

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-13

By Nick Haschka Sponsored By Mayor Cyril M. Kleen

AN ORDINANCE

AMENDING CHAPTER 191, INCOME TAX, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREA BY ADOPTING SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

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

WHEREAS, the January 31, 2018, deadline was revised to February 24, 2018, by order of the Franklin County Court of Common Pleas, and the State has no direct method of enforcing said deadline; and

WHEREAS, the City is a party to litigation in the Franklin County Court of Common Pleas, seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional; and

WHEREAS, on February 23, 2018, the Franklin County Court of Common Pleas found that Section 803.100 of H.B. 49 is constitutional; and

WHEREAS, an appeal of the decision is likely to be filed within 30 days of the decision; and

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

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

WHEREAS, the City, 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 is participating, and reserves its right to continue prosecution of the lawsuit and any subsequent appeal.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That Sections 191.27 through 191.42 inclusive, of Chapter 191, Income Tax, of the Codified Ordinances of the City of Berea, shall hereby be enacted to read as set forth in Exhibit "A" of this Ordinance, attached hereto and incorporated by reference herein.

SECTION 2. That Section 191.02, "Definitions", of Chapter 191, Income Tax, which has heretofore read as follows:

191.02 DEFINITIONS.

(A) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal

COUNCIL CHAMBER

City of Berea, Ohio

Ord No. 2018-13

By Haschka Sponsored By Mayor Kleem

income taxation or in Title LVII of the ORC, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the ORC 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 ORC.

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

(C) As used in this chapter:

- (1) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under (C)(24)(d) of this division, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
 - (a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
 - (b) Add an amount equal to five percent (5%) of intangible income deducted under division (C)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;
 - (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
 - (d)
 - (i) Except as provided in (C)(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 (C)(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 ORC;
 - (h)
 - (i) Except as limited by divisions (C)(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.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-13

By Haschka Sponsored By Mayor Kleem

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 (C)(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 more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(1)(h)(i) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(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 (C)(1)(h) of this section.
- (v) Nothing in division (C)(1)(h)(iii)(a) of this section precludes a person from carrying forward, use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(1)(h)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(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 (V)(3)(b) of Section 191.05.
- (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 (V)(3)(b) of Section 191.05.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (C)(48)(b) of this section, is not a publicly traded partnership that has made the election described in division (C)(24)(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

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

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

- (2) (a) "Assessment" means a written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to Section 191.21, and has "ASSESSMENT" written in all capital letters at the top of such finding.
- (b) "Assessment" does not include a notice denying a request for refund issued under division (C)(3) of Section 191.09, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (C)(2)(a) of this section.
- (3) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.
- (4) "Board of Tax Review" or "Board of Review" or "Board of Tax Appeals", or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under Section 191.21.
- (5) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.
- (6) "Casino operator" and "casino facility" have the same meanings as in Section 3772.01 of the ORC.
- (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 ORC.
- (8) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.
- (9) "Domicile" means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. _____ No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (10) "Employee" means an individual who is an employee for federal income tax purposes.
- (11) "Employer" means a person that is an employer for federal income tax purposes.
- (12) "Exempt income" means all of the following:
 - (a) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.
 - (b) Intangible income.
 - (c) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C)(12)(c) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.
 - (d) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
 - (e) Compensation paid under Section 3501.28 or 3501.36 of the ORC to a person serving as a precinct election official to the extent that such compensation does not exceed \$1,000 for the taxable year. Such compensation in excess of \$1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
 - (f) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.
 - (g) Alimony and child support received.
 - (h) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.
 - (i) Income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the ORC. Division (C)(12)(i) of this section does not apply for purposes of Chapter 5745 of the ORC.
 - (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.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (k) Compensation or allowances excluded from federal gross income under Section 107 of the Internal Revenue Code.
- (l) Employee compensation that is not qualifying wages as defined in division (C)(35) of this section.
- (m) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.
- (n) An S corporation shareholder's share of net profits of the S corporation, other than any part of the 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) All of the income of individuals under 18 years of age.
- (p)
 - (i) Except as provided in divisions (C)(12)(p)(ii), (iii), and (iv) of this section, qualifying wages described in division (C)(2) or (5) of Section 191.04 to the extent the qualifying wages are not subject to withholding for the City of Berea under either of those divisions.
 - (ii) The exemption provided in division (C)(12)(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 (C)(12)(p)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (C)(4)(b) of Section 191.04.
 - (iv) The exemption provided in division (C)(12)(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 (C)(2) of Section 191.04, 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 (C)(5) of Section 191.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;
 - (b) The employee receives a refund of the tax described in division (C)(12)(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 (C)(12)(q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City of Berea on not more than 20 days in a taxable year.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (ii) The exemption provided in division (C)(12)(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 municipal corporation.
 - (b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(12)(q)(ii)(b) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 191.04 (C).
- (iii) Compensation to which division (C)(12)(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 (C)(12)(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 ORC 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 (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.
- (13) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (14) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.
- (15) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.
- (16) "Income" means the following:

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (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 (C)(24)(d) of this division.
- (ii) For the purposes of division (C)(16)(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 (C)(16)(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 (C)(16)(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' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C)(12)(n) or (C)(16)(e) 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 municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident. For professional athletes whose income tax is subject to the agreement between the City of Berea and the City of Cleveland the terms of the agreement shall apply. Wages, salaries or other payments to professional athletes or other employees arising from their employment by a professional athletic organization are subject to the tax as provided herein irrespective of whether or not they are still employed by the team at the time of the making and receiving of the payment.
- (c) For taxpayers that are not individuals, net profit of the taxpayer;

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.
- (e) Intentionally left blank.
- (17) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the ORC, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.
- (18) "Internal Revenue Code" has the same meaning as in Section 5747.01 of the ORC.
- (19) "Limited liability Company" means a limited liability company formed under chapter 1705 of the ORC or under the laws of another state.
- (20) "Municipal Corporation" includes a joint economic development district or joint economic development zone that levies an income tax under Section 715.691, 715.70, 715.71, or 715.74 of the ORC.
- (21) (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 City of Berea under Section 191.03, and further reduced by any pre-2017 net operating loss carryforward available to the person for the City of Berea.
 - (ii) (a) For an individual who is a resident of the City of Berea, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.
 - (b) For an individual who is a nonresident of the City of Berea, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under Section 191.03, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City of Berea.
- (b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (C)(21)(a)(ii)(a) or (C)(21)(b) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

for federal income tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes, but only to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

- (22) "Municipality" means the same as the City of Berea. If the terms are capitalized in the ordinance they are referring to the City of Berea. If not capitalized they refer to a municipal corporation other than the City of Berea.
- (23) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (24) (a) "Net profit" for a person other than an individual means adjusted federal taxable income.
- (b) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(24)(b) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(1)(h) of this section.
- (c) For the purposes of this chapter, and notwithstanding division (C)(24)(a) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.
- (d) A publicly traded partnership that is treated as a partnership for federal income tax purposes, and that is subject to tax on its net profits by the City of Berea, may elect to be treated as a C corporation for the City of Berea. The election shall be made on the annual return for the City of Berea. The City of Berea will treat the publicly traded partnership as a C corporation if the election is so made.
- (25) "Nonresident" means an individual that is not a resident.
- (26) "Ohio Business Gateway" means the online computer network system, created under Section 125.30 of the ORC, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.
- (27) "Other payer" means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.
- (28) "Pass-through entity" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

