

1. Agenda

Documents:

01-16-2018 AGENDA.PDF

2. Workbook

Documents:

01-16-2018 WORKBOOK.PDF

MIDDLETOWN CITY COUNCIL AGENDA
TUESDAY, January 16, 2018

CITY COUNCIL BUSINESS MEETING – 5:30 pm – COUNCIL CHAMBERS – LOWER LEVEL

- 1. MOMENT OF MEDITATION/PLEDGE OF ALLEGIANCE TO THE FLAG**
- 2. ROLL CALL**
- 3. CITIZEN COMMENTS, GUESTS, ORGANIZATIONS' REPORTS**
- 4. CITY MANAGER REPORTS**
- 5. CONSENT AGENDA.** . . Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote of consent. There will be no separate discussion of these items. If discussion is desired, that item will be removed and considered separately.
 - (a) Approve City Council Minutes: January 2, 2018
 - (b) To extend the contract with T. R. Gear Landscaping, Inc., of Fairfield, OH, in a total amount of \$61,555 for the maintenance of the Gateway landscaping located at I-75 and S. R. 122.

COUNCIL COMMENTS

LEGISLATION

- 1. Resolution No. R2018-01**, a resolution authorizing the City Manager to accept and receive aviation grant funding from the Ohio Department of Transportation for the Airport Master Plan. (Second Reading)
- 2. Resolution No. R2018-02**, a resolution requesting the Auditor of Butler County to advance to the Treasurer of the City of Middletown, Ohio, taxes assessed and collected for and on behalf of the City of Middletown, Ohio and declaring an emergency.
- 3. Ordinance No. O2018-01**, an ordinance amending certain sections of Chapter 891 of the Codified Ordinances and declaring an emergency.

EXECUTIVE SESSION

Under the authority of O.R.C. 121.22 (G) (1) To consider the appointment of a public employee or official; and under the authority of O.R.C. 121.22 (G) (2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage; and under the authority of O.R.C. 121.22 (G) (8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to

MIDDLETOWN CITY COUNCIL AGENDA

TUESDAY, January 16, 2018

5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

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BUSINESS MEETING

**CITIZEN
COMMENTS,
GUESTS,
ORGANIZATION'S
REPORT**

**CITY
MANAGER
REPORTS**

CONSENT AGENDA

MIDDLETOWN, OHIO

January 2, 2018

At 5:30 p.m., Mayor Mulligan called the City Council meeting to order in Council Chambers, Lower Level of the City Building.

ROLL CALL

City Council Members present: S. Bohannon, T. Moon, J. Mulligan, A. Vitori, L. Mulligan.

Staff Present: Nadine Begley, Kevin Conrad, Sarah Fox, Deputy Chief Warrick, City Manager Doug Adkins, Clerk Amy Schenck.

EXECUTIVE SESSION

At 5:30 p.m. Mr. Bohannon moved to adjourn to executive session under the authority of O.R.C. 121.22 (G) (1) To consider the appointment of a public employee or official. Mr. Moon seconded. Motion carried. Ayes: Mr. Bohannon, Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori.

Council returned to regular session at 5:34 p.m.

VICE-MAYOR MOON

Mr. Bohannon moved to appoint Mr. Moon to serve as the Vice-Mayor. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori, Mr. Bohannon. Abstain: Mr. Moon.

CITIZEN COMMENTS

Rev. Torri Colts, 904 Baker Court, commented that she prays for the City and for the Council members every day. She understands that the challenges are great and she wants to partner with the City to help solve these challenges.

CITY MANAGER

Mr. Adkins discussed having a Council retreat possibly on a Saturday, preferably off-site to bring everyone up to speed and to discuss economic development and housing. There are tools that have been very successful in other parts of the country that have not been tried in Middletown yet.

CONSENT AGENDA

Approve City Council Minutes: December 19, 2017

Receive and File Board and Commission Minutes:

Board of Health- November 14, 2017

Confirm the Board & Commission Appointments of:

Bruce Hughley- Library Board

Nancy Romero- Historic Commission

Mr. Bohannon moved to approve the issues and actions listed on the Consent Agenda. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori, Mr. Bohannon, Mr. Moon.

