

**As Passed by the Senate
CORRECTED VERSION**

**129th General Assembly
Regular Session
2011-2012**

Sub. H. B. No. 50

Representative Snitchler

**Cosponsors: Representatives Burke, Murray, Schuring, Blessing, Boose,
Bubp, Combs, Grossman, Martin, Slesnick Speaker Batchelder
Senators Schaffer, Coley, Eklund, Manning, Niehaus, Obhof, Patton,
Peterson, Seitz, Wagoner**

—

A B I L L

To amend sections 349.04, 709.023, and 718.01 of the	1
Revised Code to exempt from municipal income tax	2
the compensation paid to persons performing	3
personal services for a political subdivision on	4
its property when that property is annexed to a	5
municipal corporation under the expedited type-II	6
annexation proceeding unless the compensation is	7
taxable because of the person's residency, and to	8
permit a board of county commissioners to	9
determine the times for and manner of holding	10
elections for citizen members of the board of	11
trustees of a new community organization.	12

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

Section 1. That sections 349.04, 709.023, and 718.01 of the	13
Revised Code be amended to read as follows:	14

Sec. 349.04. The following method of selecting a board of	15
--	----

trustees is deemed to be a compelling state interest. Within ten 16
days after the new community authority has been established, as 17
provided in section 349.03 of the Revised Code, an initial board 18
of trustees shall be appointed as follows: the organizational 19
board of commissioners shall appoint by resolution at least three, 20
but not more than six, citizen members of the board of trustees to 21
represent the interests of present and future residents of the new 22
community district and one member to serve as a representative of 23
local government, and the developer shall appoint a number of 24
members equal to the number of citizen members to serve as 25
representatives of the developer. In the case of a new community 26
authority established within three years after ~~the effective date~~ 27
~~of H.B. 225 of the 129th general assembly~~ March 22, 2012, the 28
citizen members may represent present and future employers within 29
the new community district and any present or future residents of 30
the district. 31

Members shall serve two-year overlapping terms, with two of 32
each of the initial citizen and developer members appointed to 33
serve initial ~~one-year~~ one-year terms. The organizational board of 34
commissioners shall adopt, by further resolution adopted within 35
one year of such resolution establishing such initial board of 36
trustees, a method for selection of successor members thereof 37
which determines the projected total population of the projected 38
new community and meets the following criteria: 39

(A) The appointed citizen members shall be replaced by 40
elected citizen members according to a schedule established by the 41
organizational board of commissioners calculated to achieve one 42
such replacement each time the new community district gains a 43
proportion, having a numerator of one and a denominator of twice 44
the number of citizen members, of its projected total population 45
until such time as all of the appointed citizen members are 46
replaced. 47

(B) Representatives of the developer shall be replaced by 48
elected citizen members according to a schedule established by the 49
organizational board of commissioners calculated to achieve one 50
such replacement each time the new community district gains a 51
proportion, having a numerator of one and a denominator equal to 52
the number of developer members, of its projected total population 53
until such time as all of the developer's representatives are 54
replaced. 55

(C) The representative of local government shall be replaced 56
by an elected citizen member at the time the new community 57
district gains three-quarters of its projected total population. 58

Elected citizen members of the board of trustees shall be 59
elected by a majority of the residents of the new community 60
district voting at elections held ~~on at the first Tuesday after~~ 61
times and in the manner provided in a resolution of the first 62
Monday in December of each year organizational board of 63
commissioners. Each citizen member except an appointed citizen 64
member shall be a qualified elector who resides within the new 65
community district. In the case of a new community authority for 66
which a petition is filed within three years after ~~the effective~~ 67
~~date of H.B. 225 of the 129th general assembly~~ March 22, 2012, the 68
organizational board of commissioners, by resolution, may adopt an 69
alternative method of selecting or electing successor members of 70
the board of trustees. If the alternative method provides for the 71
election of citizen members, the elections may be held at the 72
times and in the manner provided in the petition or in a 73
resolution of the organizational board of commissioners, and the 74
elected citizen members shall be qualified electors who reside in 75
the new community district. 76