- (29) "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.
- (30) "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.
- (31) "Postal service" means the United States postal service.
- (32) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Section 5703.056 of the ORC.
- (33) (a) "Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the City of Berea that was adopted by the City of Berea before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the City of Berea in future taxable years.
(b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.
- (34) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.
- (35) "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
 - (a) Deduct the following amounts:
 - (i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.
 - (ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
 - (iii) Intentionally left blank.
 - (iv) Intentionally left blank.
 - (v) Any amount included in wages that is exempt income.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

(b) Add the following amounts:

- (i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
- (ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (C)(35)(b)(ii) of this section applies only to those amounts constituting ordinary income.
- (iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (C)(35)(b)(iii) of this section applies only to employee contributions and employee deferrals.
- (iv) Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.
- (v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.
- (vi) Any amount not included in wages if all of the following apply:
 - (a) For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;
 - (b) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;
 - (c) For no succeeding taxable year will the amount constitute wages; and
 - (d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (C)(35)(b) of this section or ORC Section 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

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

- (a) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
- (b) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayer Kleem

aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

- (c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (C)(36)(d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;
 - (d) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (C)(36)(a) to (c) of this section have been met.
- (37) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in Section 1563(e) of the Internal Revenue Code.
 - (38) "Resident" means an individual who is domiciled in the municipal corporation as determined under Section 191.03(E).
 - (39) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
 - (40) "Schedule C" means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
 - (41) "Schedule E" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
 - (42) "Schedule F" means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
 - (43) "Single member limited liability company" means a limited liability company that has one direct member.
 - (44) "Small employer" means any employer that had total revenue of less than \$500,000 during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

- (45) "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by the City of Berea in accordance with this chapter or that person's designee.
- (46) "Tax return preparer" means any individual described in Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.
- (47) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (48) (a) "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (C)(48)(b)(i) of this section, a disregarded entity.
 - (b) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
 - (a) The limited liability company's single member is also a limited liability company.
 - (b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
 - (c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of ORC 718.01 as that section existed on December 31, 2004.
 - (d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.
 - (e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.
 - (ii) For purposes of division (C)(48)(b)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least \$400,000.
- (49) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in Sections 191.09, 191.12, 191.13, 191.19(B), 191.20, 191.21, and Sections 5717.011 and 5717.03 of the ORC, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718 of the ORC and resolutions, ordinances, and rules and regulations adopted by the City of Berea for the imposition and administration of a municipal income tax.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Hasekha

Sponsored By Mayor Kleem

- (50) "Video lottery terminal" has the same meaning as in Section 3770.21 of the ORC.
- (51) "Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770 of the ORC to conduct video lottery terminals on behalf of the state pursuant to Section 3770.21 of the ORC.

shall be, and the same is hereby amended to, read as follows:

191.02 DEFINITIONS.

(A) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the ORC, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the ORC 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 ORC.

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

(C) As used in this chapter:

- (1) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under (C)(24)(e) of this division, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
- (a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
 - (b) Add an amount equal to five percent (5%) of intangible income deducted under division (C)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;
 - (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
 - (d)
 - (i) Except as provided in division (C)(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 (C)(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.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (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 ORC;
- (h) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.
- (i) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (V)(3)(b) of Section 191.05.
- (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 (V)(3)(b) of Section 191.05. If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (C)(48)(b) of this section, is not a publicly traded partnership that has made the election described in division (C)(24)(e) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

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

- (2) (a) "Assessment" means a written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation

COUNCIL CHAMBER

City of Berea, Ohio

Oro No. 2018-13

By Haschka Sponsored By Mayor Kleem

that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to Section 191.21, and has "ASSESSMENT" written in all capital letters at the top of such finding.

- (b) "Assessment" does not include a notice denying a request for refund issued under division (C)(3) of Section 191.09, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (C)(2)(a) of this section.
- (3) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.
- (4) "Board of Tax Review" or "Board of Review" or "Board of Tax Appeals", or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under Section 191.21.
- (5) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.
- (6) "Casino operator" and "casino facility" have the same meanings as in Section 3772.01 of the ORC.
- (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 ORC.
- (8) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.
- (9) "Domicile" means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.
- (10) "Employee" means an individual who is an employee for federal income tax purposes.
- (11) "Employer" means a person that is an employer for federal income tax purposes.
- (12) "Exempt income" means all of the following:
 - (a) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.
 - (b) Intangible income.
 - (c) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

sickness, accident, or liability insurance policies. As used in division (C)(12)(c) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.

- (d) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (e) Compensation paid under Section 3501.28 or 3501.36 of the ORC to a person serving as a precinct election official to the extent that such compensation does not exceed \$1,000 for the taxable year. Such compensation in excess of \$1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (f) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.
- (g) Alimony and child support received.
- (h) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.
- (i) Income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the ORC. Division (C)(12)(i) of this section does not apply for purposes of Chapter 5745 of the ORC.
- (j) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.
- (k) Compensation or allowances excluded from federal gross income under Section 107 of the Internal Revenue Code.
- (l) Employee compensation that is not qualifying wages as defined in division (C)(35) of this section.
- (m) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.
- (n) An S corporation shareholder's share of net profits of the S corporation, other than any part of the share of net profits that represents wages as

COUNCIL CHAMBER

City of Berea, Ohio

Oro

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

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) All of the income of individuals under 18 years of age.
- (p)
 - (i) Except as provided in divisions (C)(12)(p)(ii), (iii), and (iv) of this section, qualifying wages described in division (C)(2) or (5) of Section 191.04 to the extent the qualifying wages are not subject to withholding for the City of Berea under either of those divisions.
 - (ii) The exemption provided in division (C)(12)(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 (C)(12)(p)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (C)(4)(b) of Section 191.04.
 - (iv) The exemption provided in division (C)(12)(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 (C)(2) of Section 191.04, 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 (C)(5) of Section 191.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;
 - (b) The employee receives a refund of the tax described in division (C)(12)(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 (C)(12)(q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City of Berea on not more than 20 days in a taxable year.
 - (ii) The exemption provided in division (C)(12)(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 municipal corporation.
 - (b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(12)(q)(ii)(b) of this section, "professional athlete," "professional entertainer,"

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

and "public figure" have the same meanings as in Section 191.04 (C).

- (iii) Compensation to which division (C)(12)(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 (C)(12)(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 ORC 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 (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.
- (13) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (14) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.
- (15) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.
- (16) "Income" means the following:
 - (a) (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 (C)(24)(e) of this division.
 - (ii) For the purposes of division (C)(16)(a)(i) of this section:

COUNCIL CHAMBER

City of Berea, Ohio

ORD. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (a) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (C)(16)(a)(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 (C)(16)(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' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C)(12)(n) or (C)(16)(e) 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 municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident. For professional athletes whose income tax is subject to the agreement between the City of Berea and the City of Cleveland the terms of the agreement shall apply. Wages, salaries or other payments to professional athletes or other employees arising from their employment by a professional athletic organization are subject to the tax as provided herein irrespective of whether or not they are still employed by the team at the time of the making and receiving of the payment.
- (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

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Kaschka

Sponsored By

Mayor Kleem

for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

(e) Intentionally left blank.

