

As Reported by the Senate Ways and Means Committee

132nd General Assembly

Regular Session

2017-2018

H. B. No. 351

Representatives Perales, Butler

Cosponsors: Representatives Becker, Bocchieri, Goodman, Hood, Johnson, McColley, Vitale, Schaffer, Green, Hambley, Householder, Patmon, Retherford, Anielski, Antani, Antonio, Arndt, Ashford, Barnes, Blessing, Boyd, Brenner, Brown, Clyde, Craig, Dean, Dever, DeVitis, Edwards, Faber, Fedor, Galonski, Gavarone, Greenspan, Hagan, Holmes, Hoops, Howse, Hughes, Landis, LaTourette, Leland, Lepore-Hagan, Manning, McClain, Merrin, Miller, O'Brien, Patterson, Ramos, Reece, Rezabek, Riedel, Rogers, Seitz, Sheehy, Slaby, Smith, R., Sprague, Stein, Strahorn, Sweeney, Speaker Rosenberger

Senators Williams, Hackett

A BILL

To amend section 718.01 of the Revised Code to
require municipal corporations to exempt from
taxation the military pay of members of the
commissioned corps of the National Oceanic and
Atmospheric Administration and Public Health
Service.

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

Section 1. That section 718.01 of the Revised Code be
amended to read as follows:

Sec. 718.01. Any term used in this chapter that is not
otherwise defined in this chapter has the same meaning as when
used in a comparable context in laws of the United States
relating to federal income taxation or in Title LVIII of the

Revised Code, unless a different meaning is clearly required. If 13
a term used in this chapter that is not otherwise defined in 14
this chapter is used in a comparable context in both the laws of 15
the United States relating to federal income tax and in Title 16
LVII of the Revised Code and the use is not consistent, then the 17
use of the term in the laws of the United States relating to 18
federal income tax shall control over the use of the term in 19
Title LVII of the Revised Code. 20

As used in this chapter: 21

(A) (1) "Municipal taxable income" means the following: 22

(a) For a person other than an individual, income reduced 23
by exempt income to the extent otherwise included in income and 24
then, as applicable, apportioned or situated to the municipal 25
corporation under section 718.02 of the Revised Code, and 26
further reduced by any pre-2017 net operating loss carryforward 27
available to the 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) (4) 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-uniformed services~~ of the United States or members of 128
their reserve components, including the national guard of any 129
state. As used in division (C) (1) of this section, "uniformed 130

<u>services" has the same meaning as in 10 U.S.C. 101.</u>	131
(2) (a) Except as provided in division (C) (2) (b) of this section, intangible income;	132 133
(b) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.	134 135 136 137 138 139 140
(3) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C) (3) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o) (2) of the Internal Revenue Code.	141 142 143 144 145 146 147 148 149 150 151 152
(4) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.	153 154 155 156
(5) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed	157 158 159

one thousand dollars for the taxable year. Such compensation in 160
excess of one thousand dollars for the taxable year may be 161
subject to taxation by a municipal corporation. A municipal 162
corporation shall not require the payer of such compensation to 163
withhold any tax from that compensation. 164

(6) Dues, contributions, and similar payments received by 165
charitable, religious, educational, or literary organizations or 166
labor unions, lodges, and similar organizations; 167

(7) Alimony and child support received; 168

(8) Compensation for personal injuries or for damages to 169
property from insurance proceeds or otherwise, excluding 170
compensation paid for lost salaries or wages or compensation 171
from punitive damages; 172

(9) Income of a public utility when that public utility is 173
subject to the tax levied under section 5727.24 or 5727.30 of 174
the Revised Code. Division (C) (9) of this section does not apply 175
for purposes of Chapter 5745. of the Revised Code. 176

(10) Gains from involuntary conversions, interest on 177
federal obligations, items of income subject to a tax levied by 178
the state and that a municipal corporation is specifically 179
prohibited by law from taxing, and income of a decedent's estate 180
during the period of administration except such income from the 181
operation of a trade or business; 182

