

As Introduced

**130th General Assembly
Regular Session
2013-2014**

S. B. No. 282

Senator Jordan

Cosponsor: Senator Schaffer

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A B I L L

To amend sections 709.023, 718.01, 718.02, 718.04, 1
and 718.14 and to repeal section 718.011 of the 2
Revised Code to prohibit municipal corporations 3
from levying an income tax on nonresidents' 4
compensation for personal services or net profits 5
from a sole proprietorship. 6

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

Section 1. That sections 709.023, 718.01, 718.02, 718.04, and 7
718.14 of the Revised Code be amended to read as follows: 8

Sec. 709.023. (A) A petition filed under section 709.021 of 9
the Revised Code that requests to follow this section is for the 10
special procedure of annexing land into a municipal corporation 11
when, subject to division (H) of this section, the land also is 12
not to be excluded from the township under section 503.07 of the 13
Revised Code. The owners who sign this petition by their signature 14
expressly waive their right to appeal in law or equity from the 15
board of county commissioners' entry of any resolution under this 16
section, waive any rights they may have to sue on any issue 17
relating to a municipal corporation requiring a buffer as provided 18
in this section, and waive any rights to seek a variance that 19

would relieve or exempt them from that buffer requirement. 20

The petition circulated to collect signatures for the special 21
procedure in this section shall contain in boldface capital 22
letters immediately above the heading of the place for signatures 23
on each part of the petition the following: "WHOEVER SIGNS THIS 24
PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY 25
FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OF ANY RESOLUTION 26
PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT 27
OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS 28
DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE." 29

(B) Upon the filing of the petition in the office of the 30
clerk of the board of county commissioners, the clerk shall cause 31
the petition to be entered upon the board's journal at its next 32
regular session. This entry shall be the first official act of the 33
board on the petition. Within five days after the filing of the 34
petition, the agent for the petitioners shall notify in the manner 35
and form specified in this division the clerk of the legislative 36
authority of the municipal corporation to which annexation is 37
proposed, the fiscal officer of each township any portion of which 38
is included within the territory proposed for annexation, the 39
clerk of the board of county commissioners of each county in which 40
the territory proposed for annexation is located other than the 41
county in which the petition is filed, and the owners of property 42
adjacent to the territory proposed for annexation or adjacent to a 43
road that is adjacent to that territory and located directly 44
across that road from that territory. The notice shall refer to 45
the time and date when the petition was filed and the county in 46
which it was filed and shall have attached or shall be accompanied 47
by a copy of the petition and any attachments or documents 48
accompanying the petition as filed. 49

Notice to a property owner is sufficient if sent by regular 50

United States mail to the tax mailing address listed on the county auditor's records. Notice to the appropriate government officer shall be given by certified mail, return receipt requested, or by causing the notice to be personally served on the officer, with proof of service by affidavit of the person who delivered the notice. Proof of service of the notice on each appropriate government officer shall be filed with the board of county commissioners with which the petition was filed.

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

If the territory proposed for annexation is subject to zoning regulations adopted under either Chapter 303. or 519. of the Revised Code at the time the petition is filed, the legislative authority of the municipal corporation also shall adopt an ordinance or resolution stating that, if the territory is annexed and becomes subject to zoning by the municipal corporation and that municipal zoning permits uses in the annexed territory that the municipal corporation determines are clearly incompatible with the uses permitted under current county or township zoning regulations in the adjacent land remaining within the township from which the territory was annexed, the legislative authority of the municipal corporation will require, in the zoning ordinance permitting the incompatible uses, the owner of the annexed territory to provide a buffer separating the use of the annexed

territory and the adjacent land remaining within the township. For 83
the purposes of this section, "buffer" includes open space, 84
landscaping, fences, walls, and other structured elements; streets 85
and street rights-of-way; and bicycle and pedestrian paths and 86
sidewalks. 87