COUNCIL COMMENTS**Mr. J. Mulligan**

Mr. J. Mulligan wished everyone a Happy New Year and commented that he is excited to be back on Council. He stated that it is a different city than it was before and he has renewed optimism for the future of Middletown.

Mr. Bohannon

Mr. Bohannon welcomed the new Council members and congratulated Mr. Moon on being named the vice-mayor. He offered his condolences to the Rossi and Lolli families on the loss of Bud Rossi.

Ms. Vitori

Ms. Vitori stated that she is looking forward to working together with the members of Council and the community. She offered condolences to the family of Sandra Ross and commented that she was a wonderful woman and a pillar in our community.

Mr. Moon

Mr. Moon wished everyone a Happy New Year and welcomed Ms. Vitori and Mr. J. Mulligan to the Council. He wished Mr. Bohannon a happy birthday.

Mr. L. Mulligan

Mr. L. Mulligan wished everyone a Happy New Year and welcomed the new Council members. He reminded everyone about the upcoming First Friday activities and congratulated former Council member Josh Laubach on the grand opening of Rolling Mills Brewery.

**Ord. No. O2017-69
Vacate Long Meadow**

Ordinance No. O2017-69, an ordinance vacating a portion of Long Meadow Drive was read for the second time.

Mr. Moon moved to approve Ordinance No. O2017-69, an ordinance vacating a portion of Long Meadow Drive. Mr. Bohannon seconded. Motion carried. Ayes: Mr. L. Mulligan, Ms. Vitori, Mr. Bohannon, Mr. Moon, Mr. J. Mulligan.

Res. No. R2018-01

Resolution No. R2018-01, a resolution authorizing the City Manager to accept and receive aviation

ADJOURNMENT

grant funding from the Ohio Department of Transportation for the Airport Master Plan was read for the first time.

At 5:48 p.m., the meeting was declared adjourned until the Council meeting of January 16, 2018, at 5:30 p.m.

Lawrence P. Mulligan, Jr., Mayor

Attest: _____

STAFF REPORT

For the Business Meeting of January 2, 2018

December 20, 2017

TO: Doug Adkins, City Manager
FROM: Cindy Strayer, Purchasing Agent

Gateway Maintenance Contract

PURPOSE

To request the extension of a contract for the maintenance of the Gateway landscaping, located at I-75 and SR 122, from T.R. Gear Landscaping, Inc., of Fairfield, OH, in the total amount of \$61,555.

BACKGROUND and FINDINGS

The Gateway to the City from the east (the intersection of I-75 and SR122) was upgraded by the City and ODOT three years ago. Since that time, the City has been responsible for the upkeep of the area. This bid is for the routine maintenance (mowing, bed care, fertilizers, weed and insect control, etc.).

T.R. Gear submitted the lowest bid when the contract was bid last year, which included two one year extensions of the contract. This request is to approve the first one year extension of the original maintenance contract.

ALTERNATIVES

The alternative is to do the work with City crews, but this is a very critical area, as well as a time-consuming project, for which the City is not adequately staffed.

FINANCIAL IMPACT

There are sufficient funds available in the Grounds Maintenance and Capital Improvements budgets to complete this work.

EMERGENCY/NON EMERGENCY

Motion Agenda

cc: Les Landen, Director of Law
Jacob Burton, Director of Finance
Scott Tadych, Director of Public Works & Utilities
Amy Schenck, Clerk of Council
File

COUNCIL COMMENTS

LEGISLATION

ITEM 1

RESOLUTION NO. R2018-01

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT AND RECEIVE AVIATION GRANT FUNDING FROM THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE AIRPORT MASTER PLAN.

BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is authorized to enter into the necessary agreements to receive and administer the local-match grant funds from Ohio Department of Transportation for the Airport Master Plan. All agreements are subject to the review and approval of the General Counsel.

