

ORIGINAL

IN THE SUPREME COURT OF OHIO

James L. Gesler and Angeline O. Gesler

Appellants,

v.

City of Worthington Income Tax Board of Appeals and Stephen R. Gande (Molly Roberts), Finance Director,

Appellees.

Supreme Court Case No. 2012-2105

Appeal from the Ohio Board of Tax Appeals Case No. 2009-K-1010

MERIT BRIEF OF APPELLEES

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I. STATEMENT OF FACTS AND THE CASE

Introduction and Levy of the Worthington Income Tax

The facts of this case are undisputed, and this appeal concerns the single legal issue of whether the Board of Tax Appeals (the "BTA") properly determined that the definition of "net profits" in the City of Worthington's ordinance exceeded the limitations imposed on the taxing power of municipalities in Revised Code Chapter 718. Mr. James L. Gesler and Ms. Angeline O. Gesler (the "Appellants," each an "Appellant") have been residents of Worthington since 1996. Appellants' Br. at 1. The City of Worthington ("Worthington") first levied a municipal income tax in 1971 and since at least 1996, as it relates to residents, that tax has been levied on the net profits of all unincorporated businesses, professions or other activities conducted by residents of the city, among other things. Worthington Ord. 29-71, Appx. pp. 1-19 and Worthington Ord. 13-93, Appx. pp. 20-23. In 2003, the General Assembly amended R.C. Chapter 718, relating to municipal income taxes. 125th General Assembly, Am. Sub. H.B. 95, 150 Ohio Laws, Part I, 396, 628-645. These revisions imposed new limits on the powers of municipalities to levy income taxes for the purpose of enhancing uniformity in the definition of net profit among the state's many municipalities. Legislative Service Commission, Final Analysis, 125th General Assembly, Am.Sub.H.B. 95, Appx. pgs. 47-49. On December 6, 2004 Worthington amended its income tax ordinances, and many of the changes from Am.Sub.H.B. 95 were incorporated into its amended ordinances, effective January 1, 2004. Worthington Ord. 53-2004, Appx. pp. 50-78.

Appellant's Income

Appellant Mr. Gesler was a certified public accountant and operated an advisory services business as a sole proprietor until his retirement on December 31, 2007. Appellants' Br. at 1.

His income from this business was reported as net profits on Schedule C of his federal income tax returns Form 1040. Appellants' Br. at 2. These amounts totaled \$649,606 in tax year 2005, \$1,118,030 in tax year 2006, and \$1,201,132 in tax year 2007, and were reported on the Appellants' Worthington Tax Forms No. 37 for tax years 2005, 2006 and 2007, respectively. Appellants' Br. at 2. Between 1997 and 1999, two of Mr. Gesler's clients compensated him by granting him options to purchase stock in each client's corporation, though he was never an officer or employee of either client. Appellants' Br. at 2. These stock options entitled the Appellant to purchase a fixed number of shares of the client's stock at a set price (the "strike price") on or before a certain date. When Mr. Gesler exercised the stock options to purchase the stock at a price below the prevailing market price for that stock, the difference between the low strike price and the higher market price of the stock purchased was treated as ordinary income for federal income tax purposes. This income was reported on the Appellants' federal Schedules C, and Forms 37 during the years in which exercises of the stock options took place, tax years 2005, 2006 and 2007, and the Appellant paid Worthington tax accordingly. Appellants' Br. at 2.

Appellant's Appeals

On March 17, 2008, Mr. Gesler met with Worthington's finance assistant to dispute the taxable status of Schedule C income, and on March 18, 2008 the finance assistant sent a letter to the Appellants indicating Worthington's determination that Schedule C income was taxable. See Letter dated March 18, 2008, Appx. pp. 79-80. After filing their 2007 return, Appellants sought refund of the tax paid to Worthington for taxable years 2005, 2006 and 2007. Appellants' Br. at 2. The City of Worthington Income Tax Board of Appeals (the "MBOA") convened hearings relating to the Appellants' refund claims on June 23, 2008, Appx. p. 82 and again on January 14, 2009. Appx. pp. 83-84. The MBOA issued a decision on April 23, 2009 denying the

Appellants' claimed refund. Appx. p. 85. The Appellants appealed the decision of the MBOA to the BTA, which ruled that although Codified Ord. 1701.15 as written did not include schedule C income within the definition of "net profit" for purposes of the Worthington income tax, Worthington was prevented by adopting such a definition by R.C. Chapter 718. The BTA likewise denied the Appellants' refund in its decision dated November 16, 2012, Appx. pp. 86-91 and the present appeal ensued.

II. LAW AND ARGUMENT

This Court should affirm the decision of the BTA because it was reasonable, lawful and in accordance with this Court's precedent in *Fisher v. Neusser*, 74 Ohio St.3d 506 (1996) and *Angell v. Toledo*, 153 Ohio St. 179 (1952), syllabus 1. This Court will affirm a decision of the BTA if that decision is "reasonable and lawful." *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054, ¶23, citing *Columbus City School Dist. Bd. of Edn. v. Zaino*, 90 Ohio St.3d 496, 497 (2001) and R.C. 5717.04. In this case, the BTA found that R.C. 718.01(G)(1) provides that for a taxpayer operating as a sole proprietorship, no municipal corporation may tax an amount other than the net profit required to be reported by the taxpayer on Schedule C or Schedule F and that R.C. 718.01(A)(7) in turn defines net profit for an individual as that individual's profit required to be reported on Schedule C, Schedule E or Schedule F. BTA decision 2009-K-1010, Appx. p. 90. The consequence of this ruling is that although Worthington adopted a contrary definition of "net profit" in Codified Ord. 1701.15 that encompasses only net profits "other than amounts required to be reported on schedule C, schedule E, or Schedule F", the definitions provided in R.C. 718.01(G)(1) and R.C. 718.01(A)(7) must apply to Worthington's tax levied on net profits in Codified Ord. 1703.01(c)(1). Appx. p. 58. For the reasons described below, these

determinations by the BTA were both reasonable and lawful, and the Appellants' refund was properly denied.

A. The Board of Tax Appeals Properly Applied R.C. Chapter 718 to Find that the Application of Codified Ord. 1701.15 as Written Would be Unlawful.

The General Assembly has the power to restrict municipal taxing powers and because it adopted definitions of "net profit" in R.C. 718.01(G)(1) and R.C. 718.01(A)(7) that are contrary to the definition of "net profits" adopted by Worthington in Codified Ord. 1701.15, the BTA's could not apply Codified Ord. 1701.15 as written and its decision was reasonable and lawful. The Ohio Constitution provides that the General Assembly may restrict municipalities' power of taxation by general laws. Ohio Constitution, Article XIII, Section 6. It also provides that laws may be passed to limit the power of municipalities to levy taxes. Ohio Constitution, Article XVIII, Section 13. This Court has recognized that the power of municipalities to levy taxes is "subject to the power of the General Assembly to limit the power of municipalities to levy taxes under Section 13 of Article XVIII or Section 6 of Article XIII of the Ohio Constitution." *Angell v. Toledo*, 153 Ohio St. 179 (1952), paragraph 1 of syllabus. The General Assembly restricted and limited the municipal power of taxation by specifically defining the base of the municipal tax on "net profits" in R.C. 718.01(G)(1) and R.C. 718.01(A)(7) and mandating that no municipality tax an amount other than net profits as so defined. R.C. 718.01(D) and 718.01(G)(1). Municipal laws cannot conflict with the state's general law, *Fisher v. Neusser*, 74 Ohio St.3d 506, 507 (1996), and in effect, the Appellants argue that the definition of the tax base used in a municipal ordinance must prevail over a conflicting provision of the state's general law. However no matter how clearly it is written, the definition in a municipal ordinance cannot be enforced in contravention of the General Assembly's restrictions in the Revised Code.

Because it does not address conflicting definitions of a term, the Appellants' reliance on *Bosher v. Euclid Income Tax Bd. of Rev.*, 99 Ohio St.3d 330, 2003-Ohio-3886 is misplaced. In *Bosher*, the taxpayer won the Ohio lottery, and the parties disagreed over whether lottery winnings constituted "taxable income" under the applicable ordinance. The Court in *Bosher* construed the taxing authorities' argument to be that the definition provided by the ordinance encompassed "monetary profit derived from all activities or undertakings that are not specifically exempted." *Bosher*, 2003-Ohio-3886, at ¶12. The Court narrowly construed the definition in the ordinance itself to include only employee compensation and "business-related activity or activities undertaken for profit[.]" and found the taxpayer's income was not taxable because playing the lottery did not satisfy those criteria. *Bosher*, 2003-Ohio-3886, at ¶15. Whether a contrary definition of "taxable income" was provided in R.C. Chapter 718 or elsewhere in Ohio law was not before the Court. Because the definition Worthington adopted in Codified Ord. 1701.15 is in direct conflict with R.C. 718.01(A)(7), R.C. 718.01(D) and R.C. 718.01(G)(1), the BTA's finding that the definition of "net profits" in Codified Ord. 1701.15 as written cannot be enforced must be affirmed as reasonable and lawful.

B. The Board of Tax Appeals Rightly Concluded that the City of Worthington Income Tax is Imposed Properly on All Net Profits of Residents, as Defined by Revised Code Chapter 718.

1. Worthington Has Levied a Tax on Compensation and Net Profits of its Residents.

During the taxable years at issue, Worthington levied its income tax on all net profits earned by residents and on all other compensation of residents. The BTA did not address the tax Worthington levied on all "other compensation earned on and after January 1, 2004, by residents of the City" provided in former Codified Ord. 1703.01(a), although this argument was raised in the briefs before the BTA and provided an equally suitable basis for the MBOA to conclude that

Mr. Gesler's stock option compensation was taxable by Worthington. Instead, the BTA based its ruling solely on the tax levied in former Codified Ord. 1703.01(c)(1) "On the net profits earned on and after January 1, 2004, of all unincorporated businesses, professions or other activities conducted by residents of the City." Appx. p. 58. The Appellants contend that Worthington failed to exercise its municipal taxing power, and that the BTA interpreted R.C. 718.01 "to be a taxing ordinance for the City of Worthington." Appellants' Br. at 14. However, Codified Ord. 1703.01(c)(1) unambiguously demonstrates that Worthington acted legislatively to adopt an ordinance to levy a tax on the net profits from the operation of unincorporated businesses or professions earned by residents of the city during the taxable years at issue. Appx. p. 58.

2. Worthington Codified Ordinance 1701.15 and R.C. 718.01 Contain Conflicting Definitions of "Net Profit".

Because the base of the tax in Codified Ord. 1703.01(c)(1), "net profit," was defined by Codified Ord. 1701.15 in a manner in conflict with the general law, the BTA rightly determined that the definitions of that term provided in R.C. 718.01(G)(1) and R.C. 718.01(A)(7) restricted Worthington from enforcing a contrary definition in Codified Ord. 1701.15. This Court has observed that Ohio municipalities "have the right to exercise all powers of local self-government and may adopt and enforce such local regulations that are not in conflict with the general law." *Fisher v. Neusser*, 74 Ohio St.3d 506, 507 (1996), quoting *Thompson v. Cincinnati*, 2 Ohio St.2d 292, 294, 208 N.E.2d 747, 749-750 (1965). R.C. 718.01(G)(1)(2008) provided:

In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, **no municipal corporation may tax** or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, **an amount other than the**

net profit required to be reported by the taxpayer on schedule C or F from such sole proprietorship for the taxable year.

(emphasis added). R.C. 718.01(A)(7) went on to define “net profit” in the following terms:

For taxable years beginning on or after January 1, 2004, “net profit” for a taxpayer other than an individual means adjusted federal taxable income and **“net profit” for a taxpayer who is an individual means the individual’s profit,** other than amounts described in division (F) of this section, **required to be reported on schedule C, schedule E or schedule F.**^[1]

(emphasis added). However former Codified Ord. 1701.15 defined “net profit” in the following terms:

“Net profit” means for a taxpayer other than an individual, the adjusted federal taxable income and “net profit” for a taxpayer who is an individual means the individual’s profit, **other than amounts required to be reported on schedule C, schedule E, or schedule F.**

(emphasis added). Appx. p. 55. The schedules C, E and F referenced in these conflicting definitions were not defined in former Codified Ord. 1701.15, but were defined in R.C. 718.01(A)(3), (12) and (13) respectively, as the schedules filed pursuant to the Internal Revenue Code. These schedules are titled “Profit or Loss From Business”, “Supplemental Income and Loss (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)” and “Profit or Loss from Farming,” respectively. See Appx. pp. 92-97.

¹ The amounts described in R.C. 718.01(F) effective in 2008 included deductions an individual is required to report on federal form 2106, which relates to employee business expenses.

R.C. 718.01(G)(1) prohibits a municipal tax on anything other than net profits from a sole proprietorship that are required to be reported on schedules C or F, consistent with R.C. 718.01(A)(7). The definition provided in R.C. 718.01(A)(7) expressly requires net profit to include amounts required to be included in schedule C, E and F. In contrast, the definition provided in Codified Ord. 1701.15 would prohibit the inclusion in net profit of any amounts required to be included in schedule C, E or F. The Appellants have conceded that the effect of R.C. 718.01 is to require municipal tax ordinances to satisfy certain uniformity criteria in order to be valid. Appellants Br. at 15. Thus, the BTA's determinations that the two definitions were in conflict with one another was reasonable and lawful, and former Codified Ord. 1701.15 was rightly found to be in conflict with the general law provided in R.C. Chapter 718.

3. R.C. 718.01(D) Prohibits Exempting Schedule C Income from Net Profits.

In addition to the definitions of net profit provided in R.C. 718.01(A)(7) and R.C. 718.01(G)(1), another provision of R.C. Chapter 718 requires schedule C income to be included in the tax base for Worthington's municipal income tax. R.C. 718.01(D)(1)(2008) provided: "Except as otherwise provided in this section, no municipal corporation shall exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession." R.C. 718.01(E)(1) goes on to permit municipalities to exempt from the tax income from stock options and nonqualified deferred compensation plans, while R.C. 718.01(F) prevents a taxpayer from being taxed on certain income twice by allowing a deduction for items included in taxable income but deducted on form 2106 and added back by a municipality, and R.C. 718.01(H)(10) and R.C. 718.03 provide additional exemptions from the qualifying wages of an employee, which are not applicable because the Appellant operated as a sole proprietor. No provision of R.C. Chapter 718 allows a municipality to exempt from tax the

net profits of a business or profession reported on schedule C. The applicability of R.C. 718.01(D) was raised in the Appellee's brief before the BTA and although the BTA did not address this provision, it is consistent with the BTA's determination that there was no exemption from tax in the applicable Worthington Ordinances for schedule C income, and provides an additional basis for affirming the BTA's decision.

4. Worthington Codified Ordinance 101.08 Requires that Codified Ordinance 1701.15 Be Severed and that Codified Ordinance 1703.01(c)(1) Remain Effective.

The BTA rightly found that the definition of "net profit" in Codified Ord. 1701.15 was properly severed, leaving intact the remainder of the levy of Worthington's tax on net profits. Worthington Codified Ordinance 101.08 provides:

If any provision of a section of the Codified Ordinances or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

Appx. p. 98. The Appellant contends that Worthington did not exercise its taxing power to tax the schedule C income of the Appellants, though they concede that Worthington did exercise its legislative power to tax "non-schedule C income". Appellants' Br. at 14. These contentions arise as the result of a fundamentally flawed reading of Codified Ordinance 1703.01(c)(1), which levies the tax on net profit from a business or profession.

The subject matter of the tax levied in Codified Ord. 1703.01(c)(1) is the net profits from the unincorporated business or profession itself. The BTA merely determined that the means Worthington used to define "net profit" in Codified Ord. 1701.15 conflicted with the definition

required by R.C. 718.01(G)(1) and provided in R.C. 718.01(A)(7) and were therefore unenforceable. The BTA consequently rendered the definition of "net profit" in 1701.15 unenforceable, but left intact the levy of the tax in 1703.01(c)(1). Consistent with Codified Ord. 101.08, the other provisions of the tax levied on net profits could be given effect by relying upon an alternative definition of "net profit." The unenforceability of the definition of net profit in Codified Ord. 1701.15 did nothing to the remaining portions of the ordinance, and the tax still applied to the net profits of Appellant Mr. Gesler's advisory business. The BTA's decision therefore should be affirmed as reasonable and lawful.

C. The Appellants Have Been Afforded Procedural and Substantive Due Process Protections Consistent With the Requirements of the United States Constitution.

1. Worthington Satisfied the Appellants' Procedural Due Process Rights.

The Appellants were provided meaningful backward-looking relief, satisfying Worthington's obligation to provide them with procedural due process under the Fourteenth Amendment of the United States Constitution. Where a taxpayer has paid a tax and contests that tax liability, a state is obligated to provide meaningful backward-looking relief in order to comply with the requirements of the due process clause. *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990). The Supreme Court has held that in a refund action a state must provide taxpayers with a fair opportunity to challenge the accuracy and the legal validity of the tax obligations, as well as a clear and certain remedy for any erroneous or unlawful tax collection. *McKesson*, 496 U.S. at 39. Worthington provided the Appellants with a hearing before its MBOA on June 23, 2008. Appx. p. 82; *see* Codified Ord. 1706.01, Appx. p. 72. Worthington subsequently allowed the Appellants to reconvene the hearing at a later date to present additional arguments and evidence challenging the tax. Appx.

pp. 83-84. The Appellants were afforded multiple opportunities to challenge the accuracy and legal validity of its tax obligations before the MBOA, the BTA and now this Court. Worthington's Tax Ordinances provide for refunds of overpaid tax where proper written requests are presented to the tax administrator, thus allowing a remedy for aggrieved taxpayers. Codified Ord. 1703.04(e) and 1703.05, Appx. pp. 62-63. Therefore Worthington, and by extension the State of Ohio, have more than satisfied their procedural due process obligations with respect to the Appellants' challenge of the tax at issue.

