

H. B. No. 228
As Introduced

_____ moved to amend as follows:

- In line 1 of the title, after "sections" insert "718.01," 1
- In line 3 of the title, delete "state-" 2
- In line 4 of the title, delete "administered" and insert "the state 3
administration of"; after "taxes" insert "and the municipal taxation of 4
retirement benefits" 5
- In line 5, after "sections" insert "718.01," 6
- After line 7, insert: 7
- "Sec. 718.01. Any term used in this chapter that is not 8
otherwise defined in this chapter has the same meaning as when 9
used in a comparable context in laws of the United States 10
relating to federal income taxation or in Title LVII of the 11
Revised Code, unless a different meaning is clearly required. 12
Except as provided in section 718.81 of the Revised Code, if a 13
term used in this chapter that is not otherwise defined in this 14
chapter is used in a comparable context in both the laws of the 15
United States relating to federal income tax and in Title LVII 16
of the Revised Code and the use is not consistent, then the use 17



of the term in the laws of the United States relating to federal 18
income tax shall control over the use of the term in Title LVII 19
of the Revised Code. 20

Except as otherwise provided in section 718.81 of the 21
Revised Code, as used in this chapter: 22

(A) (1) "Municipal taxable income" means the following: 23

(a) For a person other than an individual, income 24
apportioned or situated to the municipal corporation under 25
section 718.02 of the Revised Code, as applicable, reduced by 26
any pre-2017 net operating loss carryforward available to the 27
person for the municipal corporation. 28

(b) (i) For an individual who is a resident of a municipal 29
corporation other than a qualified municipal corporation, income 30
reduced by exempt income to the extent otherwise included in 31
income, then reduced as provided in division (A) (2) of this 32
section, and further reduced by any pre-2017 net operating loss 33
carryforward available to the individual for the municipal 34
corporation. 35

(ii) For an individual who is a resident of a qualified 36
municipal corporation, Ohio adjusted gross income reduced by 37
income exempted, and increased by deductions excluded, by the 38
qualified municipal corporation from the qualified municipal 39
corporation's tax. If a qualified municipal corporation, on or 40
before December 31, 2013, exempts income earned by individuals 41
who are not residents of the qualified municipal corporation and 42
net profit of persons that are not wholly located within the 43
qualified municipal corporation, such individual or person shall 44
have no municipal taxable income for the purposes of the tax 45
levied by the qualified municipal corporation and may be 46

exempted by the qualified municipal corporation from the 47
requirements of section 718.03 of the Revised Code. 48

(c) For an individual who is a nonresident of a municipal 49
corporation, income reduced by exempt income to the extent 50
otherwise included in income and then, as applicable, 51
apportioned or situated to the municipal corporation under 52
section 718.02 of the Revised Code, then reduced as provided in 53
division (A) (2) of this section, and further reduced by any pre- 54
2017 net operating loss carryforward available to the individual 55
for the municipal corporation. 56

(2) In computing the municipal taxable income of a 57
taxpayer who is an individual, the taxpayer may subtract, as 58
provided in division (A) (1) (b) (i) or (c) of this section, the 59
amount of the individual's employee business expenses reported 60
on the individual's form 2106 that the individual deducted for 61
federal income tax purposes for the taxable year, subject to the 62
limitation imposed by section 67 of the Internal Revenue Code. 63
For the municipal corporation in which the taxpayer is a 64
resident, the taxpayer may deduct all such expenses allowed for 65
federal income tax purposes. For a municipal corporation in 66
which the taxpayer is not a resident, the taxpayer may deduct 67
such expenses only to the extent the expenses are related to the 68
taxpayer's performance of personal services in that nonresident 69
municipal corporation. 70

(B) "Income" means the following: 71

(1) (a) For residents, all income, salaries, qualifying 72
wages, commissions, and other compensation from whatever source 73
earned or received by the resident, including the resident's 74
distributive share of the net profit of pass-through entities 75
owned directly or indirectly by the resident and any net profit 76

of the resident, except as provided in division (D) (5) of this	77
section.	78
(b) For the purposes of division (B) (1) (a) of this	79
section:	80
(i) Any net operating loss of the resident incurred in the	81
taxable year and the resident's distributive share of any net	82
operating loss generated in the same taxable year and	83
attributable to the resident's ownership interest in a pass-	84
through entity shall be allowed as a deduction, for that taxable	85
year and the following five taxable years, against any other net	86
profit of the resident or the resident's distributive share of	87
any net profit attributable to the resident's ownership interest	88
in a pass-through entity until fully utilized, subject to	89
division (B) (1) (d) of this section;	90
(ii) The resident's distributive share of the net profit	91
of each pass-through entity owned directly or indirectly by the	92
resident shall be calculated without regard to any net operating	93
loss that is carried forward by that entity from a prior taxable	94
year and applied to reduce the entity's net profit for the	95
current taxable year.	96
(c) Division (B) (1) (b) of this section does not apply with	97
respect to any net profit or net operating loss attributable to	98
an ownership interest in an S corporation unless shareholders'	99
distributive shares of net profits from S corporations are	100
subject to tax in the municipal corporation as provided in	101
division (C) (14) (b) or (c) of this section.	102
(d) Any amount of a net operating loss used to reduce a	103
taxpayer's net profit for a taxable year shall reduce the amount	104
of net operating loss that may be carried forward to any	105

subsequent year for use by that taxpayer. In no event shall the 106
cumulative deductions for all taxable years with respect to a 107
taxpayer's net operating loss exceed the original amount of that 108
net operating loss available to that taxpayer. 109