Citizen members shall not be employees of or have financial 77
interest in the developer. If a vacancy occurs in the office of a 78
member other than a member appointed by the developer, the 79

organizational board of commissioners may appoint a successor 80
member for the remainder of the unexpired term. Any appointed 81
member of the board of trustees may at any time be removed by the 82
organizational board of commissioners for misfeasance, 83
nonfeasance, or malfeasance in office. Members appointed by the 84
developer may also at any time be removed by the developer without 85
a showing of cause. 86

Each member of the board of trustees, before entering upon 87
official duties, shall take and subscribe to an oath before an 88
officer authorized to administer oaths in Ohio that the member 89
will honestly and faithfully perform the duties of the member's 90
office. Such oath shall be filed in the office of the clerk of the 91
board of county commissioners in which the petition was filed. 92
Upon taking the oath, the board of trustees shall elect one of its 93
number as chairperson and another as vice-chairperson, and shall 94
appoint suitable persons as secretary and treasurer who need not 95
be members of the board. The treasurer shall be the fiscal officer 96
of the authority. The board shall adopt by-laws governing the 97
administration of the affairs of the new community authority. Each 98
member of the board shall post a bond for the faithful performance 99
of official duties and give surety therefor in such amount, but 100
not less than ten thousand dollars, as the resolution creating 101
such board shall prescribe. 102

All of the powers of the new community authority shall be 103
exercised by its board of trustees, but without relief of such 104
responsibility, such powers may be delegated to committees of the 105
board or its officers and employees in accordance with its 106
by-laws. A majority of the board shall constitute a quorum, and a 107
concurrence of a majority of a quorum in any matter within the 108
board's duties is sufficient for its determination, provided a 109
quorum is present when such concurrence is had and a majority of 110
those members constituting such quorum are trustees not appointed 111

by the developer. All trustees shall be empowered to vote on all 112
matters within the authority of the board of trustees, and no vote 113
by a member appointed by the developer shall be construed to give 114
rise to civil or criminal liability for conflict of interest on 115
the part of public officials. 116

Sec. 709.023. (A) A petition filed under section 709.021 of 117
the Revised Code that requests to follow this section is for the 118
special procedure of annexing land into a municipal corporation 119
when, subject to division (H) of this section, the land also is 120
not to be excluded from the township under section 503.07 of the 121
Revised Code. The owners who sign this petition by their signature 122
expressly waive their right to appeal in law or equity from the 123
board of county commissioners' entry of any resolution under this 124
section, waive any rights they may have to sue on any issue 125
relating to a municipal corporation requiring a buffer as provided 126
in this section, and waive any rights to seek a variance that 127
would relieve or exempt them from that buffer requirement. 128

The petition circulated to collect signatures for the special 129
procedure in this section shall contain in boldface capital 130
letters immediately above the heading of the place for signatures 131
on each part of the petition the following: "WHOEVER SIGNS THIS 132
PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY 133
FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OF ANY RESOLUTION 134
PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT 135
OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS 136
DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE." 137

(B) Upon the filing of the petition in the office of the 138
clerk of the board of county commissioners, the clerk shall cause 139
the petition to be entered upon the board's journal at its next 140
regular session. This entry shall be the first official act of the 141
board on the petition. Within five days after the filing of the 142

petition, the agent for the petitioners shall notify in the manner 143
and form specified in this division the clerk of the legislative 144
authority of the municipal corporation to which annexation is 145
proposed, the fiscal officer of each township any portion of which 146
is included within the territory proposed for annexation, the 147
clerk of the board of county commissioners of each county in which 148
the territory proposed for annexation is located other than the 149
county in which the petition is filed, and the owners of property 150
adjacent to the territory proposed for annexation or adjacent to a 151
road that is adjacent to that territory and located directly 152
across that road from that territory. The notice shall refer to 153
the time and date when the petition was filed and the county in 154
which it was filed and shall have attached or shall be accompanied 155
by a copy of the petition and any attachments or documents 156
accompanying the petition as filed. 157

Notice to a property owner is sufficient if sent by regular 158
United States mail to the tax mailing address listed on the county 159
auditor's records. Notice to the appropriate government officer 160
shall be given by certified mail, return receipt requested, or by 161
causing the notice to be personally served on the officer, with 162
proof of service by affidavit of the person who delivered the 163
notice. Proof of service of the notice on each appropriate 164
government officer shall be filed with the board of county 165
commissioners with which the petition was filed. 166