The clerk of the legislative authority of the municipal 88
corporation to which annexation is proposed shall file the 89
ordinances or resolutions adopted under this division with the 90
board of county commissioners within twenty days following the 91
date that the petition is filed. The board shall make these 92
ordinances or resolutions available for public inspection. 93

(D) Within twenty-five days after the date that the petition 94
is filed, the legislative authority of the municipal corporation 95
to which annexation is proposed and each township any portion of 96
which is included within the territory proposed for annexation may 97
adopt and file with the board of county commissioners an ordinance 98
or resolution consenting or objecting to the proposed annexation. 99
An objection to the proposed annexation shall be based solely upon 100
the petition's failure to meet the conditions specified in 101
division (E) of this section. 102

If the municipal corporation and each of those townships 103
timely files an ordinance or resolution consenting to the proposed 104
annexation, the board at its next regular session shall enter upon 105
its journal a resolution granting the proposed annexation. If, 106
instead, the municipal corporation or any of those townships files 107
an ordinance or resolution that objects to the proposed 108
annexation, the board of county commissioners shall proceed as 109
provided in division (E) of this section. Failure of the municipal 110
corporation or any of those townships to timely file an ordinance 111
or resolution consenting or objecting to the proposed annexation 112
shall be deemed to constitute consent by that municipal 113
corporation or township to the proposed annexation. 114

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

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

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

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

(4) The territory proposed for annexation shares a contiguous boundary with the municipal corporation to which annexation is proposed for a continuous length of at least five per cent of the perimeter of the territory proposed for annexation.

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

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

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

section 4511.01 of the Revised Code. 146

(F) Not less than thirty or more than forty-five days after 147
the date that the petition is filed, if the petition is not 148
granted under division (D) of this section, the board of county 149
commissioners, if it finds that each of the conditions specified 150
in division (E) of this section has been met, shall enter upon its 151
journal a resolution granting the annexation. If the board of 152
county commissioners finds that one or more of the conditions 153
specified in division (E) of this section have not been met, it 154
shall enter upon its journal a resolution that states which of 155
those conditions the board finds have not been met and that denies 156
the petition. 157

(G) If a petition is granted under division (D) or (F) of 158
this section, the clerk of the board of county commissioners shall 159
proceed as provided in division (C)(1) of section 709.033 of the 160
Revised Code, except that no recording or hearing exhibits would 161
be involved. There is no appeal in law or equity from the board's 162
entry of any resolution under this section, but any party may seek 163
a writ of mandamus to compel the board of county commissioners to 164
perform its duties under this section. 165

(H) Notwithstanding anything to the contrary in section 166
503.07 of the Revised Code, unless otherwise provided in an 167
annexation agreement entered into pursuant to section 709.192 of 168
the Revised Code or in a cooperative economic development 169
agreement entered into pursuant to section 701.07 of the Revised 170
Code, territory annexed into a municipal corporation pursuant to 171
this section shall not at any time be excluded from the township 172
under section 503.07 of the Revised Code and, thus, remains 173
subject to the township's real property taxes. 174

(I) Any owner of land that remains within a township and that 175
is adjacent to territory annexed pursuant to this section who is 176
directly affected by the failure of the annexing municipal 177

corporation to enforce compliance with any zoning ordinance it 178
adopts under division (C) of this section requiring the owner of 179
the annexed territory to provide a buffer zone, may commence in 180
the court of common pleas a civil action against that owner to 181
enforce compliance with that buffer requirement whenever the 182
required buffer is not in place before any development of the 183
annexed territory begins. 184

~~(J) Division (H)(12) of section 718.01 of the Revised Code 185
applies to the compensation paid to persons performing personal 186
services for a political subdivision on property owned by the 187
political subdivision after that property is annexed to a 188
municipal corporation under this section. 189~~

Sec. 718.01. (A) As used in this chapter: 190

(1) "Adjusted federal taxable income" means a C corporation's 191
federal taxable income before net operating losses and special 192
deductions as determined under the Internal Revenue Code, adjusted 193
as follows: 194

