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Representative Wagner

Cosponsors: Representatives McGregor, J., Wagoner, Gibbs, Combs, Stebelton, Collier, Huffman, Blessing, Bubp, Latta, Schindel, Hagan, J., Wolpert, Adams, Aslanides, Bacon, Barrett, Batchelder, Boyd, Brown, Budish, Carmichael, Chandler, Coley, Core, Daniels, DeBose, Dolan, Domenick, Dyer, Evans, Fende, Fessler, Flowers, Goodwin, Goyal, Harwood, Healy, Hite, Hottinger, Hughes, Jones, Letson, Luckie, Lundy, Mandel, Miller, Oelslager, Otterman, Patton, Raussen, Reinhard, Sayre, Schneider, Seitz, Setzer, Szollosi, Uecker, Wachtmann, Webster, Williams, S., Yuko, Zehringer

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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:

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

<b>Sec. 718.01.</b> (A) As used in this chapter:	10
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(1) "Adjusted federal taxable income" means a C corporation's	11
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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 81  
Internal Revenue Code for its taxable year. 82

(7) For taxable years beginning on or after January 1, 2004, 83  
"net profit" for a taxpayer other than an individual means 84  
adjusted federal taxable income and "net profit" for a taxpayer 85  
who is an individual means the individual's profit, ~~other than~~ 86  
~~amounts described in division (F) of this section,~~ required to be 87  
reported on schedule C, schedule E, or schedule F, other than any 88  
amount allowed as a deduction under division (E)(2) or (3) of this 89  
section or amounts described in division (H) of this section. 90

(8) "Taxpayer" means a person subject to a tax on income 91  
levied by a municipal corporation. Except as provided in division 92  
(~~J~~)(L) of this section, "taxpayer" does not include any person 93  
that is a disregarded entity or a qualifying subchapter S 94  
subsidiary for federal income tax purposes, but "taxpayer" 95  
includes any other person who owns the disregarded entity or 96  
qualifying subchapter S subsidiary. 97

(9) "Taxable year" means the corresponding tax reporting 98  
period as prescribed for the taxpayer under the Internal Revenue 99  
Code. 100

(10) "Tax administrator" means the individual charged with 101  
direct responsibility for administration of a tax on income levied 102  
by a municipal corporation and includes: 103

(a) The central collection agency and the regional income tax	104
agency and their successors in interest, and other entities	105
organized to perform functions similar to those performed by the	106
central collection agency and the regional income tax agency;	107
(b) A municipal corporation acting as the agent of another	108
municipal corporation; and	109
(c) Persons retained by a municipal corporation to administer	110
a tax levied by the municipal corporation, but only if the	111
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

"

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 on internal revenue service form 1040. 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 premiums for the taxpayer, the taxpayer's spouse, and 177  
dependents as defined in section 5747.01 of the Revised Code. The 178  
deduction shall be allowed to the same extent the taxpayer is 179  
entitled to deduct the premiums on internal revenue service form 180  
1040. The deduction allowed under this division shall be net of 181  
any related premium refunds, related premium reimbursements, or 182  
related insurance premium dividends received by the taxpayer 183  
during the taxable year. 184

(F) If an individual's taxable income includes income against 185  
which the taxpayer has taken a deduction for federal income tax 186  
purposes as reportable on the taxpayer's form 2106, and against 187  
which a like deduction has not been allowed by the municipal 188  
corporation, the municipal corporation shall deduct from the 189  
taxpayer's taxable income an amount equal to the deduction shown 190  
on such form allowable against such income, to the extent not 191  
otherwise so allowed as a deduction by the municipal corporation. 192  
193

(G)(1) In the case of a taxpayer who has a net profit from a 194  
business or profession that is operated as a sole proprietorship, 195  
no municipal corporation may tax or use as the base for 196

determining the amount of the net profit that shall be considered 197  
as having a taxable situs in the municipal corporation, an amount 198  
other than the net profit required to be reported by the taxpayer 199  
on schedule C or F from such sole proprietorship for the taxable 200  
year. 201