2. Substantive Due Process is Satisfied.

Worthington's application of the definition of "net profits: provided in R.C. 718.01(A)(7) rather than that provided in Codified Ord. 1701.15, under the circumstances presented in this case, was not arbitrary, unforeseeable or applied retroactively and therefore did not give rise to a substantive due process violation. The United States Supreme Court has recognized that the purpose of the due process clause is to protect people from the arbitrary exercise of government power. *Slochower v. Bd. of Higher Ed. of New York City*, 350 U.S. 551, 559, 76 S.Ct. 637 (1956), quoting *Ohio Bell Tel. Co. v. Public Utils. Comm*, 301 U.S. 292, 302(1937). However, because there is a lack of meaningful guideposts in the area of substantive due process, the U.S. Supreme Court has sought to limit the expansion of substantive due process rights. *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52, 129 S. Ct. 2308, 2332 (2009), quoting *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S.Ct. 1061 (1992). However the U.S. Supreme Court also has acknowledged that "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 196, 121 S. Ct. 1446, 149 L.Ed.2d 391 (2001), quoting *Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895, 81 S.Ct.

1743, 6 L.Ed.2d 1230 (1961). Therefore the determination of whether a government official has violated the due process rights of an individual necessarily turns on the facts and circumstances of the particular case.

In this case the Appellants did not violate any provision of Codified Ord. 1713.01 relating to the failure to file or pay tax under the Worthington Ordinances. To the contrary, the Appellants paid, and then sought refund of, the tax. Therefore the liberty interests of the Appellants are not before this Court. As it relates to their property interests, the Appellants did not rely on the definition of net profit provided in Codified Ord. 1701.15; they paid the tax levied in Codified Ord. 1703.01(c)(1) based on the definition provided in R.C. 718.01(A)(7) and only subsequently sought a refund of the tax. Worthington has consistently and repeatedly stated to the Appellants that its bases for denying the refunds at issue were the result of the definitions provided in R.C. 718.01 and the prohibition on exempting schedule C income from the definition of net profit provided in R.C. 718.01(D). See Letter of March 18, 2008, Appx. pp. 79-81 and Letter of June 25, 2008, Appx. pp. 106-108. Furthermore, below the headings for "Cross References" in the Worthington Tax Ordinances in Chapters 1701 and 1703, specific reference is made to "Municipal income taxes – see Ohio R.C. Ch. 718". Appx. pgs. 52 and 58. The Appellants therefore the ordinances themselves provided notice of the existence of state law governing municipal income taxation. Even without this specific reference, citizens are charged with the duty of knowing and complying with the laws – including the tax laws – of this state. *State v. Pinkney*, 36 Ohio St. 3d 190, 198 (1988); *Carlisle Geauga Co. v. Tracy*, BTA No. 94-R-1244, unreported (July 7, 1995), Appx. pp. 99-102. This is particularly true in light of the Appellant's status as a former certified public accountant. Worthington, its employees and residents are required to comply not only with the city's own laws, but with the laws of Ohio.

Any assertion that Worthington, its employees or residents had a duty to follow a municipal ordinance in violation of state law would be absurd. Under these circumstances, the acts of Worthington and its employees were required by law, were not arbitrary, and their interpretation of the law was completely foreseeable and was or should have been known to the Appellants.

3. The Tax Levied in Codified Ordinance 1703.01(c)(1) Was Not Unconstitutionally Vague.

Worthington's tax levy in Codified Ord. 1703.01(c)(1) was sufficiently clear to levy a tax on net profits within the constraints of the Fourteenth Amendment of the United States Constitution because this Court has recognized that tax laws of one level of government may rely on definitions provided in the substantive tax law of another level of government. This Court faced a challenge similar to the one asserted by the Appellants in *Buckley v. Wilkins*, 105 Ohio St.3d 350, 2005-Ohio-2166, and ruled that state tax law could incorporate by reference all definitions provided in the Internal Revenue Code. In *Buckley*, the taxpayers claimed that they owed no Ohio income tax because, among other reasons, the tax was imposed on "adjusted gross income" and that R.C. 5747.01 defined this and other terms in such a vague manner as to violate the Due Process Clause of the U.S. Constitution. The provision of R.C. 5747.01 in question read: "Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to federal income taxes."

The Court observed in *Buckley* that the Due Process Clause does not require scientific precision and "it permits a statute's certainty to be ascertained by application of commonly accepted tools of judicial construction, with courts indulging every reasonable interpretation in favor of finding the statute constitutional." *Buckley*, 2005-Ohio-2166 at ¶19, quoting *Perez v. Cleveland*, 78 Ohio St.3d 376, 378-79, 678 N.E.2d 537 (1997). The Court went on to hold that

the language linking definitions for purposes of R.C. Chapter 5747 to federal definitions for the same terms was not unconstitutionally vague, and actually worked to the advantage of taxpayers because it operated "to eliminate confusion for taxpayers and tax collectors alike by providing both groups with uniform terms that apply to both state and federal tax laws." *Buckley*, 2005-Ohio-2166 at ¶20. In similar fashion, the limitations and restrictions R.C. Chapter 718 imposes on municipalities in the imposition of income taxes, and in particular the definition of "net profit" provided in R.C. 718.01(A)(7), help to provide taxpayers and municipalities a uniform term that applies under both state and municipal tax laws. As mentioned above, the headings in Chapters 1701 and 1703 of the Codified Ordinances of Worthington even provided specific reference to R.C. Chapter 718, facilitating awareness of that uniformity. Appx. pgs. 52 and 58.

Just as jurists are required by *Perez* to indulge every reasonable interpretation to find a statute is constitutional by use of accepted tools of judicial construction, so too should municipal taxing authorities who have a duty to observe both the laws of their municipalities and the laws of this state be afforded latitude in their construction of applicable law. The Appellee employees of Worthington construed the income tax levied on net profits in Codified Ord. 1703.01(c)(1) as relying upon the definition of "net profit" provided by state law, and were required to do so in order to the levy ordinance as legal. *See* Codified Ord. 101.08, Appx. p. 98, and R.C. 1.50. The very fact that two tribunals thus far have affirmed their interpretation of the law suggests that construction is not so unprecedented or unforeseeable as to give rise to a due process violation. *See Bouie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697 (1964) (finding court's unforeseeable and novel construction of trespass statute against protesters, applied retroactively, deprived defendants of due process). The Appellants' challenge to Worthington's application of the R.C.

718.01 definitions to Codified Ord. 1703.01 on the grounds of vagueness therefore must fail, based on relevant U.S. Supreme Court case law and this Court's precedent in *Buckley v. Wilkins*.

D. The Appellees, Municipal Employees, Have Standing to Respond to a Challenge to the Legality of a Municipal Tax Levy.

1. The Appellee Employees Have Standing to Respond to a Legal Challenge by the Appellants.

Worthington and its Appellee employees, the City Manager and Finance Director, have standing and an affirmative duty to respond to the legal challenge filed by the Appellants, and the Appellants have cited no authority stating a proposition of law to the contrary. The outcome in *Lyden v. Tracy*, 76 Ohio St.3d 66 (1996) resulted from the specific application of R.C. 5739.16(B) to an administrative regulation and has no application to this case. The Appellants argue that Worthington's City Manager and Finance Director acted beyond the authority provided them by relying on the definition of "net profit" provided in R.C. 718.01(A)(7) in administering the tax levied under 1703.01(c)(1). However the City Manager is required by Worthington Charter Section 2.08, Appx. p. 103, to perform the duties set forth within the city Charter and ordinances, and the directors of the various city departments are required to "observe and enforce the provisions of this Charter and the ordinances of this Municipality." Charter Section 3.05, Appx. p. 104. Worthington levies a tax on net profits under Codified Ord. 1703.01(c)(1), and the Appellee employees are charged with administering and collecting that tax. The Appellants have challenged the legality of that levy, and therefore it is the obligation of the Appellee employees to respond to that challenge under Charter sections 2.08 and 3.05. Appx. pgs. 103 and 104, respectively. The Appellee employees have standing because their actions in this matter were and are taken to fulfill their statutory duty to enforce the tax levy.

2. The Appellee Employees Have a Duty to Enforce All City Ordinances to the Extent Possible.

The Appellee employees have a duty to enforce Worthington ordinances, but compliance with this duty requires them to obey the laws of the State of Ohio. The Oath of Office to which the Appellee employees are sworn requires them to obey the laws of the State of Ohio, as well as the laws of Worthington. Worthington Charter Section 9.01, Appx. p. 105. Because Codified Ord. 1703.01(c)(1) levies a tax on the net profits of an unincorporated business or profession, and Codified Ord. 1701.15 defines “net profits” in a way that is contrary to R.C. 718.01(A)(7), (D) and (G)(1), these employees were faced with conflicting legal duties. They labored in good faith to resolve these conflicting obligations in compliance with applicable law, and their efforts were reviewed and approved by the MBOA and the BTA. The Appellants argue that requiring municipal tax ordinances to adhere to the provisions of conflicting provisions of R.C. Chapter 718 would “introduce disorder into the municipal tax system throughout Ohio...” with the “potential of subjecting Ohio citizens to a great deal of harm.” However the contrary would be the case – disorder and harm would ensue if cities were free to pass ordinances that conflict with the limitations and restrictions imposed in R.C. Chapter 718. Individuals living in one jurisdiction and working in another or multiple other jurisdictions could find themselves subject to a multitude of differing and inconsistent tax obligations. R.C. Chapter 718 currently provides a roadmap for compliance with certain and specified points of variation. This Court should affirm the BTA and leave that roadmap intact, by finding that the Appellee employees have standing to defend the levy of the tax in Codified Ord. 1703.01(c)(1) and that the Appellee employees properly discharged their duties according to law.

E. The Board of Tax Appeals Properly Found There Was No Exemption from Tax for Stock Option Income in the Worthington Ordinances at Issue.

The BTA properly concluded that no reasonable reading of either Codified Ord. 1701.15

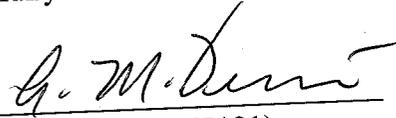
or R.C. 718.01(A)(7) provides an exemption from net profits specific to income from stock options. This Court repeatedly has held that statutes relating to exemption or exception from taxation are to be strictly construed, and one claiming such exemption or exception must affirmatively establish his right thereto. *Natl. Tube Co. v. Glander*, 157 Ohio St. 407 (1952), paragraph two of the syllabus; *Am. Soc. for Metals v. Limbach*, 59 Ohio St.3d 38, 40 (1991). R.C. 718.01(E)(1)(a) provides that municipalities “may, by ordinance or resolution, exempt from withholding and from a tax on income the following: (a) Compensation arising 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 * * *.”

However this exemption does not apply in this instance, because R.C. 718.01(E)(1) allows a municipality to offer exemptions from its tax on “compensation,” not its tax on “net profits.” Codified Ord. 1701.15 defines net profits for purposes of the tax levied in Codified Ord. 1703.01(c)(1) on net profits, and not the tax levied in Codified Ord. 1703.01(a) on wages, commissions and other compensation. Therefore if the Appellants contend that the definition of “net profits” in Codified Ord. 1701.15 incorporates into the levy on net profits an exemption from the tax levied on compensation, this is improper. This impropriety is further supported by the observation that in contrast to the definition of the tax base mandated in R.C. 718.01(D) and R.C. 718.01(G)(1), the exemption in R.C. 718.01(E)(1)(a) is phrased in permissive, rather than mandatory terms. Furthermore, the Worthington ordinance providing for tax exemptions, Codified Ord. 1707.02 (Appx. p. 73), includes no exemption for stock options, and the remaining Worthington tax ordinances make no mention of stock options whatsoever. See Worthington Ordinance 53-2004, Appx. pp. 50-78. The BTA therefore properly found no exemption from the taxes levied in Codified Ord. 1703.01 for income from stock options.

III. Conclusion

For the foregoing reasons, the decision of the BTA affirming the decision of the MBOA and denying the refund of the Appellants should be affirmed.

Respectfully submitted,

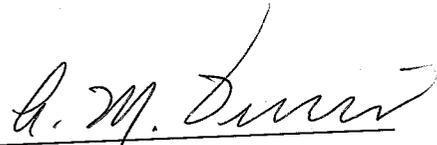


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Appeals and Stephen R. Gandee (Molly
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief was served upon David A. Froling, Vorys, Sater, Seymour and Pease, LLP, 52 East Gay Street, Columbus, Ohio 43215 by U.S. mail this 1st day of March, 2013.



Andrew M. Ferris

ORDINANCE NO. 29-71
(As Amended)

TO LEVY A TAX TO PROVIDE FUNDS FOR THE PURPOSE OF GENERAL MUNICIPAL OPERATIONS, MAINTENANCE, NEW EQUIPMENT, EXTENSION, ENLARGEMENT, AND IMPROVEMENT OF MUNICIPAL SERVICES AND FACILITIES AND CAPITAL IMPROVEMENTS ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY RESIDENTS OF THE CITY OF WORTHINGTON; ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS OF THE CITY OF WORTHINGTON FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF WORTHINGTON; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE CITY OF WORTHINGTON; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED IN THE CITY OF WORTHINGTON BY NON-RESIDENTS, AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF WORTHINGTON, REQUIRING THE FILING OF RETURNS AND FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE CITY OF WORTHINGTON; PROVIDING FOR THE AUDIT, COLLECTION, AND ENFORCEMENT OF SAID TAX; DECLARING VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES THEREFOR.

WHEREAS, the funds to be raised by the tax imposed by this ordinance are necessary for the operation of the daily activities of the City of Worthington; and,

WHEREAS, the City of Worthington, without said funds, would have to curtail the activities of its several departments to such an extent that the public peace, property, health and safety would be greatly and seriously jeopardized; and,

WHEREAS, it is necessary to raise revenues for the operation of several departments of government of the City of Worthington for the preservation of the public peace, property, health and safety;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, Franklin County, State of Ohio:

ORDINANCE NO. 241-71
(As Amended)

SECTION 1. Part Seventeen of the Codified Ordinances of the City of Worthington is hereby enacted to read as follows:

PART SEVENTEEN - REVENUE AND FINANCE CODE

TITLE ONE - Income Tax

CHAPTER 1701. Definitions

1701.01 APPLICATION.

As used in this Title Chapter, the following words shall have the meanings ascribed to them in this chapter, except as and if the context clearly indicates or requires a different meaning.

1701.02 ADMINISTRATOR.

"Administrator" means the individual designated by this ordinance to administer and enforce the provisions of this ordinance.

1701.03 ASSOCIATION.

"Association" means a partnership, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.

1701.04 BUSINESS.

"Business" means an enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity.

1701.05 CORPORATION.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country or dependency.

1701.06 EMPLOYEE.

"Employee" means one who works for wage, salary, commissions or other type of compensation in the service of an employer.

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(As Amended)

1701.07 EMPLOYER.

"Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.

1701.08 FISCAL YEAR.

"Fiscal Year" means an accounting period of twelve (12) months or less ending on any day other than December 31.

1701.09 GROSS RECEIPTS.

"Gross Receipts" means the total income from any source whatsoever.

1701.10 NET PROFITS.

"Net Profits" means the net gain from the operation of a business, profession, enterprise or other activity (whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit) after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this ordinance, federal, state or other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this ordinance.

1701.11 NON-RESIDENT INDIVIDUAL.

"Non-Resident Individual" means an individual who is not domiciled in the City of Worthington or whose usual place of abode is outside the City of Worthington.

1701.12 NON-RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Non-Resident Unincorporated Business Entity" means an unincorporated business entity not having an office or place of business within the City of Worthington.

1701.13 PERSON.

"Person" means every natural person, partnership,

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(As Amended)

fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof.

1701.14 PLACE OF BUSINESS.

"Place of Business" means any bona fide office (other than a mere statutory office), factory, warehouse or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance.

1701.15 RESIDENT INDIVIDUAL.

"Resident Individual" means any individual who is domiciled in the City of Worthington or whose usual place of abode is in the City of Worthington.

1701.16 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident Unincorporated Business Entity" means an unincorporated business entity having an office or place of business within the City of Worthington.

1701.17 SINGULAR AND PLURAL; GENDER.

The singular shall include the plural. The masculine gender shall include the feminine and the neuter genders.

1701.18 TAXABLE INCOME.

"Taxable Income" means wages, salaries, commissions, and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this ordinance.

1701.19 TAXABLE YEAR.

"Taxable Year" means the calendar year or fiscal year upon the basis of which the net profits are to be computed under this ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

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(As Amended)

1701.20 TAXPAYER.

A person, whether an individual, partnership, or association, or any corporation or other entity, required hereunder to file a return or pay a tax.

CHAPTER 1703. Imposition and Collection of Tax, Returns and Refunds

- 1703.01 Imposition of Tax
- 1703.02 Allocations of Net Profits
- 1703.03 Levy of Tax
- 1703.04 Return and Payment of Tax
- 1703.05 Amended Return and Refund for Overpayment
- 1703.06 Collection at Source
- 1703.07 Declarations

1703.01 IMPOSITION OF TAX.

To provide for the purposes of general municipal operations, maintenance, new equipment and capital improvements of the City of Worthington, there is hereby levied a tax at the rate of one (1) per centum per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after October 1, 1971, by residents of the City of Worthington.
- (b) On all salaries, wages, commissions and other compensation earned on and after October 1, 1971, by non-residents of the City of Worthington for work done or services performed or rendered in the City of Worthington.
- (c) (1) On the net profits earned on and after October 1, 1971, of all unincorporated businesses, professions, or other activities conducted by residents of the City of Worthington.
- (2) On the net profits earned on and after October 1, 1971, of all unincorporated businesses, professions, or other activities conducted in the City of Worthington by non-residents.