Section 2

It is hereby determined that the subject matter of this legislation is not a general and permanent nature, does not provide for a public improvement and does not assess a tax or payment.

Section 3

This resolution shall take effect and be in force at the earliest time permitted by law.

Lawrence P. Mulligan, Jr. Mayor

1st Reading: _____

2nd Reading: _____

Adopted: _____

Effective: _____

Attest: _____
Clerk of the City Council

December 12, 2017

TO: Douglas Adkins, City Manager

FROM: Jennifer Ekey, Economic Development Director
Prepared by Matt Eisenbraun, Economic Development Asst. Director

<p>Airport Master Plan</p> <p>Accept 2017 ODOT Matching Grant Funding</p>

PURPOSE

To authorize the City Manager to accept and receive state grant funding from the Ohio Department of Transportation (ODOT) program that provides aid directly in support of the *local-match* grant requirements for any Federal Aviation Administration (FAA) supported project.

BACKGROUND AND FINDINGS

In 2017, changes within ODOT Aviation grant administration guidelines created a *local-match support program* in which ODOT automatically contributes half of the FAA '10% local-match' requirement for any grant issued by the FAA. This program was in response to neighboring state's support which covered up to 8% of the 10% requirement and made Ohio's airport's grant applications more competitive within federal programs.

Application to the ODOT program is automatic with the acceptance of any FAA grant (2017 Master Plan/ALP update) and only requires a resolution by the sponsoring entity accepting the funding with the normal grant assurances. ODOT has requested this acknowledgement in order to appropriate the funds.

This financial structure was presented to City Council within the background information for the FAA Master Plan/ALP update grant application request at the September 5, 2017 business meeting.

FINANCIAL IMPACT

Grant funding for projects via the national system (with ODOT support) is provided on a 90/5/5 matching basis.

Final project costs	
Total - Master Plan/ALP update	\$429,387
FAA Funding (90%)	\$386,448
ODOT Match Funding (5%)	<u>\$21,469</u>
City Match Required (5%)	\$21,469

FAA funds are available on a reimbursement basis. Pending final receipt of federal funds, the total required net contribution from the Airport Capital Fund would be \$21,469 if the ODOT program is utilized.

ALTERNATIVES

The alternative is not utilizing the Grant Program and funding the entire 10% match requirement from the Airport Capital Fund. An additional \$21,469 would be required for a total of \$42,938.

EMERGENCY/NON-EMERGENCY

Non - Emergency

DEPARTMENTAL CLEARANCES

Law
Finance

Cc: Law Director
 Finance Director

LEGISLATION

ITEM 2

RESOLUTION NO. R2018-02

A RESOLUTION REQUESTING THE AUDITOR OF BUTLER COUNTY TO ADVANCE TO THE TREASURER OF THE CITY OF MIDDLETOWN, OHIO, TAXES ASSESSED AND COLLECTED FOR AND ON BEHALF OF THE CITY OF MIDDLETOWN, OHIO AND DECLARING AN EMERGENCY.

WHEREAS, Ohio Revised Code Section 321.34 provides that the Council of an Ohio municipal corporation may request from the Butler County Auditor advance payment of tax funds assessed and collected for and on behalf of such municipal corporation; and

WHEREAS, the aforesaid statute requires that such request be made by a formal resolution and that such advance payment of tax funds be paid to the Treasurer of the municipal corporation;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

In accordance with Ohio Revised Code Section 321.34, the Council of the City of Middletown, Ohio hereby requests that the Auditor of Butler County advance to the Treasurer of the City of Middletown, Ohio taxes assessed in 2017 for and on behalf of the City of Middletown and collected in 2018.

Section 2

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to make the request prior to the first advanced payment dates, and shall be in full force and effect from the date of its adoption.

Lawrence P. Mulligan, Jr., Mayor

Adopted: _____

Attest: _____
Clerk of City Council

December 22, 2017

TO: Doug Adkins, City Manager

FROM: Jacob Burton, Finance Director

Butler County Property Tax Advances

PURPOSE

Butler County collects property taxes on behalf of the City of Middletown. The collections are paid to the City in two installments during the year. The City has the option to pass a resolution requesting advance payment of property taxes which allows us to collect money sooner. This is a resolution that we pass each year.

