

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 203**

**Senator Dolan**

**Cosponsors: Senators Sykes, Eklund**

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**A BILL**

To amend sections 718.02 and 718.82 of the Revised Code to reinstate the municipal income tax "throw-back rule" used in apportioning business income among municipalities.

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

**Section 1.** That sections 718.02 and 718.82 of the Revised Code be amended to read as follows:

**Sec. 718.02.** This section applies to any taxpayer engaged in a business or profession in a municipal corporation that imposes an income tax in accordance with this chapter, unless the taxpayer is an individual who resides in the municipal corporation or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745. of the Revised Code.

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

same proportion as the average ratio of the following: 19

(1) The average original cost of the real property and 20  
tangible personal property owned or used by the taxpayer in the 21  
business or profession in the municipal corporation during the 22  
taxable period to the average original cost of all of the real 23  
and tangible personal property owned or used by the taxpayer in 24  
the business or profession during the same period, wherever 25  
situated. 26

As used in the preceding paragraph, tangible personal or 27  
real property shall include property rented or leased by the 28  
taxpayer and the value of such property shall be determined by 29  
multiplying the annual rental thereon by eight; 30

(2) Wages, salaries, and other compensation paid during 31  
the taxable period to individuals employed in the business or 32  
profession for services performed in the municipal corporation 33  
to wages, salaries, and other compensation paid during the same 34  
period to individuals employed in the business or profession, 35  
wherever the individual's services are performed, excluding 36  
compensation from which taxes are not required to be withheld 37  
under section 718.011 of the Revised Code; 38

(3) Total gross receipts of the business or profession 39  
from sales and rentals made and services performed during the 40  
taxable period in the municipal corporation to total gross 41  
receipts of the business or profession during the same period 42  
from sales, rentals, and services, wherever made or performed. 43

(B) (1) If the apportionment factors described in division 44  
(A) of this section do not fairly represent the extent of a 45  
taxpayer's business activity in a municipal corporation, the 46  
taxpayer may request, or the tax administrator of the municipal 47

corporation may require, that the taxpayer use, with respect to 48  
all or any portion of the income of the taxpayer, an alternative 49  
apportionment method involving one or more of the following: 50

(a) Separate accounting; 51

(b) The exclusion of one or more of the factors; 52

(c) The inclusion of one or more additional factors that 53  
would provide for a more fair apportionment of the income of the 54  
taxpayer to the municipal corporation; 55

(d) A modification of one or more of the factors. 56

(2) A taxpayer request to use an alternative apportionment 57  
method shall be in writing and shall accompany a tax return, 58  
timely filed appeal of an assessment, or timely filed amended 59  
tax return. The taxpayer may use the requested alternative 60  
method unless the tax administrator denies the request in an 61  
assessment issued within the period prescribed by division (A) 62  
of section 718.12 of the Revised Code. 63

(3) A tax administrator may require a taxpayer to use an 64  
alternative apportionment method as described in division (B) (1) 65  
of this section only by issuing an assessment to the taxpayer 66  
within the period prescribed by division (A) of section 718.12 67  
of the Revised Code. 68

(4) Nothing in division (B) of this section nullifies or 69  
otherwise affects any alternative apportionment arrangement 70  
approved by a tax administrator or otherwise agreed upon by both 71  
the tax administrator and taxpayer before January 1, 2016. 72

(C) As used in division (A) (2) of this section, "wages, 73  
salaries, and other compensation" includes only wages, salaries, 74  
or other compensation paid to an employee for services performed 75

at any of the following locations:	76
(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:	77 78
(a) The employer;	79
(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;	80 81 82
(c) A vendor, customer, client, or patient of a person described in division (C) (1) (b) of this section, or a related member of such a vendor, customer, client, or patient.	83 84 85
(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;	86 87 88 89 90 91 92
(3) Any other location, if the tax administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C) (1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a tax administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the tax administrator's determination was unreasonable.	93 94 95 96 97 98 99 100 101
(D) For the purposes of division (A) (3) of this section, receipts from sales and rentals made and services performed shall be sitused to a municipal corporation as follows:	102 103 104

(1) Gross receipts from the sale of tangible personal 105  
property shall be situated to the municipal corporation only if, 106  
regardless of where title passes, the property meets ~~either~~any 107  
of the following criteria: 108

(a) The property is shipped to or delivered within the 109  
municipal corporation from a stock of goods located within the 110  
municipal corporation. 111

(b) The property is delivered within the municipal 112  
corporation from a location outside the municipal corporation, 113  
provided the taxpayer is regularly engaged through its own 114  
employees in the solicitation or promotion of sales within such 115  
municipal corporation and the sales result from such 116  
solicitation or promotion. 117

(c) The property is shipped from a place within the 118  
municipal corporation to purchasers outside the municipal 119  
corporation, provided that the taxpayer is not, through its own 120  
employees, regularly engaged in the solicitation or promotion of 121  
sales at the place where delivery is made. 122