(a) Deduct intangible income to the extent included in 195
federal taxable income. The deduction shall be allowed regardless 196
of whether the intangible income relates to assets used in a trade 197
or business or assets held for the production of income. 198

(b) Add an amount equal to five per cent of intangible income 199
deducted under division (A)(1)(a) of this section, but excluding 200
that portion of intangible income directly related to the sale, 201
exchange, or other disposition of property described in section 202
1221 of the Internal Revenue Code; 203

(c) Add any losses allowed as a deduction in the computation 204
of federal taxable income if the losses directly relate to the 205
sale, exchange, or other disposition of an asset described in 206
section 1221 or 1231 of the Internal Revenue Code; 207

(d)(i) Except as provided in division (A)(1)(d)(ii) of this 208
section, deduct income and gain included in federal taxable income 209
to the extent the income and gain directly relate to the sale, 210
exchange, or other disposition of an asset described in section 211
1221 or 1231 of the Internal Revenue Code; 212

(ii) Division (A)(1)(d)(i) of this section does not apply to 213
the extent the income or gain is income or gain described in 214
section 1245 or 1250 of the Internal Revenue Code. 215

(e) Add taxes on or measured by net income allowed as a 216
deduction in the computation of federal taxable income; 217

(f) In the case of a real estate investment trust and 218
regulated investment company, add all amounts with respect to 219
dividends to, distributions to, or amounts set aside for or 220
credited to the benefit of investors and allowed as a deduction in 221
the computation of federal taxable income; 222

(g) Deduct, to the extent not otherwise deducted or excluded 223
in computing federal taxable income, any income derived from a 224
transfer agreement or from the enterprise transferred under that 225
agreement under section 4313.02 of the Revised Code. 226

If the taxpayer is not a C corporation and is not an 227
individual, the taxpayer shall compute adjusted federal taxable 228
income as if the taxpayer were a C corporation, except guaranteed 229
payments and other similar amounts paid or accrued to a partner, 230
former partner, member, or former member shall not be allowed as a 231
deductible expense; amounts paid or accrued to a qualified 232
self-employed retirement plan with respect to an owner or 233
owner-employee of the taxpayer, amounts paid or accrued to or for 234
health insurance for an owner or owner-employee, and amounts paid 235
or accrued to or for life insurance for an owner or owner-employee 236
shall not be allowed as a deduction. 237

Nothing in division (A)(1) of this section shall be construed 238

as allowing the taxpayer to add or deduct any amount more than 239
once or shall be construed as allowing any taxpayer to deduct any 240
amount paid to or accrued for purposes of federal self-employment 241
tax. 242

Nothing in this chapter shall be construed as limiting or 243
removing the ability of any municipal corporation to administer, 244
audit, and enforce the provisions of its municipal income tax. 245

(2) "Internal Revenue Code" means the Internal Revenue Code 246
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. 247

(3) "Schedule C" means internal revenue service schedule C 248
filed by a taxpayer pursuant to the Internal Revenue Code. 249

(4) "Form 2106" means internal revenue service form 2106 250
filed by a taxpayer pursuant to the Internal Revenue Code. 251

(5) "Intangible income" means income of any of the following 252
types: income yield, interest, capital gains, dividends, or other 253
income arising from the ownership, sale, exchange, or other 254
disposition of intangible property including, but not limited to, 255
investments, deposits, money, or credits as those terms are 256
defined in Chapter 5701. of the Revised Code, and patents, 257
copyrights, trademarks, tradenames, investments in real estate 258
investment trusts, investments in regulated investment companies, 259
and appreciation on deferred compensation. "Intangible income" 260
does not include prizes, awards, or other income associated with 261
any lottery winnings or other similar games of chance. 262

(6) "S corporation" means a corporation that has made an 263
election under subchapter S of Chapter 1 of Subtitle A of the 264
Internal Revenue Code for its taxable year. 265