(11) Compensation or allowances excluded from federal 183
gross income under section 107 of the Internal Revenue Code; 184

(12) Employee compensation that is not qualifying wages as 185
defined in division (R) of this section; 186

(13) Compensation paid to a person employed within the 187

boundaries of a United States air force base under the 188
jurisdiction of the United States air force that is used for the 189
housing of members of the United States air force and is a 190
center for air force operations, unless the person is subject to 191
taxation because of residence or domicile. If the compensation 192
is subject to taxation because of residence or domicile, tax on 193
such income shall be payable only to the municipal corporation 194
of residence or domicile. 195

(14) (a) Except as provided in division (C) (14) (b) or (c) 196
of this section, an S corporation shareholder's distributive 197
share of net profits of the S corporation, other than any part 198
of the distributive share of net profits that represents wages 199
as defined in section 3121(a) of the Internal Revenue Code or 200
net earnings from self-employment as defined in section 1402(a) 201
of the Internal Revenue Code. 202

(b) If, pursuant to division (H) of former section 718.01 203
of the Revised Code as it existed before March 11, 2004, a 204
majority of the electors of a municipal corporation voted in 205
favor of the question at an election held on November 4, 2003, 206
the municipal corporation may continue after 2002 to tax an S 207
corporation shareholder's distributive share of net profits of 208
an S corporation. 209

(c) If, on December 6, 2002, a municipal corporation was 210
imposing, assessing, and collecting a tax on an S corporation 211
shareholder's distributive share of net profits of the S 212
corporation to the extent the distributive share would be 213
allocated or apportioned to this state under divisions (B) (1) 214
and (2) of section 5733.05 of the Revised Code if the S 215
corporation were a corporation subject to taxes imposed under 216
Chapter 5733. of the Revised Code, the municipal corporation may 217

continue to impose the tax on such distributive shares to the 218
extent such shares would be so allocated or apportioned to this 219
state only until December 31, 2004, unless a majority of the 220
electors of the municipal corporation voting on the question of 221
continuing to tax such shares after that date voted in favor of 222
that question at an election held November 2, 2004. If a 223
majority of those electors voted in favor of the question, the 224
municipal corporation may continue after December 31, 2004, to 225
impose the tax on such distributive shares only to the extent 226
such shares would be so allocated or apportioned to this state. 227

(d) A municipal corporation shall be deemed to have 228
elected to tax S corporation shareholders' distributive shares 229
of net profits of the S corporation in the hands of the 230
shareholders if a majority of the electors of a municipal 231
corporation voted in favor of a question at an election held 232
under division (C) (14) (b) or (c) of this section. The municipal 233
corporation shall specify by resolution or ordinance that the 234
tax applies to the distributive share of a shareholder of an S 235
corporation in the hands of the shareholder of the S 236
corporation. 237

(15) To the extent authorized under a resolution or 238
ordinance adopted by a municipal corporation before January 1, 239
2016, all or a portion of the income of individuals or a class 240
of individuals under eighteen years of age. 241

(16) (a) Except as provided in divisions (C) (16) (b), (c), 242
and (d) of this section, qualifying wages described in division 243
(B) (1) or (E) of section 718.011 of the Revised Code to the 244
extent the qualifying wages are not subject to withholding for 245
the municipal corporation under either of those divisions. 246

(b) The exemption provided in division (C) (16) (a) of this 247

section does not apply with respect to the municipal corporation 248
in which the employee resided at the time the employee earned 249
the qualifying wages. 250

(c) The exemption provided in division (C) (16) (a) of this 251
section does not apply to qualifying wages that an employer 252
elects to withhold under division (D) (2) of section 718.011 of 253
the Revised Code. 254

(d) The exemption provided in division (C) (16) (a) of this 255
section does not apply to qualifying wages if both of the 256
following conditions apply: 257