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- (3) For the purposes of Paragraphs (c)(1) and (c)(2) above, an association shall not be taxable as an entity, but any member thereof who is a resident of the City of Worthington shall be taxed individually on his entire share, whether distributed or not, of the annual net profits of the association, and any non-resident members thereof shall be taxed individually only on that portion of his share, whether distributed or not, of the annual net profits of the association as are derived from work done, services performed or rendered, and business or other activities conducted in the City of Worthington.
- (d) On the net profits on and after October 1, 1971, of all corporations, estates, trusts, and limited partnerships, derived from work done or services performed or rendered and business or other activities conducted in the City of Worthington, whether or not such corporations, estates, trusts, and limited partnerships, have their principal or any place of business located in the City of Worthington.

1703.02 ALLOCATIONS OF NET PROFITS.

- (a) In the taxation of income which is subject to the tax, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City of Worthington shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City of Worthington, then only such portion shall be considered as having a taxable situs in the City of Worthington for purposes of the tax. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the City of Worthington shall be con-

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considered as having a taxable situs in the City of Worthington for purposes of the tax in the same proportion as the average ratio of:

- (1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Worthington during the taxable period to the average net book value 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, 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 persons employed in the business or professions for services performed in the City of Worthington, to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;

- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

(b) In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted by the Administrator so as to produce such result.

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- (c) As used in this Title, "sales made in the City of Worthington" mean:
- (1) All sales of tangible personal property which is delivered within the City of Worthington regardless of where title passes if shipped or delivered from a stock of goods within the City of Worthington.
 - (2) All sales of tangible personal property which is delivered within the City of Worthington regardless of where title passes even though transported from a point outside the City of Worthington if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Worthington and the sales result from such solicitation or promotion.
 - (3) All sales of tangible personal property which is shipped from a place within the City of Worthington to purchasers outside the City of Worthington regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

1703.03 LEVY OF TAX.

Said tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned on and after October 1, 1971, and with respect to the net profits of business, professions or other activities earned on and after October 1, 1971. Provided, however, that where the fiscal year of the business, profession or other activity differs from the calendar year the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after October 1, 1971, to close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis. Where the fiscal year of a business, profession or other activity is other than a calendar year, in computing initial tax the profits of such taxpayer shall be

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determined by dividing the annual profits by twelve (12) and multiplying the quotient by the number of months within the period commencing October 1, 1971, and ending at the conclusion of said fiscal year.

1703.04 RETURN AND PAYMENT OF TAX.

(a) Each taxpayer who engages in business, or whose salaries, wages, commissions and other compensation are subject to the tax imposed by this ordinance shall, whether or not a tax be due thereon, make and file a return on or before April 15th of each year with the Department of Taxation on a form furnished by or obtainable from the Department of Taxation, setting forth the aggregate amount of salaries, wages, commissions and other compensation earned and/or net profits earned and/or gross income from such business less allowable expenses in the acquisition of such gross income earned during the preceding year and subject to the tax, together with such other pertinent information as the Administrator may require. Provided, however, that when the return is made for a fiscal or other period different from the calendar year, the return shall be made on or before the 15th day of the fourth month after the close of said fiscal year or other period.

(b) Each taxpayer whose salaries, wages, commissions and other compensation are subject to the tax imposed by this chapter may offset losses from any business or professional activity when conducted in this city or in any municipality that does not levy an income tax on net profits therefrom.

A husband and wife, in any taxable year, may elect to file separate or joint returns. If joint returns are filed, a husband or wife may offset losses from any business or professional activity when conducted in this city or in any municipality that does not levy an income tax on net profits therefrom.

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- (c) If a net operating loss has been sustained in any taxable year such losses may not be carried forward or backward to any other taxable year.
- (d) The taxpayer making a return shall at the time of the filing thereof, pay to the City of Worthington the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 1703.06 of this ordinance, or where any portion of said tax has been paid by the taxpayer pursuant to the provisions of Section 1705.07 of this ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 1707.01 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
- (e) A taxpayer who has overpaid his income tax in any taxable year may request a refund provided, however, there is no other tax liability and provided, further, that no amount less than one dollar (\$1.00) will be refunded or collected.
- (f) The Administrator shall have the authority to extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax Return. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

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1703.05 AMENDED RETURN AND REFUNDS FOR OVERPAYMENT.

Where an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 1703.04 (e), such amended return shall be on a form obtainable on request from the Department of Taxation. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City of Worthington tax liability, such taxpayer shall make and file an amended City of Worthington return showing income subject to the City of Worthington tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment. No refund shall be allowed unless a written request be presented to the Administrator within three (3) years of the date the taxes were due.

1703.06 COLLECTION AT SOURCE.

Each employer within or doing business within the City of Worthington, shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax of one (1) percent of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the quarter have been paid to the City of Worthington in accordance with the payment schedule prescribed by subsections (a), (b), and (c) hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a semi-monthly, monthly, or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

- (a) Semi-monthly payments of the taxes deducted are to be made by an employer if (1) the total taxes deducted in the prior calendar

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year were \$12,000 or more, or (2) the amount of taxes deducted for any month in the preceding quarter exceeded \$1000. Such payments shall be paid to the City of Worthington within five banking days after the fifteenth and the last day of each month.

(b) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than \$12,000 but more than \$1,199 or if the taxes withheld during any month for the preceding quarter exceeded \$100. Such payments shall be paid to the City of Worthington within fifteen days after the close of each calendar month. However, those taxes accumulated for the third month of the calendar quarter need not be paid until the last day of the month following such quarter.

(c) All employers not required to make semi-monthly or monthly payments of taxes withheld under (a) and (b) of this section shall make quarterly payments no later than the last day of the month following the end of each quarter.

Each employer who maintains a place of business in the City of Worthington and another branch within the metropolitan area of the City of Worthington shall also withhold the tax from the employees residing in the City of Worthington but working at the employer's metropolitan area branch, even though the payroll records and place of payment are outside the City of Worthington.

The employer shall make and file a return on a form furnished by the Department of Taxation, showing the amount of tax deducted by said employer from the salaries, wages, commissions or other compensation of any employee and paid by the employer to the City of Worthington. Such employer's return shall be accepted as the return required of an employee whose sole income subject to the tax under this title is the salaries, wages, commissions and other compensation returned by said employer.

Each employer on or before the 31st day of January, unless written request for thirty (30) days extension is made to and granted by the Administrator following any calendar year

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in which such deductions have been made, or should have been made by such employer, shall file with the Administrator an information return (Worthington Withholding Statement of Wages Paid, and Worthington Income Tax Withheld), for each employee from whom income tax has been or should have been withheld showing the name and address of the employee, the total amount of salaries, wages, commissions and other compensation paid said employee during the year, and the amount of City of Worthington income tax withheld from each employee.

Where a resident of the City of Worthington performs service for his employer in another municipality, which services are subject to withholding in the other municipality, the employer shall have the authority to reduce the withholding to the City of Worthington to the extent of the tax liability in the other municipality.

1703.07 DECLARATIONS.

Every person who anticipates any taxable income which is not subject to Section 1703.06 hereof, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 1703.01 (c) (1) and 1703.01 (c) (2) hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the City in accordance with Section 1703.06 hereof, such person need not file a declaration.

Such declaration shall be filed on or before April 15 of each year during the life of this ordinance, or on or before the 15th day of the fourth month the taxpayer becomes subject to tax for the first time. Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the fourth month after the beginning of each fiscal year or period.

Such a declaration shall be filed upon a form furnished by or obtainable from the Department of Taxation, provided, however, credit shall be taken for the City Tax to be withheld from any portion of such income. In accordance with provisions of Section 1703.06 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

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The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment day as provided for herein.

Such declarations of estimated tax to be paid the City of Worthington shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or before the 15th day of the seventh, ninth, and twelfth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

On or before the 15th day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Worthington shall be paid therewith in accordance with the provisions of Section 1705.04 hereof.

CHAPTER 1705. Powers and Duties of Administrator

- 1705.01 Duties of the Administrator
- 1705.02 Investigative Powers of the Administrator
- 1705.03 Tax Information Confidential
- 1705.04 Collection of Unpaid Taxes

1705.01 DUTIES OF THE ADMINISTRATOR.

(a) It shall be the duty of the Administrator to collect and receive the tax imposed by this Title in the manner prescribed by said Chapter, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of said payment.

(b) The Administrator is hereby charged with the administration and enforcement of the provisions of this Title and he is hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of said chapter, including provisions for the re-examination and correction of returns and payments.

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In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City of Worthington from the taxpayer based on any information in his possession and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

1705.02 INVESTIGATIVE POWERS OF THE ADMINISTRATOR.

The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or who the Administrator believes is subject to the provisions of this title for the purposes of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this title, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would have been returned for taxation or any transaction tending to affect such income and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

1705.03 TAX INFORMATION CONFIDENTIAL.

Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this title shall be confidential, except for official purposes, or except in accordance with proper judicial order, or except as hereinafter provided. The Administrator may furnish the Internal Revenue Service, Treasury Department of the United States, the Tax Commissioner of Ohio and the duly authorized income tax administrator of any other city or state with copies of the returns filed. The Administrator is also authorized to enter

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into agreements for the exchange of any information with any of the foregoing Federal, State or City officials. Any person divulging such information, except as hereinbefore authorized, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars (\$500) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

1705.04 COLLECTION OF UNPAID TAXES.

All taxes imposed by this Title shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable.

The Administrator is authorized to institute civil law suits to collect delinquent taxes due and owing the City of Worthington by virtue of the provisions of this Title. The Administrator or his delegate is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of State Statute of Limitations.

CHAPTER 1707. Credits and Exemptions; City
of Worthington Contracts

- 1707.01 Credits
- 1707.02 Exemptions
- 1707.03 City Contracts

1707.01 CREDITS.

Every individual taxpayer who resides in the City of Worthington but who received net profits, salaries, wages, commissions or other compensation for work done or services performed or rendered outside the City of Worthington, if it be made to appear that he has paid a municipal income tax or excise tax based on income, on such net profits, salaries, wages, commissions or compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such other municipality, this credit to be applied only to the extent of the tax assessed by this Title, by reason of such net profits, salaries, wages, commissions or compensation earned in such other municipality where such tax is paid.

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1707.02 EXEMPTIONS.

The provisions of this Title shall not be construed to tax the military pay or allowances of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

The tax provided for herein shall not be levied on the personal earnings of any natural person under 18 years of age.

1707.03 CONTRACT PROVISIONS.

No contract on behalf of the City of Worthington for works or improvements of the City of Worthington shall be binding or valid unless such contract contains the following provisions: "Said _____ hereby further agrees to withhold all City of Worthington income taxes due or payable under the provisions of Title One or Part Seventeen of the Codified Ordinances of the City of Worthington, Ohio, for wages, salaries, and commission paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City of Worthington income taxes due under said chapter for services performed under this contract."

CHAPTER 1709. Interest and Penalty

1709.01 Interest and Penalties

1709.01 INTEREST AND PENALTIES.

All taxes imposed by this Title and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of six (6) percent per annum, and the taxpayers upon whom said taxes are imposed by this Title shall be liable in addition, thereto, to a penalty of ten (10) percent of the amount of the unpaid tax. A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the Federal tax liability.

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CHAPTER 1711. Allocation of Funds

1711.01 Allocation of Funds

1711.01 ALLOCATION OF FUNDS.

The funds collected under the provisions of this Title shall be applied for the following purpose and in the following order, to wit:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Title and enforcing the provisions hereof.
- (b) Such part thereof as Council may appropriate to the General Fund for the purpose of paying the cost of General Governmental Operations.
- (c) Such part thereof as Council may appropriate for the purpose of paying the cost of maintenance of, and the purchase of new equipment, motorized or other.
- (d) Such part thereof as the Council may appropriate for the purpose of paying the cost of the acquisition, construction, repair and/or maintenance of streets and/or other permanent improvements.
- (e) In any event at least eighty (80) percent of all monies collected under the provisions of this ordinance shall be deposited in the Capital Improvements Fund for the purpose of acquiring, constructing, or maintaining any capital improvement or for the purpose of paying the debt service of any capital improvement.

CHAPTER 1713. Violations and Penalties

1713.01 Violations: Penalties

1713.01 VIOLATIONS: PENALTIES.

Any person subject to the provisions of this Title who shall fail, neglect or refuse to make any return or

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declaration, or any employer who shall fail, neglect, or refuse to deduct and withhold the taxes or pay the taxes imposed by this Title, or any taxpayer who shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this Ordinance, or any person who shall refuse to permit the Administrator, or his duly authorized agent or employee, to examine the books, records and papers of a taxpayer, or any person who shall knowingly make an incomplete, false, or fraudulent return, or who shall attempt to do anything whatever to avoid payment of the whole or any part of the tax under this Chapter, shall be deemed guilty of a misdemeanor and shall be fined not more than Two Hundred Fifty Dollars (\$250) for the first offense, and shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not more than ninety (90) days or both, for a second or subsequent offense. The failure of an employer or taxpayer to receive or procure a return or declaration form, shall not excuse him from making a return or declaration or paying the tax levied under this Title.

SECTION 2. That nothing in this Title shall be deemed to prevent the exercise of any of the powers and duties imposed on any officer or division of the City of Worthington by any person or agency, including another municipal corporation, with which the City of Worthington may contract for the administration and/or enforcement of the provisions of this Title, it being the intent hereof that all enforcement powers granted to any officer or division of the City of Worthington may be exercised by such contracting party.

SECTION 3. That if any sentence, clause, section or part of this ordinance, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance. It is hereby declared to be the intention of the Council of the City of Worthington that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

SECTION 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed August 9, 1971

John P. Coleman
President of Council

Attest:

Ann B. Breyer
Clerk of Council

Introduced June 14, 1971
Effective Date August 12, 1971

ORDINANCE NO. 13 - 93

To Amend Sections 1703.01 and 1703.06 of the Codified Ordinances of the City of Worthington to Provide for an Additional Sixty-five One Hundredths of One Percent (0.65%) Per Annum Levy on Income Commencing on the 1st day of January 1994 for the Purposes of Municipal Fire Department Operations and General Municipal Operations, Maintenance, New Equipment and Capital Improvements and to Amend Sections 1703.01 and 1703.03 of the Codified Ordinances of the City of Worthington to Provide for January 1, 1994 as the Effective Date of Such Additional Levy on Income.

WHEREAS, the City of Worthington currently levies a One Percent (1.00%) per annum tax on (1) all salaries, wages, commissions and other compensation earned by residents of the City; (2) all salaries, wages, commissions and other compensation earned by nonresidents of the City for work done or services performed or rendered in the City; (3) the net profits of all unincorporated businesses, professions or other activities conducted by residents of the City; (4) the net profits earned of all unincorporated businesses, professions or other activities conducted in the City by nonresidents; and (5) the net profits of all corporations, estates, and trusts derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations, estates, and trusts have their principal or any place of business located in the City; and

WHEREAS, the City of Worthington grants to every individual taxpayer who resides in the City a credit in the total amount of any income tax paid by such taxpayer to another municipality; and

WHEREAS, the City of Worthington has determined that it is necessary to increase the current rate of income tax levied, as set forth above, from One Percent (1.00%) to One and Sixty-five One Hundredths of One Percent (1.65%), while retaining the credit granted to individual resident taxpayers as set forth above, for the purposes of municipal fire department operations and general municipal operations, maintenance, new equipment and capital improvements;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Municipality of Worthington, Franklin County, State of Ohio:

SECTION 1. That effective January 1, 1994, Sections 1703.01, 1703.03 and 1703.06 of the Codified Ordinances of the City of Worthington be and the same hereby are amended to read as follows:

1703.01 IMPOSITION OF TAX.

To provide for the purposes of general fire department operations and general municipal operations, maintenance, new equipment and capital improvements of the City, there is hereby

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levied a tax at the rate of One and Sixty-five One Hundredths of One Percentum (1.65%) per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after January 1, 1994, by residents of the City;
- (b) On all salaries, wages, commissions and other compensation earned on and after January 1, 1994, by nonresidents of the City for work done or services performed or rendered in the City.
- (c)
 - (1) On the net profits earned on and after January 1, 1994, of all unincorporated businesses, professions or other activities conducted by residents of the City.
 - (2) On the net profits earned on and after January 1, 1994, of all unincorporated businesses, professions or other activities conducted in the City by nonresidents.
 - (3) For the purposes of subsections (c)(1) and (c)(2) above, an association shall not be taxable as an entity, but any member thereof who is a resident of the City shall be taxed individually on his entire share, whether distributed or not, of the annual net profits of the association and any nonresident member thereof shall be taxed individually only on that portion of his share, whether distributed or not, of the annual net profits of the association as is derived from work done, services performed or rendered and business or other activities conducted in the City.
- (d) On the net profits on and after January 1, 1994, of all corporations, estates, and trusts derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations, estates, and trusts have their principal or any place of business located in the City.

1703.03 LEVY OF TAX.

Tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned on and after January 1, 1994, and with respect to the net profits of business, professions or other activities earned on and after January 1, 1994. Provided, however, that where the fiscal years of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after January 1, 1994, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on his fiscal year basis. Where the fiscal year of a business, profession or other activity is other than a calendar year, in computing initial tax the profits of such taxpayer shall be determined by dividing the annual profits by twelve and multiplying the quotient by the number of months within the period commencing January 1, 1994, and ending at the conclusion of such fiscal year.

1703.06 COLLECTION AT SOURCE.

Each employer within or doing business within the City shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax of One and Sixty-five One Hundredths of One Percent (1.65%) of the gross salaries, wages, commissions or other compensation due by the employer to the employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the quarter have been paid to the City in accordance with the payment schedule prescribed by subsections (a), (b) and (c) hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

Every employer or officer of a corporation is deemed to be a trustee for this Municipality in collecting and holding the tax required under the ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a semimonthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

- (a) Semimonthly payments of the taxes deducted are to be made by an employer if:
 - (1) The total taxes deducted in the prior calendar year were twelve thousand dollars (\$12,000) or more; or
 - (2) The amount of taxes deducted for any month in the preceding quarter exceeded one thousand dollars (\$1,000).