(7) For taxable years beginning on or after January 1, 2004, 266
"net profit" for a taxpayer other than an individual means 267
adjusted federal taxable income and "net profit" for a taxpayer 268
who is an individual means the individual's profit required to be 269

reported on schedule C, schedule E, or schedule F, other than any 270
amount allowed as a deduction under division (E)(2) or (3) of this 271
section or amounts described in division (H) of this section. 272

(8) "Taxpayer" means a person subject to a tax on income 273
levied by a municipal corporation. Except as provided in division 274
(L) of this section, "taxpayer" does not include any person that 275
is a disregarded entity or a qualifying subchapter S subsidiary 276
for federal income tax purposes, but "taxpayer" includes any other 277
person who owns the disregarded entity or qualifying subchapter S 278
subsidiary. 279

(9) "Taxable year" means the corresponding tax reporting 280
period as prescribed for the taxpayer under the Internal Revenue 281
Code. 282

(10) "Tax administrator" means the individual charged with 283
direct responsibility for administration of a tax on income levied 284
by a municipal corporation and includes: 285

(a) The central collection agency and the regional income tax 286
agency and their successors in interest, and other entities 287
organized to perform functions similar to those performed by the 288
central collection agency and the regional income tax agency; 289

(b) A municipal corporation acting as the agent of another 290
municipal corporation; and 291

(c) Persons retained by a municipal corporation to administer 292
a tax levied by the municipal corporation, but only if the 293
municipal corporation does not compensate the person in whole or 294
in part on a contingency basis. 295

(11) "Person" includes individuals, firms, companies, 296
business trusts, estates, trusts, partnerships, limited liability 297
companies, associations, corporations, governmental entities, and 298
any other entity. 299

(12) "Schedule E" means internal revenue service schedule E 300
filed by a taxpayer pursuant to the Internal Revenue Code. 301

(13) "Schedule F" means internal revenue service schedule F 302
filed by a taxpayer pursuant to the Internal Revenue Code. 303

(B) No municipal corporation shall tax income at other than a 304
uniform rate. 305

(C) No municipal corporation shall levy a tax on income at a 306
rate in excess of one per cent without having obtained the 307
approval of the excess by a majority of the electors of the 308
municipality voting on the question at a general, primary, or 309
special election. The legislative authority of the municipal 310
corporation shall file with the board of elections at least ninety 311
days before the day of the election a copy of the ordinance 312
together with a resolution specifying the date the election is to 313
be held and directing the board of elections to conduct the 314
election. The ballot shall be in the following form: "Shall the 315
Ordinance providing for a ... per cent levy on income for (Brief 316
description of the purpose of the proposed levy) be passed? 317

	FOR THE INCOME TAX	
	AGAINST THE INCOME TAX	"

In the event of an affirmative vote, the proceeds of the levy 322
may be used only for the specified purpose. 323

(D)(1) Except as otherwise provided in this section and 324
section 718.04 of the Revised Code, no municipal corporation shall 325
exempt from a tax on income compensation for personal services of 326
individuals over eighteen years of age or the net profit from a 327
business or profession. 328

(2)(a) For taxable years beginning on or after January 1, 329

2004, no municipal corporation shall tax the net profit from a 330
business or profession using any base other than the taxpayer's 331
adjusted federal taxable income. 332

(b) Division (D)(2)(a) of this section does not apply to any 333
taxpayer required to file a return under section 5745.03 of the 334
Revised Code or to the net profit from a sole proprietorship. 335

(E)(1) The legislative authority of a municipal corporation 336
may, by ordinance or resolution, exempt from withholding and from 337
a tax on income the following: 338

(a) Compensation arising from the sale, exchange, or other 339
disposition of a stock option, the exercise of a stock option, or 340
the sale, exchange, or other disposition of stock purchased under 341
a stock option; or 342

(b) Compensation attributable to a nonqualified deferred 343
compensation plan or program described in section 3121(v)(2)(C) of 344
the Internal Revenue Code. 345