(C) Within twenty days after the date that the petition is 167
filed, the legislative authority of the municipal corporation to 168
which annexation is proposed shall adopt an ordinance or 169
resolution stating what services the municipal corporation will 170
provide, and an approximate date by which it will provide them, to 171
the territory proposed for annexation, upon annexation. The 172
municipal corporation is entitled in its sole discretion to 173
provide to the territory proposed for annexation, upon annexation, 174

services in addition to the services described in that ordinance 175
or resolution. 176

If the territory proposed for annexation is subject to zoning 177
regulations adopted under either Chapter 303. or 519. of the 178
Revised Code at the time the petition is filed, the legislative 179
authority of the municipal corporation also shall adopt an 180
ordinance or resolution stating that, if the territory is annexed 181
and becomes subject to zoning by the municipal corporation and 182
that municipal zoning permits uses in the annexed territory that 183
the municipal corporation determines are clearly incompatible with 184
the uses permitted under current county or township zoning 185
regulations in the adjacent land remaining within the township 186
from which the territory was annexed, the legislative authority of 187
the municipal corporation will require, in the zoning ordinance 188
permitting the incompatible uses, the owner of the annexed 189
territory to provide a buffer separating the use of the annexed 190
territory and the adjacent land remaining within the township. For 191
the purposes of this section, "buffer" includes open space, 192
landscaping, fences, walls, and other structured elements; streets 193
and street rights-of-way; and bicycle and pedestrian paths and 194
sidewalks. 195

The clerk of the legislative authority of the municipal 196
corporation to which annexation is proposed shall file the 197
ordinances or resolutions adopted under this division with the 198
board of county commissioners within twenty days following the 199
date that the petition is filed. The board shall make these 200
ordinances or resolutions available for public inspection. 201

(D) Within twenty-five days after the date that the petition 202
is filed, the legislative authority of the municipal corporation 203
to which annexation is proposed and each township any portion of 204
which is included within the territory proposed for annexation may 205
adopt and file with the board of county commissioners an ordinance 206

or resolution consenting or objecting to the proposed annexation. 207
An objection to the proposed annexation shall be based solely upon 208
the petition's failure to meet the conditions specified in 209
division (E) of this section. 210

If the municipal corporation and each of those townships 211
timely files an ordinance or resolution consenting to the proposed 212
annexation, the board at its next regular session shall enter upon 213
its journal a resolution granting the proposed annexation. If, 214
instead, the municipal corporation or any of those townships files 215
an ordinance or resolution that objects to the proposed 216
annexation, the board of county commissioners shall proceed as 217
provided in division (E) of this section. Failure of the municipal 218
corporation or any of those townships to timely file an ordinance 219
or resolution consenting or objecting to the proposed annexation 220
shall be deemed to constitute consent by that municipal 221
corporation or township to the proposed annexation. 222

(E) Unless the petition is granted under division (D) of this 223
section, not less than thirty or more than forty-five days after 224
the date that the petition is filed, the board of county 225
commissioners shall review it to determine if each of the 226
following conditions has been met: 227

(1) The petition meets all the requirements set forth in, and 228
was filed in the manner provided in, section 709.021 of the 229
Revised Code. 230

(2) The persons who signed the petition are owners of the 231
real estate located in the territory proposed for annexation and 232
constitute all of the owners of real estate in that territory. 233

(3) The territory proposed for annexation does not exceed 234
five hundred acres. 235

(4) The territory proposed for annexation shares a contiguous 236
boundary with the municipal corporation to which annexation is 237

proposed for a continuous length of at least five per cent of the 238
perimeter of the territory proposed for annexation. 239

(5) The annexation will not create an unincorporated area of 240
the township that is completely surrounded by the territory 241
proposed for annexation. 242

(6) The municipal corporation to which annexation is proposed 243
has agreed to provide to the territory proposed for annexation the 244
services specified in the relevant ordinance or resolution adopted 245
under division (C) of this section. 246