(2) Gross receipts from the sale of services shall be 123  
situated to the municipal corporation to the extent that such 124  
services are performed in the municipal corporation. 125

(3) To the extent included in income, gross receipts from 126  
the sale of real property located in the municipal corporation 127  
shall be situated to the municipal corporation. 128

(4) To the extent included in income, gross receipts from 129  
rents and royalties from real property located in the municipal 130  
corporation shall be situated to the municipal corporation. 131

(5) Gross receipts from rents and royalties from tangible 132  
personal property shall be situated to the municipal corporation 133

based upon the extent to which the tangible personal property is 134  
used in the municipal corporation. 135

(E) The net profit received by an individual taxpayer from 136  
the rental of real estate owned directly by the individual or by 137  
a disregarded entity owned by the individual shall be subject to 138  
tax only by the municipal corporation in which the property 139  
generating the net profit is located and the municipal 140  
corporation in which the individual taxpayer that receives the 141  
net profit resides. 142

A municipal corporation shall allow such taxpayers to 143  
elect to use separate accounting for the purpose of calculating 144  
net profit situated under this division to the municipal 145  
corporation in which the property is located. 146

(F) (1) Except as provided in division (F) (2) of this 147  
section, commissions received by a real estate agent or broker 148  
relating to the sale, purchase, or lease of real estate shall be 149  
situated to the municipal corporation in which the real estate is 150  
located. Net profit reported by the real estate agent or broker 151  
shall be allocated to a municipal corporation based upon the 152  
ratio of the commissions the agent or broker received from the 153  
sale, purchase, or lease of real estate located in the municipal 154  
corporation to the commissions received from the sale, purchase, 155  
or lease of real estate everywhere in the taxable year. 156

(2) An individual who is a resident of a municipal 157  
corporation that imposes a municipal income tax shall report the 158  
individual's net profit from all real estate activity on the 159  
individual's annual tax return for that municipal corporation. 160  
The individual may claim a credit for taxes the individual paid 161  
on such net profit to another municipal corporation to the 162  
extent that such a credit is allowed under the municipal income 163

tax ordinance, or rules of the municipal corporation of 164  
residence. 165

(G) If, in computing a taxpayer's adjusted federal taxable 166  
income, the taxpayer deducted any amount with respect to a stock 167  
option granted to an employee, and if the employee is not 168  
required to include in the employee's income any such amount or 169  
a portion thereof because it is exempted from taxation under 170  
divisions (C) (12) and (R) (1) (d) of section 718.01 of the Revised 171  
Code by a municipal corporation to which the taxpayer has 172  
apportioned a portion of its net profit, the taxpayer shall add 173  
the amount that is exempt from taxation to the taxpayer's net 174  
profit that was apportioned to that municipal corporation. In no 175  
case shall a taxpayer be required to add to its net profit that 176  
was apportioned to that municipal corporation any amount other 177  
than the amount upon which the employee would be required to pay 178  
tax were the amount related to the stock option not exempted 179  
from taxation. 180

This division applies solely for the purpose of making an 181  
adjustment to the amount of a taxpayer's net profit that was 182  
apportioned to a municipal corporation under this section. 183

(H) When calculating the ratios described in division (A) 184  
of this section for the purposes of that division or division 185  
(B) of this section, the owner of a disregarded entity shall 186  
include in the owner's ratios the property, payroll, and gross 187  
receipts of such disregarded entity. 188

**Sec. 718.82.** This section applies to any taxpayer that is 189  
engaged in a business or profession in a municipal corporation 190  
and that has made the election under section 718.80 of the 191  
Revised Code. 192

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

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

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

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the municipal corporation to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 718.011 of the Revised Code;

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



(B) (1) If the apportionment factors described in division	223
(A) of this section do not fairly represent the extent of a	224
taxpayer's business activity in a municipal corporation, the	225
taxpayer may request, or the tax commissioner may require, that	226
the taxpayer use, with respect to all or any portion of the	227
income of the taxpayer, an alternative apportionment method	228
involving one or more of the following:	229
(a) Separate accounting;	230
(b) The exclusion of one or more of the factors;	231
(c) The inclusion of one or more additional factors that	232
would provide for a more fair apportionment of the income of the	233
taxpayer to the municipal corporation;	234
(d) A modification of one or more of the factors.	235
(2) A taxpayer request to use an alternative apportionment	236
method shall be in writing and shall accompany a tax return,	237
timely filed appeal of an assessment, or timely filed amended	238
tax return. The taxpayer may use the requested alternative	239
method unless the tax commissioner denies the request in an	240
assessment issued within the period prescribed by division (A)	241
of section 718.90 of the Revised Code.	242
(3) The tax commissioner may require a taxpayer to use an	243
alternative apportionment method as described in division (B) (1)	244
of this section only by issuing an assessment to the taxpayer	245
within the period prescribed by division (A) of section 718.90	246
of the Revised Code.	247
(C) As used in division (A) (2) of this section, "wages,	248
salaries, and other compensation" includes only wages, salaries,	249
or other compensation paid to an employee for services performed	250
at any of the following locations:	251

