

CHAPTER 40: INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016

Section

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§ 40.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

§ 40.011 AUTHORITY TO LEVY TAX.

(A) The tax on income and the withholding tax established by this Chapter 40 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter 40 are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of R.C.

Chapter 718 (ORC 718). This chapter is deemed to incorporate the provisions of R.C. Chapter 718.

(B) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The Municipality shall tax income at a uniform rate. The tax is levied on Municipal Taxable Income, as defined herein.
(Ord. 15-27, passed 12-28-2015)

§ 40.012 PURPOSES OF TAX; RATE.

(A) The purpose of the tax is to provide funds for the purpose of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of Municipal services and facilities and capital improvements of the Municipality.

(B) There is hereby levied a tax at the rate of one and one-half percent (1-1/2%)
(Ord. 15-27, passed 12-28-2015)

§ 40.013 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purposes:

(A) Such part as necessary to defray all costs of operation and administration of the Municipality, including any refunds of any taxes overpaid;

(B) The balance shall be allocated in accordance with ordinances adopted and approved by Council. It shall be deposited in the general fund and the funds collected shall be disbursed to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof; and the net available income tax receipts received annually shall be used to defray operating expenses of the Municipality or to pay for capital improvements.
(Ord. 15-27, passed 12-28-2015)

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

(A) Significant and wide-ranging amendments to R.C. Chapter 718 were enacted by Am. Sub. H.B. 5, passed by the 130th General Assembly, and signed by Governor

Kasich on December 19, 2014, and H.B. 5 required municipal corporations to conform to and adopt the provisions of R.C. Chapter 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.

(B) As mandated by H.B. 5, municipal income tax Ordinance 2015-27, effective January 1, 2016, comprehensively amends Chapter 40 in accordance with the provisions of R.C. Chapter 718 to allow the Municipality to continue the income tax and withholding tax administration and collection efforts on behalf of the Municipality.
(Ord. 15-27, passed 12-28-2015)

§ 40.02 EFFECTIVE DATE.

(A) Ordinance 2015-27, effective January 1, 2016, and corresponding changes to R.C. Chapter 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 40 apply to taxable years beginning 2016 and succeeding taxable years.

(B) Ordinance 2015-27 does not repeal the existing Sections of Chapter 39 for any taxable year prior to 2016, but rather creates a new Chapter 40 effective January 1, 2016. For municipal taxable years beginning before January 1, 2016, the Municipality shall continue to administer, audit, and enforce the income tax of the Municipality under R.C. Chapter 718 and ordinances and resolutions of the Municipality as that chapter and those ordinances and resolutions existed before January 1, 2016.
(Ord. 15-27, passed 12-28-2015)

§ 40.03 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in R.C. Title LVII, 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 R.C. Title LVII 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 R.C. Title LVII.

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

As used in this chapter:

(1) **ADJUSTED FEDERAL TAXABLE INCOME**, for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (23)(d) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(b) Add an amount equal to five percent (5%) of intangible income deducted under division (1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

(d) 1. Except as provided in division (1)(d)2 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;

2. Division (1)(d)1. 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 R.C. § 4313.02;

(h) 1. Except as limited by divisions (1)(h)2., 3., and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

2. No person shall use the deduction allowed by division (1)(h) of this section to offset qualifying wages.

3. a. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (1)(h)1. of this section.

b. For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(h)1. of this section.

4. Any pre-2017 net operating loss carry-forward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(h) of this section.

5. Nothing in division (1)(h)3.a. of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(h)3.a. of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(h)3.a. of this section is carried

forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(h)3. 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 § 40.063(E)(3)(b) of this chapter.