Such payment shall be paid to the City within five banking days after the fifteenth and the last day of each month.

- (b) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than twelve thousand dollars (\$12,000) but more than one thousand one hundred ninety-nine dollars (\$1,199) or if the taxes withheld during any month of the preceding quarter exceeded one hundred dollars (\$100). Such payments shall be paid to the City within fifteen days after the close of each calendar month. However, those taxes accumulated for the third month of the calendar quarter need not be paid until the last day of the month following such quarter.
- (c) All employers not required to make semimonthly or monthly payments of taxes withheld under subsections (a) and (b) of this section shall make quarterly payments no later than the last day of the month following the end of each quarter.

Each employer who maintains a place of business in the City and another branch within the metropolitan area of the City shall also withhold the tax from the employees residing in the City but

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working at the employer's metropolitan area branch, even though the payroll records and place of payment are outside the City.

The employer shall make and file a return on a form furnished by the Department of Taxation, showing the amount of tax deducted by the employer from the salaries, wages, commissions or other compensation of any employee and paid by the employer to the City. Such employer's return shall be accepted as the return required of an employee whose sole income subject to the tax under this Taxation Code is the salaries, wages, commissions and other compensation returned by the employer.

Each employer on or before January 31, unless written request for thirty days extension is made to and granted by the Administrator following any calendar year in which such deductions have been made or should have been made by such employer shall file with the Administrator an information return (Worthington Withholding Statement of Wages Paid, and Worthington Income Tax Withheld), for each employee from whom income tax has been or should have been withheld, showing the name and address of the employee, the total amount of salaries, wages, commissions and other compensation paid the employee during the year, and the amount of City income tax withheld from each employee.

Where a resident of the City performs service for his employer in another municipality, which services are subject to withholding in the other municipality, the employer shall have the authority to reduce the withholding to the City to the extent of the tax liability in the other municipality.

The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due.

SECTION 2. That the provisions of "Part Seventeen - Taxation Code" of the Codified Ordinances of the City of Worthington now in effect and not specifically amended by this Ordinance shall remain in full force and effect.

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed by the Electorate on the
4th day of May 1993:

President of City Council

Attest:

Clerk of City Council

Introduced February 1, 1993



Final Analysis

Jennifer Parker,
Bill Rowland,
and other LSC staff

Legislative Service Commission

Am. Sub. H.B. 95*
125th General Assembly
(As Passed by the General Assembly)

Rep. Calvert

Sens. Harris, DiDonato, Carnes, Jacobson, Blessing, Goodman, Fingerhut,
Miller, Mallory, Prentiss, White

Effective date: June 26, 2003; certain provisions effective September 26, 2003;
certain provisions effective on other dates; certain items vetoed

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DEPARTMENT OF ADMINISTRATIVE SERVICES

- Codifies the Vehicle Liability Fund.
- Requires the Director of Administrative Services, through the Office of Risk Management, to operate the Vehicle Liability Fund on an actuarially sound basis, including maintaining reserves necessary and adequate to cover potential liability claims, expenses, fees, or damages.
- Requires contributions from state agencies and state bodies for the purpose of purchasing liability insurance or administering self-insurance programs to be deposited to the credit of the Vehicle Liability Fund.



- Grants the Tax Commissioner rulemaking authority with respect to the Ohio Business Gateway.
- Creates the Ohio Business Gateway Steering Committee.
- Prohibits municipalities from taxing businesses' net profits using any base other than adjusted federal taxable income, but this restriction does not apply to electric companies, telephone companies, or sole proprietors.
- Authorizes municipalities to exempt from taxation certain compensation attributable to stock options and nonqualified deferred compensation plans.
- Specifies that net profit from rental activity not constituting a business or profession is subject to tax only by the municipal corporation in which the property that generated the profit is located.
- Provides that with respect to net profit from rental activity required to be reported on Internal Revenue Code Schedule E, or with respect to net profit from a sole proprietorship required to be reported on Internal Revenue Code Schedule C or F, municipalities are prohibited from using as the tax base any amount other than the net profit from rental activities or from the sole proprietorship required to be reported by the taxpayer on Schedule E, C, or F for the taxable year.
- Clarifies the types of intangible income that are exempt from municipal taxation.
- Requires municipalities to extend a tax credit to taxpayers for certain losses associated with nonqualified deferred compensation plans.
- Eliminates a business' option of apportioning net profit for purposes of municipal income taxation on the basis of its books and records and requires that taxpayers apportion on the basis of the existing three-part statutory formula.
- Requires that businesses use the original cost of their real and tangible personal property rather than the property's net book value when apportioning net profits among different municipalities.
- Extends a tax credit to S corporation shareholders whose incomes from an S corporation are subject to taxation by multiple municipalities.



The act requires that, each year, the Governor select a member of the Committee to serve as its chairperson. The Chairperson must appoint an official or employee of the Department of Taxation to act as the Committee's secretary. The secretary is required to keep minutes of the Committee's meetings and to maintain a journal of all of the Committee's meetings, proceedings, findings, and determinations. The Committee is to hire necessary professional, technical, and clerical staff. The Committee is to meet as often as necessary to perform its duties.

Municipal taxation of business net profit

Uniform tax base established

(R.C. 718.01(A)(1) and (D)(2) and 5745.01)

A business is subject to a municipality's tax on its net profit to the extent the profit is attributable to business conducted in the municipality. The act establishes a uniform tax base for purposes of municipal taxation of net profits. Under the act, the net profit subject to municipal taxation is the taxpayer's adjusted federal taxable income, which the act defines as a C corporation's federal taxable income before net operating losses and special deductions, adjusted as follows:

(1) Deduction of intangible income to the extent the taxpayer includes it in federal taxable income. The deduction is allowed regardless of whether the intangible income relates to assets used in a trade or business or held for the production of income.

(2) Addition of 5% of the intangible income deducted under (1) above but not that portion of intangible income that directly relates to the sale, exchange, or other disposition of capital assets described in section 1221 of the Internal Revenue Code (e.g., stock in trade that would properly be included in the taxpayer's inventory at the close of the taxable year, a copyright, or a government publication not acquired by purchase at the price at which it is sold to the public).

(3) Addition of any losses allowed as a deduction in computing federal taxable income if the losses directly relate to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code.

(4) Deduction of income and gain included in federal taxable income to the extent the income and gain directly relates to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code. However, this deduction is not required to the extent the income



or gain is income or a gain from the disposition of certain depreciable property under section 1245 or 1250 of the Internal Revenue Code.

(5) Addition of taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

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

Beginning in 2004, a municipality may not tax a business' net profit using any base other than the taxpayer's adjusted federal taxable income. However, this restriction does not apply to the net profits of electric companies, telephone companies, and sole proprietorships.

Taxpayers that are neither individuals nor C corporations

(R.C. 718.01(A)(1)(g))

The act provides that if a taxpayer is neither a C corporation nor an individual, the taxpayer must compute adjusted federal taxable income as if the taxpayer were a C corporation; however, the act specifies that guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member are not deductible expenses. In addition, with respect to each of the taxpayer's owners or owner-employees, no deduction may be taken for amounts paid or accrued to a qualified self-employed retirement plan or amounts paid or accrued to health or life insurance.

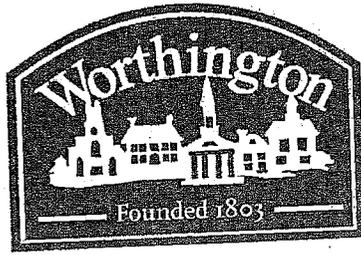
Unintended effects negated

The act specifies that it is not to be construed as allowing a taxpayer to add or deduct an amount more than once, or as allowing a taxpayer to deduct any amount paid or accrued for purposes of the federal self-employment tax. Nor is the act to be construed as limiting or removing a municipality's ability to administer, audit, and enforce its income tax. And nothing in the act requires or prohibits a net operating loss carryforward.

Municipal corporations authorized to exempt certain income

(R.C. 718.01(E))

The act authorizes a municipality's legislative authority to exempt from its income tax and withholding requirements the following amounts:



CITY CLERK'S CERTIFICATE

I, D. Kay Thress, the undersigned City Clerk of the City of Worthington, do hereby certify that the following is a true copy of Ordinance No. 53-2004 passed at the regular meeting of Worthington City Council held on December 6, 2004.

Witness my hand and seal this 22nd day of November 2011.



D. Kay Thress
City Clerk
City of Worthington

ORDINANCE NO. 53-2004

To Amend Existing Sections 1701, 1703, 1705, 1706, 1707, 1709, 1711, and 1713 of the Taxation Code (Codified Ordinances of the City of Worthington).

WHEREAS, the City of Worthington has undertaken a review of certain sections of Chapter 17 of the Codified Ordinances of the City of Worthington determining that amendments are merited thereto; and,

WHEREAS, the enactment of these amendments shall promote the interests of the effective enforcement of Chapter 17 as well as enhance administrative efficiency;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Worthington, County of Franklin, State of Ohio:

SECTION 1. The following amends Sections 1701 through 1713, inclusive, of the Codified Ordinances of the City of Worthington:

**CODIFIED ORDINANCES OF WORTHINGTON
PART SEVENTEEN – TAXATION CODE**

TITLE ONE – Income Tax

- Chap. 1701. Definitions.
- Chap. 1703. Imposition of Collection of Tax; Returns and Refunds.
- Chap. 1705. Powers and Duties of Administrator.
- Chap. 1706. Board of Tax Appeals.
- Chap. 1707. Credits and Exemptions; City Contracts.
- Chap. 1709. Penalties and Interest.
- Chap. 1711. Allocation of Funds.
- Chap. 1713. Violations and Penalty.

**CHAPTER 1701
Definitions**

- | | |
|--|---|
| 1701.01 Adjusted Federal Taxable Income. | 1701.17 Nonresident Individual. |
| 1701.02 Application. | 1701.18 Nonresident Unincorporated Business Entity. |
| 1701.03 Administrator. | 1701.19 Person. |
| 1701.04 Association. | 1701.20 Place of Business. |
| 1701.05 Board of Tax Appeals. | 1701.21 Qualifying Wages. |
| 1701.06 Business. | 1701.22 Resident Individual. |
| 1701.07 Corporation. | 1701.23 Resident Unincorporated Business Entity. |
| 1701.08 Employee. | |

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| | |
|---|--------------------------------------|
| 1701.09 Employer. | 1701.24 S Corporation. |
| 1701.10 Fiscal Year. | 1701.25 Singular and Plural; Gender. |
| 1701.11 Generic Form. | 1701.26 Taxable Income. |
| 1701.12 Gross Receipts. | 1701.27 Taxable Year. |
| 1701.13 Intangible Income. | 1701.28 Taxpayer. |
| 1701.14 Internal Revenue Code. | |
| 1701.15 Net Profit. | |
| 1701.16 Nonqualified Deferred Compensation Program. | |

CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII Sec. 3, CHTR. Sec. 2.07(8)
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718
Taxation Department, establishment and Director - see ADM. 147.01

1701.01 ADJUSTED FEDERAL TAXABLE INCOME.

"Adjusted Federal Taxable Income" 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 (5%) of intangible income deducted under division 1701.01 (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.
 1. Except as provided in part 1701.01 (d)(2) 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;
 2. Part 1701.01 (d)(1) 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.
- e. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

ORDINANCE NO. 53-2004

- f. In the case of a real estate investment trust and 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. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
 - 1. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
 - 2. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in section 1701.01 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.

Nothing in this section shall be construed as limiting or removing the ability of the City to administer, audit, and enforce the provisions of the City's Income Tax Code.
(Ord. 53-2004. Passed December 6, 2004)

1701.02 APPLICATION.

As used in this Part Seventeen - Taxation Code, the following words shall have the meanings ascribed to them in this chapter, except as and if the context clearly indicates or requires a different meaning. (Ord. 24-2002. Passed 6-17-02.)

1701.03 ADMINISTRATOR.

"Administrator" means the individual designated by this Taxation Code to administer and enforce the provisions of this Code. (Ord. 24-2002. Passed 6-17-02.)

1701.04 ASSOCIATION.

"Association" means a partnership, limited partnership, S Corporation or any other form of unincorporated enterprise owned by one or more persons. (Ord. 53-2004. Passed December 6, 2004)

1701.05 BOARD OF TAX APPEALS.

"Board of Tax Appeals" means the Board created by and constituted as provided for in Chapter 1706. (Ord. 53-2004. Passed December 6, 2004)

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1701.06 BUSINESS.

"Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal, or mixed. (Ord. 53-2004. Passed December 6, 2004)

1701.07 CORPORATION.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, State of Ohio or any other state, territory or foreign country or dependency.
(Ord. 24-2002. Passed 6-17-02.)

1701.08 EMPLOYEE.

"Employee" means one who works for wages, salary, commissions or other type of compensation in the service and under the control of an employer. (Ord. 24-2002. Passed 6-17-02.)

1701.09 EMPLOYER.

"Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, that employs one or more persons on a salary, wage, commission or other compensation basis.
(Ord. 24-2002. Passed 6-17-02.)

1701.10 FISCAL YEAR.

"Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31. (Ord. 24-2002. Passed 6-17-02.)

1701.11 GENERIC FORM.

"Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by the City for the reporting of the City's tax on income. (Ord. 53-2004. Passed December 6, 2004)

1701.12 GROSS RECEIPTS.

"Gross receipts" means the total income from any source whatsoever.
(Ord. 24-2002. Passed 6-17-02.)

1701.13 INTANGIBLE INCOME.

"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

ORDINANCE NO. 53-2004

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 or other similar games of chance.
(Ord. 53-2004. Passed December 6, 2004)

1701.14 INTERNAL REVENUE CODE.

"Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
(Ord. 53-2004. Passed December 6, 2004)

1701.15 NET PROFIT.

"Net profit" means for a taxpayer other than an individual, the adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts required to be reported on schedule C, schedule E, or schedule F.
(Ord. 53-2004. Passed December 6, 2004)

1701.16 NONQUALIFIED DEFERRED COMPENSATION PLAN.

"Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(c) of the Internal Revenue Code.
(Ord. 53-2004. Passed December 6, 2004)

1701.17 NONRESIDENT INDIVIDUAL.

"Nonresident individual" means an individual who is not domiciled in the City or whose usual place of abode is outside the City. (Ord. 24-2002. Passed 6-17-02.)

1701.18 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City. (Ord. 24-2002. Passed 6-17-02.)

1701.19 PERSON.

"Person" means every natural person, partnership, fiduciary, firm, company, business trust, estate, trust, limited liability company, governmental entity, association, or corporation, or any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof. (Ord. 53-2004. Passed December 6, 2004)

ORDINANCE NO. 53-2004

1701.20 PLACE OF BUSINESS.

"Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance. (Ord. 24-2002. Passed 6-17-02.)

1701.21 QUALIFYING WAGES.

"Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code. (Ord. 53-2004. Passed December 6, 2004)

1701.22 RESIDENT INDIVIDUAL.

"Resident individual" means any individual who is domiciled in the City or whose usual place of abode is in the City. (Ord. 24-2002. Passed 6-17-02.)

1701.23 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City. (Ord. 24-2004. Passed 6-17-02.)

1701.24 S CORPORATION.

"S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year. (Ord. 53-2004. Passed December 6, 2004)

1701.25 SINGULAR AND PLURAL; GENDER.

The singular shall include the plural. The masculine gender shall include the feminine and the neuter genders. (Ord. 24-2002. Passed 6-17-02.)

1701.26 TAXABLE INCOME.

"Taxable income" means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Taxation Code. (Ord. 53-2004. Passed December 6, 2004)

1701.27 TAXABLE YEAR.

"Taxable year" means the calendar year or fiscal year upon the basis of which the net profits are to be computed under this Taxation Code and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. (Ord. 24-2002. Passed 6-17-02.)

ORDINANCE NO. 53-2004

1701.28 TAXPAYER.

"Taxpayer" means a person subject to a tax on income levied by the City.
"Taxpayer" does not include any person that is a disregarded entity or a qualifying
subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any
other person who owns the disregarded entity or qualifying subchapter S subsidiary.
(Ord. 53-2004. Passed December 6, 2004)

ORDINANCE NO. 53-2004

CHAPTER 1703

Imposition and Collection of Tax; Returns and Refunds

- | | |
|---------------------------------------|-------------------------------|
| 1703.01 Imposition of tax. | 1703.05 Amended return and |
| 1703.02 Allocations of net profits. | refunds for overpayment. |
| 1703.03 Levy of tax. | 1703.06 Collection at source. |
| 1703.04 Return and payment of Tax. | 1703.07 Declarations. |

CROSS REFERENCES

- Power to levy income tax - see Ohio Const. Art. XVIII Sec. 3; CHTR. Sec. 2.07(8)
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718

1703.01 IMPOSITION OF TAX.

To provide for the purposes of general Fire Department operations and general Municipal operations, maintenance, new equipment and capital improvements of the City, there is hereby levied a tax at the rate of Two Percent (2%) per annum upon the following:

- (a) On all qualifying wages, salaries, commissions and other compensation earned on and after January 1, 2004, by residents of the City.
- (b) On all qualifying wages, salaries, commissions and other compensation earned on and after January 1, 2004, by nonresidents of the City for work done or services performed or rendered in the City.
- (c)
 - (1) On the net profits earned on and after January 1, 2004, of all unincorporated businesses, professions or other activities conducted by residents of the City.
 - (2) On the net profits earned on and after January 1, 2004, of all unincorporated businesses, professions or other activities conducted in the City by nonresidents.
 - (3) For the purposes of subsections (c)(1) and (c)(2) above, an association shall be taxed as an entity, on the net profits of the association derived from the work done or services performed or rendered and business or other activities conducted in the City, whether or not such association has its principal or any place of business located in the City, effective for all accounting periods commencing on or after January 1, 1999.
 - (4) For the purposes of subsection (c)(1) above, a resident of the City who is a member of an association is taxed individually on that resident's entire share, whether distributed or not, of the annual net profits of the association which are not subject to entity filing under subsection (c)(3)

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above, effective for all accounting periods commencing on or after January, 1999.