(i) For qualifying wages described in division (B) (1) of 258
section 718.011 of the Revised Code, the employee's employer 259
withholds and remits tax on the qualifying wages to the 260
municipal corporation in which the employee's principal place of 261
work is situated, or, for qualifying wages described in division 262
(E) of section 718.011 of the Revised Code, the employee's 263
employer withholds and remits tax on the qualifying wages to the 264
municipal corporation in which the employer's fixed location is 265
located; 266

(ii) The employee receives a refund of the tax described 267
in division (C) (16) (d) (i) of this section on the basis of the 268
employee not performing services in that municipal corporation. 269

(17) (a) Except as provided in division (C) (17) (b) or (c) 270
of this section, compensation that is not qualifying wages paid 271
to a nonresident individual for personal services performed in 272
the municipal corporation on not more than twenty days in a 273
taxable year. 274

(b) The exemption provided in division (C) (17) (a) of this 275
section does not apply under either of the following 276

circumstances:	277
(i) The individual's base of operation is located in the municipal corporation.	278 279
(ii) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(17)(b)(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in section 718.011 of the Revised Code.	280 281 282 283 284 285 286 287
(c) Compensation to which division (C)(17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.	288 289 290 291 292
(d) For purposes of division (C)(17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.	293 294 295 296 297
(18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Revised Code on or after March 27, 2013, unless	298 299 300 301 302 303 304 305

the person is subject to such taxation because of residence. If 306
the compensation is subject to taxation because of residence, 307
municipal income tax shall be payable only to the municipal 308
corporation of residence. 309

(19) In the case of a tax administered, collected, and 310
enforced by a municipal corporation pursuant to an agreement 311
with the board of directors of a joint economic development 312
district under section 715.72 of the Revised Code, the net 313
profits of a business, and the income of the employees of that 314
business, exempted from the tax under division (Q) of that 315
section. 316

(20) Income the taxation of which is prohibited by the 317
constitution or laws of the United States. 318

Any item of income that is exempt income of a pass-through 319
entity under division (C) of this section is exempt income of 320
each owner of the pass-through entity to the extent of that 321
owner's distributive or proportionate share of that item of the 322
entity's income. 323

(D) (1) "Net profit" for a person other than an individual 324
means adjusted federal taxable income. 325

(2) "Net profit" for a person who is an individual means 326
the individual's net profit required to be reported on schedule 327
C, schedule E, or schedule F reduced by any net operating loss 328
carried forward. For the purposes of division (D) (2) of this 329
section, the net operating loss carried forward shall be 330
calculated and deducted in the same manner as provided in 331
division (E) (8) of this section. 332

(3) For the purposes of this chapter, and notwithstanding 333
division (D) (1) of this section, net profit of a disregarded 334

entity shall not be taxable as against that disregarded entity, 335
but shall instead be included in the net profit of the owner of 336
the disregarded entity. 337

(4) For the purposes of this chapter, and notwithstanding 338
any other provision of this chapter, the net profit of a 339
publicly traded partnership that makes the election described in 340
division (D)(4) of this section shall be taxed as if the 341
partnership were a C corporation, and shall not be treated as 342
the net profit or income of any owner of the partnership. 343

A publicly traded partnership that is treated as a 344
partnership for federal income tax purposes and that is subject 345
to tax on its net profits in one or more municipal corporations 346
in this state may elect to be treated as a C corporation for 347
municipal income tax purposes. The publicly traded partnership 348
shall make the election in every municipal corporation in which 349
the partnership is subject to taxation on its net profits. The 350
election shall be made on the annual tax return filed in each 351
such municipal corporation. The publicly traded partnership 352
shall not be required to file the election with any municipal 353
corporation in which the partnership is not subject to taxation 354
on its net profits, but division (D)(4) of this section applies 355
to all municipal corporations in which an individual owner of 356
the partnership resides. 357

(E) "Adjusted federal taxable income," for a person 358
required to file as a C corporation, or for a person that has 359
elected to be taxed as a C corporation under division (D)(4) of 360
this section, means a C corporation's federal taxable income 361
before net operating losses and special deductions as determined 362
under the Internal Revenue Code, adjusted as follows: 363

