

As Introduced

**127th General Assembly
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H. B. No. 24

**Representatives Wagner, McGregor, J., Wagoner, Gibbs, Combs, Stebelton,
Collier, Huffman**

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A B I L L

To amend sections 718.01 and 718.02 of the Revised 1
Code to authorize municipalities to allow 2
self-employed taxpayers to take a municipal income 3
tax deduction for amounts paid for medical care 4
insurance and to authorize municipalities to allow 5
individuals to deduct amounts paid into health 6
savings accounts. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 718.01 and 718.02 of the Revised 8
Code be amended to read as follows: 9

Sec. 718.01. (A) As used in this chapter: 10

(1) "Adjusted federal taxable income" means a C corporation's 11
federal taxable income before net operating losses and special 12
deductions as determined under the Internal Revenue Code, adjusted 13
as follows: 14

(a) Deduct intangible income to the extent included in 15
federal taxable income. The deduction shall be allowed regardless 16
of whether the intangible income relates to assets used in a trade 17
or business or assets held for the production of income. 18

(b) Add an amount equal to five per cent of intangible income 19

deducted under division (A)(1)(a) of this section, but excluding 20
that portion of intangible income directly related to the sale, 21
exchange, or other disposition of property described in section 22
1221 of the Internal Revenue Code; 23

(c) Add any losses allowed as a deduction in the computation 24
of federal taxable income if the losses directly relate to the 25
sale, exchange, or other disposition of an asset described in 26
section 1221 or 1231 of the Internal Revenue Code; 27

(d)(i) Except as provided in division (A)(1)(d)(ii) of this 28
section, deduct income and gain included in federal taxable income 29
to the extent the income and gain directly relate to the sale, 30
exchange, or other disposition of an asset described in section 31
1221 or 1231 of the Internal Revenue Code; 32

(ii) Division (A)(1)(d)(i) of this section does not apply to 33
the extent the income or gain is income or gain described in 34
section 1245 or 1250 of the Internal Revenue Code. 35

(e) Add taxes on or measured by net income allowed as a 36
deduction in the computation of federal taxable income; 37

(f) In the case of a real estate investment trust and 38
regulated investment company, add all amounts with respect to 39
dividends to, distributions to, or amounts set aside for or 40
credited to the benefit of investors and allowed as a deduction in 41
the computation of federal taxable income; 42

(g) If the taxpayer is not a C corporation and is not an 43
individual, the taxpayer shall compute adjusted federal taxable 44
income as if the taxpayer were a C corporation, except: 45

(i) Guaranteed payments and other similar amounts paid or 46
accrued to a partner, former partner, member, or former member 47
shall not be allowed as a deductible expense; and 48

(ii) Amounts paid or accrued to a qualified self-employed 49

retirement plan with respect to an owner or owner-employee of the 50
taxpayer, amounts paid or accrued to or for health insurance for 51
an owner or owner-employee, and amounts paid or accrued to or for 52
life insurance for an owner or owner-employee shall not be allowed 53
as a deduction. 54

Nothing in division (A)(1) of this section shall be construed 55
as allowing the taxpayer to add or deduct any amount more than 56
once or shall be construed as allowing any taxpayer to deduct any 57
amount paid to or accrued for purposes of federal self-employment 58
tax. 59

Nothing in this chapter shall be construed as limiting or 60
removing the ability of any municipal corporation to administer, 61
audit, and enforce the provisions of its municipal income tax. 62

(2) "Internal Revenue Code" means the Internal Revenue Code 63
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. 64

(3) "Schedule C" means internal revenue service schedule C 65
filed by a taxpayer pursuant to the Internal Revenue Code. 66

(4) "Form 2106" means internal revenue service form 2106 67
filed by a taxpayer pursuant to the Internal Revenue Code. 68