(7) If a street or highway will be divided or segmented by 247
the boundary line between the township and the municipal 248
corporation as to create a road maintenance problem, the municipal 249
corporation to which annexation is proposed has agreed as a 250
condition of the annexation to assume the maintenance of that 251
street or highway or to otherwise correct the problem. As used in 252
this section, "street" or "highway" has the same meaning as in 253
section 4511.01 of the Revised Code. 254

(F) Not less than thirty or more than forty-five days after 255
the date that the petition is filed, if the petition is not 256
granted under division (D) of this section, the board of county 257
commissioners, if it finds that each of the conditions specified 258
in division (E) of this section has been met, shall enter upon its 259
journal a resolution granting the annexation. If the board of 260
county commissioners finds that one or more of the conditions 261
specified in division (E) of this section have not been met, it 262
shall enter upon its journal a resolution that states which of 263
those conditions the board finds have not been met and that denies 264
the petition. 265

(G) If a petition is granted under division (D) or (F) of 266
this section, the clerk of the board of county commissioners shall 267
proceed as provided in division (C)(1) of section 709.033 of the 268

Revised Code, except that no recording or hearing exhibits would 269
be involved. There is no appeal in law or equity from the board's 270
entry of any resolution under this section, but any party may seek 271
a writ of mandamus to compel the board of county commissioners to 272
perform its duties under this section. 273

(H) Notwithstanding anything to the contrary in section 274
503.07 of the Revised Code, unless otherwise provided in an 275
annexation agreement entered into pursuant to section 709.192 of 276
the Revised Code or in a cooperative economic development 277
agreement entered into pursuant to section 701.07 of the Revised 278
Code, territory annexed into a municipal corporation pursuant to 279
this section shall not at any time be excluded from the township 280
under section 503.07 of the Revised Code and, thus, remains 281
subject to the township's real property taxes. 282

(I) Any owner of land that remains within a township and that 283
is adjacent to territory annexed pursuant to this section who is 284
directly affected by the failure of the annexing municipal 285
corporation to enforce compliance with any zoning ordinance it 286
adopts under division (C) of this section requiring the owner of 287
the annexed territory to provide a buffer zone, may commence in 288
the court of common pleas a civil action against that owner to 289
enforce compliance with that buffer requirement whenever the 290
required buffer is not in place before any development of the 291
annexed territory begins. 292

(J) Division (H)(12) of section 718.01 of the Revised Code 293
applies to the compensation paid to persons performing personal 294
services for a political subdivision on property owned by the 295
political subdivision after that property is annexed to a 296
municipal corporation under this section. 297

Sec. 718.01. (A) As used in this chapter: 298

(1) "Adjusted federal taxable income" means a C corporation's 299

federal taxable income before net operating losses and special 300
deductions as determined under the Internal Revenue Code, adjusted 301
as follows: 302

(a) Deduct intangible income to the extent included in 303
federal taxable income. The deduction shall be allowed regardless 304
of whether the intangible income relates to assets used in a trade 305
or business or assets held for the production of income. 306

(b) Add an amount equal to five per cent of intangible income 307
deducted under division (A)(1)(a) of this section, but excluding 308
that portion of intangible income directly related to the sale, 309
exchange, or other disposition of property described in section 310
1221 of the Internal Revenue Code; 311

(c) Add any losses allowed as a deduction in the computation 312
of federal taxable income if the losses directly relate to the 313
sale, exchange, or other disposition of an asset described in 314
section 1221 or 1231 of the Internal Revenue Code; 315

(d)(i) Except as provided in division (A)(1)(d)(ii) of this 316
section, deduct income and gain included in federal taxable income 317
to the extent the income and gain directly relate to the sale, 318
exchange, or other disposition of an asset described in section 319
1221 or 1231 of the Internal Revenue Code; 320

(ii) Division (A)(1)(d)(i) of this section does not apply to 321
the extent the income or gain is income or gain described in 322
section 1245 or 1250 of the Internal Revenue Code. 323

(e) Add taxes on or measured by net income allowed as a 324
deduction in the computation of federal taxable income; 325

(f) In the case of a real estate investment trust and 326
regulated investment company, add all amounts with respect to 327
dividends to, distributions to, or amounts set aside for or 328
credited to the benefit of investors and allowed as a deduction in 329
the computation of federal taxable income; 330

