

CHAPTER 161 Income Tax

161.03 IMPOSITION OF TAX.

(a) Basis of Imposition. Subject to provisions of Section 161.01, an annual tax shall be, and is hereby levied on and after January 1, 1977 2014, at the rate of ~~one and one-half percent (1-1/2%)~~ **TWO AND ONE HALF PERCENT (2-1/2%)** per annum upon the following:

- (1) On all qualifying wages, salaries, commissions, other compensation, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, lottery winnings, prize moneys, tips and gratuities, and other taxable income earned or received, accrued or any way set apart unto residents of the Municipality;
- (2) On all qualifying wages, salaries, commissions, other compensation, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, lottery winnings, prize moneys, tips and gratuities, and other taxable income earned or received, accrued or any way set apart unto nonresidents for work done, or services performed or rendered, in the Municipality;
- (3) On the portion attributable to the Municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and businesses or other activities conducted in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (4) On the portion attributable to the Municipality on the net profits by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (5) On the portion attributable to the Municipality of the net profits earned by all corporations, estates and trusts that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
- (6) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and/or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings. Gambling losses are not allowed as a deduction from income unless the taxpayer is listed as a professional gambler.

(b) Businesses Both In and Outside the Municipal Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745 of the Ohio Revised Code. Except as otherwise provided in division (D) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for

EXHIBIT A

purposes of municipal income taxation in the same proportion as the average ratio of the following:

- (1) Multiply the entire net profits of the business by a business apportionment percentage to be determined by:
 - A. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation 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, 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.
 - B. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code.
 - C. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
 - D. Adding together the percentages determined in accordance with subsections (b)(1) A, B, and C hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.
 1. A factor is applicable even though it may be apportioned entirely in or outside the Municipality.
 2. Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Administrator, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

mean: (c) As used in division (b) of this section, "sales made in a municipal corporation"

- (1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation.
- (2) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

(d) Net Operating Loss (NOL).

- (1) The Municipality does not allow a net operating loss carryback or carryforward.

- (2) Nothing in Ohio R.C. 718.01 requires a municipal corporation to allow a net operating loss carryforward.
- (3) The net operating loss of any association, pass-through entity or unincorporated business activity may not be used to offset salaries, wages, commissions, other compensation or other miscellaneous non-business taxable income.
- (4) If a taxpayer is engaged in two or more taxable associations, pass-through entities or unincorporated business activities to be included in the same return, the net loss of one association or unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits.

(e) Consolidated Returns.

- (1) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.
- (2) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the Rules and Regulations for discontinuing the filing of consolidated returns have been met.

(f) Exclusions. The provisions of this Chapter shall not be construed as levying a tax upon the following:

- (1) Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
- (2) Proceeds of insurance, annuities, Workers' Compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.
- (3) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
- (4) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (5) Alimony paid or received.
- (6) Compensation for damage to property by way of insurance or otherwise.
- (7) Interest and dividends from intangible property.
- (8) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01).
- (9) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R.C. 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (10) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.
- (11) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property

ownership or income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.

- (12) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
- (13) The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.
- (14) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subject to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
- (15) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.
- (16) Personal earnings of any natural person under eighteen years of age.
- (17) Mentally retarded and developmentally disabled employees earning less than the minimum hours wage while employed at government sponsored sheltered workshops shall be exempt from the levy of the tax provided herein with approval of the Tax Administrator.
- (18) The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - A. The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.
 - B. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.
- (19) The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
 - A. The income of an electric company or combined company;
 - B. The income of a telephone company.As used in division (f)(19) of this section, "combined company", "electric company", and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.
- (20) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a)

of the Internal Revenue Code, to the extent such distributive share would not be allocated or apportioned to this State under division (B)(1) and (2) of section 5733.05 of the Ohio Revised Code if the S corporation were a corporation subject to the taxes imposed under Chapter 5733 of the Ohio Revised Code.

- (21) Generally, the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

(g) Rentals from Real Property.

- (1) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived, whether so rented, managed or operated by the taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

- (2) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of one hundred dollars (\$100.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to

tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds one hundred dollars (\$100.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds one hundred dollars (\$100.00) per month; and provided further that the person who operates a rooming house of two or more rooms rented shall be considered in business whether or not the gross income exceeds one hundred dollars (\$100.00) per month.

- (3) In determining the amount of gross monthly rental of any real property, periods during which, by reason of vacancy or any other cause, rentals are not received shall not be taken into consideration by the taxpayer.
- (4) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- (5) Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property and any and all other types of real estate.
- (6) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.
- (7) Nonresidents of Gahanna are subject to such taxation only if the real property is situated within the City. Nonresidents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00) shall take into consideration only real estate situated within Gahanna.
- (8) Residents of Gahanna are subject to taxation upon the net income from rentals, to the extent above specified, regardless of the location of the real property owned.
- (9) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in Gahanna.
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