(2) In the case of nonresidents, all income, salaries, 110
qualifying wages, commissions, and other compensation from 111
whatever source earned or received by the nonresident for work 112
done, services performed or rendered, or activities conducted in 113
the municipal corporation, including any net profit of the 114
nonresident, but excluding the nonresident's distributive share 115
of the net profit or loss of only pass-through entities owned 116
directly or indirectly by the nonresident. 117

(3) For taxpayers that are not individuals, net profit of 118
the taxpayer; 119

(4) Lottery, sweepstakes, gambling and sports winnings, 120
winnings from games of chance, and prizes and awards. If the 121
taxpayer is a professional gambler for federal income tax 122
purposes, the taxpayer may deduct related wagering losses and 123
expenses to the extent authorized under the Internal Revenue 124
Code and claimed against such winnings. 125

(C) "Exempt income" means all of the following: 126

(1) The military pay or allowances of members of the armed 127
forces of the United States or members of their reserve 128
components, including the national guard of any state; 129

(2) (a) Except as provided in division (C) (2) (b) of this 130
section, intangible income; 131

(b) A municipal corporation that taxed any type of 132
intangible income on March 29, 1988, pursuant to Section 3 of 133

S.B. 238 of the 116th general assembly, may continue to tax that 134
type of income if a majority of the electors of the municipal 135
corporation voting on the question of whether to permit the 136
taxation of that type of intangible income after 1988 voted in 137
favor thereof at an election held on November 8, 1988. 138

(3) Social security benefits, railroad retirement 139
benefits, unemployment compensation, pensions, retirement 140
benefit payments, payments from annuities, and similar payments 141
made to an employee or to the beneficiary of an employee under a 142
retirement program or plan, disability payments received from 143
private industry or local, state, or federal governments or from 144
charitable, religious or educational organizations, and the 145
proceeds of sickness, accident, or liability insurance policies. 146
As used in division (C) (3) of this section, "unemployment 147
compensation" does not include supplemental unemployment 148
compensation described in section 3402(o) (2) of the Internal 149
Revenue Code. 150

(4) The income of religious, fraternal, charitable, 151
scientific, literary, or educational institutions to the extent 152
such income is derived from tax-exempt real estate, tax-exempt 153
tangible or intangible property, or tax-exempt activities. 154

(5) Compensation paid under section 3501.28 or 3501.36 of 155
the Revised Code to a person serving as a precinct election 156
official to the extent that such compensation does not exceed 157
one thousand dollars for the taxable year. Such compensation in 158
excess of one thousand dollars for the taxable year may be 159
subject to taxation by a municipal corporation. A municipal 160
corporation shall not require the payer of such compensation to 161
withhold any tax from that compensation. 162

(6) Dues, contributions, and similar payments received by 163

charitable, religious, educational, or literary organizations or	164
labor unions, lodges, and similar organizations;	165
(7) Alimony and child support received;	166
(8) Compensation for personal injuries or for damages to	167
property from insurance proceeds or otherwise, excluding	168
compensation paid for lost salaries or wages or compensation	169
from punitive damages;	170
(9) Income of a public utility when that public utility is	171
subject to the tax levied under section 5727.24 or 5727.30 of	172
the Revised Code. Division (C) (9) of this section does not apply	173
for purposes of Chapter 5745. of the Revised Code.	174
(10) Gains from involuntary conversions, interest on	175
federal obligations, items of income subject to a tax levied by	176
the state and that a municipal corporation is specifically	177
prohibited by law from taxing, and income of a decedent's estate	178
during the period of administration except such income from the	179
operation of a trade or business;	180
(11) Compensation or allowances excluded from federal	181
gross income under section 107 of the Internal Revenue Code;	182
(12) Employee compensation that is not qualifying wages as	183
defined in division (R) of this section;	184
(13) Compensation paid to a person employed within the	185
boundaries of a United States air force base under the	186
jurisdiction of the United States air force that is used for the	187
housing of members of the United States air force and is a	188
center for air force operations, unless the person is subject to	189
taxation because of residence or domicile. If the compensation	190
is subject to taxation because of residence or domicile, tax on	191

such income shall be payable only to the municipal corporation 192
of residence or domicile. 193