(g) Deduct, to the extent not otherwise deducted or excluded 331
in computing federal taxable income, any income derived from 332
providing public services under a contract through a project owned 333
by the state, as described in section 126.604 of the Revised Code 334
or derived from a transfer agreement or from the enterprise 335
transferred under that agreement under section 4313.02 of the 336
Revised Code. 337

If the taxpayer is not a C corporation and is not an 338
individual, the taxpayer shall compute adjusted federal taxable 339
income as if the taxpayer were a C corporation, except guaranteed 340
payments and other similar amounts paid or accrued to a partner, 341
former partner, member, or former member shall not be allowed as a 342
deductible expense; amounts paid or accrued to a qualified 343
self-employed retirement plan with respect to an owner or 344
owner-employee of the taxpayer, amounts paid or accrued to or for 345
health insurance for an owner or owner-employee, and amounts paid 346
or accrued to or for life insurance for an owner or owner-employee 347
shall not be allowed as a deduction. 348

Nothing in division (A)(1) of this section shall be construed 349
as allowing the taxpayer to add or deduct any amount more than 350
once or shall be construed as allowing any taxpayer to deduct any 351
amount paid to or accrued for purposes of federal self-employment 352
tax. 353

Nothing in this chapter shall be construed as limiting or 354
removing the ability of any municipal corporation to administer, 355
audit, and enforce the provisions of its municipal income tax. 356

(2) "Internal Revenue Code" means the Internal Revenue Code 357
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. 358

(3) "Schedule C" means internal revenue service schedule C 359
filed by a taxpayer pursuant to the Internal Revenue Code. 360

(4) "Form 2106" means internal revenue service form 2106 361

filed by a taxpayer pursuant to the Internal Revenue Code. 362

(5) "Intangible income" means income of any of the following 363
types: income yield, interest, capital gains, dividends, or other 364
income arising from the ownership, sale, exchange, or other 365
disposition of intangible property including, but not limited to, 366
investments, deposits, money, or credits as those terms are 367
defined in Chapter 5701. of the Revised Code, and patents, 368
copyrights, trademarks, tradenames, investments in real estate 369
investment trusts, investments in regulated investment companies, 370
and appreciation on deferred compensation. "Intangible income" 371
does not include prizes, awards, or other income associated with 372
any lottery winnings or other similar games of chance. 373

(6) "S corporation" means a corporation that has made an 374
election under subchapter S of Chapter 1 of Subtitle A of the 375
Internal Revenue Code for its taxable year. 376

(7) For taxable years beginning on or after January 1, 2004, 377
"net profit" for a taxpayer other than an individual means 378
adjusted federal taxable income and "net profit" for a taxpayer 379
who is an individual means the individual's profit required to be 380
reported on schedule C, schedule E, or schedule F, other than any 381
amount allowed as a deduction under division (E)(2) or (3) of this 382
section or amounts described in division (H) of this section. 383

(8) "Taxpayer" means a person subject to a tax on income 384
levied by a municipal corporation. Except as provided in division 385
(L) of this section, "taxpayer" does not include any person that 386
is a disregarded entity or a qualifying subchapter S subsidiary 387
for federal income tax purposes, but "taxpayer" includes any other 388
person who owns the disregarded entity or qualifying subchapter S 389
subsidiary. 390

(9) "Taxable year" means the corresponding tax reporting 391
period as prescribed for the taxpayer under the Internal Revenue 392

Code.	393
(10) "Tax administrator" means the individual charged with	394
direct responsibility for administration of a tax on income levied	395
by a municipal corporation and includes:	396
(a) The central collection agency and the regional income tax	397
agency and their successors in interest, and other entities	398
organized to perform functions similar to those performed by the	399
central collection agency and the regional income tax agency;	400
(b) A municipal corporation acting as the agent of another	401
municipal corporation; and	402
(c) Persons retained by a municipal corporation to administer	403
a tax levied by the municipal corporation, but only if the	404
municipal corporation does not compensate the person in whole or	405
in part on a contingency basis.	406
(11) "Person" includes individuals, firms, companies,	407
business trusts, estates, trusts, partnerships, limited liability	408
companies, associations, corporations, governmental entities, and	409
any other entity.	410
(12) "Schedule E" means internal revenue service schedule E	411
filed by a taxpayer pursuant to the Internal Revenue Code.	412
(13) "Schedule F" means internal revenue service schedule F	413
filed by a taxpayer pursuant to the Internal Revenue Code.	414
(B) No municipal corporation shall tax income at other than a	415
uniform rate.	416
(C) No municipal corporation shall levy a tax on income at a	417
rate in excess of one per cent without having obtained the	418
approval of the excess by a majority of the electors of the	419
municipality voting on the question at a general, primary, or	420
special election. The legislative authority of the municipal	421
corporation shall file with the board of elections at least ninety	422