- (d) On the net profits on and after January 1, 2004, of all corporations, estates, and trusts, derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations, estates, and trusts have their principal or any place of business located in the City.
- (e) On a resident's entire share, whether distributed or not, of the net profits of a Subchapter S corporation as defined in Section 1361 of the Internal Revenue Code. If a resident is a shareholder in two or more Subchapter S corporations to be included in the same return, the resident's share of the net loss of one Subchapter S corporation (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the resident's share of the profits of another Subchapter S corporation for purposes of arriving at overall net profits derived from Subchapter S corporations. Credit on the tax imposed by this paragraph shall be given for tax paid on the resident's share of the net profits of a Subchapter S corporation under Sections 1703.01(d) and 1707.01 of this Taxation Code. The tax imposed under this paragraph is effective for all accounting periods commencing on or after January 1, 2001. (Ord. 09-2003. Passed 6-2-03.)

1703.02 ALLOCATIONS OF NET PROFITS.

- (a) In the taxation of income which is subject to the tax, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable situs in the City for purposes of the tax. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of the tax in the same proportion as the average ratio of:

- (1) The average net book value of the real and tangible personal property owned by the taxpayer in the business or profession in the City during the taxable period to the average net book value of all of the real and tangible personal property owned by the taxpayer in the business or profession during the same period, wherever situated. 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 (8);

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- (2) Qualified wages, salaries and other compensation paid during the taxable period to persons employed in the business or professions for services performed in the City to qualified wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed; and
 - (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
- (b) In the event a just and equitable result cannot be obtained under the formula provided for herein, the Administrator, under application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.
- (c) As used in this Taxation Code, "sales made in the City" means:
- (1) All sales of tangible personal property which is delivered within the City, regardless of where title passes, if shipped or delivered from a stock of goods within the City;
 - (2) All sales of tangible personal property which is delivered within the City, regardless of where title passes even though transported from a point outside the City, if the taxpayer is regularly engaged through his own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion;
 - (3) All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City, regardless of where title passes, if the sale is not generated through solicitation or promotion by an employee of the taxpayer at the place where delivery is made. (Ord. 53-2004. Passed December 6, 2004)

1703.03 LEVY OF TAX.

The income tax at the rate of one (1.00%) percent shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation earned on or before December 31, 1993 and with respect to the net profits of businesses, professions, or other activities earned on or before December 31, 1993. The income tax at the rate of one and sixty-five hundredths of one percent (1.65%) percent shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation earned on or after January 1, 1994, and with respect to the net profits of businesses, professions, or other activities earned on or after January 1, 1994. The income tax at the rate of two percent (2.00%) shall be levied, collected, and paid with respect to the salaries, qualified wages, commissions, and other compensation earned on or after January 1, 2004, and with respect to the net profits of businesses, professions, or other activities earned on or after January 1, 2004. Where the fiscal year of the business, profession, or other activity differs from the calendar year, the tax at the rate of one

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(1.00%) percent shall be applied to that part of the net profits for the portion of the fiscal year occurring before January 1, 1994. The tax at the rate of one and sixty-five hundredths of one percent (1.65%) percent shall be applied to that portion of the fiscal year occurring on and after January 1, 1994. The tax at the rate of two percent (2.00%) shall be applied to that portion of the fiscal year occurring on and after January 1, 2004.

Where the fiscal year of a business, profession, or other activity is other than a calendar year, in computing the tax, the profits of such taxpayer shall be determined by dividing the annual profits by twelve (12) and multiplying the quotient by the number of months of the fiscal year between October 1, 1971, through December 31, 1993, multiplying the quotient by the number of months of the fiscal year between January 1, 1994 and December 31, 2003, and multiplying the quotient by the number of months of the fiscal year between January 1, 2004, and thereafter and applying the appropriate tax rate to each. (Ord. 53-2004. Passed December 6, 2004)

1703.04 RETURN AND PAYMENT OF TAX.

- (a) Any person whose only income is exempt from the tax imposed by this chapter must file an exemption certificate declaring the nature of the exemption. Each taxpayer who engages in business, or whose salaries, qualified wages, commissions and other compensation are subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year with the Department of Taxation on a form furnished by or obtainable from the Department, setting forth the aggregate amount of salaries, qualified wages, commissions and other compensation earned and/or net profits earned and/or gross income from such business less allowable expenses in the acquisition of such gross income earned during the preceding year and subject to the tax, together with such other pertinent information as the Administrator may require. Provided, however, that when the return is made for a fiscal or other period different from the calendar year, the return shall be made on or before the fifteenth (15) day of the fourth month after the close of the fiscal year or other period.
- (b) Commencing with taxable years beginning subsequent to December 31, 1982, the net loss from an unincorporated business activity may not be used to offset salaries, wages, commissions or other compensation, and subsequent to December 31, 2000 on the net profits from a resident's share in a Subchapter S corporation. However, if a taxpayer is engaged in two or more taxable unincorporated business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits from unincorporated business activities. Commencing with taxable years beginning subsequent to December 31, 2000, the net loss from a resident's share of a Subchapter S corporation may

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not be used to offset salaries, qualified wages, commissions or other compensation or the net profits from an unincorporated business activity. However, if a resident taxpayer is a shareholder in two or more Subchapter S corporations included in the same return, the net loss of one Subchapter S corporation (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits from a resident's share in Subchapter S corporations. A husband and wife in any taxable year, may elect to file separate or joint returns.

- (c) If a net operating loss has been sustained in any taxable year such losses may not be carried forward or backward to any other taxable year. Nothing in Chapter 718.01 of the Ohio Revised Code requires the City to allow a net operating loss carry-forward.
- (d) Affiliated corporations may not deduct a loss from any other corporation having a taxable profit. Operations of any affiliated corporation may not be taken into consideration in computing net profits or business allocation percentage formula of another.
- (e) The taxpayer making a return shall at the time of the filing thereof, pay to the City the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 1703.06 or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 1703.07 or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 1707.01 shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.
- (f) A taxpayer who has overpaid his income tax in any taxable year may request a refund provided there is no other tax liability and provided, further, that no amount less than one dollar (\$1.00) will be refunded or collected.
- (g) The Administrator shall have the authority to extend the time for filing of the annual return, provided the request of the taxpayer for extension is made in writing and received on or before the original due date of the return. If the extension is granted, the extended due date of the City's income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon on or before the original due date. No penalty shall be assessed, in those cases in which the return is filed and the final tax paid within the period as extended.

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- (h) When the last day for filing a return falls upon a Saturday, Sunday or federal holiday, the taxpayer shall be permitted to file on or before the first business day following such Saturday, Sunday or federal holiday without penalty.
- (i) A husband and wife may file either separate returns or a joint return for City purposes, even though one of the spouses has neither taxable income nor deductions included on the City's return regardless of whether their federal and state returns were filed separately or jointly. If a joint city return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.
- (j) The return shall be filed with the Tax Administrator or their authorized agent, on a form or forms furnished by or obtainable upon the request from the Tax Administrator; or on a generic form, if the generic form, when completed and filed, contains all of the information required to be submitted with the City's prescribed return and, if the taxpayer or return preparer filing the generic form otherwise complies with the Tax Code governing the filing of returns.
(Ord. 53-2004. Passed December 6, 2004)

1703.05 AMENDED RETURN AND REFUNDS FOR OVERPAYMENT.

Where an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 1703.04(e) such amended return shall be on a form obtainable on request from the Department of Taxation. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment. Except for a claim resulting from and filed within three (3) months of the final determination of a taxpayer's Federal tax liability, no refund shall be allowed unless a written request be presented to the Income Tax Administrator within three (3) years after the date the tax was due or the return was filed, whichever is later. (Ord. 24-2002. Passed 6-17-02.)

1703.06 COLLECTION AT SOURCE.

- (a) Each employer within or doing business within the City shall deduct at the time of payment of such salaries, qualified wages, commissions or other compensation as defined in Section 1701.18 of this Taxation Code, the tax of Two Percent (2.00%) of the gross salaries, qualified wages, commissions or other compensation due by the said employer to the said employee and shall, on or before February 28th, make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted

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during the year have been paid to the City in accordance with the payment schedule prescribed by subsection (c) hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this Municipality in collecting and holding the tax required under the ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

- (b) In the case of employees who are non-resident professional athletes, the deduction and withholding of personal service compensation shall attach to the entire amount of qualified wages, salaries, and other compensation received for games that occur in the taxing community. In the case of a non-resident athlete not paid specifically for the game played in a taxing community, the following apportionment formula must be used: The wages, salaries and other compensation earned and subject to tax is the total income earned during the taxable year, including incentive payments, signing bonuses, reporting bonuses, incentive bonuses, roster bonuses and other extras, multiplied by a fraction, the numerator of which is the number of exhibition, regular season and post-season games the athlete played (or was available to play for his team, as an example, with substitutes), or was excused from playing because of injury or illness, in the taxing community during the taxable year, and the denominator of which is the total number of exhibition, regular season, and post-season games which the athlete was obligated to play under contract or otherwise during the taxable year, including games in which the athlete was excused from playing because of injury or illness. Exhibition games are only those games played before a paying audience, and played against another professional team from the same professional league. In the case of non-resident salaried athletic team employees who are not professional athletes, deduction and withholding shall attach to qualified wages, salaries and other compensation earned for personal services performed in the City.
- (c) Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a semimonthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:
- (1) Semimonthly payments of the taxes deducted are to be made by an employer if:
 - (a) The total taxes deducted in the prior calendar year were twelve thousand dollars (\$12,000) or more; or
 - (b) The amount of taxes deducted for any month in the preceding quarter exceeded one thousand dollars (\$1,000). Such payment shall be paid to the City within five banking days after the fifteenth and the last day of each month.

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- (2) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than twelve thousand dollars (\$12,000.00) but more than one thousand one hundred ninety nine dollars (\$1,199.00) or if the taxes withheld during any month of the preceding quarter exceeded one hundred dollars (\$100.00). Commencing with taxable years subsequent to December 31, 1998 monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than twelve thousand dollars (\$12,000.00) but more than three thousand five hundred ninety nine dollars (\$3,599.00), or if taxes withheld during any month for the preceding quarter exceeded three hundred dollars (\$300.00). Such payments shall be paid to the City within fifteen days after the close of each calendar month. However, those taxes accumulated for the third month of a calendar quarter by employers making monthly payments pursuant to this paragraph need not be paid until the last day of the month following such quarter.
- (3) All employers not required to make semimonthly or monthly payments of taxes withheld under (1) and (2) of this subsection shall make quarterly payments no later than the fifteenth (15th) day of the month following the end of each quarter.
- (d) Each employer who maintains a place of business in the City and another branch within the metropolitan area of the City shall also withhold the tax from the employees residing in the City but working at the employer's metropolitan area branch, even though the payroll records and place of payment are outside the City.
- (e) The employer shall make and file a Form 17 furnished by the Department of Taxation, showing the amount of tax deducted by said employer from the salaries, qualified wages, commissions or other compensation of any employee and paid by the employer to the City. The Form 17 shall also reconcile to prior remittances and returns filed by the employer for such tax year with respect to taxes withheld. Such employer's return shall be accepted as the return required of an employee whose sole income subject to the tax under this Taxation Code is the salaries, qualified wages, commissions and other compensation returned by the employer.
- (f) Each employer on or before February 28, unless written request for thirty days extension is made to and granted by the Administrator following any calendar year in which such deductions have been made or should have been made by such employer shall file with the Administrator an information return (Worthington Withholding Statement of Wages Paid, and Worthington Income Tax Withheld), for each employee from whom income

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tax has been or should have been withheld, showing the name and address of the employee, the total amount of salaries, qualified wages, commissions and other compensation paid said employee during the year, and the amount of City income tax withheld from each employee.

- (g) Where a resident of the City performs service for his employer in another municipality, which services are subject to withholding in the other municipality, the employer shall have the authority to reduce the withholding to the City to the extent of the tax liability in the other municipality.
- (h) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the City when the services were performed within the City. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.
- (i) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due. (Ord. 53-2004. Passed December 6, 2004.)

1703.07 DECLARATIONS.

Every person who anticipates any taxable income which is not subject to Section 1703.06 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 1703.01(c) inclusive and Section 1703.01(d) hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from qualified wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the City in accordance with Section 1703.06 hereof, such person need not file a declaration. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than one hundred dollars (\$100.00), no declaration or payment of estimated tax is required.

Such declaration shall be filed on or before April 15 of each year during the life of this Taxation Code, or on or before the fifteenth (15th) day of the fourth month the taxpayer becomes subject to the tax for the first time. Those taxpayers reporting on a

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fiscal year basis shall file a declaration on or before the fifteenth (15th) day of the fourth month after the beginning of each fiscal year or period.

Such a declaration shall be filed upon a form furnished by or obtainable from the Department of Taxation or an acceptable generic form, provided, however, credit shall be taken for the City tax to be withheld from any portion of such income. In accordance with the provisions of Section 1703.06 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment day as provided for herein.

Such declarations of estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the seventh, tenth and thirteenth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

On or before the fifteenth (15th) day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 1703.04 hereof.

A declaration of estimated tax which is less than eighty percent (80%) of the tax shown on the final return shall not be considered filed in good faith. The difference shall be subject to penalties and interest as provided for in Chapter 1709. (Ord. 53-2004. Passed December 6, 2004)

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CHAPTER 1705
Powers and Duties of Administrator

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|--|-------------------------------------|
| 1705.01 Duties of the Administrator. | 1705.04 Collection of unpaid taxes. |
| 1705.02 Investigative powers of the Administrator. | 1705.05 Contract for enforcement. |
| 1705.03 Tax information confidential. | 1705.06 Separability. |

CROSS REFERENCES

- Power to levy income tax - see Ohio Const., Art. XVIII Sec. 3; CHTR. Sec. 2.07(8)
Council power to establish administrative departments - see CHTR. Sec. 2.07(2)
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718

1705.01 DUTIES OF THE ADMINISTRATOR.

- (a) It shall be the duty of the Administrator to collect and receive the tax imposed by this Taxation Code in the manner prescribed by this Code, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of the payment.
- (b) The Administrator, or any duly authorized agent, is hereby charged with the administration and enforcement of the provisions of this Code and he is hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Code, including provisions for the re-examination and correction of returns and payments. In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. (Ord. 53-2004. Passed December 6, 2004)

1705.02 INVESTIGATIVE POWERS OF THE ADMINISTRATOR.

- (a) The Administrator, or any duly authorized agent, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or who the Administrator believes is subject to the provisions of this Taxation Code for the purposes of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Code, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized

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agent or employee at the reasonable time and place designated, the opportunity for making such examinations and investigations as are hereby authorized.

- (b) The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear at the office of the Tax Administrator and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
- (c) No person upon written order shall fail to appear before the Administrator or his authorized agent on the date, time and place designated in the written order. (Ord. 53-2004. Passed December 6, 2004)

1705.03 TAX INFORMATION CONFIDENTIAL.

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Taxation Code shall be confidential, except for official purposes, or except in accordance with proper judicial order. The Administrator may furnish the Internal Revenue Service, Treasury Department of the United States, the Tax Commissioner of Ohio and the duly authorized income tax administrator of any other city or state with copies of the returns filed. The Administrator is also authorized to enter into agreements for the exchange of any information with any of the foregoing Federal, state or city officials. Any person divulging such information, except as herein before authorized, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.
(Ord. 53-2004. Passed December 6, 2004)

1705.04 COLLECTION OF UNPAID TAXES.

- (a) All taxes imposed by this Taxation Code shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable.
- (b) The Administrator is authorized, in addition to his other duties, to institute civil law suits to collect delinquent taxes due and owing the City by virtue of the provisions of this Code. The Administrator or his delegate is authorized to waive penalties and interest and compromise tax liability and

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the right to accept waiver of State Statute of Limitations. (Ord. 37-99. Passed 6-28-99.)

- (c) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later.
- (d) After the time period allowed for a refund of the tax or withholding paid to another municipality, a nonrefundable credit shall be allowed against tax or withholding erroneously paid or withheld to another municipality equal to the tax or withholding paid with respect to such income or wages.
 - i. If the tax rate is less than the tax rate paid or withheld on such income or wages, the credit described in section D above shall be calculated using the tax rate in effect.
 - ii. Nothing in this section permits any credit carry-forward.
- (e) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception: No interest shall be allowed on any overpayment that is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.
(Ord. 53-2004. Passed December 6, 2004)

1705.05 CONTRACT FOR ENFORCEMENT.

Nothing in this Part Seventeen - Taxation Code shall be deemed to prevent the exercise of any of the powers and duties imposed on any officer or division of the City by any person or agency, including another municipal corporation, with which the City may contract for the administration and/or enforcement of the provisions of this Code, it being the intent hereof that all enforcement powers granted to any officer or division of the City may be exercised by such contracting party. (Ord. 24-2002. Passed 6-17-02.)

1705.06 SEPARABILITY.

If any sentence, clause, section or part of this Part Seventeen - Taxation Code, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Code and shall not affect or

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impair any of the remaining provisions, sentences, clauses, sections or other parts of this Code. It is hereby declared to be the intention of Council that this Taxation Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 24-2002. Passed 6-17-02.)