(1) Deduct intangible income to the extent included in 364

federal taxable income. The deduction shall be allowed 365
regardless of whether the intangible income relates to assets 366
used in a trade or business or assets held for the production of 367
income. 368

(2) Add an amount equal to five per cent of intangible 369
income deducted under division (E)(1) of this section, but 370
excluding that portion of intangible income directly related to 371
the sale, exchange, or other disposition of property described 372
in section 1221 of the Internal Revenue Code; 373

(3) Add any losses allowed as a deduction in the 374
computation of federal taxable income if the losses directly 375
relate to the sale, exchange, or other disposition of an asset 376
described in section 1221 or 1231 of the Internal Revenue Code; 377

(4) (a) Except as provided in division (E)(4)(b) of this 378
section, deduct income and gain included in federal taxable 379
income to the extent the income and gain directly relate to the 380
sale, exchange, or other disposition of an asset described in 381
section 1221 or 1231 of the Internal Revenue Code; 382

(b) Division (E)(4)(a) of this section does not apply to 383
the extent the income or gain is income or gain described in 384
section 1245 or 1250 of the Internal Revenue Code. 385

(5) Add taxes on or measured by net income allowed as a 386
deduction in the computation of federal taxable income; 387

(6) In the case of a real estate investment trust or 388
regulated investment company, add all amounts with respect to 389
dividends to, distributions to, or amounts set aside for or 390
credited to the benefit of investors and allowed as a deduction 391
in the computation of federal taxable income; 392

(7) Deduct, to the extent not otherwise deducted or 393

excluded in computing federal taxable income, any income derived 394
from a transfer agreement or from the enterprise transferred 395
under that agreement under section 4313.02 of the Revised Code; 396

(8) (a) Except as limited by divisions (E) (8) (b), (c), and 397
(d) of this section, deduct any net operating loss incurred by 398
the person in a taxable year beginning on or after January 1, 399
2017. 400

The amount of such net operating loss shall be deducted 401
from net profit that is reduced by exempt income to the extent 402
necessary to reduce municipal taxable income to zero, with any 403
remaining unused portion of the net operating loss carried 404
forward to not more than five consecutive taxable years 405
following the taxable year in which the loss was incurred, but 406
in no case for more years than necessary for the deduction to be 407
fully utilized. 408

(b) No person shall use the deduction allowed by division 409
(E) (8) of this section to offset qualifying wages. 410

(c) (i) For taxable years beginning in 2018, 2019, 2020, 411
2021, or 2022, a person may not deduct, for purposes of an 412
income tax levied by a municipal corporation that levies an 413
income tax before January 1, 2016, more than fifty per cent of 414
the amount of the deduction otherwise allowed by division (E) (8) 415
(a) of this section. 416

(ii) For taxable years beginning in 2023 or thereafter, a 417
person may deduct, for purposes of an income tax levied by a 418
municipal corporation that levies an income tax before January 419
1, 2016, the full amount allowed by division (E) (8) (a) of this 420
section. 421

(d) Any pre-2017 net operating loss carryforward deduction 422

that is available must be utilized before a taxpayer may deduct 423
any amount pursuant to division (E) (8) of this section. 424

(e) Nothing in division (E) (8) (c) (i) of this section 425
precludes a person from carrying forward, for use with respect 426
to any return filed for a taxable year beginning after 2018, any 427
amount of net operating loss that was not fully utilized by 428
operation of division (E) (8) (c) (i) of this section. To the 429
extent that an amount of net operating loss that was not fully 430
utilized in one or more taxable years by operation of division 431
(E) (8) (c) (i) of this section is carried forward for use with 432
respect to a return filed for a taxable year beginning in 2019, 433
2020, 2021, or 2022, the limitation described in division (E) (8) 434
(c) (i) of this section shall apply to the amount carried 435
forward. 436