- (17) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the ORC, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.
- (18) "Internal Revenue Code" has the same meaning as in Section 5747.01 of the ORC.
- (19) "Limited liability Company" means a limited liability company formed under chapter 1705 of the ORC or under the laws of another state.
- (20) "Municipal Corporation" includes a joint economic development district or joint economic development zone that levies an income tax under Section 715.691, 715.70, 715.71, or 715.74 of the ORC.
- (21) (a) "Municipal taxable income" means the following:
- (i) For a person other than an individual, income apportioned or situated to the City of Berea under Section 191.03, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the City of Berea.
 - (ii) (a) For an individual who is a resident of the City of Berea, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.
 - (b) For an individual who is a nonresident of the City of Berea, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under Section 191.03, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City of Berea.
- (b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (C)(21)(a)(ii)(a) or (C)(21)(b) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a

COUNCIL CHAMBER

City of Berea, Ohio

Ord

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes, but only to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

- (22) "Municipality" means the same as the City of Berea. If the terms are capitalized in the ordinance they are referring to the City of Berea. If not capitalized they refer to a municipal corporation other than the City of Berea.
- (23) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (24)
 - (a) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(24)(a) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(24)(c) of this section.
 - (b) "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (C)(24)(c) of this section.
 - (c)
 - (i) The amount of such operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
 - (ii) No person shall use the deduction allowed by division (C)(24)(c) of this section to offset qualifying wages.
 - (iii)
 - (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.
 - (b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (C)(24)(c) of this section without regard to the limitation of division (C)(24)(c)(iii)(a) of this section.
 - (iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (C)(24)(c) of this section.
 - (v) Nothing in division (C)(24)(c)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka

Sponsored By Mayor Kleem

filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(c)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(c)(iii)(a) of this section shall apply to the amount carried forward.

- (d) For the purposes of this chapter, and notwithstanding division (C)(24)(b) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.
 - (e) A publicly traded partnership that is treated as a partnership for federal income tax purposes, and that is subject to tax on its net profits by the City of Berea, may elect to be treated as a C corporation for the City of Berea, and shall not be treated as the net profit or income of any owner of the partnership. The election shall be made on the annual return for the City of Berea. The City of Berea will treat the publicly traded partnership as a C corporation if the election is so made.
- (25) "Nonresident" means an individual that is not a resident.
 - (26) "Ohio Business Gateway" means the online computer network system, created under Section 125.30 of the ORC, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.
 - (27) "Other payer" means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.
 - (28) "Pass-through entity" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.
 - (29) "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.
 - (30) "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (31) "Postal service" means the United States postal service.
- (32) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Section 5703.056 of the ORC.
- (33) (a) "Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the City of Berea that was adopted by the City of Berea before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the City of Berea in future taxable years.
 - (b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.
- (34) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.
- (35) "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
 - (a) Deduct the following amounts:
 - (i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.
 - (ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
 - (iii) Intentionally left blank.
 - (iv) Intentionally left blank.
 - (v) Any amount included in wages that is exempt income.
 - (b) Add the following amounts:
 - (i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
 - (ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (C)(35)(b)(ii) of this section applies only to those amounts constituting ordinary income.
 - (iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

Code. Division (C)(35)(b)(iii) of this section applies only to employee contributions and employee deferrals.

- (iv) Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.
 - (v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.
 - (vi) Any amount not included in wages if all of the following apply:
 - (a) For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;
 - (b) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;
 - (c) For no succeeding taxable year will the amount constitute wages; and
 - (d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (C)(35)(b) of this section or ORC Section 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.
- (36) "Related entity" means any of the following:
- (a) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
 - (b) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
 - (c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (C)(36)(d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka Sponsored By Mayor Klem

- (d) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (C)(36)(a) to (c) of this section have been met.
- (37) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in Section 1563(e) of the Internal Revenue Code.
- (38) "Resident" means an individual who is domiciled in the municipal corporation as determined under Section 191.03(E).
- (39) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (40) "Schedule C" means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (41) "Schedule E" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (42) "Schedule F" means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (43) "Single member limited liability company" means a limited liability company that has one direct member.
- (44) "Small employer" means any employer that had total revenue of less than \$500,000 during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.
- (45) (a) "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by the City of Berea in accordance with this chapter or that person's designee. Tax Administrator does not include the state tax commission.
- (b) "Tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code.

COUNCIL CHAMBER

City of Berea, Ohio

ORD. No. 2018-13

By Haschka Sponsored By Mayer Kleem

- (46) "Tax return preparer" means any individual described in Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15 .
- (47) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (48) (a) "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (C)(48)(b)(i) of this section, a disregarded entity.
- (b) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
- (a) The limited liability company's single member is also a limited liability company.
 - (b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
 - (c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of ORC 718.01 as that section existed on December 31, 2004.
 - (d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.
 - (e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.
- (ii) For purposes of division (C)(48)(b)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least \$400,000.
- (49) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in Sections 191.09, 191.12, 191.13, 191.19(B), 191.20, 191.21, and Sections 5717.011 and 5717.03 of the ORC, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718 of the ORC and resolutions, ordinances, and rules and regulations adopted by the City of Berea for the imposition and administration of a municipal income tax.
- (50) "Video lottery terminal" has the same meaning as in Section 3770.21 of the ORC.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (51) "Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770 of the ORC to conduct video lottery terminals on behalf of the state pursuant to Section 3770.21 of the ORC.

SECTION 3. That Section 191.04, "Collection at Source", of Chapter 191, Income Tax, which has heretofore read as follows:

191.04 COLLECTION AT SOURCE.

Withholding provisions.

(A) Each employer, agent of an employer, or other payer located or doing business in the City of Berea shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City of Berea. Except for qualifying wages for which withholding is not required under Section 191.03 of this chapter (Imposition of Tax) or division (B)(4) or (6) of this section, the tax shall be withheld at the rate, specified in Section 191.03, or 2%. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

- (B) (1) Except as provided in division (B)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City of Berea the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:

- (a) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the City of Berea in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City of Berea in any month of the preceding calendar quarter exceeded \$200.

Payment under division (B)(1)(a) of this section shall be made so that the payment is received by the Tax Administrator not later than 15 days after the last day of each month for which the tax was withheld.

- (b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the 15th day of the month following the end of each calendar quarter.

- (c) Intentionally left blank.

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

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the City of Berea as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.
- (4) An employer, agent of an employer, or other payer is not required to withhold the City of Berea income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (5)
 - (a) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
 - (b) The failure of an employer, agent of an employer, or other payer to remit to the City of Berea the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (6) Compensation deferred before June 26, 2003, is not subject to the City of Berea income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the City of Berea until such time as the withheld amount is remitted to the Tax Administrator.
- (8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:
 - (a) The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City of Berea during the preceding calendar year;
 - (b) The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;
 - (c) The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;
 - (d) Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (e) Other information as may be required by the Tax Administrator.
- (9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.
- (10) An employer is required to deduct and withhold the City of Berea income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
- (11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section.

Occasional Entrant - Withholding.

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

- (a) "Employer" includes a person that is a related member to or of an employer.
- (b) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
- (c) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.
If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (C)(2)(a)(i) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayer Klem

allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

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

- (d) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
 - (e) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
 - (f) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
 - (g) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. "Worksite location" does not include the home of an employee.
- (2) (a) Subject to divisions (C)(3), (5), (6), and (7) of this section, an employer is not required to withhold the City of Berea income tax on qualifying wages paid to an employee for the performance of personal services in the City of Berea if the employee performed such services in the City of Berea on 20 or fewer days in a calendar year, unless one of the following conditions applies:
- (i) The employee's principal place of work is located in the City of Berea.
 - (ii) The employee performed services at one or more presumed worksite locations in the City of Berea. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the City of Berea at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:
 - (a) The nature of the services are such that it will require more than 20 days of the services to complete the services;
 - (b) The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than 20 days.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (iii) The employee is a resident of the City of Berea and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 191.04.
- (iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.
- (b) For the purposes of division (C)(2)(a) of this section, an employee shall be considered to have spent a day performing services in the City of Berea only if the employee spent more time performing services for or on behalf of the employer in the City of Berea than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
 - (i) Traveling to the location at which the employee will first perform services for the employer for the day;
 - (ii) Traveling from a location at which the employee was performing services for the employer to any other location;
 - (iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
 - (iv) Transporting or delivering property described in division (C)(2)(b)(iii) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
 - (v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (C)(2)(a) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (4) (a) Except as provided in division (C)(4)(b) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the City of Berea exceeds the 20-day threshold, the employer shall withhold and remit tax to the City of Berea for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City of Berea.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (b) An employer required to begin withholding tax for the City of Berea under division (C)(4)(a) of this section may elect to withhold tax for the City of Berea for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in the City of Berea.
- (5) If an employer's fixed location is the City of Berea and the employer qualifies as a small employer as defined in Section 191.02, the employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City of Berea, regardless of the number of days which the employee worked outside the corporate boundaries of the City of Berea. To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.
- (6) Divisions (C)(2)(a) and (4) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 191.04.

shall be, and the same is hereby amended to, read as follows:

191.04 COLLECTION AT SOURCE.

Withholding provisions.