BACKGROUND and FINDINGS

The Butler County Auditor's office advised us that it is necessary to pass a formal resolution from each taxing district that would like to receive tax advances. This is to ensure compliance with ORC Section 321.34 (A)(1) which states:

"When the local authorities by resolution so request, the county auditor shall pay township fiscal officers, treasurers of municipal corporations, the treasurer of any board of education, and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer, any money that may be in the county treasury to the accounts of the local authorities, respectively, and lawfully applicable to the purpose of the current fiscal year in which the request is made."

ALTERNATIVES

The alternative would be to not pass a resolution which would mean the City would receive property tax revenue twice a year at the final settlement. Butler County would collect the funds and hold them until the final settlement date.

FINANCIAL IMPACT

The request for advances will allow the city of Middletown to earn interest on funds that belong to the City instead of waiting until the required distributions are submitted from the county.

EMERGENCY/NON EMERGENCY

Emergency legislation is requested. Butler County anticipates that the first advance of property tax revenue will be paid in February. Passing this resolution by emergency will allow us to receive the first advance payment.

LEGISLATION

ITEM 3

ORDINANCE NO. O2018-01

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 891 OF THE CODIFIED ORDINANCES AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

Section 891.03 of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit "A", attached hereto and made a part hereof.

Section 2

Section 891.062 of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit "B", attached hereto and made a part hereof.

Section 3

Section 891.07 of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit "C", attached hereto and made a part hereof.

Section 4

Section 891.10 of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit "D", attached hereto and made a part hereof.

Section 5

These amendments apply to taxable years beginning on or after January 1, 2018.

Section 6

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to be in compliance with state law the amendments must be in place on or before January 31, 2018, and shall be in full force and effect from the date of its adoption.

Lawrence P. Mulligan, Jr., Mayor

Adopted: _____

Attest: _____
Clerk of City Council

Exhibit "A"

891.03 DEFINITIONS

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 LVII of the Ohio Revised Code, unless a different meaning is clearly required. **Except as provided in section 718.81 of the Revised Code, if** a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

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

(1) "ADJUSTED FEDERAL TAXABLE INCOME," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division 23(D) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

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

(B) Add an amount equal to five percent of intangible income deducted under division (1)(A) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

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

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

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

Exhibit "A"

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

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

(G) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Ohio Revised Code;

~~(H) (i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.~~

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

~~(ii) No person shall use the deduction allowed by division (1)(H) of this section to offset qualifying wages.~~

~~(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty percent of the amount of the deduction otherwise allowed by division (1)(H)(i) of this section.~~

~~(b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(H)(i) of this section.~~

~~(iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.~~

~~(v) Nothing in division (1)(H)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(H)(iii)(a) of this section. To the~~

Exhibit “A”

~~extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(H)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(H)(iii)(a) of this section shall apply to the amount carried forward.~~

(H) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(I) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer’s federal taxable income unless an affiliated group of corporations includes that net profit in the group’s federal taxable income in accordance with division (E)(3)(b) of Section 891.063 of this Chapter.

(J) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer’s federal taxable income unless an affiliated group of corporations includes that loss in the group’s federal taxable income in accordance with division (E)(3)(b) of Section 891.063 of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (4748)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(D) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) (A) “ASSESSMENT” means any of the following:

(i) 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;

Exhibit "A"

(ii) A full or partial denial of a refund request issued under Section 891.096 (B)(2) of this Chapter;

(iii) A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section 891.062(B)(2) of this Chapter; or

(iv) A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under Section 891.062(B)(3) of this Chapter.

(v) For purposes of division (2)(A)(i), (ii), (iii) and (iv) of this Section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section 891.18 of this Chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

(B) "ASSESSMENT" does not include notice(s) denying a request for refund issued under Section 891.096 (B)(3) of this Chapter, 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 mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (2)(A) of this section.