(2) The legislative authority of a municipal corporation may 346
adopt an ordinance or resolution that allows a taxpayer who is an 347
individual to deduct, in computing the taxpayer's municipal income 348
tax liability, an amount equal to the aggregate amount the 349
taxpayer paid in cash during the taxable year to a health savings 350
account of the taxpayer, to the extent the taxpayer is entitled to 351
deduct that amount on internal revenue service form 1040. 352

(3) The legislative authority of a municipal corporation may 353
adopt an ordinance or resolution that allows a taxpayer who has a 354
net profit from a business or profession that is operated as a 355
sole proprietorship to deduct from that net profit the amount that 356
the taxpayer paid during the taxable year for medical care 357
insurance premiums for the taxpayer, the taxpayer's spouse, and 358
dependents as defined in section 5747.01 of the Revised Code. The 359
deduction shall be allowed to the same extent the taxpayer is 360

entitled to deduct the premiums on internal revenue service form 1040. The deduction allowed under this division shall be net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received by the taxpayer during the taxable year.

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

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

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

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

(1) The military pay or allowances of members of the armed

forces of the United States and of members of their reserve 392
components, including the Ohio national guard; 393

(2) The income of religious, fraternal, charitable, 394
scientific, literary, or educational institutions to the extent 395
that such income is derived from tax-exempt real estate, 396
tax-exempt tangible or intangible property, or tax-exempt 397
activities; 398

(3) Except as otherwise provided in division (I) of this 399
section, intangible income; 400

(4) Compensation paid under section 3501.28 or 3501.36 of the 401
Revised Code to a person serving as a precinct election official, 402
to the extent that such compensation does not exceed one thousand 403
dollars annually. Such compensation in excess of one thousand 404
dollars may be subjected to taxation by a municipal corporation. A 405
municipal corporation shall not require the payer of such 406
compensation to withhold any tax from that compensation. 407

~~(5) Compensation paid to an employee of a transit authority, 408
regional transit authority, or regional transit commission created 409
under Chapter 306. of the Revised Code for operating a transit bus 410
or other motor vehicle for the authority or commission in or 411
through the municipal corporation, unless the bus or vehicle is 412
operated on a regularly scheduled route, the operator is subject 413
to such a tax by reason of residence or domicile in the municipal 414
corporation, or the headquarters of the authority or commission is 415
located within the municipal corporation;~~ 416

~~(6) The income of a public utility, when that public utility 417
is subject to the tax levied under section 5727.24 or 5727.30 of 418
the Revised Code, except a municipal corporation may tax the 419
following, subject to Chapter 5745. of the Revised Code: 420~~

~~(a) Beginning January 1, 2002, the income of an electric 421
company or combined company; 422~~

(b) Beginning January 1, 2004, the income of a telephone company. 423
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As used in division (H)~~(6)~~(5) of this section, "combined company," "electric company," and "telephone company" have the same meanings as in section 5727.01 of the Revised Code. 425
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~~(7)~~(6) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code; 428
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~~(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;~~ 431
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~~(9)~~(7)(a) Except as provided in divisions (H)~~(9)~~(7)(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. 434
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(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 shareholder's distributive share of net profits of an S corporation. 441
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(c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B)(1) and (2) of section 5733.05 of the Revised Code if the S corporation 448
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were a corporation subject to taxes imposed under Chapter 5733. of 454
the Revised Code, the municipal corporation may continue to impose 455
the tax on such distributive shares to the extent such shares 456
would be so allocated or apportioned to this state only until 457
December 31, 2004, unless a majority of the electors of the 458
municipal corporation voting on the question of continuing to tax 459
such shares after that date vote in favor of that question at an 460
election held November 2, 2004. If a majority of those electors 461
vote in favor of the question, the municipal corporation may 462
continue after December 31, 2004, to impose the tax on such 463
distributive shares only to the extent such shares would be so 464
allocated or apportioned to this state. 465