(5) "Intangible income" means income of any of the following 69
types: income yield, interest, capital gains, dividends, or other 70
income arising from the ownership, sale, exchange, or other 71
disposition of intangible property including, but not limited to, 72
investments, deposits, money, or credits as those terms are 73
defined in Chapter 5701. of the Revised Code, and patents, 74
copyrights, trademarks, tradenames, investments in real estate 75
investment trusts, investments in regulated investment companies, 76
and appreciation on deferred compensation. "Intangible income" 77
does not include prizes, awards, or other income associated with 78
any lottery winnings or other similar games of chance. 79

(6) "S corporation" means a corporation that has made an 80

election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(7) For taxable years beginning on or after January 1, 2004, "net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, ~~other than amounts described in division (F) of this section,~~ required to be reported on schedule C, schedule E, or schedule F, other than any amount allowed as a deduction under division (E)(2) or (3) of this section or amounts described in division (H) of this section.

(8) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. Except as provided in division ~~(J)~~(L) of this section, "taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(9) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(10) "Tax administrator" means the individual charged with direct responsibility for administration of a tax on income levied by a municipal corporation and includes:

(a) The central collection agency and the regional income tax agency and their successors in interest, and other entities organized to perform functions similar to those performed by the central collection agency and the regional income tax agency;

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

(c) Persons 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 112
in part on a contingency basis. 113

(11) "Person" includes individuals, firms, companies, 114
business trusts, estates, trusts, partnerships, limited liability 115
companies, associations, corporations, governmental entities, and 116
any other entity. 117

(12) "Schedule E" means internal revenue service schedule E 118
filed by a taxpayer pursuant to the Internal Revenue Code. 119

(13) "Schedule F" means internal revenue service schedule F 120
filed by a taxpayer pursuant to the Internal Revenue Code. 121

(B) No municipal corporation shall tax income at other than a 122
uniform rate. 123

(C) No municipal corporation shall levy a tax on income at a 124
rate in excess of one per cent without having obtained the 125
approval of the excess by a majority of the electors of the 126
municipality voting on the question at a general, primary, or 127
special election. The legislative authority of the municipal 128
corporation shall file with the board of elections at least 129
seventy-five days before the day of the election a copy of the 130
ordinance together with a resolution specifying the date the 131
election is to be held and directing the board of elections to 132
conduct the election. The ballot shall be in the following form: 133
"Shall the Ordinance providing for a ... per cent levy on income 134
for (Brief description of the purpose of the proposed levy) be 135
passed? 136

	FOR THE INCOME TAX	
	AGAINST THE INCOME TAX	"

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In the event of an affirmative vote, the proceeds of the levy 141

may be used only for the specified purpose. 142

(D)(1) Except as otherwise provided in ~~division (E) or (F) of~~ 143
this section, no municipal corporation shall exempt from a tax on 144
income compensation for personal services of individuals over 145
eighteen years of age or the net profit from a business or 146
profession. 147

(2)(a) For taxable years beginning on or after January 1, 148
2004, no municipal corporation shall tax the net profit from a 149
business or profession using any base other than the taxpayer's 150
adjusted federal taxable income. 151

(b) Division (D)(2)(a) of this section does not apply to any 152
taxpayer required to file a return under section 5745.03 of the 153
Revised Code or to the net profit from a sole proprietorship. 154

(E)(1) The legislative authority of a municipal corporation 155
may, by ordinance or resolution, exempt from withholding and from 156
a tax on income the following: 157

~~(1)(a)~~ Compensation arising from the sale, exchange, or other 158
disposition of a stock option, the exercise of a stock option, or 159
the sale, exchange, or other disposition of stock purchased under 160
a stock option; or 161

~~(2)(b)~~ Compensation attributable to a nonqualified deferred 162
compensation plan or program described in section 3121(v)(2)(C) of 163
the Internal Revenue Code. 164