(14) (a) Except as provided in division (C) (14) (b) or (c) 194
of this section, an S corporation shareholder's distributive 195
share of net profits of the S corporation, other than any part 196
of the distributive share of net profits that represents wages 197
as defined in section 3121(a) of the Internal Revenue Code or 198
net earnings from self-employment as defined in section 1402(a) 199
of the Internal Revenue Code. 200

(b) If, pursuant to division (H) of former section 718.01 201
of the Revised Code as it existed before March 11, 2004, a 202
majority of the electors of a municipal corporation voted in 203
favor of the question at an election held on November 4, 2003, 204
the municipal corporation may continue after 2002 to tax an S 205
corporation shareholder's distributive share of net profits of 206
an S corporation. 207

(c) If, on December 6, 2002, a municipal corporation was 208
imposing, assessing, and collecting a tax on an S corporation 209
shareholder's distributive share of net profits of the S 210
corporation to the extent the distributive share would be 211
allocated or apportioned to this state under divisions (B) (1) 212
and (2) of section 5733.05 of the Revised Code if the S 213
corporation were a corporation subject to taxes imposed under 214
Chapter 5733. of the Revised Code, the municipal corporation may 215
continue to impose the tax on such distributive shares to the 216
extent such shares would be so allocated or apportioned to this 217
state only until December 31, 2004, unless a majority of the 218
electors of the municipal corporation voting on the question of 219
continuing to tax such shares after that date voted in favor of 220
that question at an election held November 2, 2004. If a 221

majority of those electors voted in favor of the question, the 222
municipal corporation may continue after December 31, 2004, to 223
impose the tax on such distributive shares only to the extent 224
such shares would be so allocated or apportioned to this state. 225

(d) A municipal corporation shall be deemed to have 226
elected to tax S corporation shareholders' distributive shares 227
of net profits of the S corporation in the hands of the 228
shareholders if a majority of the electors of a municipal 229
corporation voted in favor of a question at an election held 230
under division (C) (14) (b) or (c) of this section. The municipal 231
corporation shall specify by resolution or ordinance that the 232
tax applies to the distributive share of a shareholder of an S 233
corporation in the hands of the shareholder of the S 234
corporation. 235

(15) To the extent authorized under a resolution or 236
ordinance adopted by a municipal corporation before January 1, 237
2016, all or a portion of the income of individuals or a class 238
of individuals under eighteen years of age. 239

(16) (a) Except as provided in divisions (C) (16) (b), (c), 240
and (d) of this section, qualifying wages described in division 241
(B) (1) or (E) of section 718.011 of the Revised Code to the 242
extent the qualifying wages are not subject to withholding for 243
the municipal corporation under either of those divisions. 244

(b) The exemption provided in division (C) (16) (a) of this 245
section does not apply with respect to the municipal corporation 246
in which the employee resided at the time the employee earned 247
the qualifying wages. 248

(c) The exemption provided in division (C) (16) (a) of this 249
section does not apply to qualifying wages that an employer 250

elects to withhold under division (D) (2) of section 718.011 of the Revised Code. 251
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(d) The exemption provided in division (C) (16) (a) of this section does not apply to qualifying wages if both of the following conditions apply: 253
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(i) For qualifying wages described in division (B) (1) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located; 256
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(ii) The employee receives a refund of the tax described in division (C) (16) (d) (i) of this section on the basis of the employee not performing services in that municipal corporation. 265
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(17) (a) Except as provided in division (C) (17) (b) or (c) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipal corporation on not more than twenty days in a taxable year. 268
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(b) The exemption provided in division (C) (17) (a) of this section does not apply under either of the following circumstances: 273
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(i) The individual's base of operation is located in the municipal corporation. 276
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(ii) The individual is a professional athlete, 278

professional entertainer, or public figure, and the compensation 279
is paid for the performance of services in the individual's 280
capacity as a professional athlete, professional entertainer, or 281
public figure. For purposes of division (C) (17) (b) (ii) of this 282
section, "professional athlete," "professional entertainer," and 283
"public figure" have the same meanings as in section 718.011 of 284
the Revised Code. 285

(c) Compensation to which division (C) (17) of this section 286
applies shall be treated as earned or received at the 287
individual's base of operation. If the individual does not have 288
a base of operation, the compensation shall be treated as earned 289
or received where the individual is domiciled. 290

(d) For purposes of division (C) (17) of this section, 291
"base of operation" means the location where an individual owns 292
or rents an office, storefront, or similar facility to which the 293
individual regularly reports and at which the individual 294
regularly performs personal services for compensation. 295

(18) Compensation paid to a person for personal services 296
performed for a political subdivision on property owned by the 297
political subdivision, regardless of whether the compensation is 298
received by an employee of the subdivision or another person 299
performing services for the subdivision under a contract with 300
the subdivision, if the property on which services are performed 301
is annexed to a municipal corporation pursuant to section 302
709.023 of the Revised Code on or after March 27, 2013, unless 303
the person is subject to such taxation because of residence. If 304
the compensation is subject to taxation because of residence, 305
municipal income tax shall be payable only to the municipal 306
corporation of residence. 307