(A) Each employer, agent of an employer, or other payer located or doing business in the City of Berea shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City of Berea. Except for qualifying wages for which withholding is not required under Section 191.03 of this chapter (Imposition of Tax) or division (B)(4) or (6) of this section, the tax shall be withheld at the rate, specified in Section 191.03, or 2%. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

- (B) (1) Except as provided in division (B)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City of Berea the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:
 - (a) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the City of Berea in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City of Berea in any month of the preceding calendar quarter exceeded \$200. Payments under division (B)(1)(a) of this section shall be made to the Tax Administrator not later than 15 days after the last day of each month for which the tax was withheld.
 - (b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this section of taxes required to be deducted and withheld shall make quarterly

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Kaschka

Sponsored By

Mayor Kleem

payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.

- (c) Intentionally left blank.
- (2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the City of Berea. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.
- (3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the City of Berea as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.
- (4) An employer, agent of an employer, or other payer is not required to withhold the City of Berea income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (5)
 - (a) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
 - (b) The failure of an employer, agent of an employer, or other payer to remit to the City of Berea the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (6) Compensation deferred before June 26, 2003, is not subject to the City of Berea income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the City of Berea until such time as the withheld amount is remitted to the Tax Administrator.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Kaschka Sponsored By Mayor Kleem

- (8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:
- (a) The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City of Berea during the preceding calendar year;
 - (b) The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;
 - (c) The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;
 - (d) Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;
 - (e) Other information as may be required by the Tax Administrator.
- (9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.
- (10) An employer is required to deduct and withhold the City of Berea income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
- (11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section

Occasional Entrant - Withholding.

- (C) (1) As used in this division:
- (a) "Employer" includes a person that is a related member to or of an employer.
 - (b) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

- (c) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer. If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (C)(2)(a)(i) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.
- For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (C)(2)(b) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.
- (d) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
- (e) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
- (f) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
- (g) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. "Worksite location" does not include the home of an employee.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

- (iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
 - (iv) Transporting or delivering property described in division (C)(2)(b)(iii) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
 - (v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (C)(2)(a) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (4) (a) Except as provided in division (C)(4)(b) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the City of Berea exceeds the 20-day threshold, the employer shall withhold and remit tax to the City of Berea for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City of Berea.
- (b) An employer required to begin withholding tax for the City of Berea under division (C)(4)(a) of this section may elect to withhold tax for the City of Berea for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in the City of Berea.
- (5) If an employer's fixed location is the City of Berea and the employer qualifies as a small employer as defined in Section 191.02, the employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City of Berea, regardless of the number of days which the employee worked outside the corporate boundaries of the City of Berea. To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.
- (6) Divisions (C)(2)(a) and (4) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement

SECTION 4. That Section 191.05, "Annual Return; Filing", of Chapter 191, Income Tax, which has heretofore read as follows:

191.05 ANNUAL RETURN; FILING.

- (A) An annual the City of Berea income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Klem

for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

- (1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 191.04 when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City of Berea.
- (2) Retirees having no Municipal Taxable Income for the City of Berea income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City of Berea, at which time the retiree shall be required to comply with all applicable provisions of this chapter.
- (B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.
- (C) If an individual is unable to complete and file a return or notice required by the City of Berea, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.
- (D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.
- (E) The City of Berea shall permit spouses to file a joint return.
- (F) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
- (2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
- (3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleen

- (2) (a) Subject to divisions (C)(3), (5), (6), and (7) of this section, an employer is not required to withhold the City of Berea income tax on qualifying wages paid to an employee for the performance of personal services in the City of Berea if the employee performed such services in the City of Berea on 20 or fewer days in a calendar year, unless one of the following conditions applies:
- (i) The employee's principal place of work is located in the City of Berea.
 - (ii) The employee performed services at one or more presumed worksite locations in the City of Berea. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the City of Berea at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:
 - (a) The nature of the services are such that it will require more than 20 days of the services to complete the services;
 - (b) The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than 20 days.
 - (iii) The employee is a resident of the City of Berea and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 191.04.
 - (iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.
- (b) For the purposes of division (C)(2)(a) of this section, an employee shall be considered to have spent a day performing services in the City of Berea only if the employee spent more time performing services for or on behalf of the employer in the City of Berea than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
- (i) Traveling to the location at which the employee will first perform services for the employer for the day;
 - (ii) Traveling from a location at which the employee was performing services for the employer to any other location;

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

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

- (4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by the City of Berea to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.
- (G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Berea. No remittance is required if the net amount due is ten dollars or less.
- (b) Except as otherwise provided in this chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15th) of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Berea. No remittance is required if the net amount due is ten dollars or less.
- (2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City of Berea's income tax return. The extended due date of the City of Berea's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (a) A copy of the federal extension request shall be included with the filing of the City of Berea's income tax return.
- (b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's the City of Berea income tax return. If the request is received by the Tax Administrator on or before the date the City of Berea income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

COUNCIL CHAMBER

City of Berea, Ohio

Oro. No. 2018-13

By Haschka Sponsored By Mayor Kleem

- (3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of the City of Berea's income tax return. The extended due date of the City of Berea's income tax return shall be the same as the extended due date of the state income tax return.
- (4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City of Berea, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.
- (5) To the extent that any provision in this division (G) of this section conflicts with any provision in divisions (N), (O), (P), or (Q) of this section, the provisions in divisions (N), (O), (P), or (Q) prevail.
- (H) (1) For taxable years beginning after 2015, the City of Berea shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.
- (2) Any taxpayer not required to remit tax to the City of Berea for a taxable year pursuant to division (H)(1) of this section shall file with the City of Berea an annual net profit return under division (F)(3) of this section.
- (I) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. This division shall not apply to payments required to be made under division (B)(1)(a) of Section 191.04 or provisions for semi-monthly withholding.
- (J) Taxes withheld for the City of Berea by an employer, the agent of an employer, or other payer as described in Section 191.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City of Berea, unless the amounts withheld were not remitted to the City of Berea and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.
- (K) Each return required by the City of Berea to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.
- (L) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City of Berea, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City of Berea or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter and of the City of Berea's ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.
- Filing via Ohio Business Gateway.
- (M) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the City of Berea's income tax

COUNCIL CHAMBER

City of Berea, Ohio

Ord. _____

No. 2018-13

By _____

Haschka

Sponsored By _____

Mayor Kleck

return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

- (2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

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

- (O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the City of Berea before the 181st day after the applicant's active duty or service terminates.
- (3) Taxes paid pursuant to a contract entered into under (O)(1) of this division are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) of this section.
- (2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the City of Berea in accordance with this chapter. The length of any extension granted under division (P)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

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

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

Consolidated municipal income tax return.