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CHAPTER 1706
Board of Tax Appeals

1706.01 Board of Tax Appeals.

CROSS REFERENCES

Municipal income taxes - see Ohio R.C. Ch. 718.11

1706.01 Board of Tax Appeals

- (a) There is hereby established a Board of Tax Appeals, consisting of three (3) members and one (1) alternate, who shall be resident individuals appointed by Worthington City Council. The alternate member will replace a member who disqualifies himself or herself based upon a conflict of interest or is unable to attend. Appointments to the Board shall be for four-year terms, provided that the term of two of the members appointed to the first Board shall be for two years. All members shall possess general tax knowledge or be sufficiently versed on municipal tax related issues. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its transactions. Any hearing of the Board may be conducted privately and the provisions of Section 1705.03 hereof with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board of Tax Appeals.
- (b) Any person dissatisfied with any ruling or decision of the Tax Administrator, which is made under the authority conferred by this chapter, may appeal to the Board within 30 days from the announcement of such ruling or decision by the Tax Administrator and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and such hearing shall be scheduled with 45 days from the date of appeal. The Board's ruling must be made within 90 days from the date of the hearing and shall send notice of its final decision by ordinary mail to all parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code. The concurrence of two members is required to reverse or modify any ruling or decision of the Tax Administrator.
- (Ord. 53-2004. Passed December 6, 2004)

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CHAPTER 1707

Credits and Exemptions; City Contracts; Registration

- 1707.01 Credits For Tax Paid to Another Municipality
1707.02 Exemptions.
1707.03 Contract provisions.
1707.04 Registration of Tenants

CROSS REFERENCES

- Power to levy income tax - see Ohio Const., Art XVIII Sec. 3; CHTR. Sec. 2.07(8)
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718

1707.01 CREDITS FOR TAX PAID TO ANOTHER MUNICIPALITY.

Every individual taxpayer who resides in the City but who received net profits, salaries, qualified wages, commissions or other compensation for work done or services performed or rendered outside the City, if it be made to appear that such taxpayer has paid a municipal income tax or excise tax based on income, on such net profits, salaries, qualified wages, commissions or compensation in another municipality, shall be allowed a credit for the amount so paid by such taxpayer or in such taxpayer's behalf in such other municipality; this credit to be applied only to the extent of the tax accessed by this Taxation Code, by reason of such net profits, salaries, qualified wages, commissions or compensation earned in such other municipality where such tax is paid.
(Ord. 53-2004. Passed December 6, 2004)

1707.02 EXEMPTIONS.

The provisions of this Taxation Code shall not be construed to tax the military pay or allowances of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

The tax provided for herein shall not be levied on the personal earnings of any natural person under eighteen years of age.

Mentally retarded and developmentally disabled employees earning less than the minimum hourly wage while employed at government-sponsored sheltered workshops shall be exempt from the levy of the tax provided herein. (Ord. 24-2002. Passed 6-17-02.)

1707.03 CONTRACT PROVISIONS.

No contract on behalf of the City of Worthington for works or improvements of the City shall be binding or valid unless such contract contains the following provisions:
"Said _____ hereby further agrees to withhold all City of Worthington income taxes due or payable under the provisions of Part Seventeen Taxation Code of the Codified Ordinances of the City of Worthington, Ohio, for qualified wages, salaries and

ORDINANCE NO. 53-2004

commission paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City of Worthington income taxes due under said Code for services performed under this contract.”
(Ord. 24-2002. Passed 6-17-02.)

1707.04 REGISTRATION OF TENANTS, CONTRACTORS AND EMPLOYEES.

Each owner, or the duly designated agent thereof, of one (1) or more units of real property located within the City and which are rented or available for rent as of July 1, 2002, and thereafter, shall submit to the Tax Administrator, or the designee thereof, on or before September 30 of each year a list of tenants presently occupying those rental units and those units vacant. For the purposes of this section, Rented Units includes any unit of real property which is subject to a rental agreement, whether oral or written, for residential, commercial or industrial purposes.

All employers, contractors or subcontractors who do work in the City shall register with the Tax Administrator. The Tax Administrator may request a list of all employees, subcontractors, contractors or others who may do work for them whose profits, wages or earnings are not presently subject to withholding of the City of Worthington income tax. (Ord. 24-2002. Passed 6-17-02.)

ORDINANCE NO. 53-2004

CHAPTER 1709
Penalties and Interest

1709.01 Penalties and interest.

CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII Sec. 3; CHTR. Sec.

2.07(8)

Payroll deductions - see Ohio R.C. 9.42

Municipal income taxes - see Ohio R. C. Ch. 718

1709.01 PENALTIES AND INTEREST.

- (a) All taxes imposed by this Taxation Code, which remain unpaid after they become due, shall result in the assessment of a penalty of ten percent (10%) of the amount of unpaid tax. A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.
- (b) In the event that a taxpayer has a duty as imposed by this Taxation Code to file a return and does not do so, a penalty of twenty-five dollars (\$25.00) per month shall be assessed the day after the due date of the filing and for each month thereafter not to exceed one hundred fifty dollars (\$150.00). This penalty shall not apply to taxpayers required to file an individual separate or individual joint return.
- (c) In the event that the taxpayer has properly requested an extension of filing time, no penalty shall be assessed in those cases in which the return is filed and the final tax, if any, is paid within the period as extended.
- (d) All taxes imposed by this chapter and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of six percent (6%) per year or fraction thereof. (Ord. 24-2002. Passed 6-17-02.)

ORDINANCE NO. 53-2004

CHAPTER 1711
Allocation of Funds

1711.01 Allocation of funds.

CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII Sec. 3; CHTR. Sec. 2.07(8)
Council authority to adopt budget - see CHTR. Sec. 2.07(3)
Budget estimates and statements - see CHTR. Sec. 4.02
Municipal income taxes - see Ohio R.C. Ch. 718

1711.01 ALLOCATION OF FUNDS.

The funds collected under the provisions of this Taxation Code shall be applied for the following purpose and in the following order, to wit:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Code and enforcing the provisions hereof;
- (b) Such part thereof as Council may appropriate to the General Fund for the purpose of paying the cost of general governmental operations;
- (c) Such part thereof as Council may appropriate for the purpose of paying the cost of maintenance of, and the purchase of new equipment, motorized or other;
- (d) Such part thereof as Council may appropriate for the purpose of paying the cost of the acquisition, construction, repair and/or maintenance of streets and/or other permanent improvements; and
- (e) In any event at least twenty percent (20.0%) of the proceeds collected on and after January 1, 2004, from the City Income Tax under the provisions of this Code shall be deposited in the Capital Improvements Fund for the purpose of acquiring, constructing or maintaining any capital improvement or for the purpose of paying the debt service of any capital improvements.

(Ord. 63-2003. Passed 11-17-03.)

ORDINANCE NO. 53-2004

CHAPTER 1713
Violations and Penalty

- 1713.01 Violations; general penalty. 1713.02 Penalty and interest on unpaid withheld taxes.
1713.03 Income Tax Regulation.

CROSS REFERENCES

Payroll deductions - see Ohio R.C. 9.42
Returns and payment of tax - see TAX. 1703.04, 1703.05
Collection at source - see TAX. 1703.06
Collection of unpaid taxes - see TAX. 1705.04

1713.01 VIOLATIONS; GENERAL PENALTY.

- (a) No person subject to the provisions of this chapter shall do any of the following:
- (1) Fail, neglect, or refuse to make and file any return or declaration.
 - (2) Fail, neglect, or refuse to pay the tax, interest, or penalty imposed by this chapter.
 - (3) Being a corporation or business association fail, neglect, or refuse to permit the Administrator or his duly authorized agent or employee the opportunity to examine their books, records, and papers by failing to produce such information at the reasonable time and place designated pursuant to Section 1705.02 of this Code.
 - (4) Knowingly make and file an incomplete, false, or fraudulent return.
- (b) No employer shall fail, neglect, or refuse to deduct and withhold the taxes or pay the taxes imposed by this chapter.
- (c) The failure of an employer or taxpayer to receive or procure a return or declaration form, shall not excuse either one from making a return or declaration or paying the tax levied under this chapter.
- (d) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree and upon conviction thereof, shall be fined in a sum not to exceed two hundred fifty dollars (\$250.00) or imprisoned for a period not to exceed thirty (30) days or both for first offense, and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months for a second or subsequent conviction. (Ord. 24-2002. Passed 6-17-02.)

ORDINANCE NO. 53-2004

1713.02 PENALTY AND INTEREST ON UNPAID WITHHELD TAXES.

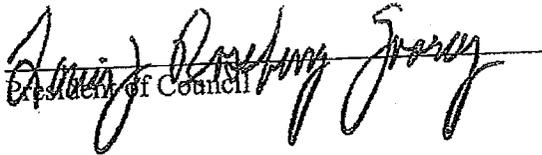
- (a) All taxes deducted by an employer or required to be deducted and withheld by an employer pursuant to Section 1703.06 remaining unpaid after they become due shall result in the assessment of a penalty of fifty percent (50%) of the amount of the unpaid tax.
- (b) All taxes deducted by an employer or required to be deducted and withheld by an employer and remaining unpaid after they become due pursuant to Section 1703.06 (c)(1), (c)(2) and (c)(3) shall bear interest on the amount of unpaid tax at the rate of six percent (6%) per year or fraction thereof.
- (Ord. 24-2002. Passed 6-17-02.)

1713.03 INCOME TAX REGULATION

Where compensation is paid or received in property or the use thereof, its fair market value shall be subject to the tax and/or to withholding (deduction of tax at source), and shall be included in earnings at fair market value to the same extent and at the same time that all such items are or may be taxable under the Federal Internal Revenue Code as it exists now or is hereinafter amended. The value finally accepted for the purposes of Federal Internal Revenue Code will be accepted by the Administrator and shall be used by the taxpayer. This provision only provides for the valuation of income paid or received in property or the use thereof and shall not be interpreted to adopt or refer to any other provision of the Federal Internal Revenue Code. For purposes of this regulation the phrase "income paid or received in property or use thereof" shall not include any deferred income currently taxed by the City of Worthington Tax Code. (Ord. 24-2002. Passed 6-17-02.)

SECTION 2. That notice of passage of this Ordinance shall be by publication of a notice one time, in a newspaper of general circulation in the City setting forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council, and that this Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed December 6, 2004


President of Council

Attest:


Clerk of Council

Introduced November 15, 2004
P.H. December 6, 2004
Effective December 29, 2004



Founded 1803

COUNCIL • MANAGER • GOVERNMENT

March 18, 2008

Jim Gesler
6663 Lakeside Circle
Worthington, Ohio 43085

Dear Mr. Gesler:

Thank you for your recent inquiry concerning the City's definition of net profits. Worthington Taxation Code Section 1701.15 defines Net Profits as: "*Net Profit*" means for a taxpayer other than an individual, the adjusted federal taxable income and "*net profit*" for a taxpayer who is an individual means the individual's profit, other than amounts required to be reported on a schedule C, schedule E, or schedule F. This definition mirrors the Ohio Revised Code Section 718.01(A)(7) except for the wording of "...other than amounts described in division (F) of this section,..." Division (F) of the ORC describes the income that a municipal corporation shall not tax.

The City has always determined that net profits shall be on the basis of the information used for federal income tax purposes. This would include all income reported on schedules C, E and F. In addition, all other taxable income (individual's net profit) must be included on the Worthington return, attaching those schedules listing all other taxable income not reported on the schedules C, E and F. An example of this income would include those amounts being reported on the Federal Form 4797.

Whereas, Worthington Taxation Code Section 1701.26 defines Taxable Income as: "...qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Taxation Code."

Concerning your question on the 2007 tax return, this return would need to be filed by the due date of April 15th with all schedule income included as mentioned above and form of payment if needed.

Any decision regarding our Code may be appealed according to Chapter 1706: Board of Tax Appeals of the Worthington Taxation Code. We have attached a copy of that section for your convenience.



Again, thank you for your inquiry and hopefully this has answered all of your concerns.
If further information is requested, please contact me at (614) 786-7352.

Sincerely,


Jason W. Nicodemus
Finance Assistant

Cc: S. Gandee
L. Gischel

CHAPTER 1706
Board of Tax Appeals

1706.01 Board of Tax Appeals.

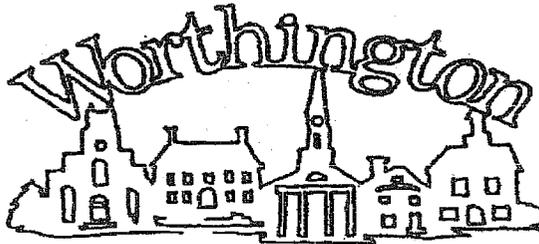
CROSS REFERENCES

Municipal income taxes - see Ohio R.C. Ch. 718.11

1706.01 BOARD OF TAX APPEALS.

(a) There is hereby established a Board of Tax Appeals, consisting of three (3) members and one (1) alternate, who shall be resident individuals appointed by Worthington City Council. The alternate member will replace a member who disqualifies himself or herself based upon a conflict of interest or is unable to attend. Appointments to the Board shall be for four-year terms, provided that the term of two of the members appointed to the first Board shall be for two years. All members shall possess general tax knowledge or be sufficiently versed on municipal tax related issues. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its transactions. Any hearing of the Board may be conducted privately and the provisions of Section 1705.03 hereof with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board of Tax Appeals.

(b) Any person dissatisfied with any ruling or decision of the Tax Administrator, which is made under the authority conferred by this chapter, may appeal to the Board within 30 days from the announcement of such ruling or decision by the Tax Administrator and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and such hearing shall be scheduled with 45 days from the date of appeal. The Board's ruling must be made within 90 days from the date of the hearing and shall send notice of its final decision by ordinary mail to all parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code. The concurrence of two members is required to reverse or modify any ruling or decision of the Tax Administrator.
(Ord. 53-2004. Passed 12-6-04.)



Founded 1803

COUNCIL • MANAGER • GOVERNMENT

June 4, 2008

James L. Gesler
6663 Lakeside Circle
Worthington, Ohio 43085

RE: Tax Appeal Hearing

Dear Mr. Gessler:

An Income Tax Board of Appeals Hearing has been scheduled for Monday, June 23, 2008 at 5:30 p.m. in the Council Chambers, Worthington Municipal Administration Building, 6550 N. High Street. At that time, both parties will have an opportunity to discuss the appeal filed with the City of Worthington. Enclosed is the Board of Appeals Instructions sheet and the procedural manual as requested.

If you have any questions, please contact me at (614) 786-7352.

Thank you.

Sincerely,



Jason W. Nicodemus
Finance Assistant

Enclosures (2)

CC: S. Gandee
M. Minister
L. Gischel
A. Arrighi



-COPY-

Founded 1803

COUNCIL • MANAGER • GOVERNMENT

November 26, 2008

James L. Gesler
6663 Lakeside Circle
Worthington, Ohio 43085

Dear Mr. Gesler:

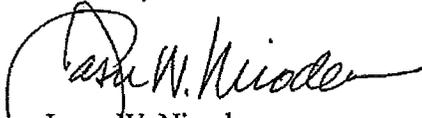
RE: Board of Income Tax Appeals – Hearing 02-2008
Board Decision Summary

Please find attached the Board of Tax Appeal's Position concerning the Motion to Reconvene Hearing of June 23, 2008. Based upon evidence and arguments educed on November 20, 2008, the Motion to Reconvene Hearing of June 23, 2008 was hereby granted.

The Income Tax Board of Appeals will reconvene on a date and at a time to be determined for the sole purpose of hearing the appeal first filed by the Appellant on April 11, 2008.

Thank you for your attention and if any further information is required, please contact the Finance Department at (614) 786-7352.

Sincerely,



Jason W. Nicodemus
Finance Assistant

Attachment



**CITY OF WORTHINGTON
INCOME TAX BOARD OF APPEALS
HEARING NO. 02-2008**

APPELLANT:

JAMES L. GESLER

HEARING DATE: 11/20/2008 | **TIME:** 5:30 PM | **PLACE:** Worthington Council Chambers

IN ATTENDANCE:

| | | | |
|-------------------|-------|----------------|---|
| Jerry A. Katz | X | Tax Dept. Rep. | X |
| James G. May | X | Appellant | X |
| Megan J. Browning | _____ | | |

APPEAL OF:

An appeal has been filed by a Worthington Resident contesting the City's ability to tax income reported on Schedule C, Schedule E, and Schedule F from Federal Form 1040.

DECISION

| | | |
|--------------------------|------------------------|--------------------------------|
| APPEAL MODIFIED _____ | APPEAL UPHELD _____ | APPEAL DENIED _____ X _____ |
|--------------------------|------------------------|--------------------------------|

BOARD OF TAX APPEAL'S POSITION:

We, the Income Tax Board of Appeals, find that the appellant has failed to prove, by competent and probative evidence, that the taxation of Schedule C, E, or F income is in error. Upon review of the record before us, we conclude that the City's determination is supported by a preponderance of the evidence and is in accordance with law. Accordingly, we affirm the determination and deny the appeal.

Should you have any questions concerning this ruling, please feel free to contact the Income Tax Department at (614) 786-7353.

Very truly yours,

| | |
|-------------------------------------|--------|
| WORTHINGTON BOARD OF APPEALS | |
| Jerry A. Katz | Chair |
| James G. May | Member |
| Megan J. Browning | Member |

OHIO BOARD OF TAX APPEALS

| | | |
|---|---|------------------------|
| James L. Gessler and Angeline O. Gessler, |) | CASE NO. 2009-K-1010 |
| |) | |
| Appellants, |) | (MUNICIPAL INCOME TAX) |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | |
| City of Worthington Income Tax Board of |) | |
| Appeals and Steven R. Gandee, Finance |) | |
| Director, |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

For the Appellants - Vorys, Sater, Seymour and Pease LLP
Raymond D. Anderson
David A. Froling
Steven L. Smiseck
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

For the Appellees - Baker & Hostetler, LLP
Andrew M. Ferris
Capitol Square, Suite 2100
65 East State Street
Columbus, Ohio 43215-4260

Entered **NOV 16 2012**

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

Through their appeal, appellants challenge a determination made by the City of Worthington Income Tax Board of Appeals ("MBOA") affirming the city's finance assistant's denial of their request for refund of city income tax paid for tax years 2005, 2006, and 2007. We proceed to consider and resolve this matter upon appellants' notice of appeal, the transcript certified by the MBOA pursuant to R.C. 5717.011, the record of the hearing convened before this board, and the written argument submitted on behalf of the parties.