(9) Deduct any net profit of a pass-through entity owned 437
directly or indirectly by the taxpayer and included in the 438
taxpayer's federal taxable income unless an affiliated group of 439
corporations includes that net profit in the group's federal 440
taxable income in accordance with division (E) (3) (b) of section 441
718.06 of the Revised Code. 442

(10) Add any loss incurred by a pass-through entity owned 443
directly or indirectly by the taxpayer and included in the 444
taxpayer's federal taxable income unless an affiliated group of 445
corporations includes that loss in the group's federal taxable 446
income in accordance with division (E) (3) (b) of section 718.06 447
of the Revised Code. 448

If the taxpayer is not a C corporation, is not a 449
disregarded entity that has made the election described in 450
division (L) (2) of this section, is not a publicly traded 451
partnership that has made the election described in division (D) 452

(4) of this section, and is not an individual, the taxpayer 453
shall compute adjusted federal taxable income under this section 454
as if the taxpayer were a C corporation, except guaranteed 455
payments and other similar amounts paid or accrued to a partner, 456
former partner, shareholder, former shareholder, member, or 457
former member shall not be allowed as a deductible expense 458
unless such payments are in consideration for the use of capital 459
and treated as payment of interest under section 469 of the 460
Internal Revenue Code or United States treasury regulations. 461
Amounts paid or accrued to a qualified self-employed retirement 462
plan with respect to a partner, former partner, shareholder, 463
former shareholder, member, or former member of the taxpayer, 464
amounts paid or accrued to or for health insurance for a 465
partner, former partner, shareholder, former shareholder, 466
member, or former member, and amounts paid or accrued to or for 467
life insurance for a partner, former partner, shareholder, 468
former shareholder, member, or former member shall not be 469
allowed as a deduction. 470

Nothing in division (E) of this section shall be construed 471
as allowing the taxpayer to add or deduct any amount more than 472
once or shall be construed as allowing any taxpayer to deduct 473
any amount paid to or accrued for purposes of federal self- 474
employment tax. 475

(F) "Schedule C" means internal revenue service schedule C 476
(form 1040) filed by a taxpayer pursuant to the Internal Revenue 477
Code. 478

(G) "Schedule E" means internal revenue service schedule E 479
(form 1040) filed by a taxpayer pursuant to the Internal Revenue 480
Code. 481

(H) "Schedule F" means internal revenue service schedule F 482

(form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.	483 484
(I) "Internal Revenue Code" has the same meaning as in section 5747.01 of the Revised Code.	485 486
(J) "Resident" means an individual who is domiciled in the municipal corporation as determined under section 718.012 of the Revised Code.	487 488 489
(K) "Nonresident" means an individual that is not a resident.	490 491
(L) (1) "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (L) (2) (a) of this section, a disregarded entity.	492 493 494 495 496
(2) (a) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:	497 498 499 500 501 502
(i) The limited liability company's single member is also a limited liability company.	503 504
(ii) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.	505 506 507
(iii) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of this	508 509 510

section as this section existed on December 31, 2004. 511

(iv) The limited liability company was not formed for the 512
purpose of evading or reducing Ohio municipal corporation income 513
tax liability of the limited liability company or its single 514
member. 515

(v) The Ohio municipal corporation that was the primary 516
place of business of the sole member of the limited liability 517
company consented to the election. 518

(b) For purposes of division (L) (2) (a) (v) of this section, 519
a municipal corporation was the primary place of business of a 520
limited liability company if, for the limited liability 521
company's taxable year ending in 2003, its income tax liability 522
was greater in that municipal corporation than in any other 523
municipal corporation in Ohio, and that tax liability to that 524
municipal corporation for its taxable year ending in 2003 was at 525
least four hundred thousand dollars. 526

(M) "Person" includes individuals, firms, companies, joint 527
stock companies, business trusts, estates, trusts, partnerships, 528
limited liability partnerships, limited liability companies, 529
associations, C corporations, S corporations, governmental 530
entities, and any other entity. 531