days before the day of the election a copy of the ordinance 423
together with a resolution specifying the date the election is to 424
be held and directing the board of elections to conduct the 425
election. The ballot shall be in the following form: "Shall the 426
Ordinance providing for a ... per cent levy on income for (Brief 427
description of the purpose of the proposed levy) be passed? 428

	FOR THE INCOME TAX	
	AGAINST THE INCOME TAX	"

429
430
431
432

In the event of an affirmative vote, the proceeds of the levy 433
may be used only for the specified purpose. 434

(D)(1) Except as otherwise provided in this section, no 435
municipal corporation shall exempt from a tax on income 436
compensation for personal services of individuals over eighteen 437
years of age or the net profit from a business or profession. 438

(2)(a) For taxable years beginning on or after January 1, 439
2004, no municipal corporation shall tax the net profit from a 440
business or profession using any base other than the taxpayer's 441
adjusted federal taxable income. 442

(b) Division (D)(2)(a) of this section does not apply to any 443
taxpayer required to file a return under section 5745.03 of the 444
Revised Code or to the net profit from a sole proprietorship. 445

(E)(1) The legislative authority of a municipal corporation 446
may, by ordinance or resolution, exempt from withholding and from 447
a tax on income the following: 448

(a) Compensation arising from the sale, exchange, or other 449
disposition of a stock option, the exercise of a stock option, or 450
the sale, exchange, or other disposition of stock purchased under 451
a stock option; or 452

(b) Compensation attributable to a nonqualified deferred 453
compensation plan or program described in section 3121(v)(2)(C) of 454
the Internal Revenue Code. 455

(2) The legislative authority of a municipal corporation may 456
adopt an ordinance or resolution that allows a taxpayer who is an 457
individual to deduct, in computing the taxpayer's municipal income 458
tax liability, an amount equal to the aggregate amount the 459
taxpayer paid in cash during the taxable year to a health savings 460
account of the taxpayer, to the extent the taxpayer is entitled to 461
deduct that amount on internal revenue service form 1040. 462

(3) The legislative authority of a municipal corporation may 463
adopt an ordinance or resolution that allows a taxpayer who has a 464
net profit from a business or profession that is operated as a 465
sole proprietorship to deduct from that net profit the amount that 466
the taxpayer paid during the taxable year for medical care 467
insurance premiums for the taxpayer, the taxpayer's spouse, and 468
dependents as defined in section 5747.01 of the Revised Code. The 469
deduction shall be allowed to the same extent the taxpayer is 470
entitled to deduct the premiums on internal revenue service form 471
1040. The deduction allowed under this division shall be net of 472
any related premium refunds, related premium reimbursements, or 473
related insurance premium dividends received by the taxpayer 474
during the taxable year. 475

(F) If an individual's taxable income includes income against 476
which the taxpayer has taken a deduction for federal income tax 477
purposes as reportable on the taxpayer's form 2106, and against 478
which a like deduction has not been allowed by the municipal 479
corporation, the municipal corporation shall deduct from the 480
taxpayer's taxable income an amount equal to the deduction shown 481
on such form allowable against such income, to the extent not 482
otherwise so allowed as a deduction by the municipal corporation. 483

(G)(1) In the case of a taxpayer who has a net profit from a 484

business or profession that is operated as a sole proprietorship, 485
no municipal corporation may tax or use as the base for 486
determining the amount of the net profit that shall be considered 487
as having a taxable situs in the municipal corporation, an amount 488
other than the net profit required to be reported by the taxpayer 489
on schedule C or F from such sole proprietorship for the taxable 490
year. 491