The facts relevant to this appeal are generally undisputed. Appellants have been residents of the city of Worthington since 1996. James L. Gessler provided tax advisory services for which two of his clients compensated him with stock options that he exercised during tax years 2005, 2006, and 2007. The resulting income was reported on schedule C of appellants' federal income tax returns, as well as on Form 37 of their city tax returns, for the years in question on which tax was paid. In 2008, Mr. Gessler contacted the city of Worthington, disputing the taxable status, as prescribed by the city of Worthington, of the stock options exercised and seeking a refund of taxes paid. Said request was denied initially by the city and subsequently by the MBOA.

From the MBOA's decision, appellants filed the present appeal pursuant to R.C. 5717.011. As this board stated in *Marion v. Marion Bd. of Rev.* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, at 3, "[w]hen cases are appealed from a municipal board of review to the BTA, the burden of proof is on the appellant to establish its right to the relief requested. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121." Cf. *Tetlak v. Bratenahl* (2001), 92 Ohio St.3d 46, 51-52.

We begin by referring to Codified Ord. 1703.01 which provides in pertinent part:

"To provide for the purposes of general Fire Department operation and general Municipal operations, maintenance, new equipment and capital improvements of the City, there is hereby levied a tax at the rate of Two Percent (2%) per annum upon the following:

"(c)(1) On the net profits earned on and after January 1, 2004, of all unincorporated businesses, professions or other activities conducted by residents of the City."

Through Codified Ord. 1701.15, the city expressly defined “net profit” for purposes of its income tax:

“‘Net profit’ means for a taxpayer other than an individual, the adjusted federal taxable income and ‘net profit’ for a taxpayer who is an individual means the individual’s profit, *other than amounts required to be reported on schedule C, schedule E, or schedule F.*” (Emphasis added.)

Under the preceding definition, the stock options exercised by Mr. Gessler and reported on schedule C of appellants’ federal tax return would not constitute “net profit” for purposes of city income tax. Despite this express language, the city posits several grounds for the denial of appellants’ refund request, two of which suggest concession that Codified Ord. 1701.15, as enacted, warrants a ruling in appellants’ favor: (a) apparent from other city taxing provisions, its subsequent amendment of Codified Ord. 1701.15,¹ and the testimony of its witnesses, it was not the city’s intent to exclude schedule C income from the city’s definition of net profit and that the above-emphasized language was inadvertent; (b) this board should construe any ambiguity in the city’s favor so as to avoid an unreasonable and absurd result; and/or (c) the city’s definition of net profit is inconsistent with the definition of the same term as set forth in R.C. Chapter 718 and therefore the latter must prevail.

In *Bosher v. Euclid Income Tax Bd. of Rev.*, 99 Ohio St.3d 330, 2003-Ohio-3886, the Supreme Court, in concluding a city’s ordinances did not provide for its taxation of individual lottery winnings, held as follows:

¹ On October 20, 2008, the city amended this provision to read as follows:

“‘Net profit’ means for a taxpayer other than an individual, the adjusted federal taxable income and ‘net profit’ for a taxpayer who is an individual means the individual’s profit required to be reported on Federal Schedules C, E, or F, excluding those amounts exempted by Section 718.01(F) of the Ohio Revised Code.”

“In determining whether Euclid’s ordinances permit taxation of lottery winnings, we must adhere to the following rules of statutory construction. First, in looking at the specific language contained in the ordinances, if the language is unambiguous, we must apply the clear meaning of the words used. *Roxane Laboratories, Inc. v. Tracy* (1996), 75 Ohio St.3d 125, 127, ***. In addition, R.C. 1.42 declares, ‘Words and phrases shall be read in context and construed according to the rules of grammar and common usage.’ Also, statutory enactments that relate to the same general subject matter must be read in *pari materia*. *United Tel. Co. of Ohio v. Limbach* (1994), 71 Ohio St.3d 369, 372, ***. Finally, we must strictly construe tax ordinances and resolve any doubt as to their meaning in favor of the taxpayer. *Roxane Laboratories*, 75 Ohio St.3d at 127, ***.” *Id.* at ¶14. (Parallel citations omitted.)

Upon review of the ordinance in question, and the testimony provided on the city’s behalf, we are not persuaded by the city’s arguments regarding its claimed intent in enacting the statute or the asserted existence of a scrivener’s error. We consider Codified Ord. 1701.15 to be clear and its terms unambiguous, therefore requiring no interpretation by this board.

Ultimately, however, we find more compelling, and dispositive of this appeal, the city’s argument that while it appears appellants would be entitled to a refund under the language appearing in the city’s ordinance, the Ohio General Assembly’s expression must be deemed to govern the present situation. In *Fisher v. Neusser* (1996), 74 Ohio St.3d 506, the Supreme Court recognized:

“Ohio municipalities ‘have the right to exercise all powers of local self-government and may adopt and enforce such local regulations that are not in conflict with the general law. Sections 3 and 7, Article XVIII, Ohio Constitution. Included within the above grant of authority is the power of taxation. See *State ex rel. Zielonka, City Solr. v. Carrel, Aud.* [1919] 99 Ohio St. 220 ***.’ *Thompson v. Cincinnati* (1965), 2 Ohio St.2d 292, 294, ***.

“That power, however, is subject to ‘pre-emption by the General Assembly of the field of income taxation and subject to the power of the General Assembly to limit the power of municipalities to levy taxes under Section 13 of Article XVIII or Section 6 of Article XIII of the Ohio Constitution.’ *Angell v. Toledo* (1950), 153 Ohio St. 179, *** paragraph one of the syllabus.” , 507. (Parallel citations omitted.)

See, also, *Cincinnati Imaging Venture v. Cincinnati* (1996), 116 Ohio App.3d 1.

R.C. 718.01(G)(1) provides:

“In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, an amount other than the net profit *required to be reported by the taxpayer on schedule C or F* from such sole proprietorship for the taxable year.”

Although the city has defined net income to mean an “individual’s profit, other than amounts required to be reported on schedule C, schedule E, or schedule F,” such language is in direct contravention of R.C. 718.01(A)(7):

“For taxable years beginning on or after January 1, 2004, ‘net profit’ for a taxpayer other than an individual means adjusted federal taxable income and ‘net profit’ for a taxpayer who is an individual means the individual’s profit *required to be reported on schedule C, schedule E, or schedule F*, other than any amount allowed as a deduction under division (E)(2) or (3) of this section or amounts described in division (H) of this section.”² (Emphasis added.)

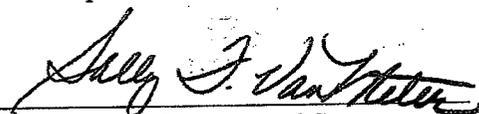
² The above-quoted version of the statute, referred to by the parties in their briefs, became effective on December 21, 2007, differing slight from the prior version of the statute:

“For taxable years beginning on or after January 1, 2004, ‘net profit’ for a taxpayer other than an individual means adjusted federal taxable income and ‘net profit’ for a taxpayer who is an individual means the individual’s profit, other than amounts described in division (F) of this section, required to be reported on schedule C, schedule E, or schedule F.”

In this instance, the disputed income was required to be reported, and was in fact reported, on schedule C of appellant's federal income tax returns. While appellants assert the preceding provision be read in pari materia with R.C. 718.01(E)(1)(a), a statute which grants some latitude to municipalities regarding the taxation of stock option income, we do not find this more permissive provision subservient to the clear expression set forth within the definition enacted by the General Assembly in R.C. 718.01(A)(7). Moreover, nowhere does it appear the city expressly elected to grant exemption to stock option income and Codified Ord. 1701.15 cannot be reasonably read as doing so.

Accordingly, we are unpersuaded by appellants' arguments and it is therefore the decision and order of this board that the decision of the city of Worthington Income Tax Board of Appeals must be, and hereby is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

**SCHEDULE C
(Form 1040)**

Department of the Treasury
Internal Revenue Service

Profit or Loss From Business

(Sole Proprietorship)

▶ Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.
▶ Attach to Form 1040 or 1041. ▶ See instructions for Schedule C (Form 1040).

OMB No. 1545-0074

2004

Attachment
Sequence No. **09**

| | |
|---|---|
| Name of proprietor | Social security number (SSN) |
| A Principal business or profession, including product or service (see page C-2 of the instructions) | B Enter code from pages C-7, 8, & 9 ▶ |
| C Business name. If no separate business name, leave blank. | D Employer ID number (EIN), if any |
| E Business address (including suite or room no.) ▶ City, town or post office, state, and ZIP code | |
| F Accounting method: (1) <input type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ▶ | |
| G Did you "materially participate" in the operation of this business during 2004? If "No," see page C-3 for limit on losses <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| H If you started or acquired this business during 2004, check here <input type="checkbox"/> | |

Part I Income

| | | | |
|--|---|--|--|
| 1 Gross receipts or sales. Caution. If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here <input type="checkbox"/> | 1 | | |
| 2 Returns and allowances | 2 | | |
| 3 Subtract line 2 from line 1 | 3 | | |
| 4 Cost of goods sold (from line 42 on page 2) | 4 | | |
| 5 Gross profit. Subtract line 4 from line 3. | 5 | | |
| 6 Other income, including Federal and state gasoline or fuel tax credit or refund (see page C-3) | 6 | | |
| 7 Gross income. Add lines 5 and 6 | 7 | | |

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

| | | | | | | | |
|--|-----|--|--|---|-----|--|--|
| 8 Advertising | 8 | | | 19 Pension and profit-sharing plans | 19 | | |
| 9 Car and truck expenses (see page C-3) | 9 | | | 20 Rent or lease (see page C-5): | 20 | | |
| 10 Commissions and fees | 10 | | | a Vehicles, machinery, and equipment | 20a | | |
| 11 Contract labor (see page C-4) | 11 | | | b Other business property | 20b | | |
| 12 Depletion | 12 | | | 21 Repairs and maintenance | 21 | | |
| 13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-4) | 13 | | | 22 Supplies (not included in Part III) | 22 | | |
| 14 Employee benefit programs (other than on line 19). | 14 | | | 23 Taxes and licenses | 23 | | |
| 15 Insurance (other than health) | 15 | | | 24 Travel, meals, and entertainment: | 24 | | |
| 16 Interest: | 16 | | | a Travel | 24a | | |
| a Mortgage (paid to banks, etc.) | 16a | | | b Meals and entertainment | | | |
| b Other | 16b | | | c Enter nondeductible amount included on line 24b (see page C-5) | | | |
| 17 Legal and professional services | 17 | | | d Subtract line 24c from line 24b | 24d | | |
| 18 Office expense | 18 | | | 25 Utilities | 25 | | |
| 28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns | | | | 26 Wages (less employment credits) | 26 | | |
| 29 Tentative profit (loss). Subtract line 28 from line 7 | | | | 27 Other expenses (from line 48 on page 2) | 27 | | |
| 30 Expenses for business use of your home. Attach Form 8829 | | | | 28 | 28 | | |
| 31 Net profit or (loss). Subtract line 30 from line 29. <ul style="list-style-type: none"> • If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32. | | | | 29 | 29 | | |
| 32 If you have a loss, check the box that describes your investment in this activity (see page C-6). <ul style="list-style-type: none"> • If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you must attach Form 6198. | | | | 30 | 30 | | |
| | | | | 31 | 31 | | |
| | | | | 32a <input type="checkbox"/> All investment is at risk. | | | |
| | | | | 32b <input type="checkbox"/> Some investment is not at risk. | | | |

**SCHEDULE E
(Form 1040)**

Supplemental Income and Loss
(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

2004

Attachment
Sequence No. **13**

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1041. ▶ See Instructions for Schedule E (Form 1040).

Name(s) shown on return

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). Report farm rental income or loss from Form 4835 on page 2, line 40.

| | | | | | |
|---|---|---|---|-----|----|
| 1 | List the type and location of each rental real estate property: | 2 | For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days or • 10% of the total days rented at fair rental value? (See page E-3.) | Yes | No |
| | A | | | A | |
| | B | | | B | |
| C | C | C | | | |

| Income: | Properties | | | Totals |
|--|------------|---|---|----------------------------|
| | A | B | C | (Add columns A, B, and C.) |
| 3 Rents received | | | | 3 |
| 4 Royalties received | | | | 4 |
| Expenses: | | | | |
| 5 Advertising | | | | 5 |
| 6 Auto and travel (see page E-4) | | | | 6 |
| 7 Cleaning and maintenance | | | | 7 |
| 8 Commissions | | | | 8 |
| 9 Insurance | | | | 9 |
| 10 Legal and other professional fees | | | | 10 |
| 11 Management fees | | | | 11 |
| 12 Mortgage interest paid to banks, etc. (see page E-4) | | | | 12 |
| 13 Other interest | | | | 13 |
| 14 Repairs | | | | 14 |
| 15 Supplies | | | | 15 |
| 16 Taxes | | | | 16 |
| 17 Utilities | | | | 17 |
| 18 Other (list) ▶ | | | | 18 |
| 19 Add lines 5 through 18 | | | | 19 |
| 20 Depreciation expense or depletion (see page E-4) | | | | 20 |
| 21 Total expenses. Add lines 19 and 20 | | | | 21 |
| 22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-4 to find out if you must file Form 6198. | | | | 22 |
| 23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See page E-4 to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2 | | | | 23 |
| 24 Income. Add positive amounts shown on line 22. Do not include any losses | | | | 24 |
| 25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here | | | | 25 |
| 26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 41 on page 2 | | | | 26 |

Name(s) shown on return. Do not enter name and social security number if shown on other side.

Your social security number

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check column (e) on line 28 and attach Form 6198. See page E-1.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? Yes No

Table with 5 columns: (a) Name, (b) Enter P for partnership, S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Rows A, B, C, D.

Table with 5 columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4562, (j) Nonpassive income from Schedule K-1. Rows A, B, C, D, 29a Totals, b Totals, 30, 31, 32.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A, B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Rows A, B, 34a Totals, b Totals, 35, 36, 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Row 39.

Part V Summary

Table with 2 columns: Description, Amount. Rows 40, 41, 42, 43.

**SCHEDULE F
(Form 1040)**

Profit or Loss From Farming

OMB No. 1545-0074

2004

Attachment
Sequence No. 14

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040, Form 1041, Form 1065, or Form 1065-B.

▶ See Instructions for Schedule F (Form 1040).

Name of proprietor

Social security number (SSN)

A Principal product. Describe in one or two words your principal crop or activity for the current tax year.

B Enter code from Part IV

D Employer ID number (EIN), if any

C Accounting method: (1) Cash (2) Accrual

E Did you "materially participate" in the operation of this business during 2004? If "No," see page F-2 for limit on passive losses. Yes No

**Part I Farm Income—Cash Method. Complete Parts I and II (Accrual method taxpayers complete Parts II and III, and line 11 of Part I.)
Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.**

| | | | | | |
|----|--|----|--|-------------------|----|
| 1 | Sales of livestock and other items you bought for resale | 1 | | | |
| 2 | Cost or other basis of livestock and other items reported on line 1 | 2 | | | |
| 3 | Subtract line 2 from line 1 | 3 | | | |
| 4 | Sales of livestock, produce, grains, and other products you raised | 4 | | | |
| 5a | Total cooperative distributions (Form(s) 1099-PATR) | 5a | | 5b Taxable amount | 5b |
| 6a | Agricultural program payments (see page F-2) | 6a | | 6b Taxable amount | 6b |
| 7 | Commodity Credit Corporation (CCC) loans (see page F-3): | | | | |
| a | CCC loans reported under election | 7a | | 7c Taxable amount | 7c |
| b | CCC loans forfeited | 7b | | | |
| 8 | Crop insurance proceeds and certain disaster payments (see page F-3): | | | | |
| a | Amount received in 2004 | 8a | | 8b Taxable amount | 8b |
| c | If election to defer to 2005 is attached, check here <input type="checkbox"/> 8d Amount deferred from 2003 | 8d | | | 8d |
| 9 | Custom hire (machine work) income | 9 | | | |
| 10 | Other income, including Federal and state gasoline or fuel tax credit or refund (see page F-3) | 10 | | | |
| 11 | Gross income. Add amounts in the right column for lines 3 through 10. If accrual method taxpayer, enter the amount from page 2, line 51 | 11 | | | |

Part II Farm Expenses—Cash and Accrual Method. Do not include personal or living expenses such as taxes, insurance, repairs, etc., on your home.

| | | | | | | | |
|----|---|-----|--|----|--|-----|--|
| 12 | Car and truck expenses (see page F-4—also attach Form 4562) | 12 | | 25 | Pension and profit-sharing plans | 25 | |
| 13 | Chemicals | 13 | | 26 | Rent or lease (see page F-5): | | |
| 14 | Conservation expenses (see page F-4) | 14 | | a | Vehicles, machinery, and equipment | 26a | |
| 15 | Custom hire (machine work) | 15 | | b | Other (land, animals, etc.) | 26b | |
| 16 | Depreciation and section 179 expense deduction not claimed elsewhere (see page F-4) | 16 | | 27 | Repairs and maintenance | 27 | |
| 17 | Employee benefit programs other than on line 25 | 17 | | 28 | Seeds and plants purchased | 28 | |
| 18 | Feed purchased | 18 | | 29 | Storage and warehousing | 29 | |
| 19 | Fertilizers and lime | 19 | | 30 | Supplies purchased | 30 | |
| 20 | Freight and trucking | 20 | | 31 | Taxes | 31 | |
| 21 | Gasoline, fuel, and oil | 21 | | 32 | Utilities | 32 | |
| 22 | Insurance (other than health) | 22 | | 33 | Veterinary, breeding, and medicine | 33 | |
| 23 | Interest: | | | 34 | Other expenses (specify): | | |
| a | Mortgage (paid to banks, etc.). | 23a | | a | | 34a | |
| b | Other | 23b | | b | | 34b | |
| 24 | Labor hired (less employment credits) | 24 | | c | | 34c | |
| | | | | d | | 34d | |
| | | | | e | | 34e | |
| | | | | f | | 34f | |

35 Total expenses. Add lines 12 through 34f

36 Net farm profit or (loss). Subtract line 35 from line 11. If a profit, enter on Form 1040, line 18, and also on Schedule SE, line 1. If a loss, you must go on to line 37 (estates, trusts, and partnerships, see page F-6)

37 If you have a loss, you must check the box that describes your investment in this activity (see page F-6).
 • If you checked 37a, enter the loss on Form 1040, line 18, and also on Schedule SE, line 1.
 • If you checked 37b, you must attach Form 6198.