(3) "AUDIT" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) "BOARD OF REVIEW" has same meaning as "Local Board of Tax Review".

(5) "CALENDAR QUARTER" means the three-month period ending on the last day of March, June, September, or December.

(6) "CASINO OPERATOR" and "CASINO FACILITY" have the same meanings as in section 3772.01 of the Ohio Revised Code.

(7) "CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE," and similar terms include any delivery service authorized pursuant to section 5703.056 of the Ohio Revised Code.

(8) "COMPENSATION" means any form of remuneration paid to an employee for personal services.

Exhibit "A"

(9) "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.

(10) "DOMICILE" means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

(11) "EXEMPT INCOME" means all of the following:

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

(B) (i) Except as provided in division (11)(B)(ii) of this section, intangible income;

(ii) 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.

(C) 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 (11)(C) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

(D) 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.

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

Exhibit "A"

(F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.

(G) Alimony and child support received.

(H) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages.

(I) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (11)(I) of this section does not apply for purposes of Chapter 5745. of the Ohio Revised Code.

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

(K) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code.

(L) Employee compensation that is not qualifying wages as defined in division (34) of this section.

(M) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(N) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

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(P) (i) Except as provided in divisions (11)(P)(ii), (iii), and (iv) of this section, qualifying wages described in division (B)(1) or (E) of Section 891.052 of

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this Chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.

(ii) The exemption provided in division (11)(P)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(iii) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of Section 891.052 of this Chapter.

(iv) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages if both of the following conditions apply:

(a) For qualifying wages described in division (B)(1) of Section 891.052 of this Chapter, 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 891.052 of this Chapter, 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;

(b) The employee receives a refund of the tax described in division (11)(P)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.

(Q) (i) Except as provided in division (11)(Q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.

(ii) The exemption provided in division (11)(Q)(i) of this section does not apply under either of the following circumstances:

(a) The individual’s base of operation is located in the Municipality.

(b) 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 (11)(Q)(ii)(b) of this section, “professional athlete,” “professional entertainer,” and “public figure” have the same meanings as in Section 891.052 of this Chapter.

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(iii) Compensation to which division (11)(Q) 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.

(iv) For purposes of division (11)(Q) 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.

(R) 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 Ohio Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

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

Any item of income that is exempt income of a pass-through entity under division (11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner’s distributive or proportionate share of that item of the entity’s income.

(12) “FORM 2106” means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(13) “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, including a request for refund.

(14) “INCOME” means the following:

(A) (i) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident’s distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (23)(D) of this section.

(ii) For the purposes of division (14)(A)(i) of this section:

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(a) Any net operating loss of the resident incurred in the taxable year and the resident’s distributive share of any net operating loss generated in the same taxable year and attributable to the resident’s ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident’s distributive share of any net profit attributable to the resident’s ownership interest in a pass-through entity until fully utilized, subject to division (14)(A)(iv) of this section;

(b) The resident’s distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity’s net profit for the current taxable year.

(iii) Division (14)(A)(ii) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders’ distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division 11(N) or division 14(E) of this Section.

(iv) Any amount of a net operating loss used to reduce a taxpayer’s net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer’s net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(B) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident’s distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(C) For taxpayers that are not individuals, net profit of the taxpayer.

(D) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 891.081 of this Chapter.

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(15) “INTANGIBLE INCOME” means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. “Intangible income” does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(16) “INTERNAL REVENUE CODE” means the “Internal Revenue Code of 1986,” 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(17) “LIMITED LIABILITY COMPANY” means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

(18) “LOCAL BOARD OF TAX REVIEW” and “BOARD OF TAX REVIEW” means the entity created under Section 891.18 of this Chapter.

(19) “MUNICIPAL CORPORATION” means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 718.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.