(1) A location that is owned, controlled, or used by,	252
rented to, or under the possession of one of the following:	253
(a) The employer;	254
(b) A vendor, customer, client, or patient of the	255
employer, or a related member of such a vendor, customer,	256
client, or patient;	257
(c) A vendor, customer, client, or patient of a person	258
described in division (C) (1) (b) of this section, or a related	259
member of such a vendor, customer, client, or patient.	260
(2) Any location at which a trial, appeal, hearing,	261
investigation, inquiry, review, court-martial, or similar	262
administrative, judicial, or legislative matter or proceeding is	263
being conducted, provided that the compensation is paid for	264
services performed for, or on behalf of, the employer or that	265
the employee's presence at the location directly or indirectly	266
benefits the employer;	267
(3) Any other location, if the tax commissioner determines	268
that the employer directed the employee to perform the services	269
at the other location in lieu of a location described in	270
division (C) (1) or (2) of this section solely in order to avoid	271
or reduce the employer's municipal income tax liability. If the	272
tax commissioner makes such a determination, the employer may	273
dispute the determination by establishing, by a preponderance of	274
the evidence, that the tax commissioner's determination was	275
unreasonable.	276
(D) For the purposes of division (A) (3) of this section,	277
receipts from sales and rentals made and services performed	278
shall be situated to a municipal corporation as follows:	279
(1) Gross receipts from the sale of tangible personal	280

property shall be sitused to the municipal corporation only if, 281  
regardless of where title passes, the property meets ~~either~~any 282  
of the following criteria: 283

(a) The property is shipped to or delivered within the 284  
municipal corporation from a stock of goods located within the 285  
municipal corporation. 286

(b) The property is delivered within the municipal 287  
corporation from a location outside the municipal corporation, 288  
provided the taxpayer is regularly engaged through its own 289  
employees in the solicitation or promotion of sales within such 290  
municipal corporation and the sales result from such 291  
solicitation or promotion. 292

(c) The property is shipped from a place within the 293  
municipal corporation to purchasers outside the municipal 294  
corporation, provided that the taxpayer is not, through its own 295  
employees, regularly engaged in the solicitation or promotion of 296  
sales at the place where delivery is made. 297

(2) Gross receipts from the sale of services shall be 298  
sitused to the municipal corporation to the extent that such 299  
services are performed in the municipal corporation. 300

(3) To the extent included in income, gross receipts from 301  
the sale of real property located in the municipal corporation 302  
shall be sitused to the municipal corporation. 303

(4) To the extent included in income, gross receipts from 304  
rents and royalties from real property located in the municipal 305  
corporation shall be sitused to the municipal corporation. 306

(5) Gross receipts from rents and royalties from tangible 307  
personal property shall be sitused to the municipal corporation 308  
based upon the extent to which the tangible personal property is 309

used in the municipal corporation. 310

(E) Commissions received by a real estate agent or broker 311  
relating to the sale, purchase, or lease of real estate shall be 312  
situated to the municipal corporation in which the real estate is 313  
located. Net profit reported by the real estate agent or broker 314  
shall be allocated to a municipal corporation based upon the 315  
ratio of the commissions the agent or broker received from the 316  
sale, purchase, or lease of real estate located in the municipal 317  
corporation to the commissions received from the sale, purchase, 318  
or lease of real estate everywhere in the taxable year. 319

(F) If, in computing a taxpayer's adjusted federal taxable 320  
income, the taxpayer deducted any amount with respect to a stock 321  
option granted to an employee, and if the employee is not 322  
required to include in the employee's income any such amount or 323  
a portion thereof because it is exempted from taxation under 324  
divisions (C) (12) and (R) (1) (d) of section 718.01 of the Revised 325  
Code by a municipal corporation to which the taxpayer has 326  
apportioned a portion of its net profit, the taxpayer shall add 327  
the amount that is exempt from taxation to the taxpayer's net 328  
profit that was apportioned to that municipal corporation. In no 329  
case shall a taxpayer be required to add to its net profit that 330  
was apportioned to that municipal corporation any amount other 331  
than the amount upon which the employee would be required to pay 332  
tax were the amount related to the stock option not exempted 333  
from taxation. 334

This division applies solely for the purpose of making an 335  
adjustment to the amount of a taxpayer's net profit that was 336  
apportioned to a municipal corporation under this section. 337

(G) When calculating the ratios described in division (A) 338  
of this section for the purposes of that division or division 339

(B) of this section, the owner of a disregarded entity shall 340  
include in the owner's ratios the property, payroll, and gross 341  
receipts of such disregarded entity. 342

**Section 2.** That existing sections 718.02 and 718.82 of the 343  
Revised Code are hereby repealed. 344

**Section 3.** The amendment by this act of sections 718.02 345  
and 718.82 of the Revised Code applies to taxable years 346  
beginning on or after January 1, 2018. 347