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3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 13 - 2021

6
7 AN ORDINANCE AMENDING AND/OR SUPPLEMENTING
8 TITLE 7, TAXATION, CHAPTER 164, MUNICIPAL INCOME
9 TAX, TO COMPLY WITH STATE LAW MANDATES, AND
10 DECLARING AN EMERGENCY.

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12 WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVII,
13 Section 3, provides that "municipalities shall have authority to exercise all powers of
14 local self-government," and the municipal taxing power is one of such powers of local
15 self-government delegated by the people of the State to the people of municipalities; and
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17 WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the
18 General Assembly may restrict a municipality's power of taxation to the extent
19 necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio
20 Constitution states that "laws may be passed to limit the powers of municipalities to
21 levy taxes and incur debts for local purposes;" and
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23 WHEREAS, the General Assembly has determined that it is necessary and
24 appropriate to amend Chapter 718 of the Ohio Revised Code, supplementing statutory
25 requirements for municipal income tax codes in Ohio; and
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27 WHEREAS, more specifically, the General Assembly enacted H. B. 49 in 2017 and
28 H.B. 166 in 2019, and mandated that municipal income tax codes be amended such
29 that any income or withholding tax is "levied in accordance with the provisions and
30 limitations specified in Chapter 718"; and
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32 WHEREAS, upon review of H. B. 49 and H. B. 166 and the Codified Ordinances
33 of the City Cuyahoga Falls, this Ordinance is found and determined by this Council
34 to enact the amendments required to be in accord with the provisions and limitations
35 specified in Chapter 718 of the Revised Code.
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37 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
38 County of Summit, and State of Ohio, that:
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40 Section 1. Title 7, Taxation, Chapter 164, Municipal Income Tax, is hereby
41 amended and/or supplemented as follows (new text double underlined; deleted text
42 in ~~strikethrough~~):
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45 **CHAPTER 164**
46 **Municipal Income Tax**
47 Effective January 1, 2016
48 For taxable years beginning with taxable year 2016

49 **164.05 DEFINITIONS.**

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51 Any term used in this Section that is not otherwise defined in this Section
52 has the same meaning as when used in a comparable context in the laws of the United
53 States relating to federal income taxation or in Title LVII of the Ohio Revised Code,
54 unless the context clearly requires or indicates a different meaning. If a term is used in
55 this Section and it is not defined in this Section and it is used in a comparable context
56 in both the laws of the United States relating to federal income tax and in Title LVII of
57 the Ohio Revised Code and the use is not consistent, then the use of the term in the law
58 of the United States relating to federal income tax shall control over the use of the term
59 in Title LVII of the Ohio Revised Code.

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

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64 As used in this Chapter:

- 65
66 (a) "ADJUSTED FEDERAL TAXABLE INCOME," for a person required to file as
67 a C corporation, or for a person that has elected to be taxed as a C
68 corporation under Division (v)(5)(iii) of this Section, means a C corporation's
69 federal taxable income before net operating losses and special deductions
70 as determined under the Internal Revenue Code, adjusted as follows:
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72 (1) Deduct intangible income to the extent included in federal taxable income.
73 The deduction shall be allowed regardless of whether the intangible income
74 relates to assets used in a trade or business or assets held for the
75 production of income.
76
77 (2) Add an amount equal to five per cent of intangible income deducted under
78 (a)(1) of this Section, but excluding that portion of intangible income
79 directly related to the sale, exchange, or other disposition of property
80 described in Section 1221 of the Internal Revenue Code;
81
82 (3) Add any losses allowed as a deduction in the computation of federal taxable
83 income if the losses directly relate to the sale, exchange, or other disposition
84 of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
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86 (4) i. Except as provided in Division (a)(4)(ii) of this Section, deduct
87 income and gain included in federal taxable income to the extent
88 the income and gain directly relate to the sale, exchange, or other
89 disposition of an asset described in Section 1221 or 1231 of the
90 Internal Revenue Code;
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92 ii. Division (a)(4)(i) of this Section does not apply to the extent the
93 income or gain is income or gain described in Section 1245 or 1250
94 of the Internal Revenue Code.
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96 (5) Add taxes on or measured by net income allowed as a deduction in the
97 computation of federal taxable income;