(R) As used in this section:

- (1) "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.
- (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.
- (3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (R)(1) of this section.
- (4) "Incumbent local exchange carrier" has the same meaning as in Section 4927.01 of the ORC.
- (5) "Local exchange telephone service" has the same meaning as in Section 5727.01 of the ORC.

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

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

- (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.
- (3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

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

(U) A taxpayer shall prepare a consolidated the City of Berea income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

- (V) (1) Except as otherwise provided in divisions (V)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 191.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.
- (2) No corporation filing a consolidated the City of Berea income tax return shall make any adjustment otherwise required under Section 191.02 (C)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
- (3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated the City of Berea income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 191.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Berea. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
 - (b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 191.05, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Berea. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.
- (4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:
- (a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of Section 191.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Berea;
 - (b) The pass-through entity shall be subject to the City of Berea income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (W) Corporations filing a consolidated the City of Berea income tax return shall make the computations required under divisions (R) through (Y) of Section 191.05 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.
- (X) Each corporation filing a consolidated the City of Berea income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City of Berea in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
- (Y) Corporations and their affiliates that made an election or entered into an agreement with the City of Berea before January 1, 2016, to file a consolidated or combined tax return with the

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Klein

City of Berea may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

shall be, and the same is hereby amended to, read as follows:

191.05 ANNUAL RETURN; FILING.

(A) An annual the City of Berea income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

- (1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 191.04 when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City of Berea.
- (2) Retirees having no Municipal Taxable Income for the City of Berea income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City of Berea, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

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

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

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

(E) The City of Berea shall permit spouses to file a joint return.

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

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; or in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Klean

files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

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

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

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

- (G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Berea. No remittance is required if the net amount due is ten dollars or less.

- (b) Except as otherwise provided in this chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15th) of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Berea. No remittance is required if the net amount due is ten dollars or less.

- (2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City of Berea's income tax return. The extended due date of the City of Berea's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

- (a) A copy of the federal extension request shall be included with the filing of the City of Berea's income tax return.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's City of Berea income tax return. If the request is received by the Tax Administrator on or before the date the City income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of the City of Berea's income tax return. The extended due date of the City of Berea's income tax return shall be the same as the extended due date of the state income tax return.
- (4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City of Berea, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.
- (5) To the extent that any provision in this division (G) of this section conflicts with any provision in divisions (N), (O), (P), or (Q) of this section, the provisions in divisions (N), (O), (P), or (Q) prevail.
- (H) (1) For taxable years beginning after 2015, the City of Berea shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.
- (2) Any taxpayer not required to remit tax to the City of Berea for a taxable year pursuant to division (H)(1) of this section shall file with the City of Berea an annual net profit return under division (F)(3) of this section, unless the provisions of division (H)(3) apply.
- (3) (a) A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to the City of Berea income tax ordinance for a taxable year if both the following apply:
 - (i) The person was required to file a tax return with the City of Berea for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 191.04(C)(1)(g) within the City.
 - (ii) The person no longer provides services in the City of Berea and does not expect to be subject to the City of Berea income tax for the taxable year.
- (b) The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the City. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the City of Berea, make any sales in the City of Berea, or otherwise become subject to the tax levied by the City of Berea during the taxable year. If the affiant does become subject to the tax levied by the City of Berea for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply

COUNCIL CHAMBER

City of Berea, Ohio

Ord. 2018-13 No. 2018-13

By Haschka Sponsored By Mayor Kleem

as a taxpayer with the City of Berea income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.

- (c) If a person submits an affidavit described in division (H)(3)(b) the Tax Administrator shall not require the person to file and tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.
- (d) Nothing in division (H)(3) of this section prohibits the Tax Administrator from performing an audit of the person.

(I) If a payment under this chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.

(J) Taxes withheld for the City of Berea by an employer, the agent of an employer, or other payer as described in Section 191.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City of Berea, unless the amounts withheld were not remitted to the City of Berea and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the City of Berea to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

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

Filing via Ohio Business Gateway.

- (M) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the City of Berea's income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.
- (2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

(N) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support

COUNCIL CHAMBER

City of Berea, Ohio

ORD.

No. 2018-13

By

Kaschka

Sponsored By

Mayor Kleem

of the armed forces, may apply to the Tax Administrator of the City of Berea for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City of Berea during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

- (O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the City of Berea before the 181st day after the applicant's active duty or service terminates.
- (3) Taxes paid pursuant to a contract entered into under (O)(1) of this division are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) of this section.
- (2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the City of Berea in accordance with this chapter. The length of any extension granted under division (P)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.
- (b) Taxes whose payment is extended in accordance with division (P)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (P)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.
- (Q) For each taxable year to which division (N), (O), or (P) of this section applies to a taxpayer, the provisions of divisions (O)(2) and (3) of this section, as applicable, apply to the

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

Consolidated municipal income tax return.

(R) As used in this section:

- (1) "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.
 - (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.
 - (3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (R)(1) of this section.
 - (4) "Incumbent local exchange carrier" has the same meaning as in Section 4927.01 of the ORC.
 - (5) "Local exchange telephone service" has the same meaning as in Section 5727.01 of the ORC.
- (S) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the City of Berea's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
- (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.
 - (3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

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

(U) A taxpayer shall prepare a consolidated the City of Berea income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

- (V) (1) Except as otherwise provided in divisions (V)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 191.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.
- (2) No corporation filing a consolidated the City of Berea income tax return shall make any adjustment otherwise required under Section 191.02 (C)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
- (3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated the City of Berea income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
- (a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 191.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City of Berea. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 191.05, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City of

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haskin Sponsored By Mayor Kleem

Berea. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

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

- (a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of Section 191.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Berea;
- (b) The pass-through entity shall be subject to the City of Berea income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(W) Corporations filing a consolidated the City of Berea income tax return shall make the computations required under divisions (R) through (Y) of Section 191.05 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

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

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

SECTION 5. That Section 191.07, "Estimated Taxes", of Chapter 191, Income Tax, which has heretofore read as follows:

191.07 ESTIMATED TAXES.

(A) As used in this section:

- (1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the City of Berea's income tax for the current taxable year.
- (2) "Tax liability" means the total taxes due to the City of Berea for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Klicm

- (B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least \$200. For the purposes of this section:
- (a) Taxes withheld for the City of Berea from qualifying wages shall be considered as paid to the City of Berea in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.
 - (b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
- (2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.
- (3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 191.05 or on or before the fifteenth (15th) day of the fourth month after the taxpayer becomes subject to tax for the first time.
- (4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15th) day of the fourth month after the beginning of each fiscal year or period.
- (5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.
- (C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the City of Berea, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
- (a) On or before the fifteenth (15th) day of the fourth month after the beginning of the taxable year, twenty-two and one-half (22.5) percent of the tax liability for the taxable year;
 - (b) On or before the fifteenth (15th) day of the sixth month after the beginning of the taxable year, forty-five (45) percent of the tax liability for the taxable year;
 - (c) On or before the fifteenth (15th) day of the ninth month after the beginning of the taxable year, sixty-seven and one-half (67.5) percent of the tax liability for the taxable year;
 - (d) On or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleen

- (2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
- (3) On or before the fifteenth (15th) day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 191.05.
- (D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 191.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:
 - (a) For the first payment of estimated taxes each year, twenty-two and one-half percent (22.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (b) For the second payment of estimated taxes each year, forty-five percent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (c) For the third payment of estimated taxes each year, sixty-seven and one-half percent (67.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (d) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.
- (E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:
 - (1) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
 - (2) The amount of estimated taxes that were paid equals at least one hundred percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the City of Berea under Section 191.05 for that year.