(20) (A) “MUNICIPAL TAXABLE INCOME” means the following:

(i) For a person other than an individual, income ~~reduced by exempt income to the extent otherwise included in income and then, as applicable,~~ apportioned or sitused to the Municipality under Section 891.062 of this Chapter, ~~and further~~ **as applicable**, reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

(ii) (a) For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(b) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified

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municipal corporation from the qualified municipal corporation’s tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Ohio Revised Code.

(iii) For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section 891.062 of this Chapter, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(B) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (20)(A)(ii)(a) or (iii) of this section, the amount of the individual’s employee business expenses reported on the individual’s form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer’s performance of personal services in that nonresident municipal corporation.

(21) “MUNICIPALITY” means the City of Middletown.

(22) “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.

(23) ~~(A) “NET PROFIT” for a person other than an individual means adjusted federal taxable income.~~

~~(B)~~(A) “NET PROFIT” for a person who is an individual means the individual’s net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of this division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division ~~(23)~~(C) of this section.

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(B) “NET PROFIT” for a person who is other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (23)(C) of this section.

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

(ii) No person shall use the deduction allowed by division (23)(C) of this section to offset qualifying wages.

(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty percent of the amount of the deduction otherwise allowed by division (23)(C)(i) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (23)(C)(i) of this section without regard to the limitation of division (23)(C)(iii)(a) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (23)(C) of this section.

(v) Nothing in division (23)(C)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (23)(C)(iii)(a) of this section. To the extent than an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (23)(C)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (23)(C)(iii)(a) of this section shall apply to the amount carried forward.

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(~~C~~D) For the purposes of this chapter, and notwithstanding division (23)(A) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(~~D~~E) (i) For purposes of this chapter, “publicly traded partnership” means any partnership, an interest in which is regularly traded on an established securities market. A “publicly traded partnership” may have any number of partners.

(ii) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(~~D~~E) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

(iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (~~D~~E)(iv) of this section.

(iv) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (~~D~~E)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

(v) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (~~D~~E) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

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(vi) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

(24) “NONRESIDENT” means an individual that is not a resident of the Municipality.

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

(26) “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.

(27) “PASS-THROUGH ENTITY” means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. “Pass-through entity” does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(28) “PENSION” means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

(29) “PERSON” includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(30) “POSTAL SERVICE” means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(31) “POSTMARK DATE,” “DATE OF POSTMARK,” and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.

(32) (A) “PRE-2017 NET OPERATING LOSS CARRYFORWARD” means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the

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extent such loss was permitted, by a resolution or ordinance of the Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such Municipality in future taxable years.

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

(33) “QUALIFIED MUNICIPAL CORPORATION” means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(34) “QUALIFYING WAGES” means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(A) Deduct the following amounts:

(i) 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.

(ii) 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.

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(v) Any amount included in wages that is exempt income.

(B) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(ii) 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, or other disposition of stock purchased under a stock option. Division (34)(B)(ii) of this section applies only to those amounts constituting ordinary income.

(iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code.

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Division (34)(B)(iii) of this section applies only to employee contributions and employee deferrals.

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

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

(vi) Any amount not included in wages if all of the following apply:

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

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

(c) For no succeeding taxable year will the amount constitute wages; and

(d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (34)(B) of this section or section 718.03 of the Ohio Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(35) "RELATED ENTITY" means any of the following:

(A) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

(B) 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 percent of the value of the taxpayer's outstanding stock;

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(C) 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 (35)(D) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation’s outstanding stock;

(D) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (35)(A) to (C) of this section have been met.

(36) “RELATED MEMBER” means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, “twenty percent” shall be substituted for “5 percent” wherever “5 percent” appears in section 1563(e) of the Internal Revenue Code.

(37) “RESIDENT” means an individual who is domiciled in the Municipality as determined under Section 891.042 of this Chapter.

(38) “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.

(39) “SCHEDULE C” means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(40) “SCHEDULE E” means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) “SCHEDULE F” means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) “SINGLE MEMBER LIMITED LIABILITY COMPANY” means a limited liability company that has one direct member.