(j) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with § 40.063(E)(3)(b) of this chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)(b) of this section, is not a publicly traded partnership that has made the election described in division (23)(d) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States Treasury Regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

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

(2) (a) **ASSESSMENT** means any of the following:

1. 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;

2. A full or partial denial of a refund request issued under § 40.096(B)(2) of this chapter;

3. A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under § 40.062(B)(2) of this chapter; or

4. A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under § 40.062(B)(3) of this chapter.

5. For purposes of division (2)(a)1, 2., 3. and 4. of this section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to § 40.18 of this chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

(b) **ASSESSMENT** does not include notice(s) denying a request for refund issued under § 40.096(B)(3) of this chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (2)(a) of this section.

(3) **AUDIT** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) **BOARD OF REVIEW** has the same meaning as "Local Board of Tax Review".

(5) **CALENDAR QUARTER** means the three-month period ending on the last day of March, June, September, or December.

(6) **CASINO OPERATOR** and **CASINO FACILITY** have the same meanings as in R.C. § 3772.01.

(7) **CERTIFIED MAIL, EXPRESS MAIL, UNITED STATES MAIL, POSTAL SERVICE**, and similar terms include any delivery service authorized pursuant to R.C. § 5703.056.

(8) **COMPENSATION** means any form of remuneration paid to an employee for personal services.

(9) **DISREGARDED ENTITY** means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(10) **DOMICILE** means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

(11) **EXEMPT INCOME** means all of the following:

(a) The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state;

(b) 1. Except as provided in division (11)(b)2. of this section, intangible income;

2. A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th General Assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

(c) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (11)(c) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in § 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 R.C. § 3501.28 or 3501.36 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) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages.

(i) Income of a public utility when that public utility is subject to the tax levied under R.C. § 5727.24 or 5727.30. Division (11)(l) of this section does not apply for purposes of R.C. Chapter 5745.

(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 § 107 of the Internal Revenue Code;

(l) Employee compensation that is not qualifying wages as defined in division (34) of this section.

(m) Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless

the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(n) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in § 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in § 1402(a) of the Internal Revenue Code.

(o) All of the municipal taxable income earned by individuals under 18 years of age.

(p) 1. Except as provided in divisions (11)(p)2., 3., and 4. of this section, qualifying wages described § 40.052(B)(1) or (E) of this chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.

2. The exemption provided in division (11)(p)1. 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.

3. The exemption provided in division (11)(p)1. of this section does not apply to qualifying wages that an employer elects to withhold under § 40.052(D)(2) of this chapter.

4. The exemption provided in division (11)(p)1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in § 40.052(B)(1) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described § 40.052(E) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

b. The employee receives a refund of the tax described in division (11)(p)4.a. of this section on the basis of the employee not performing services in that municipal corporation.

(q) 1. Except as provided in division (11)(q)2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.

2. The exemption provided in division (11)(q)1. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the Municipality.

b. The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (11)(q)2.b. of this section, *PROFESSIONAL ATHLETE*, *PROFESSIONAL ENTERTAINER*, and *PUBLIC FIGURE* have the same meanings as in § 40.052 of this chapter.

3. Compensation to which division (11)(q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

4. For purposes of division (11)(q) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(r) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to R.C. § 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(s) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(12) **FORM 2106** means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(13) **GENERIC FORM** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(14) **INCOME** means the following:

(a) 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (23)(d) of this section.

2. For the purposes of division (14)(a)1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (14)(a)4. 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.

3. Division (14)(a)2. of this section does not apply with respect to any net profit or net operating

loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (11)(n) or division (14)(e) of this section.

4. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(b) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For taxpayers that are not individuals, net profit of the taxpayer;

(d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in § 40.081 of this chapter.

(e) Intentionally left blank.

(15) **INTANGIBLE INCOME** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation.

INTANGIBLE INCOME does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(16) **INTERNAL REVENUE CODE** means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(17) **LIMITED LIABILITY COMPANY** means a limited liability company formed under R.C. Chapter 1705 or under the laws of another state.

(18) **LOCAL BOARD OF TAX REVIEW** and **BOARD OF TAX REVIEW** means the entity created under § 40.18 of this chapter.