(2) The legislative authority of a municipal corporation may 165
adopt an ordinance or resolution that allows a taxpayer who is an 166
individual to deduct, in computing the taxpayer's municipal income 167
tax liability, an amount equal to the aggregate amount the 168
taxpayer paid in cash during the taxable year to a health savings 169
account of the taxpayer, to the extent the taxpayer is entitled to 170
deduct that amount under section 223 of the Internal Revenue Code. 171

(3) The legislative authority of a municipal corporation may 172
adopt an ordinance or resolution that allows a taxpayer who has a 173
net profit from a business or profession that is operated as a 174
sole proprietorship to deduct from that net profit the amount that 175
the taxpayer paid during the taxable year for medical care 176
insurance for the taxpayer, the taxpayer's spouse, and dependents 177
as defined in section 5747.01 of the Revised Code. The deduction 178
shall be net of any related premium refunds, related premium 179
reimbursements, or related insurance premium dividends received by 180
the taxpayer during the taxable year. 181

As used in division (E)(3) of this section, "medical care" 182
has the same meaning given in section 213 of the Internal Revenue 183
Code, subject to the special rules, limitations, and exclusions 184
set forth therein. 185

(F) If an individual's taxable income includes income against 186
which the taxpayer has taken a deduction for federal income tax 187
purposes as reportable on the taxpayer's form 2106, and against 188
which a like deduction has not been allowed by the municipal 189
corporation, the municipal corporation shall deduct from the 190
taxpayer's taxable income an amount equal to the deduction shown 191
on such form allowable against such income, to the extent not 192
otherwise so allowed as a deduction by the municipal corporation. 193

(G)(1) In the case of a taxpayer who has a net profit from a 195
business or profession that is operated as a sole proprietorship, 196
no municipal corporation may tax or use as the base for 197
determining the amount of the net profit that shall be considered 198
as having a taxable situs in the municipal corporation, an amount 199
other than the net profit required to be reported by the taxpayer 200
on schedule C or F from such sole proprietorship for the taxable 201
year. 202

(2) In the case of a taxpayer who has a net profit from 203

rental activity required to be reported on schedule E, no 204
municipal corporation may tax or use as the base for determining 205
the amount of the net profit that shall be considered as having a 206
taxable situs in the municipal corporation, an amount other than 207
the net profit from rental activities required to be reported by 208
the taxpayer on schedule E for the taxable year. 209

~~(F)~~(H) A municipal corporation shall not tax any of the 210
following: 211

(1) The military pay or allowances of members of the armed 212
forces of the United States and of members of their reserve 213
components, including the Ohio national guard; 214

(2) The income of religious, fraternal, charitable, 215
scientific, literary, or educational institutions to the extent 216
that such income is derived from tax-exempt real estate, 217
tax-exempt tangible or intangible property, or tax-exempt 218
activities; 219

(3) Except as otherwise provided in division ~~(G)~~(I) of this 220
section, intangible income; 221

(4) Compensation paid under section 3501.28 or 3501.36 of the 222
Revised Code to a person serving as a precinct election official, 223
to the extent that such compensation does not exceed one thousand 224
dollars annually. Such compensation in excess of one thousand 225
dollars may be subjected to taxation by a municipal corporation. A 226
municipal corporation shall not require the payer of such 227
compensation to withhold any tax from that compensation. 228

(5) Compensation paid to an employee of a transit authority, 229
regional transit authority, or regional transit commission created 230
under Chapter 306. of the Revised Code for operating a transit bus 231
or other motor vehicle for the authority or commission in or 232
through the municipal corporation, unless the bus or vehicle is 233
operated on a regularly scheduled route, the operator is subject 234

to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;

(6) The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Revised Code:

(a) Beginning January 1, 2002, the income of an electric company or combined company;

(b) Beginning January 1, 2004, the income of a telephone company.

As used in division ~~(F)~~(H)(6) of this section, "combined company," "electric company," and "telephone company" have the same meanings as in section 5727.01 of the Revised Code.