(d) For the purposes of division ~~(D)~~(C) of section 718.14 of 466
the Revised Code, a municipal corporation shall be deemed to have 467
elected to tax S corporation shareholders' distributive shares of 468
net profits of the S corporation in the hands of the shareholders 469
if a majority of the electors of a municipal corporation vote in 470
favor of a question at an election held under division 471
~~(H)~~(9)(7)(b) or (c) of this section. The municipal corporation 472
shall specify by ordinance or rule that the tax applies to the 473
distributive share of a shareholder of an S corporation in the 474
hands of the shareholder of the S corporation. 475

~~(10)~~(8) Employee compensation that is not "qualifying wages" 476
as defined in section 718.03 of the Revised Code; 477

~~(11) Beginning August 1, 2007, compensation paid to a person 478
employed within the boundaries of a United States air force base 479
under the jurisdiction of the United States air force that is used 480
for the housing of members of the United States air force and is a 481
center for air force operations, unless the person is subject to 482
taxation because of residence or domicile. If the compensation is 483
subject to taxation because of residence or domicile, municipal 484
income tax shall be payable only to the municipal corporation of 485~~

~~residence or domicile.~~ 486

~~(12) Compensation paid to a person for personal services 487
performed for a political subdivision on property owned by the 488
political subdivision, regardless of whether the compensation is 489
received by an employee of the subdivision or another person 490
performing services for the subdivision under a contract with the 491
subdivision, if the property on which services are performed is 492
annexed to a municipal corporation pursuant to section 709.023 of 493
the Revised Code on or after March 27, 2013, unless the person is 494
subject to such taxation because of residence or domicile. If the 495
compensation is subject to taxation because of residence or 496
domicile, municipal income tax shall be payable only to the 497
municipal corporation of residence or domicile. 498~~

(I) Any municipal corporation that taxes any type of 499
intangible income on March 29, 1988, pursuant to Section 3 of 500
Amended Substitute Senate Bill No. 238 of the 116th general 501
assembly, may continue to tax that type of income after 1988 if a 502
majority of the electors of the municipal corporation voting on 503
the question of whether to permit the taxation of that type of 504
intangible income after 1988 vote in favor thereof at an election 505
held on November 8, 1988. 506

(J) Nothing in this section or section 718.02 of the Revised 507
Code shall authorize the levy of any tax on income that a 508
municipal corporation is not authorized to levy under existing 509
laws or shall require a municipal corporation to allow a deduction 510
from taxable income for losses incurred from a sole proprietorship 511
or partnership. 512

(K)(1) Nothing in this chapter prohibits a municipal 513
corporation from allowing, by resolution or ordinance, a net 514
operating loss carryforward. 515

(2) Nothing in this chapter requires a municipal corporation 516

to allow a net operating loss carryforward. 517

(L)(1) A single member limited liability company that is a 518
disregarded entity for federal tax purposes may elect to be a 519
separate taxpayer from its single member in all Ohio municipal 520
corporations in which it either filed as a separate taxpayer or 521
did not file for its taxable year ending in 2003, if all of the 522
following conditions are met: 523

(a) The limited liability company's single member is also a 524
limited liability company; 525

(b) The limited liability company and its single member were 526
formed and doing business in one or more Ohio municipal 527
corporations for at least five years before January 1, 2004; 528

(c) Not later than December 31, 2004, the limited liability 529
company and its single member each make an election to be treated 530
as a separate taxpayer under division (L) of this section; 531

(d) The limited liability company was not formed for the 532
purpose of evading or reducing Ohio municipal corporation income 533
tax liability of the limited liability company or its single 534
member; 535

(e) The Ohio municipal corporation that is the primary place 536
of business of the sole member of the limited liability company 537
consents to the election. 538

(2) For purposes of division (L)(1)(e) of this section, a 539
municipal corporation is the primary place of business of a 540
limited liability company if, for the limited liability company's 541
taxable year ending in 2003, its income tax liability is greater 542
in that municipal corporation than in any other municipal 543
corporation in Ohio, and that tax liability to that municipal 544
corporation for its taxable year ending in 2003 is at least four 545
hundred thousand dollars. 546