(19) **MUNICIPAL CORPORATION** means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under R.C. §§ 715.691, 715.70, 715.71, or 715.74.

(20) (a) **MUNICIPAL TAXABLE INCOME** means the following:

1. For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under § 40.062 of this chapter, and further reduced by any pre-2017 net operating loss carry-forward available to the person for the Municipality.

2. a. For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)(b) of this section, and further reduced by any pre-2017 net operating loss carry-forward available to the individual for the Municipality.

b. For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal

corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of R.C. § 718.03.

3. For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under § 40.062 of this chapter, then reduced as provided in division (20)(b) of this and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (20)(a)2. a. or (20)(a)3. 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 resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. 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.

(21) **MUNICIPALITY** means the Village of Smithville, Ohio.

(22) **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.

(23) (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 this division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)(h) of this section.

(c) For the purposes of this chapter, and notwithstanding division (23)(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) 1. For purposes of this chapter, **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.

2. For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(d) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

3. 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 in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (23)(d)4. of this section.

4. An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (23)(d)3. of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be

made in the first year following the last year of a five-year election period.

5. The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (23)(d) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

6. The individual owners of the partnership not filing as a C corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

(24) **NONRESIDENT** means an individual that is not a resident of the Municipality.

(25) **OHIO BUSINESS GATEWAY** means the online computer network system, created under R.C. § 125.30, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(26) **OTHER PAYER** means any person, other than an individual's employer or the employer's agent, who 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.

(27) **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.

(28) **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.

(29) **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.

(30) **POSTAL SERVICE** means the United States Postal Service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(31) **POSTMARK DATE, DATE OF POSTMARK**, and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery

(32) (a) **PRE-2017 NET OPERATING LOSS CARRY-FORWARD** 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 Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such Municipality in future taxable years.

(b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carry-forward 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.

(33) **QUALIFIED MUNICIPAL CORPORATION** means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by R.C. § 5747.01, as the income subject to tax for the purposes of imposing a municipal income tax.

(34) **QUALIFYING WAGES** means wages, as defined in § 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(a) Deduct the following amounts:

1. 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.

2. 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.

3. Intentionally left blank.

4. Intentionally left blank.

5. Any amount included in wages that is exempt income.

(b) Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

2. 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 (34)(b)2. of this section applies only to those amounts constituting ordinary income.

3. Any amount not included in wages if the amount is an amount described in §§ 401(k), 403(b), or 457 of the Internal Revenue Code. Division (34)(b)3. of this section applies only to employee contributions and employee deferrals.

4. Any amount that is supplemental unemployment compensation benefits described in § 3402(o)(2) of the Internal Revenue Code and not included in wages.

5. Any amount received that is treated as self-employment income for federal tax purposes in accordance with § 1402(a)(8) of the Internal Revenue Code.

6. 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 of 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 § 911 of the Internal Revenue Code;

b. For no preceding taxable year did the amount constitute wages as defined in § 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 (34)(b) of this section or R.C. § 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

(35) **RELATED ENTITY** means any of the following:

(a) An individual stockholder, or a member of the stockholder's family enumerated in § 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 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 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 (35)(d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock;

(d) The attribution rules described in § 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (35)(a) to (c) of this section have been met.

(36) **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 § 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "20%" shall be substituted for "5%" wherever "5%" appears in § 1563(e) of the Internal Revenue Code.

(37) **RESIDENT** means an individual who is domiciled in the Municipality as determined under § 40.042 of this chapter.

(38) **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.

(39) **SCHEDULE C** means Internal Revenue Service Schedule C (Form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(40) **SCHEDULE E** means Internal Revenue Service Schedule E (Form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) **SCHEDULE F** means Internal Revenue Service Schedule F (Form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) **SINGLE MEMBER LIMITED LIABILITY COMPANY** means a limited liability company that has one direct member.

(43) **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; 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.