(N) "Pass-through entity" means a partnership not treated 532
as an association taxable as a C corporation for federal income 533
tax purposes, a limited liability company not treated as an 534
association taxable as a C corporation for federal income tax 535
purposes, an S corporation, or any other class of entity from 536
which the income or profits of the entity are given pass-through 537
treatment for federal income tax purposes. "Pass-through entity" 538
does not include a trust, estate, grantor of a grantor trust, or 539

disregarded entity.	540
(O) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.	541 542 543
(P) "Single member limited liability company" means a limited liability company that has one direct member.	544 545
(Q) "Limited liability company" means a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of another state.	546 547 548
(R) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:	549 550 551
(1) Deduct the following amounts:	552
(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.	553 554 555
(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.	556 557 558 559
(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.	560 561 562 563 564 565
(d) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the	566 567

exercise of a stock option, or the sale, exchange, or other	568
disposition of stock purchased under a stock option and the	569
municipal corporation has, by resolution or ordinance adopted	570
before January 1, 2016, exempted the amount from withholding and	571
tax.	572
(e) Any amount included in wages that is exempt income.	573
(2) Add the following amounts:	574
(a) Any amount not included in wages solely because the	575
employee was employed by the employer before April 1, 1986.	576
(b) Any amount not included in wages because the amount	577
arises from the sale, exchange, or other disposition of a stock	578
option, the exercise of a stock option, or the sale, exchange,	579
or other disposition of stock purchased under a stock option and	580
the municipal corporation has not, by resolution or ordinance,	581
exempted the amount from withholding and tax adopted before	582
January 1, 2016. Division (R) (2) (b) of this section applies only	583
to those amounts constituting ordinary income.	584
(c) Any amount not included in wages if the amount is an	585
amount described in section 401(k), 403(b), or 457 of the	586
Internal Revenue Code. Division (R) (2) (c) of this section	587
applies only to employee contributions and employee deferrals.	588
(d) Any amount that is supplemental unemployment	589
compensation benefits described in section 3402(o) (2) of the	590
Internal Revenue Code and not included in wages.	591
(e) Any amount received that is treated as self-employment	592
income for federal tax purposes in accordance with section	593
1402(a) (8) of the Internal Revenue Code.	594
(f) Any amount not included in wages if all of the	595

following apply: 596

(i) For the taxable year the amount is employee 597
compensation that is earned outside of the United States and 598
that either is included in the taxpayer's gross income for 599
federal income tax purposes or would have been included in the 600
taxpayer's gross income for such purposes if the taxpayer did 601
not elect to exclude the income under section 911 of the 602
Internal Revenue Code; 603

(ii) For no preceding taxable year did the amount 604
constitute wages as defined in section 3121(a) of the Internal 605
Revenue Code; 606

(iii) For no succeeding taxable year will the amount 607
constitute wages; and 608

(iv) For any taxable year the amount has not otherwise 609
been added to wages pursuant to either division (R) (2) of this 610
section or section 718.03 of the Revised Code, as that section 611
existed before the effective date of H.B. 5 of the 130th general 612
assembly, March 23, 2015. 613

(S) "Intangible income" means income of any of the 614
following types: income yield, interest, capital gains, 615
dividends, or other income arising from the ownership, sale, 616
exchange, or other disposition of intangible property including, 617
but not limited to, investments, deposits, money, or credits as 618
those terms are defined in Chapter 5701. of the Revised Code, 619
and patents, copyrights, trademarks, tradenames, investments in 620
real estate investment trusts, investments in regulated 621
investment companies, and appreciation on deferred compensation. 622
"Intangible income" does not include prizes, awards, or other 623
income associated with any lottery winnings, gambling winnings, 624

or other similar games of chance. 625

(T) "Taxable year" means the corresponding tax reporting 626
period as prescribed for the taxpayer under the Internal Revenue 627
Code. 628

(U) "Tax administrator" means the individual charged with 629
direct responsibility for administration of an income tax levied 630
by a municipal corporation in accordance with this chapter, and 631
also includes the following: 632

(1) A municipal corporation acting as the agent of another 633
municipal corporation; 634