(7) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code;

(8) On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under section 718.011 of the Revised Code;

(9)(a) Except as provided in division ~~(F)~~(H)(9)(b) and (c) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(b) If, pursuant to division (H) of former section 718.01 of the Revised Code as it existed before March 11, 2004, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal

corporation may continue after 2002 to tax an S corporation 265
shareholder's distributive share of net profits of an S 266
corporation. 267

(c) If, on December 6, 2002, a municipal corporation was 268
imposing, assessing, and collecting a tax on an S corporation 269
shareholder's distributive share of net profits of the S 270
corporation to the extent the distributive share would be 271
allocated or apportioned to this state under divisions (B)(1) and 272
(2) of section 5733.05 of the Revised Code if the S corporation 273
were a corporation subject to taxes imposed under Chapter 5733. of 274
the Revised Code, the municipal corporation may continue to impose 275
the tax on such distributive shares to the extent such shares 276
would be so allocated or apportioned to this state only until 277
December 31, 2004, unless a majority of the electors of the 278
municipal corporation voting on the question of continuing to tax 279
such shares after that date vote in favor of that question at an 280
election held November 2, 2004. If a majority of those electors 281
vote in favor of the question, the municipal corporation may 282
continue after December 31, 2004, to impose the tax on such 283
distributive shares only to the extent such shares would be so 284
allocated or apportioned to this state. 285

(d) For the purposes of division (D) of section 718.14 of the 286
Revised Code, a municipal corporation shall be deemed to have 287
elected to tax S corporation shareholders' distributive shares of 288
net profits of the S corporation in the hands of the shareholders 289
if a majority of the electors of a municipal corporation vote in 290
favor of a question at an election held under division 291
~~(F)~~(H)(9)(b) or (c) of this section. The municipal corporation 292
shall specify by ordinance or rule that the tax applies to the 293
distributive share of a shareholder of an S corporation in the 294
hands of the shareholder of the S corporation. 295

(10) Employee compensation that is not "qualifying wages" as 296

defined in section 718.03 of the Revised Code. 297

~~(G)~~(I) Any municipal corporation that taxes any type of 298
intangible income on March 29, 1988, pursuant to Section 3 of 299
Amended Substitute Senate Bill No. 238 of the 116th general 300
assembly, may continue to tax that type of income after 1988 if a 301
majority of the electors of the municipal corporation voting on 302
the question of whether to permit the taxation of that type of 303
intangible income after 1988 vote in favor thereof at an election 304
held on November 8, 1988. 305

~~(H)~~(J) Nothing in this section or section 718.02 of the 306
Revised Code shall authorize the levy of any tax on income that a 307
municipal corporation is not authorized to levy under existing 308
laws or shall require a municipal corporation to allow a deduction 309
from taxable income for losses incurred from a sole proprietorship 310
or partnership. 311

~~(I)~~(K)(1) Nothing in this chapter prohibits a municipal 312
corporation from allowing, by resolution or ordinance, a net 313
operating loss carryforward. 314

(2) Nothing in this chapter requires a municipal corporation 315
to allow a net operating loss carryforward. 316

~~(J)~~(L)(1) A single member limited liability company that is a 317
disregarded entity for federal tax purposes may elect to be a 318
separate taxpayer from its single member in all Ohio municipal 319
corporations in which it either filed as a separate taxpayer or 320
did not file for its taxable year ending in 2003, if all of the 321
following conditions are met: 322

(a) The limited liability company's single member is also a 323
limited liability company; 324

(b) The limited liability company and its single member were 325
formed and doing business in one or more Ohio municipal 326
corporations for at least five years before January 1, 2004; 327

(c) Not later than December 31, 2004, the limited liability company and its single member each make an election to be treated as a separate taxpayer under division ~~(J)~~(L) of this section;

(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 is the primary place of business of the sole member of the limited liability company consents to the election.