COUNCIL CHAMBER

City of Berea, Ohio

Oro. No. 2018-13

By Haschka Sponsored By Mayor Kleem

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

shall be, and the same is hereby amended to, read as follows:

191.07 ESTIMATED TAXES.

(A) As used in this section:

- (1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the City of Berea's income tax for the current taxable year.
- (2) "Tax liability" means the total taxes due to the City of Berea for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least \$200. For the purposes of this section:

- (a) Taxes withheld for the City of Berea from qualifying wages shall be considered as paid to the City of Berea in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.
- (b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

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

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 191.05 or on or before the fifteenth (15th) day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15th) day of the fourth month after the beginning of each fiscal year or period.

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

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the City of Berea, including the

COUNCIL CHAMBER

City of Berea, Ohio

Ole No. 2018-13

By Haschka Sponsored By Mayor Kiehm

application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

- (a) On or before the fifteenth (15th) day of the fourth month after the beginning of the taxable year, twenty-two and one-half (22.5) percent of the tax liability for the taxable year;
 - (b) On or before the fifteenth (15th) day of the sixth month after the beginning of the taxable year, forty-five (45) percent of the tax liability for the taxable year;
 - (c) On or before the fifteenth (15th) day of the ninth month after the beginning of the taxable year, sixty-seven and one-half (67.5) percent of the tax liability for the taxable year;
 - (d) For an individual, on or before the fifteenth (15th) day of the first month of the following taxable year, ninety percent (90%) of the tax liability for the taxable year. For a person other than an individual, on or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.
- (2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
- (3) On or before the fifteenth (15th) day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 191.05.
- (D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 191.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:
- (a) For the first payment of estimated taxes each year, twenty-two and one-half percent (22.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (b) For the second payment of estimated taxes each year, forty-five percent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (c) For the third payment of estimated taxes each year, sixty-seven and one-half percent (67.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (d) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kleem

payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

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

- (1) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
- (2) The amount of estimated taxes that were paid equals at least one hundred percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the City of Berea under Section 191.05 for that year.
- (3) The taxpayer is an individual who resides in the City of Berea but was not domiciled here on the first day of January of the calendar year that includes the first day of the taxable year.

SECTION 6. That Section 191.18, "Interest and Penalties", of Chapter 191, Income Tax, which has heretofore read as follows:

191.18 INTEREST AND PENALTIES.

(A) As used in this section:

- (1) "Applicable law" means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the City of Berea provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of the City of Berea.
- (2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under Section 1274 of the Internal Revenue Code, for July of the current year.
- (3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by the City of Berea pursuant to applicable law, including at any time before January 1, 2016.
- (4) "Interest rate as described in division (A) of this section" means the federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.
- (5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with the Tax Administrator or the City of Berea 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.

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By Haschka

Sponsored By Mayor Kilem

- (7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.
- (8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
- (9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.
- (B) (1) This section applies to the following:
- (a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;
- (b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the City of Berea on or after January 1, 2016.
- (2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules and regulations, as adopted before January 1, 2016, of the City of Berea to which the return is to be filed or the payment is to be made.
- (C) Should any taxpayer, employer, agent of the employer, or other payer for any reason fails, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the City of Berea any return required to be filed, the following penalties and interest shall apply:
- (1) Interest shall be imposed at the rate described in division (A) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.
- (2) (a) With respect to unpaid income tax and unpaid estimated income tax, the City of Berea may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.
- (b) With respect to any unpaid withholding tax, the City of Berea may impose a penalty equal to fifty percent (50%) of the amount not timely paid.
- (3) With respect to returns other than estimated income tax returns, the City of Berea may impose a penalty of \$25 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 \$150 for each failure.
- (D) Nothing in this section requires the City of Berea to refund or credit any penalty, amount of interest, charges, or additional fees that the City of Berea has properly imposed or collected before January 1, 2016.
- (E) Nothing in this section limits the authority of the City of Berea to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.
- (F) By the 31st day of October of each year the City of Berea shall publish the rate described in division (A) of this section applicable to the next succeeding calendar year.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Klem

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

shall be, and the same is hereby amended to, read as follows:

191.18 INTEREST AND PENALTIES.

(A) As used in this section:

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

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

- (a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

COUNCIL CHAMBER

City of Berea, Ohio

Ord.

No. 2018-13

By

Haschka

Sponsored By

Mayor Kleem

- (b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the City of Berea on or after January 1, 2016.
- (2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules and regulations, as adopted before January 1, 2016, of the City of Berea to which the return is to be filed or the payment is to be made.
- (C) Should any taxpayer, employer, agent of the employer, or other payer for any reason fails, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the City of Berea any return required to be filed, the following penalties and interest shall apply:
- (1) Interest shall be imposed at the rate described in division (A) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.
- (2) (a) With respect to unpaid income tax and unpaid estimated income tax, the City of Berea may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.
- (b) With respect to any unpaid withholding tax, the City of Berea may impose a penalty not exceeding fifty percent (50%) of the amount not timely paid.
- (3) With respect to returns other than estimated income tax returns, the City of Berea may impose a penalty of \$25 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 \$150 for each failure.
- (D) Nothing in this section requires the City of Berea to refund or credit any penalty, amount of interest, charges, or additional fees that the City of Berea has properly imposed or collected before January 1, 2016.
- (E) Nothing in this section limits the authority of the City of Berea to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.
- (F) By the 31st day of October of each year the City of Berea shall publish the rate described in division (A) of this section applicable to the next succeeding calendar year.
- (G) The City of Berea may impose on the taxpayer, employer, any agent of the employer, or any other payer the City of Berea's post-judgment collection costs and fees, including attorney's fees.

SECTION 7. That the Council hereby expressly finds and determines that it does not concede the legality of H.B. 49's municipal income tax provisions, Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas or any subsequent appeal of said case, 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.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2018-13

By Haschka Sponsored By Mayor Kleem

SECTION 8. That this Ordinance is declared to be an 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 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 9. That the Council hereby finds that this Ordinance was deliberated upon and passed in public meetings in accordance with Section 121.22 of the Ohio Revised Code.

SECTION 10. That, subject to Section 7, the provisions adopted in Section 1 and Section 2 of this Ordinance shall apply to all tax years beginning on or after January 1, 2018.

SECTION 11. 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 the amendments made in Section 2 of this Ordinance shall likewise be stayed.

SECTION 12. That provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: March 5, 2018

[Signature]
President of Council

ATTEST: [Signature]
Clerk of Council

APPROVED: March 6, 2018

[Signature]
Mayor

Approved as to Form:

[Signature]
Director of Law

191.27 FILING NET PROFIT TAXES; ELECTION TO BE SUBJECT TO PROVISIONS OF CHAPTER.

(A) A taxpayer may elect to be subject to sections 191.27 to 191.42 of the Codified Ordinances in lieu of the provisions set forth in the remainder of this chapter. Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:

- (1) The state tax commissioner shall serve as the sole administrator of the municipal net profit tax for which the taxpayer as defined in 191.28(C) of the Codified Ordinances is liable for the term of the election;
- (2) The commissioner shall administer the tax pursuant to sections 718.80 to 718.95 of the Revised Code, sections 191.27 to 191.42 of the Codified Ordinances, and any applicable provision of Chapter 5703. of the Revised Code.

(B) (1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the taxpayer's taxable year by notifying the tax commissioner and the City of Berea, on a form prescribed by the tax commissioner.

- (2)
 - (a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the tax commissioner and the City of its termination of the election.
 - (b) A notification of termination shall be made, on a form prescribed by the tax commissioner, on or before the first day of the third month of any taxable year.
 - (c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to sections 191.27 to 191.42 of the Codified Ordinances and is instead subject to the provisions set forth in the remainder of this chapter.