(2) In the case of a taxpayer who has a net profit from 492
rental activity required to be reported on schedule E, no 493
municipal corporation may tax or use as the base for determining 494
the amount of the net profit that shall be considered as having a 495
taxable situs in the municipal corporation, an amount other than 496
the net profit from rental activities required to be reported by 497
the taxpayer on schedule E for the taxable year. 498

(H) A municipal corporation shall not tax any of the 499
following: 500

(1) The military pay or allowances of members of the armed 501
forces of the United States and of members of their reserve 502
components, including the Ohio national guard; 503

(2) The income of religious, fraternal, charitable, 504
scientific, literary, or educational institutions to the extent 505
that such income is derived from tax-exempt real estate, 506
tax-exempt tangible or intangible property, or tax-exempt 507
activities; 508

(3) Except as otherwise provided in division (I) of this 509
section, intangible income; 510

(4) Compensation paid under section 3501.28 or 3501.36 of the 511
Revised Code to a person serving as a precinct election official, 512
to the extent that such compensation does not exceed one thousand 513
dollars annually. Such compensation in excess of one thousand 514
dollars may be subjected to taxation by a municipal corporation. A 515

municipal corporation shall not require the payer of such 516
compensation to withhold any tax from that compensation. 517

(5) Compensation paid to an employee of a transit authority, 518
regional transit authority, or regional transit commission created 519
under Chapter 306. of the Revised Code for operating a transit bus 520
or other motor vehicle for the authority or commission in or 521
through the municipal corporation, unless the bus or vehicle is 522
operated on a regularly scheduled route, the operator is subject 523
to such a tax by reason of residence or domicile in the municipal 524
corporation, or the headquarters of the authority or commission is 525
located within the municipal corporation; 526

(6) The income of a public utility, when that public utility 527
is subject to the tax levied under section 5727.24 or 5727.30 of 528
the Revised Code, except a municipal corporation may tax the 529
following, subject to Chapter 5745. of the Revised Code: 530

(a) Beginning January 1, 2002, the income of an electric 531
company or combined company; 532

(b) Beginning January 1, 2004, the income of a telephone 533
company. 534

As used in division (H)(6) of this section, "combined 535
company," "electric company," and "telephone company" have the 536
same meanings as in section 5727.01 of the Revised Code. 537

(7) On and after January 1, 2003, items excluded from federal 538
gross income pursuant to section 107 of the Internal Revenue Code; 539

(8) On and after January 1, 2001, compensation paid to a 540
nonresident individual to the extent prohibited under section 541
718.011 of the Revised Code; 542

(9)(a) Except as provided in division (H)(9)(b) and (c) of 543
this section, an S corporation shareholder's distributive share of 544
net profits of the S corporation, other than any part of the 545

distributive share of net profits that represents wages as defined 546
in section 3121(a) of the Internal Revenue Code or net earnings 547
from self-employment as defined in section 1402(a) of the Internal 548
Revenue Code. 549

(b) If, pursuant to division (H) of former section 718.01 of 550
the Revised Code as it existed before March 11, 2004, a majority 551
of the electors of a municipal corporation voted in favor of the 552
question at an election held on November 4, 2003, the municipal 553
corporation may continue after 2002 to tax an S corporation 554
shareholder's distributive share of net profits of an S 555
corporation. 556

(c) If, on December 6, 2002, a municipal corporation was 557
imposing, assessing, and collecting a tax on an S corporation 558
shareholder's distributive share of net profits of the S 559
corporation to the extent the distributive share would be 560
allocated or apportioned to this state under divisions (B)(1) and 561
(2) of section 5733.05 of the Revised Code if the S corporation 562
were a corporation subject to taxes imposed under Chapter 5733. of 563
the Revised Code, the municipal corporation may continue to impose 564
the tax on such distributive shares to the extent such shares 565
would be so allocated or apportioned to this state only until 566
December 31, 2004, unless a majority of the electors of the 567
municipal corporation voting on the question of continuing to tax 568
such shares after that date vote in favor of that question at an 569
election held November 2, 2004. If a majority of those electors 570
vote in favor of the question, the municipal corporation may 571
continue after December 31, 2004, to impose the tax on such 572
distributive shares only to the extent such shares would be so 573
allocated or apportioned to this state. 574