(2) In the case of a taxpayer who has a net profit from 202  
rental activity required to be reported on schedule E, no 203  
municipal corporation may tax or use as the base for determining 204  
the amount of the net profit that shall be considered as having a 205  
taxable situs in the municipal corporation, an amount other than 206  
the net profit from rental activities required to be reported by 207  
the taxpayer on schedule E for the taxable year. 208

~~(F)~~(H) A municipal corporation shall not tax any of the 209  
following: 210

(1) The military pay or allowances of members of the armed 211  
forces of the United States and of members of their reserve 212  
components, including the Ohio national guard; 213

(2) The income of religious, fraternal, charitable, 214  
scientific, literary, or educational institutions to the extent 215  
that such income is derived from tax-exempt real estate, 216  
tax-exempt tangible or intangible property, or tax-exempt 217  
activities; 218

(3) Except as otherwise provided in division ~~(G)~~(I) of this 219  
section, intangible income; 220

(4) Compensation paid under section 3501.28 or 3501.36 of the 221  
Revised Code to a person serving as a precinct election official, 222  
to the extent that such compensation does not exceed one thousand 223  
dollars annually. Such compensation in excess of one thousand 224  
dollars may be subjected to taxation by a municipal corporation. A 225  
municipal corporation shall not require the payer of such 226  
compensation to withhold any tax from that compensation. 227



(5) Compensation paid to an employee of a transit authority, 228  
regional transit authority, or regional transit commission created 229  
under Chapter 306. of the Revised Code for operating a transit bus 230  
or other motor vehicle for the authority or commission in or 231  
through the municipal corporation, unless the bus or vehicle is 232  
operated on a regularly scheduled route, the operator is subject 233  
to such a tax by reason of residence or domicile in the municipal 234  
corporation, or the headquarters of the authority or commission is 235  
located within the municipal corporation; 236

(6) The income of a public utility, when that public utility 237  
is subject to the tax levied under section 5727.24 or 5727.30 of 238  
the Revised Code, except a municipal corporation may tax the 239  
following, subject to Chapter 5745. of the Revised Code: 240

(a) Beginning January 1, 2002, the income of an electric 241  
company or combined company; 242

(b) Beginning January 1, 2004, the income of a telephone 243  
company. 244

As used in division ~~(F)~~(H)(6) of this section, "combined 245  
company," "electric company," and "telephone company" have the 246  
same meanings as in section 5727.01 of the Revised Code. 247

(7) On and after January 1, 2003, items excluded from federal 248  
gross income pursuant to section 107 of the Internal Revenue Code; 249

(8) On and after January 1, 2001, compensation paid to a 250  
nonresident individual to the extent prohibited under section 251  
718.011 of the Revised Code; 252

(9)(a) Except as provided in division ~~(F)~~(H)(9)(b) and (c) of 253  
this section, an S corporation shareholder's distributive share of 254  
net profits of the S corporation, other than any part of the 255  
distributive share of net profits that represents wages as defined 256  
in section 3121(a) of the Internal Revenue Code or net earnings 257  
from self-employment as defined in section 1402(a) of the Internal 258

Revenue Code. 259

(b) If, pursuant to division (H) of former section 718.01 of 260  
the Revised Code as it existed before March 11, 2004, a majority of 261  
the electors of a municipal corporation voted in favor of the 262  
question at an election held on November 4, 2003, the municipal 263  
corporation may continue after 2002 to tax an S corporation 264  
shareholder's distributive share of net profits of an S 265  
corporation. 266

(c) If, on December 6, 2002, a municipal corporation was 267  
imposing, assessing, and collecting a tax on an S corporation 268  
shareholder's distributive share of net profits of the S 269  
corporation to the extent the distributive share would be 270  
allocated or apportioned to this state under divisions (B)(1) and 271  
(2) of section 5733.05 of the Revised Code if the S corporation 272  
were a corporation subject to taxes imposed under Chapter 5733. of 273  
the Revised Code, the municipal corporation may continue to impose 274  
the tax on such distributive shares to the extent such shares 275  
would be so allocated or apportioned to this state only until 276  
December 31, 2004, unless a majority of the electors of the 277  
municipal corporation voting on the question of continuing to tax 278  
such shares after that date vote in favor of that question at an 279  
election held November 2, 2004. If a majority of those electors 280  
vote in favor of the question, the municipal corporation may 281  
continue after December 31, 2004, to impose the tax on such 282  
distributive shares only to the extent such shares would be so 283  
allocated or apportioned to this state. 284