- 98 (6) In the case of a real estate investment trust or regulated investment
99 company, add all amounts with respect to dividends to, distributions to, or
100 amounts set aside for or credited to the benefit of investors and allowed as
101 a deduction in the computation of federal taxable income;
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103 (7) Deduct, to the extent not otherwise deducted or excluded in computing
104 federal taxable income, any income derived from a transfer agreement or
105 from the enterprise transferred under that agreement under Section
106 4313.02 of the Ohio Revised Code;
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108 (8) Deduct exempt income to the extent not otherwise deducted or excluded in
109 computing adjusted federal taxable income.
110
111 (9) Deduct any net profit of a pass-through entity owned directly or indirectly
112 by the taxpayer and included in the taxpayer's federal taxable income
113 unless an affiliated group of corporations includes that net profit in the
114 group's federal taxable income in accordance with Section 164.09(e)(3)(ii) of
115 this Chapter.
116
117 (10) Add any loss incurred by a pass-through entity owned directly or indirectly
118 by the taxpayer and included in the taxpayer's federal taxable income
119 unless an affiliated group of corporations includes that loss in the group's
120 federal taxable income in accordance with Section 164.09(e)(3)(ii) of this
121 Chapter.
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123 If the taxpayer is not a C corporation, is not a disregarded entity that has made
124 an election described in Division ~~(uu)~~ (vv)(1) of this Section, is not a publicly traded
125 partnership that has made the election described in Division (v)(5)(iii) of this Section,
126 and is not an individual, the taxpayer shall compute adjusted federal taxable income
127 under this Section as if the taxpayer were a C corporation, except guaranteed payments
128 and other similar amounts paid or accrued to a partner, former partner, shareholder,
129 former shareholder, member, or former member shall not be allowed as a deductible
130 expense unless such payments are in consideration for the use of capital and treated as
131 payment of interest under Section 469 of the Internal Revenue Code or United States
132 treasury regulations. Amounts paid or accrued to a qualified self-employed retirement
133 plan with respect to a partner, former partner, shareholder, former shareholder,
134 member, or former member of the taxpayer, amounts paid or accrued to or for health
135 insurance for a partner, former partner, shareholder, former shareholder, member, or
136 former member, and amounts paid or accrued to or for life insurance for a partner,
137 former partner, shareholder, former shareholder, member, or former member shall not
138 be allowed as a deduction.
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140 Nothing in division (a) of this section shall be construed as allowing the taxpayer
141 to add or deduct any amount more than once or to deduct any amount paid to or
142 accrued for purposes of federal self-employment tax.
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- 144 (b) (1) "ASSESSMENT" means a written finding by the Tax
145 Administrator that a person has underpaid municipal income
146 tax, or owes penalty and interest, or any combination of tax,
147 penalty, or interest to the municipal corporation that
148 commences the person's time limitation for making an appeal

149 to the Board of Tax Review pursuant to Section 164.32, and has
150 "ASSESSMENT" written in all capital letters at the top of such
151 finding.
152

153 (2) "ASSESSMENT" does not include a notice denying a request
154 for refund issued under Division 164.19(b)(3) a billing
155 statement notifying a taxpayer of current or past-due balances
156 owed to the municipality, a request for additional information
157 from the Tax Administrator, a notification to the taxpayer of
158 mathematical errors, or the Tax Administrator's other written
159 correspondence to a person or taxpayer that does not meet the
160 criteria prescribed by Division (b)(1) of this Section.
161