(d) For the purposes of division (D) of section 718.14 of the 575
Revised Code, a municipal corporation shall be deemed to have 576
elected to tax S corporation shareholders' distributive shares of 577

net profits of the S corporation in the hands of the shareholders 578
if a majority of the electors of a municipal corporation vote in 579
favor of a question at an election held under division (H)(9)(b) 580
or (c) of this section. The municipal corporation shall specify by 581
ordinance or rule that the tax applies to the distributive share 582
of a shareholder of an S corporation in the hands of the 583
shareholder of the S corporation. 584

(10) Employee compensation that is not "qualifying wages" as 585
defined in section 718.03 of the Revised Code; 586

(11) Beginning August 1, 2007, compensation paid to a person 587
employed within the boundaries of a United States air force base 588
under the jurisdiction of the United States air force that is used 589
for the housing of members of the United States air force and is a 590
center for air force operations, unless the person is subject to 591
taxation because of residence or domicile. If the compensation is 592
subject to taxation because of residence or domicile, municipal 593
income tax shall be payable only to the municipal corporation of 594
residence or domicile. 595

(12) Compensation paid to a person for personal services 596
performed for a political subdivision on property owned by the 597
political subdivision, regardless of whether the compensation is 598
received by an employee of the subdivision or another person 599
performing services for the subdivision under a contract with the 600
subdivision, if the property on which services are performed is 601
annexed to a municipal corporation pursuant to section 709.023 of 602
the Revised Code on or after the effective date of the amendment 603
of this section, unless the person is subject to such taxation 604
because of residence or domicile. If the compensation is subject 605
to taxation because of residence or domicile, municipal income tax 606
shall be payable only to the municipal corporation of residence or 607
domicile. 608

(I) Any municipal corporation that taxes any type of 609

intangible income on March 29, 1988, pursuant to Section 3 of 610
Amended Substitute Senate Bill No. 238 of the 116th general 611
assembly, may continue to tax that type of income after 1988 if a 612
majority of the electors of the municipal corporation voting on 613
the question of whether to permit the taxation of that type of 614
intangible income after 1988 vote in favor thereof at an election 615
held on November 8, 1988. 616

(J) Nothing in this section or section 718.02 of the Revised 617
Code shall authorize the levy of any tax on income that a 618
municipal corporation is not authorized to levy under existing 619
laws or shall require a municipal corporation to allow a deduction 620
from taxable income for losses incurred from a sole proprietorship 621
or partnership. 622

(K)(1) Nothing in this chapter prohibits a municipal 623
corporation from allowing, by resolution or ordinance, a net 624
operating loss carryforward. 625

(2) Nothing in this chapter requires a municipal corporation 626
to allow a net operating loss carryforward. 627

(L)(1) A single member limited liability company that is a 628
disregarded entity for federal tax purposes may elect to be a 629
separate taxpayer from its single member in all Ohio municipal 630
corporations in which it either filed as a separate taxpayer or 631
did not file for its taxable year ending in 2003, if all of the 632
following conditions are met: 633

(a) The limited liability company's single member is also a 634
limited liability company; 635

(b) The limited liability company and its single member were 636
formed and doing business in one or more Ohio municipal 637
corporations for at least five years before January 1, 2004; 638

(c) Not later than December 31, 2004, the limited liability 639
company and its single member each make an election to be treated 640

as a separate taxpayer under division (L) of this section; 641

(d) The limited liability company was not formed for the 642
purpose of evading or reducing Ohio municipal corporation income 643
tax liability of the limited liability company or its single 644
member; 645

(e) The Ohio municipal corporation that is the primary place 646
of business of the sole member of the limited liability company 647
consents to the election. 648

(2) For purposes of division (L)(1)(e) of this section, a 649
municipal corporation is the primary place of business of a 650
limited liability company if, for the limited liability company's 651
taxable year ending in 2003, its income tax liability is greater 652
in that municipal corporation than in any other municipal 653
corporation in Ohio, and that tax liability to that municipal 654
corporation for its taxable year ending in 2003 is at least four 655
hundred thousand dollars. 656

Section 2. That existing sections 349.04, 709.023, and 718.01 657
of the Revised Code are hereby repealed. 658