



Legislation Text

File #: ORD-0047-2018, **Version:** 1

TO AMEND THE CITY INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE BY ENACTING SECTIONS 161.50 THROUGH 161.65 OF THE CODIFIED ORDINANCES OF THE CITY OF GAHANNA, AND TO DECLARE AN EMERGENCY.

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

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

WHEREAS, the City of Gahanna, with over 160 other Ohio municipalities, is party to a case challenging the State's actions with regard to municipal income taxation in H.B. 49; and

WHEREAS, on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 17CV 10258 extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and

WHEREAS, on February 12 and 13, 2018, Judge Cain held a hearing on the motion for preliminary injunction made by the coalition of municipalities challenging H.B. 49's municipal income tax provisions; and

WHEREAS, on February 21, 2018, Judge Cain issued a ruling denying all of the municipalities' claims on the merits, although no dispositive motion was pending and no order to consolidate the preliminary injunction hearing with a trial on the merits had been given; and

WHEREAS, on February 27, 2018, the municipalities filed a notice of appeal of Judge Cain's decision, and that appeal is pending before the Tenth District Court of Appeals, Case Number 18AP 144; 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 and single-subject rule, and would confiscate municipal tax revenues, the City 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 that lawsuit;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

Section 1. That sections 161.50 through 161.65 inclusive of Chapter 161 of the Codified Ordinances of the City shall hereby be enacted to read as set forth in Exhibit A of this Ordinance, attached hereto and incorporated by reference herein, for tax years starting on or after January 1, 2018.

Section 2. That the City 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 18AP 144 in the Tenth District Court of Appeals, and that the City reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the City therein.

Section 3. That this Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, and safety, which shall be effective upon passage, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the City 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 4. That the Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

Section 5. That if any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, that the provisions adopted in Section 1 of this Ordinance shall likewise be stayed.

Section 6. That, for the reasons set forth in the preamble hereinabove, this Ordinance is declared emergency legislation and shall be in full force and effect immediately upon passage by this Council and on date of signature approval by the Mayor.