

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 203

Senator Dolan

Cosponsors: Senators Sykes, Eklund

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