162 (c) "AUDIT" means the examination of a person or the inspection of the
163 books, records, memoranda, or accounts of a person, ordered to
164 appear before the Tax Administrator, for the purpose of determining
165 liability for a municipal income tax.
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167 (d) "CALENDAR QUARTER" means the three-month period ending on the
168 last day of March, June, September, and December.
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170 (e) "CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL,"
171 "POSTAL SERVICE," and similar terms include any delivery service
172 authorized pursuant to Section 5703.056 of the Ohio Revised Code.
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174 (f) "DISREGARDED ENTITY" means a single member limited liability
175 company, a qualifying subchapter S subsidiary, or another entity if
176 the company, subsidiary, or entity is a disregarded entity for federal
177 income tax purposes.
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179 (g) "DOMICILE" means the true, fixed and permanent home of the
180 taxpayer to which, whenever absent, the taxpayer intends to return.
181 Domicile differs from residency. Although a person may have multiple
182 residences, a person can have only one domicile.
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184 (h) "EMPLOYEE" means an individual who is an employee for federal
185 income tax purposes.
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187 (i) "EMPLOYER" means a person that is an employer for federal income
188 tax purposes.
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190 (j) "EXEMPT INCOME" means all of the following:
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192 (1) The military pay or allowances of members of the armed forces
193 of the United States or members of their reserve components,
194 including the national guard of any state;
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196 (2) Intangible Income;
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198 (3) Social security benefits, railroad retirement benefits,
199 unemployment compensation, pensions, retirement benefit

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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 (j)(3) of this Section, "unemployment compensation" does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.

- (4) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (5) 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 will be subject to taxation. The payer of such compensation is not required to withhold any tax from that compensation.
- (6) Dues, contributions, and similar payments received by charitable, religious, educational, literary organizations, labor unions, lodges, and similar organizations;
- (7) Alimony and child support received;
- (8) 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;
- (9) 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 (j)(9) of this Section does not apply for purposes of Chapter 5745 of the Ohio Revised Code.
- (10) 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;
- (11) Compensation or allowances for the rental value of parsonages excluded from federal gross income under Section 107 of the Internal Revenue Code;

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- (12) Employee compensation that is not qualifying wages as defined in Division (hh) of this Section;

- (13) 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 in the City, tax on such income shall be payable to the City.

- (14) All of the municipal taxable income earned by individuals while they are under eighteen years of age.

- (15)
 - i. Except as provided in Divisions (j)(15)(ii), (iii), and (iv) of this Section, qualifying wages described in Division 164.11(b)(1) or (e) of this Chapter to the extent the qualifying wages are not subject to withholding for the City under either of those Divisions.

 - ii. The exemption provided in Division (j)(15)(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 (j)(15)(i) of this Section does not apply to qualifying wages that an employer elects to withhold under Section 164.11(d)(2) of this Chapter.

 - iv. The exemption provided in Division (j)(15)(i) of this Section does not apply to qualifying wages if both of the following conditions apply:
 - a) For qualifying wages described in Section 164.11(b)(1), 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 Section 164.11(e), 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 (j)(15)(iv)(a) of this Section on the basis of the employee not performing services in that municipal corporation.

- (16)
 - i. Except as provided in Division (j)(16)(ii) or (iii) of this Section, compensation that is not qualifying wages paid to

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a nonresident individual for personal services performed in the City on not more than twenty days in a taxable year.

ii. The exemption provided in Division (j)(16)(i) of this Section does not apply under either of the following circumstances:

a) The individual's base of operation is located in the municipal corporation.

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 (j)(16)(ii)(b) of this Section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 164.11 of this Chapter.

iii. Compensation to which Division (j)(16)(i) 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 (j)(16)(i) 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.

(17) 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.

(18) Income that the constitution or laws of the United States prohibit from being taxed.

(k) "FORM 2106" means Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

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

- (m) "INCOME" means the following:
 - (1) 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 (v)(5) of this Division.

 - ii. For the purposes of Division (m)(1)(i) of this Section:
 - 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 (m)(1)(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 (m)(1)(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' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in Division (m)(5) 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

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original amount of that net operating loss available to that taxpayer.