(2) A person retained by a municipal corporation to 635
administer a tax levied by the municipal corporation, but only 636
if the municipal corporation does not compensate the person in 637
whole or in part on a contingency basis; 638

(3) The central collection agency or the regional income 639
tax agency or their successors in interest, or another entity 640
organized to perform functions similar to those performed by the 641
central collection agency and the regional income tax agency. 642

(V) "Employer" means a person that is an employer for 643
federal income tax purposes. 644

(W) "Employee" means an individual who is an employee for 645
federal income tax purposes. 646

(X) "Other payer" means any person, other than an 647
individual's employer or the employer's agent, that pays an 648
individual any amount included in the federal gross income of 649
the individual. "Other payer" includes casino operators and 650
video lottery terminal sales agents. 651

(Y) "Calendar quarter" means the three-month period ending 652

on the last day of March, June, September, or December.	653
(Z) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.	654 655
(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.	656 657 658 659
(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.	660 661 662 663
(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.	664 665 666 667 668 669
(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.	670 671 672
(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.	673 674 675 676 677
(FF) "Local board of tax review" and "board of tax review" mean the entity created under section 718.11 of the Revised Code.	678 679 680

(GG) "Net operating loss" means a loss incurred by a 681
person in the operation of a trade or business. "Net operating 682
loss" does not include unutilized losses resulting from basis 683
limitations, at-risk limitations, or passive activity loss 684
limitations. 685

(HH) "Casino operator" and "casino facility" have the same 686
meanings as in section 3772.01 of the Revised Code. 687

(II) "Video lottery terminal" has the same meaning as in 688
section 3770.21 of the Revised Code. 689

(JJ) "Video lottery terminal sales agent" means a lottery 690
sales agent licensed under Chapter 3770. of the Revised Code to 691
conduct video lottery terminals on behalf of the state pursuant 692
to section 3770.21 of the Revised Code. 693

(KK) "Postal service" means the United States postal 694
service. 695

(LL) "Certified mail," "express mail," "United States 696
mail," "postal service," and similar terms include any delivery 697
service authorized pursuant to section 5703.056 of the Revised 698
Code. 699

(MM) "Postmark date," "date of postmark," and similar 700
terms include the date recorded and marked in the manner 701
described in division (B) (3) of section 5703.056 of the Revised 702
Code. 703

(NN) "Related member" means a person that, with respect to 704
the taxpayer during all or any portion of the taxable year, is 705
either a related entity, a component member as defined in 706
section 1563(b) of the Internal Revenue Code, or a person to or 707
from whom there is attribution of stock ownership in accordance 708
with section 1563(e) of the Internal Revenue Code except, for 709

purposes of determining whether a person is a related member 710
under this division, "twenty per cent" shall be substituted for 711
"5 percent" wherever "5 percent" appears in section 1563(e) of 712
the Internal Revenue Code. 713

(00) "Related entity" means any of the following: 714

(1) An individual stockholder, or a member of the 715
stockholder's family enumerated in section 318 of the Internal 716
Revenue Code, if the stockholder and the members of the 717
stockholder's family own directly, indirectly, beneficially, or 718
constructively, in the aggregate, at least fifty per cent of the 719
value of the taxpayer's outstanding stock; 720

(2) A stockholder, or a stockholder's partnership, estate, 721
trust, or corporation, if the stockholder and the stockholder's 722
partnerships, estates, trusts, or corporations own directly, 723
indirectly, beneficially, or constructively, in the aggregate, 724
at least fifty per cent of the value of the taxpayer's 725
outstanding stock; 726

(3) A corporation, or a party related to the corporation 727
in a manner that would require an attribution of stock from the 728
corporation to the party or from the party to the corporation 729
under division (00)(4) of this section, provided the taxpayer 730
owns directly, indirectly, beneficially, or constructively, at 731
least fifty per cent of the value of the corporation's 732
outstanding stock; 733