(19) In the case of a tax administered, collected, and 308

enforced by a municipal corporation pursuant to an agreement 309
with the board of directors of a joint economic development 310
district under section 715.72 of the Revised Code, the net 311
profits of a business, and the income of the employees of that 312
business, exempted from the tax under division (Q) of that 313
section. 314

(20) All of the following: 315

(a) Income derived from disaster work conducted in this 316
state by an out-of-state disaster business during a disaster 317
response period pursuant to a qualifying solicitation received 318
by the business; 319

(b) Income of a qualifying employee described in division 320
(A) (14) (a) of section 5703.94 of the Revised Code, to the extent 321
such income is derived from disaster work conducted in this 322
state by the employee during a disaster response period pursuant 323
to a qualifying solicitation received by the employee's 324
employer; 325

(c) Income of a qualifying employee described in division 326
(A) (14) (b) of section 5703.94 of the Revised Code, to the extent 327
such income is derived from disaster work conducted in this 328
state by the employee during a disaster response period on 329
critical infrastructure owned or used by the employee's 330
employer. 331

(21) Income the taxation of which is prohibited by the 332
constitution or laws of the United States. 333

Any item of income that is exempt income of a pass-through 334
entity under division (C) of this section is exempt income of 335
each owner of the pass-through entity to the extent of that 336
owner's distributive or proportionate share of that item of the 337

entity's income. 338

(D) (1) "Net profit" for a person who is an individual 339
means the individual's net profit required to be reported on 340
schedule C, schedule E, or schedule F reduced by any net 341
operating loss carried forward. For the purposes of division (D) 342
(1) of this section, the net operating loss carried forward 343
shall be calculated and deducted in the same manner as provided 344
in division (D) (3) of this section. 345

(2) "Net profit" for a person other than an individual 346
means adjusted federal taxable income reduced by any net 347
operating loss incurred by the person in a taxable year 348
beginning on or after January 1, 2017, subject to the 349
limitations of division (D) (3) of this section. 350

(3) (a) The amount of such net operating loss shall be 351
deducted from net profit to the extent necessary to reduce 352
municipal taxable income to zero, with any remaining unused 353
portion of the net operating loss carried forward to not more 354
than five consecutive taxable years following the taxable year 355
in which the loss was incurred, but in no case for more years 356
than necessary for the deduction to be fully utilized. 357

(b) No person shall use the deduction allowed by division 358
(D) (3) of this section to offset qualifying wages. 359

(c) (i) For taxable years beginning in 2018, 2019, 2020, 360
2021, or 2022, a person may not deduct, for purposes of an 361
income tax levied by a municipal corporation that levies an 362
income tax before January 1, 2016, more than fifty per cent of 363
the amount of the deduction otherwise allowed by division (D) (3) 364
of this section. 365

(ii) For taxable years beginning in 2023 or thereafter, a 366

person may deduct, for purposes of an income tax levied by a 367
municipal corporation that levies an income tax before January 368
1, 2016, the full amount allowed by division (D) (3) of this 369
section without regard to the limitation of division (D) (3) (b) 370
(i) of this section. 371

(d) Any pre-2017 net operating loss carryforward deduction 372
that is available may be utilized before a taxpayer may deduct 373
any amount pursuant to division (D) (3) of this section. 374

(e) Nothing in division (D) (3) (c) (i) of this section 375
precludes a person from carrying forward, for use with respect 376
to any return filed for a taxable year beginning after 2018, any 377
amount of net operating loss that was not fully utilized by 378
operation of division (D) (3) (c) (i) of this section. To the 379
extent that an amount of net operating loss that was not fully 380
utilized in one or more taxable years by operation of division 381
(D) (3) (c) (i) of this section is carried forward for use with 382
respect to a return filed for a taxable year beginning in 2019, 383
2020, 2021, or 2022, the limitation described in division (D) (3) 384
(c) (i) of this section shall apply to the amount carried 385
forward. 386

(4) For the purposes of this chapter, and notwithstanding 387
division (D) (2) of this section, net profit of a disregarded 388
entity shall not be taxable as against that disregarded entity, 389
but shall instead be included in the net profit of the owner of 390
the disregarded entity. 391