- (2) 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 municipal corporation, 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.
 - (3) For taxpayers that are not individuals, net profit of the taxpayer.
 - (4) Lottery, sweepstakes, gambling, sports winnings, winnings from games of chance, 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.
 - (5) In accordance with a ballot issue, regarding S corporation language, approved by the voters in the election on November 2, 2004, a shareholder's share of net profits of an S corporation are taxable to the municipality to the extent such shares would be so allocated or apportioned to the State of Ohio.
- (n) "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.
 - (o) "INTERNAL REVENUE CODE" means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.
 - (p) "LIMITED LIABILITY COMPANY" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
 - (q) "LOCAL BOARD OF TAX REVIEW" means the entity created under Section 164.32 of this Chapter.

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- (r) "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 or net profit tax under Sections 715.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code. The City of Cuyahoga Falls is a municipal corporation for purposes of this Chapter.

- (s) (1) "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 164.08, and further reduced by any pre-2017 net operating loss carryforward available to the person for the municipality.

 - ii. For an individual who is a resident of the municipality, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in Division (s)(2) of this Section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipality.

 - 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 sitused to the municipality under Section 164.08 of this Chapter, then reduced as provided in Division (s)(2) of this Section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

- (2) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in Division (s)(1)(ii) or (s)(1)(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, but to the extent the expenses do not relate to exempt income. 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 and are not related to exempt income.

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- (t) "MUNICIPALITY" means the City of Cuyahoga Falls, and includes any joint economic development district or joint economic development zone that levies an income tax or net profit tax under Sections 718.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code or within which the City levies an income tax or net profit tax pursuant to said Sections of the Ohio Revised Code, including but not limited to the Boston Township-Cuyahoga Falls Joint Economic Development District.

- (u) "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.

- (v) (1) "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 Division (v)(1) of this Section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in Division (v)(3) of this Section. "Net Profit" for a person 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 (v)(3) of this section.
 - (2) For the purposes of this Chapter, and notwithstanding Division (v)(1) 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.

 - (3)
 - 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 (v)(3)(i) of this section to offset qualifying wages.

 - iii. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, more than fifty per cent of the amount of the deduction otherwise allowed by division (v)(3)(i) of this section.

 - iv. For taxable years beginning in 2023 or thereafter, a person may deduct, the full amount allowed by division

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(v)(3)(i) of this section without regard to the limitation of division (v)(3)(iii) of this section.

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

- vi. Nothing in division (v)(3) (iii) 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 (v)(3)(iii) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (v)(3)(iii) 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 (v)(3)(iii) of this section shall apply to the amount carried forward.

(4) For the purposes of this Chapter, and notwithstanding Division (v)(1)(2) 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.

(5) 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 (v)(5)(iii) 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 by the municipality, may elect to be treated as a C corporation. The election shall be made on the annual return for the municipality. The municipality will treat the publicly traded partnership as a C corporation if the election is so made.

iv. The individual owners of the partnership not filing as a C corporation are required to file with their municipal