(4) The attribution rules described in section 318 of the 734
Internal Revenue Code apply for the purpose of determining 735
whether the ownership requirements in divisions (00)(1) to (3) 736
of this section have been met. 737

(PP)(1) "Assessment" means a written finding by the tax 738

administrator that a person has underpaid municipal income tax, 739
or owes penalty and interest, or any combination of tax, 740
penalty, or interest, to the municipal corporation that 741
commences the person's time limitation for making an appeal to 742
the local board of tax review pursuant to section 718.11 of the 743
Revised Code, and has "ASSESSMENT" written in all capital 744
letters at the top of such finding. 745

(2) "Assessment" does not include an informal notice 746
denying a request for refund issued under division (B) (3) of 747
section 718.19 of the Revised Code, a billing statement 748
notifying a taxpayer of current or past-due balances owed to the 749
municipal corporation, a tax administrator's request for 750
additional information, a notification to the taxpayer of 751
mathematical errors, or a tax administrator's other written 752
correspondence to a person or taxpayer that does meet the 753
criteria prescribed by division (PP) (1) of this section. 754

(QQ) "Taxpayers' rights and responsibilities" means the 755
rights provided to taxpayers in sections 718.11, 718.12, 718.19, 756
718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the 757
Revised Code and the responsibilities of taxpayers to file, 758
report, withhold, remit, and pay municipal income tax and 759
otherwise comply with Chapter 718. of the Revised Code and 760
resolutions, ordinances, and rules adopted by a municipal 761
corporation for the imposition and administration of a municipal 762
income tax. 763

(RR) "Qualified municipal corporation" means a municipal 764
corporation that, by resolution or ordinance adopted on or 765
before December 31, 2011, adopted Ohio adjusted gross income, as 766
defined by section 5747.01 of the Revised Code, as the income 767
subject to tax for the purposes of imposing a municipal income 768

tax. 769

(SS) (1) "Pre-2017 net operating loss carryforward" means 770
any net operating loss incurred in a taxable year beginning 771
before January 1, 2017, to the extent such loss was permitted, 772
by a resolution or ordinance of the municipal corporation that 773
was adopted by the municipal corporation before January 1, 2016, 774
to be carried forward and utilized to offset income or net 775
profit generated in such municipal corporation in future taxable 776
years. 777

(2) For the purpose of calculating municipal taxable 778
income, any pre-2017 net operating loss carryforward may be 779
carried forward to any taxable year, including taxable years 780
beginning in 2017 or thereafter, for the number of taxable years 781
provided in the resolution or ordinance or until fully utilized, 782
whichever is earlier. 783

(TT) "Small employer" means any employer that had total 784
revenue of less than five hundred thousand dollars during the 785
preceding taxable year. For purposes of this division, "total 786
revenue" means receipts of any type or kind, including, but not 787
limited to, sales receipts; payments; rents; profits; gains, 788
dividends, and other investment income; compensation; 789
commissions; premiums; money; property; grants; contributions; 790
donations; gifts; program service revenue; patient service 791
revenue; premiums; fees, including premium fees and service 792
fees; tuition payments; unrelated business revenue; 793
reimbursements; any type of payment from a governmental unit, 794
including grants and other allocations; and any other similar 795
receipts reported for federal income tax purposes or under 796
generally accepted accounting principles. "Small employer" does 797
not include the federal government; any state government, 798

including any state agency or instrumentality; any political 799
subdivision; or any entity treated as a government for financial 800
accounting and reporting purposes. 801

(UU) "Audit" means the examination of a person or the 802
inspection of the books, records, memoranda, or accounts of a 803
person for the purpose of determining liability for a municipal 804
income tax. 805

(VV) "Publicly traded partnership" means any partnership, 806
an interest in which is regularly traded on an established 807
securities market. A "publicly traded partnership" may have any 808
number of partners. 809

Section 2. That existing section 718.01 of the Revised 810
Code is hereby repealed. 811

Section 3. The amendment by this act of section 718.01 of 812
the Revised Code applies to taxable years beginning on or after 813
January 1, 2017. 814