(5) For the purposes of this chapter, and notwithstanding 392
any other provision of this chapter, the net profit of a 393
publicly traded partnership that makes the election described in 394
division (D) (5) of this section shall be taxed as if the 395
partnership were a C corporation, and shall not be treated as 396

the net profit or income of any owner of the partnership. 397

A publicly traded partnership that is treated as a 398
partnership for federal income tax purposes and that is subject 399
to tax on its net profits in one or more municipal corporations 400
in this state may elect to be treated as a C corporation for 401
municipal income tax purposes. The publicly traded partnership 402
shall make the election in every municipal corporation in which 403
the partnership is subject to taxation on its net profits. The 404
election shall be made on the annual tax return filed in each 405
such municipal corporation. The publicly traded partnership 406
shall not be required to file the election with any municipal 407
corporation in which the partnership is not subject to taxation 408
on its net profits, but division (D) (5) of this section applies 409
to all municipal corporations in which an individual owner of 410
the partnership resides. 411

(E) "Adjusted federal taxable income," for a person 412
required to file as a C corporation, or for a person that has 413
elected to be taxed as a C corporation under division (D) (5) of 414
this section, means a C corporation's federal taxable income 415
before net operating losses and special deductions as determined 416
under the Internal Revenue Code, adjusted as follows: 417

(1) Deduct intangible income to the extent included in 418
federal taxable income. The deduction shall be allowed 419
regardless of whether the intangible income relates to assets 420
used in a trade or business or assets held for the production of 421
income. 422

(2) Add an amount equal to five per cent of intangible 423
income deducted under division (E) (1) of this section, but 424
excluding that portion of intangible income directly related to 425
the sale, exchange, or other disposition of property described 426

in section 1221 of the Internal Revenue Code;	427
(3) Add any losses allowed as a deduction in the	428
computation of federal taxable income if the losses directly	429
relate to the sale, exchange, or other disposition of an asset	430
described in section 1221 or 1231 of the Internal Revenue Code;	431
(4) (a) Except as provided in division (E) (4) (b) of this	432
section, deduct income and gain included in federal taxable	433
income to the extent the income and gain directly relate to the	434
sale, exchange, or other disposition of an asset described in	435
section 1221 or 1231 of the Internal Revenue Code;	436
(b) Division (E) (4) (a) of this section does not apply to	437
the extent the income or gain is income or gain described in	438
section 1245 or 1250 of the Internal Revenue Code.	439
(5) Add taxes on or measured by net income allowed as a	440
deduction in the computation of federal taxable income;	441
(6) In the case of a real estate investment trust or	442
regulated investment company, add all amounts with respect to	443
dividends to, distributions to, or amounts set aside for or	444
credited to the benefit of investors and allowed as a deduction	445
in the computation of federal taxable income;	446
(7) Deduct, to the extent not otherwise deducted or	447
excluded in computing federal taxable income, any income derived	448
from a transfer agreement or from the enterprise transferred	449
under that agreement under section 4313.02 of the Revised Code;	450
(8) Deduct exempt income to the extent not otherwise	451
deducted or excluded in computing adjusted federal taxable	452
income.	453
(9) Deduct any net profit of a pass-through entity owned	454

directly or indirectly by the taxpayer and included in the 455
taxpayer's federal taxable income unless an affiliated group of 456
corporations includes that net profit in the group's federal 457
taxable income in accordance with division (E) (3) (b) of section 458
718.06 of the Revised Code. 459

(10) Add any loss incurred by a pass-through entity owned 460
directly or indirectly by the taxpayer and included in the 461
taxpayer's federal taxable income unless an affiliated group of 462
corporations includes that loss in the group's federal taxable 463
income in accordance with division (E) (3) (b) of section 718.06 464
of the Revised Code. 465

If the taxpayer is not a C corporation, is not a 466
disregarded entity that has made the election described in 467
division (L) (2) of this section, is not a publicly traded 468
partnership that has made the election described in division (D) 469
(5) of this section, and is not an individual, the taxpayer 470
shall compute adjusted federal taxable income under this section 471
as if the taxpayer were a C corporation, except guaranteed 472
payments and other similar amounts paid or accrued to a partner, 473
former partner, shareholder, former shareholder, member, or 474
former member shall not be allowed as a deductible expense 475
unless such payments are a pension or retirement benefit payment 476
paid to a retired partner, retired shareholder, or retired 477
member or are in consideration for the use of capital and 478
treated as payment of interest under section 469 of the Internal 479
Revenue Code or United States treasury regulations. Amounts paid 480
or accrued to a qualified self-employed retirement plan with 481
respect to a partner, former partner, shareholder, former 482
shareholder, member, or former member of the taxpayer, amounts 483
paid or accrued to or for health insurance for a partner, former 484
partner, shareholder, former shareholder, member, or former 485

member, and amounts paid or accrued to or for life insurance for 486
a partner, former partner, shareholder, former shareholder, 487
member, or former member shall not be allowed as a deduction. 488

Nothing in division (E) of this section shall be construed 489
as allowing the taxpayer to add or deduct any amount more than 490
once or shall be construed as allowing any taxpayer to deduct 491
any amount paid to or accrued for purposes of federal self- 492
employment tax. 493

(F) "Schedule C" means internal revenue service schedule C 494
(form 1040) filed by a taxpayer pursuant to the Internal Revenue 495
Code. 496