- 604 corporation of residence, and report partnership
605 distribution of net profit.
- 606 (w) "NONRESIDENT" means an individual that is not a resident of the
607 City of Cuyahoga Falls.
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- 609 (x) "OHIO BUSINESS GATEWAY" means the online computer network
610 system, created under Section 125.30 of the Ohio Revised Code,
611 that allows businesses to electronically file business reply forms
612 with state agencies and includes any successor electronic filing and
613 payment system.
- 614
- 615 (y) "OTHER COMPENSATION" all forms of earned income including but
616 not limited to severance pay, tips, tax shelter plans, gifts of any type
617 for services rendered, vacation and holiday pay, wage continuation
618 benefits, director's fees, jury duty fees, stock options granted in
619 connection with the performance of service and not designated as
620 capital gains, property in lieu of cash, sick pay, bonuses, incentive
621 payments in whatever form, company closing benefits, earnings
622 designated as deferred compensation or compensation paid by an
623 employer in whatever form for services rendered, employer paid
624 premiums for group-term insurance in excess of fifty thousand
625 dollars (\$50,000), strike benefits, depreciation recapture, ordinary
626 income shown on the federal form 4797, and a resident partner's or
627 stockholder's distributive share of a nonresident partnership or S-
628 corporation net profits. If income appears as part of Medicare wages
629 on a W-2 form and is not shown to be an exception in accordance
630 with Section 164.05(j) it shall be considered other compensation
631 and is therefore taxable to the individual.
- 632
- 633 (z) "OTHER PAYER" means any person, other than an individual's
634 employer or the employer's agent that pays an individual any
635 amount included in the federal gross income of the individual.
636 "Other payer" includes casino operators and video lottery terminal
637 sales agents.
- 638
- 639 (aa) "PASS-THROUGH ENTITY" means a partnership not treated as an
640 association taxable as a C corporation for federal income tax
641 purposes, a limited liability company not treated as an association
642 taxable as a C corporation for federal income tax purposes, an S
643 corporation, or any other class of entity from which the income or
644 profits of the entity are given pass-through treatment for federal
645 income tax purposes. "Pass-through entity" does not include a
646 trust, estate, grantor of a grantor trust, or disregarded entity.
- 647
- 648 (bb) ~~"PENSION" means any amount paid to an employee or former~~
649 ~~employee that is reported to the recipient on an IRS form 1099-R,~~
650 ~~or successor form. Pension does not include deferred compensation,~~
651 ~~or amounts attributable to nonqualified deferred compensation~~
652 ~~plans, reported as FICA/Medicare wages on an IRS form W-2, Wage~~
653 ~~and Tax Statement, or successor form. a retirement benefit plan,~~
654 ~~regardless of whether the plan satisfies the qualifications described~~

655 under section 401(a) of the Internal Revenue Code, including
656 amounts that are taxable under the "Federal Insurance
657 Contributions Act," Chapter 21 of the Internal Revenue Code,
658 excluding employee contributions and elective deferrals, and
659 regardless of whether such amounts are paid in the same taxable
660 year in which the amounts are included in the employee's wages,
661 as defined by section 3121(a) of the Internal Revenue Code.
662

663 (cc) "PERSON" includes individuals, firms, companies, joint stock
664 companies, business trusts, estates, trusts, partnerships, limited
665 liability partnerships, limited liability companies, associations, C
666 corporations, S corporations, governmental entities, and any other
667 entity.
668

669 (dd) "POSTAL SERVICE" means the United States postal service, or
670 private delivery service delivering documents and packages within
671 an agreed upon delivery schedule, or any other carrier service
672 delivering the item.
673

674 (ee) "POSTMARK DATE," "DATE OF POSTMARK," and similar terms
675 include the date recorded and marked by a delivery service and
676 recorded electronically to a database kept in the regular course of
677 its business and marked on the cover in which the payment or
678 document is enclosed.
679

680 (ff) "PRE-2017 NET OPERATING LOSS CARRYFORWARD" means any
681 net operating loss incurred in a taxable year beginning before
682 January 1, 2017, to the extent such loss was permitted, by
683 161.03(c)(1) through (3) to be carried forward and utilized to offset
684 income or net profit generated in the municipality in future taxable
685 years. For the purpose of calculating municipal taxable income, any
686 pre-2017 net operating loss carryforward may be carried forward to
687 any taxable year, including taxable years beginning in 2017 or
688 thereafter, for the number of taxable years provided in the
689 ordinance or until fully utilized, whichever is earlier.
690

691 (gg) "PUBLICLY TRADED PARTNERSHIP" means any partnership, an
692 interest in which is regularly traded on an established securities
693 market. A "publicly traded partnership" may have any number of
694 partners.
695

696 (hh) "QUALIFYING WAGES" means wages, as defined in Section 3121(a)
697 of the Internal Revenue Code, without regard to any wage
698 limitations, adjusted as follows:
699

