

ORDINANCE NO.: 2018-04
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: MARCH 13, 2018 **ASSIGNED TO:** FINANCE

AN ORDINANCE TO AMEND SECTIONS 880.03; 880.062; 880.063; AND ENACT NEW SECTION 880.22 OF CHAPTER 880 OF THE CODIFIED ORDINANCES OF THE CITY OF GREEN REGARDING MUNICIPAL INCOME TAX, AND DECLARING AN EMERGENCY.

WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, provides that "Municipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict a municipality's power of taxation to the extent necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes;" and

WHEREAS, the General Assembly determined that it was necessary and appropriate to comprehensively review and amend Chapter 718 of the Ohio Revised Code, setting forth statutory requirements for municipal income tax codes in Ohio; and

WHEREAS, more specifically, the General Assembly enacted H.B.5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is "levied in accordance with the provisions and limitations specified in Chapter 718;" and

WHEREAS, upon a detailed review of H.B.5 and the Codified Ordinances of the City of Green, Ordinance 2015-15 was passed and adopted by this Council on or about November 10, 2015 to enact the amendments required prior to the January 1, 2016 deadline, in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, since that time the General Assembly has identified certain conflicts and required clarifications to H.B.5; and

WHEREAS, pursuant to Substitute Senate Bill 172, effective September 12, 2016, the General Assembly addressed the conflicts and required clarifications by extending the deadline for the payment of quarterly municipal income tax withholding taxes and modifying the rules for when municipal income tax withholding payments are considered to have been made; and

WHEREAS, pursuant to House Bill 49, effective for tax years January 1, 2018, the General Assembly addressed additional conflicts and required clarifications; and

WHEREAS, this Council deemed it in the best interest of the City and its residents to revise the City's Municipal Income Tax Code to conform with the amendments to Ohio Revised Code Chapter 718, as adopted by House Bill 49 and did so pursuant to Ordinance 2017-28; and

WHEREAS, as a result of litigation about the validity of certain provisions not previously adopted by the City, it is now necessary to make amendments to address the centralized collection of net profit returns and the "throwback" rule.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO, THAT:

SECTION ONE:

Sections 880.03; 880.062; and 880.063 of Chapter 880 of the Codified Ordinances are amended and 880.22 is added to read as set forth in Exhibit "A" a copy of which is attached hereto and incorporated by reference. Notwithstanding the above, the passage of this ordinance does not waive any rights of the City, including, but not limited to the City reserving it right under its home rule powers to challenge House Bill 49, including the amendments to Chapter 718 of the Revised Code.

SECTION TWO:

This Ordinance shall take effect and be in force from and after January 1, 2018.

SECTION THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION FOUR:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. It is necessary for City Council to enact this Ordinance to ensure that the provisions of it are effective January 1, 2018 to enable the City to tax income of individuals pursuant to the changes made by the Ohio Legislature in and through House Bill 49. Provided that this legislation receives the affirmative vote of three-fourths ($\frac{3}{4}$ ths) of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: MARCH 13, 2018
Molly Kapeluck
Molly Kapeluck, Clerk

Chris Humphrey
Chris Humphrey, Council President

APPROVED: March 13, 2018
Gerard M. Neugebauer
Gerard M. Neugebauer, Mayor

COPIED INCOME TAX
MAY FIN LAW PLAN ENG
SVCE FIRE PARK ZONE HR

ENACTED EFFECTIVE: MARCH 13, 2018

ON ROLL CALL: Babbitt -Aye Dyer -Aye Humphrey -Aye Shaughnessy -Aye
Speight -Aye Yeargin -Aye Young -Aye
Adopted 7-0

Suburbanite publication on MARCH 16 and MARCH 23, 2018
Molly Kapeluck
Molly Kapeluck, Clerk

03/08/2018 Approved as to form and content by Diane A. Calta, Director of Law Diane A. Calta
3.8.18

*2018-04**HB 49 p. 398-399***§ 880.03 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 Ohio R.C. Title LVII, unless a different meaning is clearly required. ~~If~~ Except as provided in section 718.81 of the Revised Code, 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 Ohio 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 Ohio R.C. Title LVII.

(b) For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(c) ~~As~~ Except as otherwise provided in section 718.81 of the Revised Code, as used in this chapter:

~~apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.~~

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

~~(h) When calculating the ratios described in 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.~~

~~(Ord. 2015-15. Passed 11-10-15.)~~

**880.062 *[Effective for Tax Years Beginning on or After 1/1/2018]* NET PROFIT;
INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE
APPORTIONMENT.**

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

(a) ~~Except as otherwise provided in divisions (b) or (c) of this section,~~ net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's

services are performed, excluding compensation from which taxes are not required to be withheld under Section 880.052 of this chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

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

- A. Separate accounting;
- B. The exclusion of one or more of the factors;
- C. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;
- D. A modification of one or more of the factors.

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 880.19(a) of this chapter.

(3) A Tax Administrator 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 Section 880.19(a) of this chapter.

(4) Nothing in division (b) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(c) As used in 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 Administrator 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 a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(d) For the purposes of division (a)(3) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(1) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation ~~in which the sale originates, for the purposes of this division, a sale of property originates in a municipal corporation only if, regardless of where title passes, the property meets any either of the following criteria:~~

A. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.

B. The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

~~C. The property is shipped from a place within the municipal corporation to another location within the municipal corporation, provided that 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.~~

(2) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.

(3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.

(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(e) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

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

(f) (1) Except as provided in division (f)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 880.081 of this chapter.

(g) If, in computing a taxpayer's adjusted Federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under Section 880.03(c)(11)L. and (c)(34)A.4. of this chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal

corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

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

(h) When calculating the ratios described in 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.

(Ord. 2015-15. Passed 11-10-15.)

§880.063 CONSOLIDATED FEDERAL INCOME TAX RETURN.

(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 Ohio R.C. 4927.01.

(5) "Local exchange telephone service" has the same meaning as in Ohio R.C. 5727.01.

(b) (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 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.

A. 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.

B. 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 (b)(2) of this section; or

C. 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 (b)(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 (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 718.80 of the Revised Code, a valid election made by the taxpayer under division (b)(1) or (2) of this section is binding upon the tax commissioner for the remainder of the five-year period.

(5) When an election made under section 718.80 of the Revised Code is terminated, a valid election made under section 718.86 of the Revised Code 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 municipal 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 municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal 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.

(d) A taxpayer shall prepare a consolidated municipal 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.

(e) (1) Except as otherwise provided in divisions (e)(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 **880.03(c)(1)** of this chapter, 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 corporations" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under Section **880.03(c)(1)** of this chapter 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 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 municipal 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 Section **880.062** of this chapter, 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. 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 **880.062** of this chapter, include 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. 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 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, 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 Section 880.062 of this chapter, 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 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.

(f) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 880.062 of this chapter 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 municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation 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.

(h) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation 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.

(Ord. 2015-15. Passed 11-10-15.)

SECTION 880.22 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95 OF THE OHIO REVISED CODE

- (A) Municipality hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the Ohio Revised Code for tax years beginning on or after January 1, 2018.
- (B) A taxpayer, as defined in division (C) of this section, may elect to be subject to Sections 718.80 to 718.95 of the Revised Code in lieu of the provisions of this Chapter.
- (C) "Taxpayer" has the same meaning as in section 718.01 of the Revised Code, 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) In the event that Section 718.80 to 718.95 of the Ohio Revised Code are determined by a court of competent jurisdiction to be invalid, unconstitutional, or otherwise unenforceable, this section shall be considered null and void and shall be automatically repealed until and unless further legislative action is taken by City Council.