(G) "Schedule E" means internal revenue service schedule E 497
(form 1040) filed by a taxpayer pursuant to the Internal Revenue 498
Code. 499

(H) "Schedule F" means internal revenue service schedule F 500
(form 1040) filed by a taxpayer pursuant to the Internal Revenue 501
Code. 502

(I) "Internal Revenue Code" has the same meaning as in 503
section 5747.01 of the Revised Code. 504

(J) "Resident" means an individual who is domiciled in the 505
municipal corporation as determined under section 718.012 of the 506
Revised Code. 507

(K) "Nonresident" means an individual that is not a 508
resident. 509

(L) (1) "Taxpayer" means a person subject to a tax levied 510
on income by a municipal corporation in accordance with this 511
chapter. "Taxpayer" does not include a grantor trust or, except 512
as provided in division (L) (2) (a) of this section, a disregarded 513

entity. 514

(2) (a) A single member limited liability company that is a 515
disregarded entity for federal tax purposes may be a separate 516
taxpayer from its single member in all Ohio municipal 517
corporations in which it either filed as a separate taxpayer or 518
did not file for its taxable year ending in 2003, if all of the 519
following conditions are met: 520

(i) The limited liability company's single member is also 521
a limited liability company. 522

(ii) The limited liability company and its single member 523
were formed and doing business in one or more Ohio municipal 524
corporations for at least five years before January 1, 2004. 525

(iii) Not later than December 31, 2004, the limited 526
liability company and its single member each made an election to 527
be treated as a separate taxpayer under division (L) of this 528
section as this section existed on December 31, 2004. 529

(iv) The limited liability company was not formed for the 530
purpose of evading or reducing Ohio municipal corporation income 531
tax liability of the limited liability company or its single 532
member. 533

(v) The Ohio municipal corporation that was the primary 534
place of business of the sole member of the limited liability 535
company consented to the election. 536

(b) For purposes of division (L) (2) (a) (v) of this section, 537
a municipal corporation was the primary place of business of a 538
limited liability company if, for the limited liability 539
company's taxable year ending in 2003, its income tax liability 540
was greater in that municipal corporation than in any other 541

municipal corporation in Ohio, and that tax liability to that 542
municipal corporation for its taxable year ending in 2003 was at 543
least four hundred thousand dollars. 544

(M) "Person" includes individuals, firms, companies, joint 545
stock companies, business trusts, estates, trusts, partnerships, 546
limited liability partnerships, limited liability companies, 547
associations, C corporations, S corporations, governmental 548
entities, and any other entity. 549

(N) "Pass-through entity" means a partnership not treated 550
as an association taxable as a C corporation for federal income 551
tax purposes, a limited liability company not treated as an 552
association taxable as a C corporation for federal income tax 553
purposes, an S corporation, or any other class of entity from 554
which the income or profits of the entity are given pass-through 555
treatment for federal income tax purposes. "Pass-through entity" 556
does not include a trust, estate, grantor of a grantor trust, or 557
disregarded entity. 558

(O) "S corporation" means a person that has made an 559
election under subchapter S of Chapter 1 of Subtitle A of the 560
Internal Revenue Code for its taxable year. 561

(P) "Single member limited liability company" means a 562
limited liability company that has one direct member. 563

(Q) "Limited liability company" means a limited liability 564
company formed under Chapter 1705. or 1706. of the Revised Code 565
or under the laws of another state. 566

(R) "Qualifying wages" means wages, as defined in section 567
3121(a) of the Internal Revenue Code, without regard to any wage 568
limitations, adjusted as follows: 569

(1) Deduct the following amounts:	570
(a) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.	571 572 573
(b) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.	574 575 576 577
(c) Any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v) (2) (C) of the Internal Revenue Code if the compensation is included in wages and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.	578 579 580 581 582 583
(d) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.	584 585 586 587 588 589 590
(e) Any amount included in wages that is exempt income.	591
(2) Add the following amounts:	592
(a) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.	593 594
(b) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange,	595 596 597

or other disposition of stock purchased under a stock option and 598
the municipal corporation has not, by resolution or ordinance, 599
exempted the amount from withholding and tax adopted before 600
January 1, 2016. Division (R) (2) (b) of this section applies only 601
to those amounts constituting ordinary income. 602

(c) Any amount not included in wages if the amount is an 603
amount described in section 401(k), 403(b), or 457 of the 604
Internal Revenue Code. Division (R) (2) (c) of this section 605
applies only to employee contributions and employee deferrals. 606

(d) Any amount that is supplemental unemployment 607
compensation benefits described in section 3402(o) (2) of the 608
Internal Revenue Code and not included in wages. 609

(e) Any amount received that is treated as self-employment 610
income for federal tax purposes in accordance with section 611
1402(a) (8) of the Internal Revenue Code. 612