(C) The tax commissioner shall enforce and administer sections 191.27 to 191.42 of the Codified Ordinances. In addition to any other powers conferred upon the tax commissioner by law, the tax commissioner may:

- (1) Prescribe all forms necessary to administer those sections;
- (2) Adopt such rules as the tax commissioner finds necessary to carry out those sections;
- (3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the tax commissioner by those sections.

(D) The tax commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code and Section 191.02(C)(45)(a) of the City of Berea Codified Ordinances.

191.28 DEFINITIONS.

If a term used in sections 191.27 to 191.42 of the Codified Ordinances 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 have control over the use of the term in Title LVII of the Revised Code, unless the term is defined in Chapter 5703. of the Revised Code, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and section 191.02 of the Codified Ordinances, the definition in this section shall control for all uses of that term in sections 191.27 to 191.42 of the Codified Ordinances.

As used in sections 191.27 to 191.42 of the Codified Ordinances only:

(A) "Municipal taxable income" means income apportioned or sitused to the municipal corporation under section 191.29 of the Codified Ordinances, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(B) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation as described in division (D)(5) of section 718.01 of the Revised Code and section 191.02 of the Codified Ordinances, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

- (1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
- (2) Add an amount equal to five per cent of intangible income deducted under division (B)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.
- (3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.
- (4)
 - (a) Except as provided in division (B)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.
 - (b) Division (B)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
- (6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

- (7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.
- (8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.
- (9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of section 191.33 of the Codified Ordinances.
- (10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of section 191.33 of the Codified Ordinances.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in section 718.01(L)(2), and is not a publicly traded partnership that has made the election described in 718.01(D)(5), the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

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

(C) "Taxpayer" has the same meaning as in section 191.02(C)(48) of the Codified Ordinances, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745. of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

(D) "Tax return" or "return" means the notifications and reports required to be filed pursuant to sections 191.27 to 191.45 of the Codified Ordinances for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.

(E) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of sections 191.27 to 191.45 of the Codified

Ordinances is changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The tax commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.

(F) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 191.37 of the Codified Ordinances.

191.29 APPLICABILITY; TAXABLE SITUS; APPORTIONMENT.

This section applies to any taxpayer that is engaged in a business or profession in the City and that has made the election under section 191.27 of the Codified Ordinances.

(A) Except as otherwise provided in division (B) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City 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 City 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 City 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 191.04 of the Codified Ordinances;
- (3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

- (B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the taxpayer may request, or the tax commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

- (a) Separate accounting;

- (b) The exclusion of one or more of the factors;

- (c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
 - (d) A modification of one or more of the factors.
- (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the tax commissioner denies the request in an assessment issued within the period prescribed by division (A) of section 191.37 of the Codified Ordinances.
- (3) The tax commissioner may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of section 191.37 of the Codified Ordinances.

(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

- (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - (a) The employer;
 - (b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.
- (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
- (3) Any other location, if the tax commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the tax commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the tax commissioner's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be situated to the City as follows:

- (1) Gross receipts from the sale of tangible personal property shall be situated to the City only if, regardless of where title passes, the property meets either of the following criteria:

- (a) The property is shipped to or delivered within the City from a stock of goods located within the City.
 - (b) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
- (2) Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
 - (3) To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
 - (4) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.
 - (5) Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.

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

(F) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under (C)(12) and (R)(1)(d) of section 718.01 of the Revised Code, by the City or substantially similar provision of the codified ordinances of another municipal corporation, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the City. In no case shall a taxpayer be required to add to its net profit that was apportioned to the City any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

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

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

191.30 INFORMATION PROVIDED TO TAX ADMINISTRATORS; CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by sections 191.27 to 191.42 of the Codified Ordinances is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in section 4123.271 or 5703.21 of the Revised Code. The tax commissioner may furnish

the internal revenue service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.

(B) In May and November of each year, the tax commissioner shall provide the City tax administrator with the following information for every taxpayer that filed tax returns with the commissioner under sections 191.27 to 191.42 of the Codified Ordinances and that had municipal taxable income apportionable to the City under this chapter for any prior year:

- (1) The taxpayer's name, address, and federal employer identification number;
- (2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the City pursuant to section 191.29 of the Codified Ordinances;
- (3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;
- (4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year;
- (5) The amount of any credit claimed under section 718.94 of the Revised Code.

(C) Not later than thirty days after each distribution made to municipal corporations under section 718.83 of the Revised Code, the tax commissioner shall provide to the City a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the City and the amount of each such taxpayer's estimated payment.

(D) The information described under divisions (B) and (C) of this section shall be provided to the individual or individuals designated by the City tax administrator under section 718.83(D) of the Revised Code.

- (E) (1) The City expects that the tax commissioner will, pursuant to section 718.84(E) of the Revised Code, provide tax returns and other information it receives in the performance of its administration of the municipal net profits tax for taxpayers making the election provided in section 191.27 of the Codified Ordinances. The tax administrator shall review these returns and information, as well as the information received pursuant to divisions (B) and (C) of this section, and has discretion to refer any taxpayer for audit by the tax commissioner. Such referral shall be made on a form prescribed by the commissioner and shall include any information that forms the basis for the referral.
- (2) If the tax commissioner declines to audit a taxpayer referred by the tax administrator under this section, the City reserves its right to pursue any and all remedies, whether at law or in equity, to ensure that the correct tax liability has been calculated and paid by the taxpayer.

191.31 FILING OF ANNUAL RETURN; REMITTANCE; DISPOSITION OF FUNDS.

- (A) (1) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under section 191.35 of the Codified Ordinances, shall be submitted to the tax commissioner, on a form and in the manner prescribed by the commissioner, on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

- (2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with sections 191.27, 191.28, and, if applicable, 191.33 of the Codified Ordinances onto its annual return.
- (3) The remittance shall be made payable to the treasurer of state and in the form prescribed by the tax commissioner. If the amount payable with the tax return is ten dollars or less, no remittance is required.
- (B) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer and shall include the taxpayer's identification number. Each return shall be verified by a declaration under penalty of perjury.
- (2) (a) The tax commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the commissioner under sections 191.27 to 191.42 of the Codified Ordinances, copies of any relevant documents or other information.
- (b) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the tax commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if electronic submission is not available, mail the documents to the tax commissioner. The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.
- (3) After a taxpayer files a tax return, the tax commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.
- (C) (1) (a) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.
- (b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the commissioner receives the request on or before the date the municipal income tax return is due, the commissioner shall grant the taxpayer's extension request.
- (c) An extension of time to file under division (D)(1) of this section is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date.
- (2) If the commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with section 191.03 of the Codified Ordinances, the commissioner may

require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(D) Each return required to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the tax commissioner about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the commissioner to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the commissioner with information that is missing from the return, to contact the commissioner for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the commissioner and has shown to the preparer or other person.

(E) When income tax returns or other documents require the signature of a tax return preparer, the tax commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature.

191.32 ELECTRONIC FILING.

(A) All taxpayers that have made the election allowed under section 191.27 of the Codified Ordinances shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio business gateway or in another manner as prescribed by the tax commissioner.

(B) A taxpayer may apply to the commissioner, on a form prescribed by the commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by nonelectronic means.

(C) The tax commissioner may adopt rules establishing the following:

- (1) The format of documents to be used by taxpayers to file returns and make payments by electronic means;
- (2) The information taxpayers must submit when filing tax returns by electronic means.