- 700 (1) Deduct the following amounts:
- 701 i. Any amount included in wages if the amount
 - 702 constitutes compensation attributable to a plan or
 - 703 program described in Section 125 of the Internal
 - 704 Revenue Code.
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- 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.
 - iii. Any amount included in wages that is exempt income.
- (2) 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 and the municipal corporation has not exempted the amount from withholding and tax adopted before January 1, 2016. Division (hh)(2)(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 Sections 401(k), 403(b), or 457 of the Internal Revenue Code. Division (hh)(2)(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 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;

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- b) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;
- c) For any taxable year the amount has not otherwise been added to wages pursuant to either Division (hh)(2) 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.

- (ii) "RELATED ENTITY"
 - (1) 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 per cent of the value of the taxpayer's outstanding stock;
 - (2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;
 - (3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under Division (ii)(4) of this Section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;
 - (4) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in Divisions (ii)(1) to (3) of this Section have been met.

- (jj) "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 per cent" shall be substituted for "5 percent" wherever "5 percent" appears in Section 1563(e) of the Internal Revenue Code.

807 (kk) "RESIDENT" means an individual who is domiciled in the
808 Municipality as determined under Section 164.20 of this Chapter.
809

810 (ll) "RETIREMENT BENEFIT PLAN" means an arrangement whereby an
811 entity provides benefits to individuals either on or after their
812 termination of service because of retirement or disability.
813 "Retirement benefit plan" does not include wage continuation
814 payments, severance payments, or payments made for accrued
815 personal or vacation time.
816

817 (H) (mm) "S CORPORATION" means a person that has made an election
818 under subchapter S of Chapter 1 of Subtitle A of the Internal
819 Revenue Code for its taxable year
820

821 (~~mm~~) (nn) "SCHEDULE C" means internal revenue service schedule C (form
822 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
823

824 (~~nn~~) (oo) "SCHEDULE E" means internal revenue service schedule E (form
825 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
826

827 (~~oo~~) (pp) "SCHEDULE F" means internal revenue service schedule F (form
828 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
829

830 (~~pp~~) (qq) "SINGLE MEMBER LIMITED LIABILITY COMPANY" means a limited
831 liability company that has one direct member.
832

833 (~~qq~~) (rr) "SMALL EMPLOYER" means any employer that had total revenue of
834 less than five hundred thousand dollars during the preceding
835 taxable year. For purposes of this Division, "total revenue" means
836 receipts of any type or kind, including, but not limited to, sales
837 receipts; payments; rents; profits; gains, dividends, and other
838 investment income; commissions; premiums; money; property;
839 grants; contributions; donations; gifts; program service revenue;
840 patient service revenue; premiums; fees, including premium fees
841 and service fees; tuition payments; unrelated business revenue;
842 reimbursements; any type of payment from a governmental unit,
843 including grants and other allocations; and any other similar
844 receipts reported for federal income tax purposes or under generally
845 accepted accounting principles. "Small employer" does not include
846 the federal government; any state government, including any state
847 agency or instrumentality; any political subdivision; or any entity
848 treated as a government for financial accounting and reporting
849 purposes.
850

851 (~~rr~~) (ss) "TAX ADMINISTRATOR" means the individual charged with direct
852 responsibility for administration of the income tax levied by the City
853 in accordance with this Chapter
854

855 (~~ss~~) (tt) "TAX RETURN PREPARER" means any individual described in
856 Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R.
857 301.7701-15 .

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

~~(uu)~~ (vv) "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 ~~(uu)~~ (vv)(1) of this Section, a disregarded entity.

(1) 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:

- i. The limited liability company's single member is also a limited liability company.
- ii. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
- iii. Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under Division (L) of Section 718.01 of the Ohio Revised Code as this Section existed on December 31, 2004.
- iv. 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.
- v. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

(2) For purposes of Division ~~(uu)~~ (vv) (1)(v) 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 the tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.

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~~(vv)~~ (ww) "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, ordinances, and rules and regulations adopted by the municipality for the imposition and administration of a municipal income tax.