(f) Any amount not included in wages if all of the 613
following apply: 614

(i) For the taxable year the amount is employee 615
compensation that is earned outside of the United States and 616
that either is included in the taxpayer's gross income for 617
federal income tax purposes or would have been included in the 618
taxpayer's gross income for such purposes if the taxpayer did 619
not elect to exclude the income under section 911 of the 620
Internal Revenue Code; 621

(ii) For no preceding taxable year did the amount 622
constitute wages as defined in section 3121(a) of the Internal 623
Revenue Code; 624

(iii) For no succeeding taxable year will the amount 625

constitute wages; and 626

(iv) For any taxable year the amount has not otherwise 627
been added to wages pursuant to either division (R) (2) of this 628
section or section 718.03 of the Revised Code, as that section 629
existed before the effective date of H.B. 5 of the 130th general 630
assembly, March 23, 2015. 631

(S) "Intangible income" means income of any of the 632
following types: income yield, interest, capital gains, 633
dividends, or other income arising from the ownership, sale, 634
exchange, or other disposition of intangible property including, 635
but not limited to, investments, deposits, money, or credits as 636
those terms are defined in Chapter 5701. of the Revised Code, 637
and patents, copyrights, trademarks, tradenames, investments in 638
real estate investment trusts, investments in regulated 639
investment companies, and appreciation on deferred compensation. 640
"Intangible income" does not include prizes, awards, or other 641
income associated with any lottery winnings, gambling winnings, 642
or other similar games of chance. 643

(T) "Taxable year" means the corresponding tax reporting 644
period as prescribed for the taxpayer under the Internal Revenue 645
Code. 646

(U) "Tax administrator" means the individual charged with 647
direct responsibility for administration of an income tax levied 648
by a municipal corporation in accordance with this chapter, and 649
also includes the following: 650

(1) A municipal corporation acting as the agent of another 651
municipal corporation; 652

(2) A person retained by a municipal corporation to 653
administer a tax levied by the municipal corporation, but only 654

if the municipal corporation does not compensate the person in whole or in part on a contingency basis;

(3) The central collection agency or the regional income tax agency or their successors in interest, or another entity organized to perform functions similar to those performed by the central collection agency and the regional income tax agency.

"Tax administrator" does not include the tax commissioner.

(V) "Employer" means a person that is an employer for federal income tax purposes.

(W) "Employee" means an individual who is an employee for federal income tax purposes.

(X) "Other payer" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(Y) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

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

(AA) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.72 of the Revised Code.

(BB) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(CC) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.

(DD) "Tax return preparer" means any individual described in section 7701(a) (36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(EE) "Ohio business gateway" means the online computer network system, created under section 125.30 of the Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(FF) "Local board of tax review" and "board of tax review" mean the entity created under section 718.11 of the Revised Code.

(GG) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(HH) "Casino operator" and "casino facility" have the same meanings as in section 3772.01 of the Revised Code.

(II) "Video lottery terminal" has the same meaning as in section 3770.21 of the Revised Code.

(JJ) "Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770. of the Revised Code to

conduct video lottery terminals on behalf of the state pursuant 711
to section 3770.21 of the Revised Code. 712

(KK) "Postal service" means the United States postal 713
service. 714

(LL) "Certified mail," "express mail," "United States 715
mail," "postal service," and similar terms include any delivery 716
service authorized pursuant to section 5703.056 of the Revised 717
Code. 718

(MM) "Postmark date," "date of postmark," and similar 719
terms include the date recorded and marked in the manner 720
described in division (B) (3) of section 5703.056 of the Revised 721
Code. 722

(NN) "Related member" means a person that, with respect to 723
the taxpayer during all or any portion of the taxable year, is 724
either a related entity, a component member as defined in 725
section 1563(b) of the Internal Revenue Code, or a person to or 726
from whom there is attribution of stock ownership in accordance 727
with section 1563(e) of the Internal Revenue Code except, for 728
purposes of determining whether a person is a related member 729
under this division, "twenty per cent" shall be substituted for 730
"5 percent" wherever "5 percent" appears in section 1563(e) of 731
the Internal Revenue Code. 732

(OO) "Related entity" means any of the following: 733

(1) An individual stockholder, or a member of the 734
stockholder's family enumerated in section 318 of the Internal 735
Revenue Code, if the stockholder and the members of the 736
stockholder's family own directly, indirectly, beneficially, or 737
constructively, in the aggregate, at least fifty per cent of the 738
value of the taxpayer's outstanding stock; 739

(2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (00)(4) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;

(4) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (00)(1) to (3) of this section have been met.

(PP)(1) "Assessment" means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of tax review pursuant to section 718.11 of the Revised Code, and has "ASSESSMENT" written in all capital letters at the top of such finding.