191.33 CONSOLIDATED RETURNS.

(A) As used in this section:

- (1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.
- (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

- (3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.
 - (4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.
 - (5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.
- (B) (1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated tax returns under division (B)(2) of this section or a taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown.
- (2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.
 - (3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
 - (4) When a taxpayer makes the election allowed under section 191.27 of the Codified Ordinances, a valid election made by the taxpayer is binding upon the tax commissioner for the remainder of the five-year period.
 - (5) When an election made under section 191.27 of the Codified Ordinances is terminated, a valid election made under this section is binding upon the tax administrator for the remainder of the five-year period.
- (C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the tax commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

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

- (E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 191.28 of the Codified Ordinances, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.
- (2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 191.28 of the Codified Ordinances to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
- (3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
- (a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 191.29 of the Codified Ordinances, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
 - (b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 191.29 of the Codified Ordinances, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.
- (4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:
- (a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in section 191.29 of the Codified Ordinances, exclude the property, payroll, and gross

receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

- (b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 191.27 to 191.42 of the Codified Ordinances on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under section 191.29 of the Codified Ordinances by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 191.27 to 191.42 of the Codified Ordinances or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

191.34 FAILURE TO PAY TAX.

If a taxpayer that has made the election allowed under 191.27 of the Codified Ordinances fails to pay any tax as required under sections 191.27 to 191.42 of the Codified Ordinances, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the date an assessment is issued under section 191.27 of the Codified Ordinances, whichever occurs first.

191.35 DECLARATION OF ESTIMATED TAXES.

(A) As used in this section:

- (1) "Combined tax liability" means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.
- (2) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.

- (B) (1) Except as provided in division (B)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the tax commissioner, if the amount payable as estimated taxes is at least two hundred dollars.
- (2) Except as provided in division (B)(4) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner.
- (3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

- (4) The tax commissioner may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

(C) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the tax commissioner at the times and in the amounts prescribed in division (C)(1) of this section. Remitted taxes shall be made payable to the treasurer of state.

- (1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:

- (a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the combined tax liability for the taxable year;
- (b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the combined tax liability for the taxable year;
- (c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the combined tax liability for the taxable year;
- (d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the combined tax liability for the taxable year.

- (2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.

- (3)
 - (a) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.
 - (b) Upon receiving a payment of estimated taxes under this section, the commissioner shall immediately forward the payment to the treasurer of state. The treasurer shall credit the payment in the same manner as in division (B) of section 718.85 of the Revised Code.

- (D) (1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

- (a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

- (b) For the second payment of estimated taxes each year, forty-five per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (d) For the fourth payment of estimated taxes each year, ninety per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently due.
 - (3) All amounts collected under this section shall be considered as taxes collected under sections 191.27 to 191.42 of the Codified Ordinances and shall be credited and distributed to municipal corporations in accordance with section 718.83 of the Revised Code.

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

- (1) The amount of estimated taxes that were paid equals at least ninety per cent of the combined tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
- (2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a municipal income tax return for that year.

191.36 ADDITIONAL PENALTIES.

(A) In addition to any other penalty imposed by sections 191.27 to 191.42 of the Codified Ordinances or Chapter 5703. of the Revised Code, the following penalties shall apply:

- (1) If a taxpayer required to file a tax return under sections 191.27 to 191.42 of the Codified Ordinances fails to make and file the return within the time prescribed, including any extensions of time granted by the tax commissioner, the commissioner may impose a penalty not exceeding twenty-five dollars per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed one hundred fifty dollars.

- (2) If a person required to file a tax return electronically under sections 191.27 to 191.42 of the Codified Ordinances fails to do so, the commissioner may impose a penalty not to exceed the following:
 - (a) For each of the first two failures, five per cent of the amount required to be reported on the return;
 - (b) For the third and any subsequent failure, ten per cent of the amount required to be reported on the return.
- (3) If a taxpayer that has made the election allowed under section 191.27 of the Codified Ordinances fails to timely pay an amount of tax required to be paid under this chapter, the commissioner may impose a penalty equal to fifteen per cent of the amount not timely paid.
- (4) If a taxpayer files what purports to be a tax return required by sections 191.27 to 191.42 of the Codified Ordinances that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of sections 191.27 to 191.42 of the Codified Ordinances, a penalty of up to five hundred dollars may be imposed.
- (5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under sections 191.27 to 191.42 of the Codified Ordinances, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.
- (6) If any person makes a false or fraudulent claim for a refund under section 191.38 of the Codified Ordinances, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 191.37 of the Codified Ordinances without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the tax commissioner. The commissioner may adopt rules governing the imposition and abatement of such penalties.

(D) All amounts collected under this section shall be considered as taxes collected under sections 191.27 to 191.42 of the Codified Ordinances and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under section 718.83 of the Revised Code.

191.37 ASSESSMENTS AGAINST TAXPAYER.

(A) If any taxpayer required to file a return under section 191.27 to 191.42 of the Codified Ordinances fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 191.38 of the Codified Ordinances for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by sections 191.27 to 191.42 of the Codified Ordinances, or that files a fraudulent return. The commissioner shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 191.38 of the Codified Ordinances, with interest on that amount as provided by that section.

191.38 REFUND APPLICATIONS.

(A) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under sections 191.27 to 191.42 of the Codified Ordinances, including assessments, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 191.37 of the Codified Ordinances. The application shall be filed in the form prescribed by the tax commissioner.

(B) (1) On the filing of a refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than ten dollars and not less than that claimed, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code. If the amount is greater than ten dollars but less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(2) Upon issuance of a refund under this section, the commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under section 718.83 of the Revised Code.

- (C) Any portion of a refund determined under division (B) of this section that is not issued within ninety days after such determination shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

191.39 AMENDED RETURNS.

(A) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under section 191.27 of the Codified Ordinances and used to determine the tax due under sections 191.27 to 191.42 of the Codified Ordinances must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under those sections, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the commissioner before filing the amended return.

(B) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. An amended return required by this section is a return subject to assessment under section 191.37 of the Codified Ordinances for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

(C) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in section 191.38 of the Codified Ordinances, if the application otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 191.38 of the Codified Ordinances. The application shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

191.40 EXAMINATION OF RECORDS AND OTHER DOCUMENTS AND PERSONS.

(A) The tax commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to sections 191.27 to 191.42 of the Codified Ordinances for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the commissioner,

authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer or other person that is subject to sections 191.27 to 191.42 of the Codified Ordinances shall be open to the tax commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The commissioner may require any person, by notice served on that person, to keep such records as the commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.

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

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

191.41 CREDITS.

(A) A credit, granted by resolution or ordinance of the City pursuant to section 718.15 or 718.151 of the Revised Code, shall be available to a taxpayer that has made the election allowed under section 191.27 of the Codified Ordinances, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the tax commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:

- (1) A copy of the agreement entered into by the City and taxpayer under section 718.15 or 718.151 of the Codified Ordinances;
 - (2) A copy of the ordinance or resolution authorizing the agreement entered into between the City and the taxpayer.
- (B) (1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the City granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.
- (2) Such documentation shall be provided in the form prescribed by the tax commissioner.
 - (3) Nothing in this section shall be construed to authorize the tax commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the City and taxpayer under

section 718.15 or 718.151 of the Codified Ordinances, or to modify the terms or conditions of any such existing agreement.

191.42 RECKLESS VIOLATIONS; PENALTIES.

(A) Except as provided in division (B) of this section, whoever recklessly violates division (A) of section 191.31 of the Codified Ordinances shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both.

(B) Each instance of access or disclosure in violation of division (A) of section 191.31 of the Codified Ordinances constitutes a separate offense.

(C) These specific penalties shall not be construed to prevent the City from prosecuting any and all other offenses that may apply.