164.08 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. For purposes of this Section, the municipality is defined in Section 164.05(t) and the net profit calculated herein shall apply as set forth in Section 164.06 and 164.07 of this Chapter.

(a) Net profit from a business or profession conducted both within and outside of 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 sentence, 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 164.11 of this Chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period

956 in the Municipality to total gross receipts of the business or
957 profession during the same period from sales, rentals, and
958 services, wherever made or performed.
959

960
961 (b) (1) If the apportionment factors described in Division (a) of this
962 Section do not fairly represent the extent of a taxpayer's
963 business activity in the Municipality, the taxpayer may request,
964 or the Tax Administrator may require, that the taxpayer use,
965 with respect to all or any portion of the income of the taxpayer,
966 an alternative apportionment method involving one or more of
967 the following:

- 968 i. Separate accounting;
- 969 ii. The exclusion of one or more of the factors;
- 970 iii. The inclusion of one or more additional factors that
971 would provide for a more fair apportionment of the
972 income of the taxpayer to the Municipality;
- 973 iv. A modification of one or more of the factors.

974
975 (2) A taxpayer request to use an alternative apportionment method
976 shall be in writing and shall accompany a tax return, timely filed
977 appeal of an assessment, or timely filed amended tax return. The
978 taxpayer may use the requested alternative method unless the
979 Tax Administrator denies the request in an assessment issued
980 within the period prescribed by Section 164.33 of this Chapter.
981

982 (3) The Tax Administrator may require a taxpayer to use an
983 alternative apportionment method as described in Division (b)(1)
984 of this Section only by issuing an assessment to the taxpayer
985 within the period prescribed by Section 164.33 of this Chapter.
986

987 (4) Nothing in Division (b) of this Section nullifies or otherwise
988 affects any alternative apportionment arrangement approved by
989 the Tax Administrator or otherwise agreed upon by both the Tax
990 Administrator and taxpayer before January 1, 2016.
991

992 (c) As used in Division (a)(2) of this Section, "wages, salaries, and other
993 compensation" includes only wages, salaries, or other
994 compensation paid to an employee for services performed at any of
995 the following locations:
996

1000 (1) A location that is owned, controlled, or used by, rented to, or
1001 under the possession of one of the following:

- 1002 i. The employer;

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- ii. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
- iii. A vendor, customer, client, or patient of a person described in Division (c)(1)(ii) 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;

(4) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in Division (c)(1) or (2) of this Section solely in order to avoid or reduce the employer's municipal income tax liability. If the 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 only if, regardless of where title passes, the property meets either of the following criteria:

- i. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
- ii. 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.

(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.

- 1056 (3) To the extent included in income, gross receipts from the sale of
1057 real property located in the municipal corporation shall be
1058 situated to the municipal corporation.
1059
- 1060 (4) To the extent included in income, gross receipts from rents and
1061 royalties from real property located in the municipal corporation
1062 shall be situated to the municipal corporation.
1063
- 1064 (5) Gross receipts from rents and royalties from tangible personal
1065 property shall be situated to the municipal corporation based
1066 upon the extent to which the tangible personal property is used
1067 in the municipal corporation.
1068
- 1069 (e) The net profit received by an individual taxpayer from the rental of
1070 real estate owned directly by the individual or by a disregarded
1071 entity owned by the individual shall be subject to tax only by the
1072 municipal corporation in which the property generating the net
1073 profit is located and the municipal corporation in which the
1074 individual taxpayer that receives the net profit resides. A municipal
1075 corporation shall allow such taxpayers to elect to use separate
1076 accounting for the purpose of calculating net profit situated under
1077 this Division to the municipal corporation in which the property is
1078 located. For purposes of the application of any net operating loss
1079 realized from the rental of real estate, said loss is to be applied using
1080 separate accounting as it relates to those properties within a given
1081 municipal taxing jurisdiction. Common or shared expenses relating
1082 to rental real estate shall be allocated equally among all rental
1083 properties.
1084
- 1085 (f) (1) Except as provided in Division (f)(2) of this Section, commissions
1086 received by a real estate agent or broker relating to the sale,
1087 purchase, or lease of real estate shall be situated to the municipal
1088 corporation in which the real estate is located. Net profit reported
1089 by the real estate agent or broker shall be allocated to a municipal
1090 corporation based upon the ratio of the commissions the agent or
1091 broker received from the sale, purchase, or lease of real estate
1092 located in the municipal corporation to the commissions received
1093 from the sale, purchase, or lease of real estate everywhere in the
1094 taxable year.
1095
- 1096 (2) An individual who is a resident of a municipal corporation that
1097 imposes a municipal income tax shall report the individual's net
1098 profit from all real estate activity on the individual's annual tax
1099 return for that municipal corporation. The individual may claim a
1100 credit for taxes the individual paid on such net profit to another
1101 municipal corporation to the extent that such credit is allowed
1102 under 164.14 of this Chapter.
1103
- 1104 (g) If, in computing a taxpayer's adjusted federal taxable income, the
1105 taxpayer deducted any amount with respect to a stock option
1106 granted to an employee, the taxpayer shall add the amount that is