Sec. 718.02. This section does not apply to taxpayers that 547
are subject to and required to file reports under Chapter 5745. of 548
the Revised Code or to taxpayers with a net profit from a business 549
or profession operated as a sole proprietorship. 550

(A) Except as otherwise provided in division (D) of this 551
section, net profit from a business or profession conducted both 552
within and without the boundaries of a municipal corporation shall 553
be considered as having a taxable situs in such municipal 554
corporation for purposes of municipal income taxation in the same 555
proportion as the average ratio of the following: 556

(1) The average original cost of the real and tangible 557
personal property owned or used by the taxpayer in the business or 558
profession in such municipal corporation during the taxable period 559
to the average original cost of all of the real and tangible 560
personal property owned or used by the taxpayer in the business or 561
profession during the same period, wherever situated. 562

As used in the preceding paragraph, real property shall 563
include property rented or leased by the taxpayer and the value of 564
such property shall be determined by multiplying the annual rental 565
thereon by eight; 566

(2) Wages, salaries, and other compensation paid during the 567
taxable period to persons employed in the business or profession 568
for services performed in such municipal corporation to wages, 569
salaries, and other compensation paid during the same period to 570
persons employed in the business or profession, wherever their 571
services are performed, ~~excluding compensation that is not taxable~~ 572
~~by the municipal corporation under section 718.011 of the Revised~~ 573
~~Code;~~ 574

(3) Gross receipts of the business or profession from sales 575
made and services performed during the taxable period in such 576
municipal corporation to gross receipts of the business or 577

profession during the same period from sales and services, 578
wherever made or performed. 579

If the foregoing apportionment formula does not produce an 580
equitable result, another basis may be substituted, under uniform 581
regulations, so as to produce an equitable result. 582

(B) As used in division (A) of this section, "sales made in a 583
municipal corporation" mean: 584

(1) All sales of tangible personal property delivered within 585
such municipal corporation regardless of where title passes if 586
shipped or delivered from a stock of goods within such municipal 587
corporation; 588

(2) All sales of tangible personal property delivered within 589
such municipal corporation regardless of where title passes even 590
though transported from a point outside such municipal corporation 591
if the taxpayer is regularly engaged through its own employees in 592
the solicitation or promotion of sales within such municipal 593
corporation and the sales result from such solicitation or 594
promotion; 595

(3) All sales of tangible personal property shipped from a 596
place within such municipal corporation to purchasers outside such 597
municipal corporation regardless of where title passes if the 598
taxpayer is not, through its own employees, regularly engaged in 599
the solicitation or promotion of sales at the place where delivery 600
is made. 601

(C) Except as otherwise provided in division (D) of this 602
section, net profit from rental activity not constituting a 603
business or profession shall be subject to tax only by the 604
municipal corporation in which the property generating the net 605
profit is located. 606

(D) ~~This section does not apply to~~ Nothing in this section 607
prohibits a municipal corporation from imposing a tax on all 608

~~income earned by individuals who are residents of the municipal corporation and, except as otherwise provided in section 718.01 of the Revised Code, a municipal corporation may impose a tax on all income earned by residents of the municipal corporation to the extent allowed by the United States Constitution and section 718.01 of the Revised Code.~~ 609
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(E) If, in computing the taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in income any amount or any portion thereof because it is exempted from taxation under division (H)~~(10)~~(8) of section 718.01 of the Revised Code and division (A)(2)(d) of section 718.03 of the Revised Code by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation. 615
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This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under divisions (A) and (B) of this section. 630
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Sec. 718.04. (A) Except as otherwise provided in section 718.01 of the Revised Code, a municipal corporation may impose a tax on all income earned by residents of the municipal corporation to the extent allowed by the United States Constitution. 634
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~~(B) No municipal corporation other than the municipal corporation of residence shall levy a tax on the income of any~~ 638
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~~member or employee of the Ohio general assembly including the 640
lieutenant governor which income is received as a result of 641
services rendered as such member or employee and is paid from 642
appropriated funds of this state. 643~~