(2) "Assessment" does not include an informal notice denying a request for refund issued under division (B)(3) of section 718.19 of the Revised Code, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a tax administrator's request for

additional information, a notification to the taxpayer of 770
mathematical errors, or a tax administrator's other written 771
correspondence to a person or taxpayer that does meet the 772
criteria prescribed by division (PP)(1) of this section. 773

(QQ) "Taxpayers' rights and responsibilities" means the 774
rights provided to taxpayers in sections 718.11, 718.12, 718.19, 775
718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the 776
Revised Code and the responsibilities of taxpayers to file, 777
report, withhold, remit, and pay municipal income tax and 778
otherwise comply with Chapter 718. of the Revised Code and 779
resolutions, ordinances, and rules adopted by a municipal 780
corporation for the imposition and administration of a municipal 781
income tax. 782

(RR) "Qualified municipal corporation" means a municipal 783
corporation that, by resolution or ordinance adopted on or 784
before December 31, 2011, adopted Ohio adjusted gross income, as 785
defined by section 5747.01 of the Revised Code, as the income 786
subject to tax for the purposes of imposing a municipal income 787
tax. 788

(SS) (1) "Pre-2017 net operating loss carryforward" means 789
any net operating loss incurred in a taxable year beginning 790
before January 1, 2017, to the extent such loss was permitted, 791
by a resolution or ordinance of the municipal corporation that 792
was adopted by the municipal corporation before January 1, 2016, 793
to be carried forward and utilized to offset income or net 794
profit generated in such municipal corporation in future taxable 795
years. 796

(2) For the purpose of calculating municipal taxable 797
income, any pre-2017 net operating loss carryforward may be 798
carried forward to any taxable year, including taxable years 799

beginning in 2017 or thereafter, for the number of taxable years 800
provided in the resolution or ordinance or until fully utilized, 801
whichever is earlier. 802

(TT) "Small employer" means any employer that had total 803
revenue of less than five hundred thousand dollars during the 804
preceding taxable year. For purposes of this division, "total 805
revenue" means receipts of any type or kind, including, but not 806
limited to, sales receipts; payments; rents; profits; gains, 807
dividends, and other investment income; compensation; 808
commissions; premiums; money; property; grants; contributions; 809
donations; gifts; program service revenue; patient service 810
revenue; premiums; fees, including premium fees and service 811
fees; tuition payments; unrelated business revenue; 812
reimbursements; any type of payment from a governmental unit, 813
including grants and other allocations; and any other similar 814
receipts reported for federal income tax purposes or under 815
generally accepted accounting principles. "Small employer" does 816
not include the federal government; any state government, 817
including any state agency or instrumentality; any political 818
subdivision; or any entity treated as a government for financial 819
accounting and reporting purposes. 820

(UU) "Audit" means the examination of a person or the 821
inspection of the books, records, memoranda, or accounts of a 822
person for the purpose of determining liability for a municipal 823
income tax. 824

(VV) "Publicly traded partnership" means any partnership, 825
an interest in which is regularly traded on an established 826
securities market. A "publicly traded partnership" may have any 827
number of partners. 828

(WW) "Tax commissioner" means the tax commissioner 829

appointed under section 121.03 of the Revised Code. 830

(XX) "Out-of-state disaster business," "qualifying solicitation," "qualifying employee," "disaster work," "critical infrastructure," and "disaster response period" have the same meanings as in section 5703.94 of the Revised Code. 831
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(YY) "Pension" means a retirement benefit plan, regardless of whether the plan satisfies the qualifications described under section 401(a) of the Internal Revenue Code, including amounts that are taxable under the "Federal Insurance Contributions Act," Chapter 21 of the Internal Revenue Code, excluding employee contributions and elective deferrals, and regardless of whether such amounts are paid in the same taxable year in which the amounts are included in the employee's wages, as defined by section 3121(a) of the Internal Revenue Code. 835
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(ZZ) "Retirement benefit plan" means an arrangement whereby an entity provides benefits to individuals either on or after their termination of service because of retirement or disability. "Retirement benefit plan" does not include wage continuation payments, severance payments, or payments made for accrued personal or vacation time." 844
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In line 219, after "payments" insert "are a pension or retirement benefit payment paid to a retired partner, retired shareholder, or retired member or" 850
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In line 510, after "sections" insert "718.01," 853

In line 512, delete "The" and insert "(A) The amendment by this act of section 718.01 and division (B) of section 718.81 of the Revised Code applies to municipal taxable years beginning on and after January 1, 2020." 854
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(B) Except as provided in division (A) of this section, 857

the"

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The motion was _____ agreed to.

SYNOPSIS

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Municipal income tax: PTE retirement payments deduction

860

R.C. 718.01 and 718.81(B) (10); Section 3

861

For municipal income tax purposes, allows a pass-through entity to deduct any pension or retirement benefits paid to a retired partner, retired shareholder, or retired member. Under continuing law, such benefits are exempt from municipal income tax in computing an individual's tax liability.

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Applies to municipal taxable years beginning on and after January 1, 2020.

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