1107 exempt from taxation to the taxpayer's net profit that was
1108 apportioned to that municipal corporation. The taxpayer will not be
1109 required to add to its net profit that was apportioned to that
1110 Municipal Corporation any amount other than the amount upon
1111 which the employee would be required to pay tax were the amount
1112 related to the stock option not exempted from taxation. This
1113 Division applies solely for the purpose of making an adjustment to
1114 the amount of a taxpayer's net profit that was apportioned to a
1115 municipal corporation under this Section.
1116

1117 (h) When calculating the ratios described in Division (a) or Division (b)
1118 of this Section, the owner of a disregarded entity shall include in
1119 the owner's ratios the property, payroll, and gross receipts of such
1120 disregarded entity.
1121

1122 (i) Election to be subject to R.C. §§ 718.80 to 718.95.
1123

1124 (1) The City of Cuyahoga Falls hereby adopts and incorporates
1125 herein by reference R.C. §§ 718.80 to 718.95 for tax years
1126 beginning on or after January 1, 2018.
1127

1128 (2) A taxpayer, as defined in division (3) of this section, may elect to
1129 be subject to R.C. §§ 718.80 to 718.95 in lieu of the provisions
1130 of this chapter.
1131

1132 (3) "Taxpayer" has the same meaning as in R.C. § 718.01, except
1133 that "taxpayer" does not include natural persons or entities
1134 subject to the tax imposed under R.C. Chapter 5745. "Taxpayer"
1135 may include receivers, assignees, or trustees in bankruptcy
1136 when such persons are required to assume the role of a
1137 taxpayer.
1138

1139 Section 3. Any ordinances or resolutions or portions of ordinances and resolutions
1140 inconsistent herewith are hereby repealed, but any ordinances and resolutions not
1141 inconsistent herewith and which have not previously been repealed are hereby ratified
1142 and confirmed.
1143

1144 Section 4. It is found and determined that all formal actions of this Council
1145 concerning and relating to the passage of this ordinance were taken in an open meeting
1146 of this Council and that all deliberations of this Council and of any committees that
1147 resulted in those formal actions were in meetings open to the public, in compliance with
1148 all requirements including Chapter 107 of the Codified Ordinances.
1149

1150 Section 5. This ordinance is hereby declared to be an emergency measure necessary
1151 for the preservation of the public peace, health, safety, convenience and welfare of the
1152 City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the
1153 affirmative vote of two-thirds of the members elected or appointed to Council, it shall
1154 take effect and be in force immediately upon its passage and approval by the Mayor;
1155 otherwise it shall take effect and be in force at the earliest period allowed by law.
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Passed: 3-8-2021



President of Council



Clerk of Council

Approved 3-10-2021



Mayor

2/22/21
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