(43) “SMALL EMPLOYER” means any employer that had total revenue of less than five hundred thousand dollars during the preceding taxable year. For purposes of this division, “total revenue” means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. “Small employer” does not include the federal government; any state government, including any state agency or instrumentality; any

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political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(44) "TAX ADMINISTRATOR" means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

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

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

(C) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) 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.

(45) "TAX COMMISSIONER" means the tax commissioner appointed under section 121.03 of the Revised Code.

~~(4546)~~ "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.

~~(4647)~~ "TAXABLE YEAR" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

~~(4748)~~ (A) "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 ~~(4748)~~(B)(i) of this section, a disregarded entity.

(B) (i) 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:

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

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(b) 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.

(c) 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 section 718.01 of the Ohio Revised Code as this section existed on December 31, 2004.

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

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

(ii) For purposes of division (4748)(B)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.

(48) "TAXPAYERS' RIGHTS AND RESPONSIBILITIES" means the rights provided to taxpayers in sections 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the Ohio Revised Code and any corresponding ordinances of the Municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718. of the Ohio Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

(49) "VIDEO LOTTERY TERMINAL" has the same meaning as in section 3770.21 of the Ohio Revised Code.

(50) "VIDEO LOTTERY TERMINAL SALES AGENT" means a lottery sales agent licensed under Chapter 3770. of the Ohio Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Ohio Revised Code.

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891.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

(A) Net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

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

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

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not-required to be withheld under section 891.052 of this Chapter;

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

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Administrator of the Municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

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

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(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;

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

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 891.19 of this Chapter.

(3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of Section 891.19 of this Chapter.

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

(C) As used in division (A)(2) of this section, “wages, salaries, and other compensation” includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee’s presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or

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reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(1) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation ~~in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation~~ **only** if, regardless of where title passes, the property meets ~~any~~ **either** of the following criteria:

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

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

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

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

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

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

(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(E) The net profit received by an individual taxpayer from the rental of real estate owned-directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the

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net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

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

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

(2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 891.081 of this Chapter.

(G) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (11)(L) and (34)(A)(iv) of Section 891.03 of this Chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

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

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

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891.07 DECLARATION OF ESTIMATED TAX

(A) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars. For the purposes of this section:

(a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.

(b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(c) A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(d) Taxes withheld by a casino operator or by a lottery sales agent under section 718.031 of the Ohio Revised Code are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 891.091 of this Chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

Exhibit "C"

- (4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.
- (5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.
- (C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
- (a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half percent of the tax liability for the taxable year;
 - (b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five percent of the tax liability for the taxable year;
 - (c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half percent of the tax liability for the taxable year;
 - (d) ~~On~~ **For an individual, on or before the fifteenth day of the first month of the following taxable year, ninety percent of the tax liability for the taxable year. For a person other than an individual, on** or before the fifteenth day of the twelfth month of the taxable year, ninety percent of the tax liability for the taxable year.
- (2) A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates. The amended declaration must be filed on the next applicable due date as outlined in (C)(1)(a) through (d) of this section.
- (3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with section 891.091 of this Chapter.
- (a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the filing of the federal tax return, unless extended pursuant to division (G) of section 5747.08 of the Revised Code.

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- (b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.
- (4) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.
- (D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to section 891.10 of this Chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:
 - (a) For the first payment of estimated taxes each year, twenty-two and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (b) For the second payment of estimated taxes each year, forty-five percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (c) For the third payment of estimated taxes each year, sixty-seven and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (d) For the fourth payment of estimated taxes each year, ninety percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.
- (E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:
 - (1) The amount of estimated taxes that were paid equals at least ninety percent of the tax liability for the current taxable year, determined by annualizing the

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income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least one hundred percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the municipal corporation under Section 891.091 of this Chapter for that year.

(3) The taxpayer is an individual who resides in the Municipality but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

(F) A Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

Exhibit “D”

891.10 PENALTY, INTEREST, FEES, AND CHARGES

(A) As used in this section:

(1) “Applicable law” means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Municipality provided such resolutions, ordinances, codes, directives, instructions, and rules impose or directly or indirectly address the levy, payment, remittance, or filing requirements of a municipal income tax.