(44) **TAX ADMINISTRATOR** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

(a) A municipal corporation acting as the agent of another municipal corporation;

(b) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;

(c) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.

(45) **TAX RETURN PREPARER** means any individual described in § 7701(a)(36) of the Internal Revenue code and 26 C.F.R. 301.7701-15.

(46) **TAXABLE YEAR** means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(47) (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 (47)(b)1. of this section, a disregarded entity.

(b) 1. 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 R.C. § 718.01(L) as this 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.

2. For purposes of division (47)(b)1.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.

(48) **TAXPAYERS' RIGHTS AND RESPONSIBILITIES** means the rights provided to taxpayers in R.C. §§ 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 and any corresponding ordinances of the Municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with R.C. Chapter 718 and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

(49) **VIDEO LOTTERY TERMINAL** has the same meaning as in R.C. § 3770.21.

(50) **VIDEO LOTTERY TERMINAL SALES AGENT** means a lottery sales agent licensed under R.C. Chapter 3770 to conduct video lottery terminals on behalf of the state pursuant to R.C. § 3770.21. (Ord. 15-27, passed 12-28-2015)

§ 40.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS

§ 40.041 DETERMINING MUNICIPAL TAXABLE INCOME FOR INDIVIDUALS.

(A) Municipal Taxable Income for a resident of the Municipality is calculated as follows:

(1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in § 40.03(20)(b) of this chapter, further reduced by any "Pre-2017 net operating loss carryforward" equals "Municipal taxable income".

(a) *INCOME* is defined in § 40.03(14) of this chapter.

1. *QUALIFYING WAGES* is defined in § 40.03(34).

2. *NET PROFIT* is included in "income", and is defined in § 40.03(23) of this chapter. This section also provides that the net operating loss carry-forward shall be calculated and deducted in the same manner as provided in § 40.03(1)(h). Treatment of net profits received by an individual taxpayer from rental real estate is provided in § 40.062(E).

3. Section 40.03(14) provides the following: offsetting and net operating loss carry-forward treatment in division (14)(a)2.a.; resident's distributive share of net profit from pass through entity treatment in division (14)(a)2.b.; treatment of S Corporation distributive share of net profit in the hands of the shareholder in division (14)(a)3.; restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in division (14)(a)4.

4. *PASS THROUGH ENTITY* is defined in § 40.03(27).

(b) *EXEMPT INCOME* is defined in § 40.03(11) of this chapter.

(c) Allowable employee business expense deduction is described in Section 40.03(20)(b) of this chapter, and is subject to the limitations provided in that Section.

(d) *PRE-2017 NET OPERATING LOSS CARRY-FORWARD* is defined in § 40.03(32) of this chapter.

(e) *PRE-2017 NET OPERATING LOSS CARRYFORWARD* is defined in § 40.03(32) of this chapter.

(Ord. 15-27, passed 12-28-2015)

§ 40.042 DOMICILE.

(A) As used in this section:

(1) *DOMICILE* means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return.

(2) An individual is presumed to be domiciled in the Municipality for all or part of a taxable year if the individual was domiciled in the Municipality on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the Municipality for all or part of the taxable year.

(3) An individual may rebut the presumption of domicile described in division (A)(1) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Municipality for all or part of the taxable year.

(B) For the purpose of determining whether an individual is domiciled in the Municipality for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

(1) The individual's domicile in other taxable years;

(2) The location at which the individual is registered to vote;

(3) The address on the individual's driver's license;

(4) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

(5) The location and value of abodes owned or leased by the individual;

(6) Declarations, written or oral, made by the individual regarding the individual's residency;

(7) The primary location at which the individual is employed;

(8) The location of educational institutions attended by the individual's dependents as defined in § 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation or state where the educational institution is located;

(9) The number of contact periods the individual has with the Municipality. For the purposes of this division,

an individual has one "contact period" with the Municipality if the individual is away overnight from the individual's abode located outside of the Municipality and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the Municipality. For purposes of this Section, the state's contact period test or bright-line test and resulting determination have no bearing on municipal residency or domicile.