~~(B) No municipal corporation other than the municipal 644
corporation of residence and the city of Columbus shall levy a tax 645
on the income of the chief justice or a justice of the supreme 646
court received as a result of services rendered as the chief 647
justice or justice. No municipal corporation other than the 648
municipal corporation of residence shall levy a tax on the income 649
of a judge sitting by assignment of the chief justice or on the 650
income of a district court of appeals judge sitting in multiple 651
locations within the district, received as a result of services 652
rendered as a judge the compensation for personal services of a 653
nonresident individual or on the net profit from a business or 654
profession operated as a sole proprietorship of a nonresident. 655~~

Sec. 718.14. (A) As used in this section: 656

(1) "Limited liability company" means a limited liability 657
company formed under Chapter 1705. of the Revised Code or under 658
the laws of another state. 659

(2) "Pass-through entity" means a partnership, limited 660
liability company, S corporation, or any other class of entity the 661
income or profits from which are given pass-through treatment 662
under the Internal Revenue Code. 663

(3) "Income from a pass-through entity" means partnership 664
income of partners, membership interests of members of a limited 665
liability company, distributive shares of shareholders of an S 666
corporation, or other distributive or proportionate ownership 667
shares of income from other pass-through entities. 668

(4) "Owner" means a partner of a partnership, a member of a 669

limited liability company, a shareholder of an S corporation, or 670
other person with an ownership interest in a pass-through entity. 671

(5) "Owner's proportionate share," with respect to each owner 672
of a pass-through entity, means the ratio of (a) the owner's 673
income from the pass-through entity that is subject to taxation by 674
the municipal corporation, to (b) the total income from that 675
entity of all owners whose income from the entity is subject to 676
taxation by that municipal corporation. 677

(B) On and after January 1, 2003, any municipal corporation 678
imposing a tax that applies to income from a pass-through entity 679
shall grant a credit to each owner who is domiciled in the 680
municipal corporation for taxes paid to another municipal 681
corporation by a pass-through entity that does not conduct 682
business in the municipal corporation. The amount of the credit 683
shall equal the lesser of the following amounts, ~~subject to~~ 684
~~division (C) of this section:~~ 685

(1) The owner's proportionate share of the amount, if any, of 686
tax paid by the pass-through entity to another municipal 687
corporation in this state; 688

(2) The owner's proportionate share of the amount of tax that 689
would be imposed on the pass-through entity by the municipal 690
corporation in which the taxpayer is domiciled if the pass-through 691
entity conducted business in the municipal corporation. 692

~~(C) If a municipal corporation grants a credit for a 693
percentage, less than one hundred per cent, of the amount of 694
income taxes paid on compensation by an individual who resides or 695
is domiciled in the municipal corporation to another municipal 696
corporation, the amount of credit otherwise required by division 697
(B) of this section shall be multiplied by that percentage. 698~~

~~(D)~~ On and after January 1, 2003, any municipal corporation 699
that imposes a tax on income of or from a pass-through entity 700

shall specify by ordinance or rule whether the tax applies to 701
income of the pass-through entity in the hands of the entity or to 702
income from the pass-through entity in the hands of the owners of 703
the entity. A municipal corporation may specify a different 704
ordinance or rule under this division for each of the classes of 705
pass-through entity enumerated in division (A)(2) of this section. 706

Section 2. That existing sections 709.023, 718.01, 718.02, 707
718.04, and 718.14 and section 718.011 of the Revised Code are 708
hereby repealed. 709

Section 3. The amendment and repeal by this act of sections 710
709.023, 718.01, 718.011, 718.02, 718.04, and 718.14 of the 711
Revised Code shall apply to taxable years beginning on or after 712
the effective date of this act. 713