(2) “Federal short-term rate” means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) “Income tax,” “estimated income tax,” and “withholding tax” mean any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before January 1, 2016.

(4) “Interest rate as described in division (A) of this section” means the federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.

(5) “Return” includes any tax return, report, reconciliation, schedule, and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) “Unpaid estimated income tax” means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) “Unpaid income tax” means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) “Unpaid withholding tax” means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) “Withholding tax” includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee’s qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee’s qualifying wages.

(B) (1) This section shall apply to the following:

Exhibit "D"

(a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

(b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016.

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules, as adopted from time to time before January 1, 2016 of this Municipality.

(C) The Municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Municipality any return required to be filed.

(1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

(2) (a) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent of the amount not timely paid shall be imposed.

(3b) With respect to any unpaid withholding tax, a penalty ~~equal to~~ **not exceeding** fifty percent of the amount not timely paid shall be imposed.

(43) With respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars in assessed penalty for each failure to timely file a return.

(D) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section.

(E) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not refund or credit any penalty, amount of interest,

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charges, or additional fees that were properly imposed or collected before January 1, 2016.

(F) The Tax Administrator may, in the Tax Administrator’s sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.

(G) The Municipality shall impose on the taxpayer, employer, any agent of the employer, or any other payer the Municipality’s post-judgment collection costs and fees, including attorney’s fees.

STAFF REPORT
For the business Meeting of: January 16, 2018

January 4, 2018

TO: Douglas Adkins, City Manager

FROM: Jacob Burton, Finance Director

Amendments to Municipal Income Tax Ordinance

PURPOSE

The purpose of this staff report is to present amendments to the 2016 Tax Ordinance, chapter 891 of the codified ordinances, as required by the State of Ohio. These amendments apply to taxable years beginning on or after January 1, 2018.

BACKGROUND and FINDINGS

The General Assembly enacted H.B. 5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is “levied in accordance with the provisions and limitations specified in Chapter 718.” H.B. 49 included several provisions of sections 718.80 through 718.95 required to the original tax codes that must be adopted, by Ordinance or Resolution, by 1/31/18. As of December 29, 2017, Franklin County Court of Common Pleas Judge David Cain issued a preliminary injunction on the centralized collection of municipal net profit tax language in H.B. 49. A permanent injunction hearing is scheduled for February 12-13, 2018. Certain provisions of H.B. 49 require municipalities to reconcile their ordinances in accordance with H.B. 49 by January 31, 2018 (“Ordinance Reconciliation”). Because of the Parties’ intent to brief issues in this matter and taking into account the intervening holidays, the Parties agreed to stay the Ordinance Reconciliation provisions (Section 803.100(B) of H.B. 49 of the 132nd General Assembly) until February 24, 2018, or until further order of the Court, whichever is sooner. The changes not related to centralized collection are still mandatory by 1/31/18, and therefore the City has to comply.

The main amendments required in H.B. 49 that are being changed in our ordinance are below:

- 1) Repeals the "throw-back rule" used in determining what amount of a business' income is apportioned to a particular municipal corporation, beginning in 2018. (This change will be made in section 891.03 of our ordinance.)

- 2) Extends, by one month, the due date by which municipal income taxpayers that are individuals must make their fourth-quarter estimated tax payment, beginning in 2018. (This change will be made in section 891.07 (C) (1) (d) of our ordinance.)
- 3) Permits the penalty imposed on employers that do not timely remit municipal income tax withholdings to be less than 50% of the unpaid amount. (This change will be made in section 891.10 (C) of our ordinance.)

ALTERNATIVES

Do not pass the tax ordinance amendments and therefore not be in compliance with Chapter 718 of the O.R.C. and be unable to levy an income or withholding tax.

FINANCIAL IMPACT

No income taxes will be levied or collected if ordinance is not passed.

EMERGENCY/NON-EMERGENCY

Emergency

EXECUTIVE SESSION