(d) For the purposes of division (D) of section 718.14 of the 285  
Revised Code, a municipal corporation shall be deemed to have 286  
elected to tax S corporation shareholders' distributive shares of 287  
net profits of the S corporation in the hands of the shareholders 288  
if a majority of the electors of a municipal corporation vote in 289  
favor of a question at an election held under division 290

(9)(b) or (c) of this section. The municipal corporation shall 291  
specify by ordinance or rule that the tax applies to the 292  
distributive share of a shareholder of an S corporation in the 293  
hands of the shareholder of the S corporation. 294

(10) Employee compensation that is not "qualifying wages" as 295  
defined in section 718.03 of the Revised Code. 296

~~(G)~~(I) Any municipal corporation that taxes any type of 297  
intangible income on March 29, 1988, pursuant to Section 3 of 298  
Amended Substitute Senate Bill No. 238 of the 116th general 299  
assembly, may continue to tax that type of income after 1988 if a 300  
majority of the electors of the municipal corporation voting on 301  
the question of whether to permit the taxation of that type of 302  
intangible income after 1988 vote in favor thereof at an election 303  
held on November 8, 1988. 304

~~(H)~~(J) Nothing in this section or section 718.02 of the 305  
Revised Code shall authorize the levy of any tax on income that a 306  
municipal corporation is not authorized to levy under existing 307  
laws or shall require a municipal corporation to allow a deduction 308  
from taxable income for losses incurred from a sole proprietorship 309  
or partnership. 310

~~(I)~~(K)(1) Nothing in this chapter prohibits a municipal 311  
corporation from allowing, by resolution or ordinance, a net 312  
operating loss carryforward. 313

(2) Nothing in this chapter requires a municipal corporation 314  
to allow a net operating loss carryforward. 315

~~(J)~~(L)(1) A single member limited liability company that is a 316  
disregarded entity for federal tax purposes may elect to be a 317  
separate taxpayer from its single member in all Ohio municipal 318  
corporations in which it either filed as a separate taxpayer or 319  
did not file for its taxable year ending in 2003, if all of the 320  
following conditions are met: 321

(a) The limited liability company's single member is also a 322  
limited liability company; 323

(b) The limited liability company and its single member were 324  
formed and doing business in one or more Ohio municipal 325  
corporations for at least five years before January 1, 2004; 326

(c) Not later than December 31, 2004, the limited liability 327  
company and its single member each make an election to be treated 328  
as a separate taxpayer under division ~~(J)~~(L) of this section; 329

(d) The limited liability company was not formed for the 330  
purpose of evading or reducing Ohio municipal corporation income 331  
tax liability of the limited liability company or its single 332  
member; 333

(e) The Ohio municipal corporation that is the primary place 334  
of business of the sole member of the limited liability company 335  
consents to the election. 336

(2) For purposes of division ~~(J)~~(L)(1)(e) of this section, a 337  
municipal corporation is the primary place of business of a 338  
limited liability company if, for the limited liability company's 339  
taxable year ending in 2003, its income tax liability is greater 340  
in that municipal corporation than in any other municipal 341  
corporation in Ohio, and that tax liability to that municipal 342  
corporation for its taxable year ending in 2003 is at least four 343  
hundred thousand dollars. 344

**Sec. 718.02.** This section does not apply to taxpayers that 345  
are subject to and required to file reports under Chapter 5745. of 346  
the Revised Code. 347

(A) Except as otherwise provided in division (D) of this 348  
section, net profit from a business or profession conducted both 349  
within and without the boundaries of a municipal corporation shall 350  
be considered as having a taxable situs in such municipal 351

corporation for purposes of municipal income taxation in the same 352  
proportion as the average ratio of the following: 353