(C) All applicable factors are provided in R.C. § 718.012.

(Ord. 15-27, passed 12-28-2015)

§ 40.043 EXEMPTION FOR MEMBER OR EMPLOYEE OF GENERAL ASSEMBLY AND CERTAIN JUDGES.

(A) Only the municipal corporation of residence shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of this state.

(B) Only the municipal corporation of residence and the city of Columbus shall levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice. Only the municipal corporation of residence shall levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge.

(Ord. 15-27, passed 12-28-2015)

§ 40.05 COLLECTION AT SOURCE

§ 40.051 COLLECTION AT SOURCE; WITHHOLDING FROM QUALIFYING WAGES.

(A) (1) Each employer, agent of an employer, or other payer located or doing business in the Municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the Municipality multiplied by the applicable rate of the Municipality's income tax, except for qualifying wages for

which withholding is not required under § 40.052 of this chapter or division (D) or (F) of this section. 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.

(2) In addition to withholding the amounts required under division (A)(1) of this section, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.

(B) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality 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, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:

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

(b) 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 municipal corporation 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 Municipality in any month of the preceding calendar quarter exceeded \$200. Payment under division (B)(1)(b) 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.

(c) Taxes required to be deducted and withheld shall be remitted semimonthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted on behalf of the Municipality in the preceding calendar year exceeded \$11,999, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar year exceeded \$1,000. The

payment under division (B)(1)(c) of this section shall be made so that they payment is received by the Tax Administrator not later than one of the following:

1. If the taxes were deducted and withheld or required to be deducted and withheld during the first 15 days of a month, the third banking day after the fifteenth day of that month;

2. If the taxes were deducted and withheld or required to be deducted and withheld after the fifteenth day of a month and before the first day of the immediately following month, the third banking day after the last day of that month.

(C) 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 the Municipality as the return required of an 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, unless the Municipality requires all resident individual taxpayers to file a tax return under § 40.091 of this chapter.

(D) An employer, agent of an employer, or other payer is not required to withhold municipal 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.

(E) (1) 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.

(2) The failure of an employer, agent of an employer, or other payer to remit to the Municipality 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.

(F) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or

municipal 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.

(G) 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 Municipality until such time as the withheld amount is remitted to the Tax Administrator.

(H) On or before the last day of February of each year, an employer shall file a Withholding Reconciliation Return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, 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, 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, and other information as may be required by the Tax Administrator.

(I) 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.

(J) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages 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.

(K) A 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.

(Ord. 15-27, passed 12-28-2015)

**§ 40.052 COLLECTION AT SOURCE;
OCCASIONAL ENTRANT.**

(A) The following terms as used in this section:

(1) **EMPLOYER** includes a person that is a related member to or of an employer.

(2) **PROFESSIONAL ATHLETE** means an athlete who performs services in a professional athletic event for wages or other remuneration.

(3) **PROFESSIONAL ENTERTAINER** means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

(4) **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.

(5) **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.

(6) **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.

(7) **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 (B)(1)(a) 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 deemed in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on 20 or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the Municipality.

(b) The employee performed services at one or more presumed worksite locations in the Municipality. For the purposes of this division, **PRESUMED WORKSITE LOCATION** means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be 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:

1. The nature of the services are such that it will require more than 20 days of actual services to complete the services;

2. The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than 20 days.

(c) The employee is a resident of the Municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in § 40.051 of this chapter.

(d) 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 within the Municipality.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation 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:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) 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;

(d) Transporting or delivering property described in division (B)(2)(c) 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;

(e) 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.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) 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 the municipal corporation in which the employee's principal place of work is located.

(D) (1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the 20-day threshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) if an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first 20 days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an 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 municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in § 40.03 of this chapter. To determine whether an employer qualifies as a small employer for a