(2) For purposes of division ~~(J)~~(L)(1)(e) of this section, a municipal corporation is 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 is 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 is at least four hundred thousand dollars.

Sec. 718.02. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745. of the Revised Code.

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

(1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period

to the average original cost of all of the real and tangible 358
personal property owned or used by the taxpayer in the business or 359
profession during the same period, wherever situated. 360

As used in the preceding paragraph, real property shall 361
include property rented or leased by the taxpayer and the value of 362
such property shall be determined by multiplying the annual rental 363
thereon by eight; 364

(2) Wages, salaries, and other compensation paid during the 365
taxable period to persons employed in the business or profession 366
for services performed in such municipal corporation to wages, 367
salaries, and other compensation paid during the same period to 368
persons employed in the business or profession, wherever their 369
services are performed, excluding compensation that is not taxable 370
by the municipal corporation under section 718.011 of the Revised 371
Code; 372

(3) Gross receipts of the business or profession from sales 373
made and services performed during the taxable period in such 374
municipal corporation to gross receipts of the business or 375
profession during the same period from sales and services, 376
wherever made or performed. 377

If the foregoing apportionment formula does not produce an 378
equitable result, another basis may be substituted, under uniform 379
regulations, so as to produce an equitable result. 380

(B) As used in division (A) of this section, "sales made in a 381
municipal corporation" mean: 382

(1) All sales of tangible personal property delivered within 383
such municipal corporation regardless of where title passes if 384
shipped or delivered from a stock of goods within such municipal 385
corporation; 386

(2) All sales of tangible personal property delivered within 387
such municipal corporation regardless of where title passes even 388

though transported from a point outside such municipal corporation 389
if the taxpayer is regularly engaged through its own employees in 390
the solicitation or promotion of sales within such municipal 391
corporation and the sales result from such solicitation or 392
promotion; 393

(3) All sales of tangible personal property shipped from a 394
place within such municipal corporation to purchasers outside such 395
municipal corporation regardless of where title passes if the 396
taxpayer is not, through its own employees, regularly engaged in 397
the solicitation or promotion of sales at the place where delivery 398
is made. 399

(C) Except as otherwise provided in division (D) of this 400
section, net profit from rental activity not constituting a 401
business or profession shall be subject to tax only by the 402
municipal corporation in which the property generating the net 403
profit is located. 404

(D) This section does not apply to individuals who are 405
residents of the municipal corporation and, except as otherwise 406
provided in section 718.01 of the Revised Code, a municipal 407
corporation may impose a tax on all income earned by residents of 408
the municipal corporation to the extent allowed by the United 409
States Constitution. 410

(E) If, in computing the taxpayer's adjusted federal taxable 411
income, the taxpayer deducted any amount with respect to a stock 412
option granted to an employee, and if the employee is not required 413
to include in income any amount or any portion thereof because it 414
is exempted from taxation under division ~~(F)~~(H)(10) of section 415
718.01 of the Revised Code and division (A)(2)(d) of section 416
718.03 of the Revised Code by a municipal corporation to which the 417
taxpayer has apportioned a portion of its net profit, the taxpayer 418
shall add the amount that is exempt from taxation to the 419
taxpayer's net profit that was apportioned to that municipal 420

corporation. In no case shall a taxpayer be required to add to its 421
net profit that was apportioned to that municipal corporation any 422
amount other than the amount upon which the employee would be 423
required to pay tax were the amount related to the stock option 424
not exempted from taxation. 425

This division applies solely for the purpose of making an 426
adjustment to the amount of a taxpayer's net profit that was 427
apportioned to a municipal corporation under divisions (A) and (B) 428
of this section. 429

Section 2. That existing sections 718.01 and 718.02 of the 430
Revised Code are hereby repealed. 431

Section 3. The amendment by this act of sections 718.01 and 432
718.02 of the Revised Code applies to taxable years beginning on 433
or after January 1, 2007. 434