(1) The average original cost of the real and tangible 354  
personal property owned or used by the taxpayer in the business or 355  
profession in such municipal corporation during the taxable period 356  
to the average original cost of all of the real and tangible 357  
personal property owned or used by the taxpayer in the business or 358  
profession during the same period, wherever situated. 359

As used in the preceding paragraph, real property shall 360  
include property rented or leased by the taxpayer and the value of 361  
such property shall be determined by multiplying the annual rental 362  
thereon by eight; 363

(2) Wages, salaries, and other compensation paid during the 364  
taxable period to persons employed in the business or profession 365  
for services performed in such municipal corporation to wages, 366  
salaries, and other compensation paid during the same period to 367  
persons employed in the business or profession, wherever their 368  
services are performed, excluding compensation that is not taxable 369  
by the municipal corporation under section 718.011 of the Revised 370  
Code; 371

(3) Gross receipts of the business or profession from sales 372  
made and services performed during the taxable period in such 373  
municipal corporation to gross receipts of the business or 374  
profession during the same period from sales and services, 375  
wherever made or performed. 376

If the foregoing apportionment formula does not produce an 377  
equitable result, another basis may be substituted, under uniform 378  
regulations, so as to produce an equitable result. 379

(B) As used in division (A) of this section, "sales made in a 380  
municipal corporation" mean: 381

(1) All sales of tangible personal property delivered within 382

such municipal corporation regardless of where title passes if 383  
shipped or delivered from a stock of goods within such municipal 384  
corporation; 385

(2) All sales of tangible personal property delivered within 386  
such municipal corporation regardless of where title passes even 387  
though transported from a point outside such municipal corporation 388  
if the taxpayer is regularly engaged through its own employees in 389  
the solicitation or promotion of sales within such municipal 390  
corporation and the sales result from such solicitation or 391  
promotion; 392

(3) All sales of tangible personal property shipped from a 393  
place within such municipal corporation to purchasers outside such 394  
municipal corporation regardless of where title passes if the 395  
taxpayer is not, through its own employees, regularly engaged in 396  
the solicitation or promotion of sales at the place where delivery 397  
is made. 398

(C) Except as otherwise provided in division (D) of this 399  
section, net profit from rental activity not constituting a 400  
business or profession shall be subject to tax only by the 401  
municipal corporation in which the property generating the net 402  
profit is located. 403

(D) This section does not apply to individuals who are 404  
residents of the municipal corporation and, except as otherwise 405  
provided in section 718.01 of the Revised Code, a municipal 406  
corporation may impose a tax on all income earned by residents of 407  
the municipal corporation to the extent allowed by the United 408  
States Constitution. 409

(E) If, in computing the taxpayer's adjusted federal taxable 410  
income, the taxpayer deducted any amount with respect to a stock 411  
option granted to an employee, and if the employee is not required 412  
to include in income any amount or any portion thereof because it 413

is exempted from taxation under division ~~(F)~~(H)(10) of section 414  
718.01 of the Revised Code and division (A)(2)(d) of section 415  
718.03 of the Revised Code by a municipal corporation to which the 416  
taxpayer has apportioned a portion of its net profit, the taxpayer 417  
shall add the amount that is exempt from taxation to the 418  
taxpayer's net profit that was apportioned to that municipal 419  
corporation. In no case shall a taxpayer be required to add to its 420  
net profit that was apportioned to that municipal corporation any 421  
amount other than the amount upon which the employee would be 422  
required to pay tax were the amount related to the stock option 423  
not exempted from taxation. 424

This division applies solely for the purpose of making an 425  
adjustment to the amount of a taxpayer's net profit that was 426  
apportioned to a municipal corporation under divisions (A) and (B) 427  
of this section. 428

**Section 2.** That existing sections 718.01 and 718.02 of the 429  
Revised Code are hereby repealed. 430

**Section 3.** The amendment by this act of sections 718.01 and 431  
718.02 of the Revised Code applies to taxable years beginning on 432  
or after January 1, 2007. 433