37a All investment is at risk.
 37b Some investment is not at risk.

Part III Farm Income—Accrual Method (see page F-6)

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797 and do not include this livestock on line 46 below.

| | | | | | |
|------------|---|------------|--|------------|----------------|
| 38 | Sales of livestock, produce, grains, and other products during the year | | | 38 | |
| 39a | Total cooperative distributions (Form(s) 1099-PATR) | 39a | | 39b | Taxable amount |
| 40a | Agricultural program payments | 40a | | 40b | Taxable amount |
| 41 | Commodity Credit Corporation (CCC) loans: | | | 41a | |
| a | CCC loans reported under election | | | 41a | |
| b | CCC loans forfeited | 41b | | 41c | Taxable amount |
| 42 | Crop insurance proceeds | | | 42 | |
| 43 | Custom hire (machine work) income | | | 43 | |
| 44 | Other income, including Federal and state gasoline or fuel tax credit or refund | | | 44 | |
| 45 | Add amounts in the right column for lines 38 through 44 | | | 45 | |
| 46 | Inventory of livestock, produce, grains, and other products at beginning of the year | 46 | | | |
| 47 | Cost of livestock, produce, grains, and other products purchased during the year | 47 | | | |
| 48 | Add lines 46 and 47. | 48 | | | |
| 49 | Inventory of livestock, produce, grains, and other products at end of year | 49 | | | |
| 50 | Cost of livestock, produce, grains, and other products sold. Subtract line 49 from line 48* | | | 50 | |
| 51 | Gross income. Subtract line 50 from line 45. Enter the result here and on page 1, line 11. | | | 51 | |

*If you use the unit-livestock-price method or the farm-price method of valuing inventory and the amount on line 49 is larger than the amount on line 48, subtract line 48 from line 49. Enter the result on line 50. Add lines 45 and 50. Enter the total on line 51.

Part IV Principal Agricultural Activity Codes



File **Schedule C** (Form 1040), Profit or Loss From Business, or **Schedule C-EZ** (Form 1040), Net Profit From Business, instead of Schedule F if:

- Your principal source of income is from providing agricultural services such as soil preparation, veterinary, farm labor, horticultural, or management for a fee or on a contract basis or
- You are engaged in the business of breeding, raising, and caring for dogs, cats, or other pet animals.

These codes for the Principal Agricultural Activity classify farms by the type of activity they are engaged in to facilitate the administration of the Internal Revenue Code. These six-digit codes are based on the North American Industry Classification System (NAICS).

Select one of the following codes and enter the six-digit number on page 1, line B.

Crop Production

- 111100 Oilseed and grain farming
- 111210 Vegetable and melon farming

- 111300 Fruit and tree nut farming
- 111400 Greenhouse, nursery, and floriculture production
- 111900 Other crop farming

Animal Production

- 112111 Beef cattle ranching and farming
- 112112 Cattle feedlots
- 112120 Dairy cattle and milk production
- 112210 Hog and pig farming
- 112300 Poultry and egg production
- 112400 Sheep and goat farming
- 112510 Animal aquaculture
- 112900 Other animal production

Forestry and Logging

- 113000 Forestry and logging (including forest nurseries and timber tracts)

101.08 SEVERABILITY.

If any provision of a section of the Codified Ordinances or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

(ORC 1.50)

Checkpoint Contents

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CARLISLE GEAUGA COMPANY, Appellant, v. Roger W. TRACY, Tax Commissioner of Ohio, Appellee, 94-R-1244,

07/07/1995

CARLISLE GEAUGA COMPANY, Appellant, v. Roger W. TRACY, Tax Commissioner of Ohio, Appellee

Case Information:

Docket/Court: 94-R-1244, Ohio Board of Tax Appeals

Date Issued: 07/07/1995

Tax Type(s): Property

For the Appellant - William E. Spatz, Vice President of Finance, Carlisle Geauga Company

For the Appellee - Betty D. Montgomery, Attorney General of Ohio, By: Richard C. Farrin, Assistant Attorney General

OPINION

DECISION AND ORDER

This matter came to be considered by the Board of Tax Appeals upon a notice of appeal, filed November 14, 1994, by William E. Spatz, Vice President of Finance, on behalf of Carlisle Geauga Company. The appellant appeals a Final Determination of the Tax Commissioner, dated October 13, 1994. In the Final Determination, the Tax Commissioner denied appellant's application for final assessment relating to appellant's 1992 personal property tax.

Specifically, the Tax Commissioner's Final Determination reads as follows:

"This matter now comes on for final determination. It involves an application for final assessment for the 1992 personal property tax return for Carlisle Geauga Company. **Ohio Revised Code Section 5711.26** provides for the filing and review of applications for final assessment. The request made by the taxpayer is being reviewed under the provisions of that section.

" **Section 5711.26, R.C.** provides in part:

"Except for taxable property concerning the assessment of which an appeal has been filed under **section 5717.02 of the Revised Code**, the tax commissioner may, within the time limitation in **section 5711.25 of the Revised Code**, and shall, upon application filed within such time limitation in accordance with the requirements of this section, finally assess the taxable property required to be returned by any taxpayer, ...

"Application for final assessment shall be filed with the tax commissioner in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the application is presented shall be treated as the date of filing."

"In this instance, the tax return was filed April 16, 1992. The time period provided in **Section 5711.25**, the second

Monday in August in the second year after the return is filed expired August 8, 1994. The application for final assessment was by letter dated August 12, 1994. It was mailed by the taxpayer, by United States Postal Service Express Mail, (next day service). The date on the postage meter stamps is August 12, 1994, and the date on the mailing label for the Express Mail services appears to be August 12, 1994.

"Since the application was filed after the time limitation prescribed in **Section 5711.26, R.C.**, the Tax Commissioner is without jurisdiction to finally assess the property for this return year. Therefore, the application for final assessment is dismissed.

"*****"

Appellant, in its notice of appeal, challenges the foregoing decision asserting that:

"We hereby wish to advise you that we are not in agreement with the Final Determination regarding the application for final assessment for Tax Return Year 1992. As stated in your Final Determination, our application for final assessment had to be filed by August 8, 1994. However, when our representatives personally filed our 1994 tax return in Columbus, they were told by two Ohio Revenue auditors that the applications for final assessment were due to (sic) later than August 15, 1994. Therefore, our final assessment letter which was dated August 12, 1994, was timely.

"Taking into consideration the above facts, we hereby request that reconsideration be given to our request for final assessment of the 1992 Tax Return and that request should be granted."

The Board held an evidentiary hearing in this matter on June 14, 1995. The Tax Commissioner was represented by counsel. The appellant, however, did not appear. Nevertheless, Mr. Robert A. Shackell, an employee of Property Assessment Advisors, Inc., testified on the appellant's behalf. Accordingly, this appeal is now submitted upon the notice of appeal, the statutory transcript certified to the Board of Tax Appeals ("S.T."), and the record of the evidentiary hearing held before the Board ("R.").

The issue in this case is whether the Tax Commissioner properly denied appellant's application for final assessment as to its 1992 tax return.

First, the Board notes that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St. 3d 221. In addition, the taxpayer has the affirmative duty to come forward and prove the Tax Commissioner's findings are unreasonable, unlawful, or erroneous. *Manfredi Motor Transit Co. v. Limbach* (Aug. 17, 1990), B.T.A. Case No. 87-F-279, unreported. When no competent and probative evidence is presented by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Hatchadorian v. Lindley* (1986), 21 Ohio St. 3d 66; *Averill v. Limbach* (Aug. 23, 1991), B.T.A. Case No. 90-C-1647, unreported.

Every taxpayer owning taxable, personal property must annually file a personal property tax return with the county auditor of each county where the property is located. **R.C. 5711.02.**

Further, **R.C. 5711.26** requires the Tax Commissioner to consider the taxpayer's application for final assessment, as follows:

"Except for taxable property concerning the assessment of which an appeal has been filed under **section 5717.02 of the Revised Code**, the tax commissioner may, within the time limitation in **section 5711.25 of the Revised Code**, and shall, upon application filed within such time limitation in accordance with the requirements of this section, finally assess the taxable property required to be returned by any taxpayer, ***** as to which a preliminary or amended assessment has been made by or certified to a county treasurer or certified to the auditor of state or as to which the preliminary assessment is evidenced by a return filed with a county auditor for any prior year, *****. Application for final assessment shall be filed with the tax commissioner in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the application is presented shall be treated as the date of filing. *****"

(Emphasis added.)

R.C. 5711.25 establishes the time in which a taxpayer must file its application for final assessment. Pursuant to this statute, a taxpayer must file its application for final assessment on or before the second Monday of August in the second year after the personal

property tax return is filed to be timely filed. R.C. 5711.25, as in effect at the time the application was filed, reads, in pertinent part, as follows:

"*****. Each preliminary assessment certificate, and if amended such preliminary assessment certificate as last amended, shall become final on the second Monday of August of the second year after the filing of a return with the county auditor or after the certification of the preliminary assessment certificate, *****; unless prior to the expiration of said period ***** one of the following occurred:

(A) A final assessment certificate as to the taxpayer represented thereby has been issued pursuant to 5711.26 of the Revised Code."

The time frame for finalizing assessment certificates outlined in R.C. 5711.25, in effect, constitutes a statute of limitations. *Michelin Tire Corp. v. Kosydar* (1974), 38 Ohio St. 2d 254, 257. This filing limitation as promulgated by the legislature is mandatory in nature, and not discretionary.

The facts in this appeal are contained in the statutory transcript and were presented through the testimony of Robert A. Shackell at the evidentiary hearing. On April 16, 1992, appellant filed its 1992 Inter-County Return of Taxable Business Property, Form 945. (S.T. 52) The Ohio Department of Taxation issued a preliminary assessment, valuing appellant's personal property for 1992. (S.T. 5)

According to the testimony of appellant's witness, 'on June 14, 1994, Mr. Shackell and his supervisor, Ken Miller, were in Columbus, Ohio, personally filing appellant's 1994 personal property tax return with the Tax Department. At that time, they inquired as to when an application for final assessment needed to be filed by appellant for the previous two years (1992 and 1993). Although Mr. Shackell could not recall the names of or otherwise identify the two individuals to whom he spoke, Mr. Shackell claimed that he was told by employees of the Ohio Department of Taxation that the applications for final assessment needed to be filed by August 15th.

On August 15, 1994, the Tax Department received a letter, dated August 12, 1995, from appellant, requesting a "Final Assessment" for 1992 and 1993. (S.T. 4) After review and consideration, the Tax Commissioner denied appellant's application as to the 1992 tax return because it was not timely filed in accordance with the statute. (S.T. 1-2) It is from this determination that appellant now appeals.

As stated before, to be timely filed, applications for final assessment must be submitted by the second Monday in August in the second year after the return was filed. R.C. 5711.25. In 1994, the second Monday in August was August 8. Therefore, the appellant should have filed its application for final assessment of personal property tax for tax year 1992 by August 8, 1994. This, appellant did not do.

The record reflects that the application for final assessment was made by letter dated August 12, 1994 (S.T. 4), was mailed by the taxpayer by United States Postal Service Express Mail (next day service) on August 12, 1994 (S.T. 51), and was received by the Ohio Department of Taxation on August 15, 1994 (S.T. 4). Consequently, based on this evidence and the applicable law, the Board concludes that appellant's application for final assessment for tax year 1992 was untimely.

As the appellant presented no evidence to the contrary, the Board finds that the Tax Commissioner determination that he was without jurisdiction to consider appellant's application was not unreasonable, unlawful, or erroneous. Thus, the Tax Commissioner was correct in dismissing appellant's application.

The fact that Mr. Shackell claims he was told by two employees of the Tax Department that the filing deadline was August 15 rather than the correct date, August 8, 1994, does not alter this Board's conclusion. Even if the appellant had established this point by competent, probative, and reliable evidence at the hearing, such casual statements and advice given by representatives of the Ohio Department of Taxation do not bind the Tax Commissioner. It is well established that estoppel does not apply to the State of Ohio with regard to a taxing statute. *Beatrice Foods Co., Inc. v. Lindley* (1982), 70 Ohio St. 2d 29; *Ormet Corp. v. Lindley* (1982), 69 Ohio St. 2d 263; *H.C. Albring Co. v. Kosydar* (1976), 46 Ohio St. 2d 343; *Am. Handling Equip. Co. v. Kosydar* (1975), 42 Ohio St. 2d 150; *Recording Devices, Inc. v. Bowers* (1963), 174 Ohio St. 518, paragraph one of the syllabus. As a citizen conducting business in the State of Ohio, appellant is presumed to know the statutory laws, rules, and regulations concerning personal property tax filings. Appellant's apparent reliance upon erroneous advice from property assessment consultants does not void the statutory limitations.

Accordingly, based upon the foregoing, it is the decision and order of the Board of Tax Appeals that the final order of the Tax Commissioner must be, and hereby is, affirmed.

Kiehner Johnson, Chairman

Mr. Shackell is an employee of Property Assessment Advisors, Inc. and, apparently, performs services, such as filing personal property tax returns, on behalf of the appellant.

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SECTION 2.08 APPOINTMENT OF CITY MANAGER.

The Council shall appoint by ordinance an officer of the Municipality who shall have the title of City Manager, who shall have the administrative powers and responsibilities of the Municipality and who shall perform the duties set forth in this Charter or by ordinance. The Council may authorize and its President may execute on behalf of the Municipality an employment agreement with the City Manager in which is set forth such salary, benefits, and conditions of employment, including a provision for severance pay, of the City Manager as Council may determine and as are not inconsistent with this Charter. If deemed appropriate to do so, Council may authorize severance pay for the City Manager in the absence of an employment agreement with the City Manager. No Council member or Mayor shall be appointed as City Manager during the term of office for which such Council member or Mayor has been elected or appointed or for one year thereafter.

SECTION 3.05 DEPARTMENT DIRECTORS.

At the head of each department shall be a Director, responsible to and appointed by the City Manager with the approval of the Council, and who shall be an exempt officer of the Municipality. The Director shall have supervision and control, subject to the direction of the City Manager, of the department and shall faithfully discharge those duties of the office and observe and enforce the provisions of this Charter and the ordinances of this Municipality. Two or more departments may be headed by the same officer and the City Manager may serve as head of one or more departments in addition to serving as City Manager, if approved by Council.

SECTION 9.01 OATH OF OFFICE.

Every officer and employee of the Municipality shall, before entering upon the duties of office or employment, take and subscribe to the following oath or affirmation to be filed and kept in the office of the Clerk:

"I solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Ohio and will obey the laws thereof and that I will, in all respects, observe the provisions of the Charter and ordinances of this Municipality, and will faithfully discharge the duties of _____, upon which I am about to enter."



Founded 1803

COUNCIL • MANAGER • GOVERNMENT

June 25, 2008

Mr. James L. Gesler
6663 Lakeside Circle
Worthington, OH 43085

In re: Municipal Net Profit Tax on Individuals
Second Determination Letter

Dear Mr. Gesler:

Please find below the response to your request during the hearing of the Worthington Income Tax Board of Tax Appeals on June 23, 2008.

The City has levied an income tax since 1971 and municipal income tax in Ohio is administered pursuant to each municipality's specific ordinances, as limited/supplemented by Chapter 718 of the Ohio Revised Code. The City's municipal income tax code is set out in Chapter 1701 of the City's Codified Ordinances. With respect to tax on net profits, Section 1703.01(c)(1) provides that the City's income tax is to be imposed on the net profits of all unincorporated businesses, professions or other activities conducted by residents of the City.

Before 2004, Section 1701.10 of the ordinance defined net profits as:

"[T]he net gain from the operation of a business, profession, or enterprise or other activity (whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit) after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting method used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this Taxation Code, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this Taxation Code (Section 1701.10, Passed 12-12-01)."

There was no distinction in this definition between net profits of individuals and net profits of companies or entities. Clearly under this language, and Section 1703.01(c)(1), the net gain from business activity conducted by a resident was subject to tax by the City. For individuals, net gains

from the operation of unincorporated businesses are reported on federal income tax Schedules C, E and F. Schedule C is the federal schedule used by individuals to report net profits from a business that is operated as a sole proprietorship. Schedule E is the federal schedule used by individuals to report supplemental income and loss from rental real estate and royalties. Schedule F is the federal schedule used by individuals to report profit or loss from farming.

In 2003, the Ohio General Assembly undertook a significant overhaul and update of Chapter 718 of the Ohio Revised Code, with respect to municipal income tax. One of those updates to Chapter 718 was the addition of a definition of "net profits". Section 718.01(A)(7) of the Ohio Revised Code reads as follows:

"For taxable years beginning on or after January 1, 2004, "net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in division (F) of this section, required to be reported on schedule C, schedule E, or schedule F."

Division (F) of O.R.C. §718.01 contains a list of items that a municipal corporation may not tax. So, in other words, net profit for an individual is the individual's profit that is required to be reported on Schedules C, E or F, when those reported profits do not include items that a municipality is prohibited from taxing.

In response to the changes to Chapter 718 made by the Ohio General Assembly, the City undertook its own ordinance update in December of 2004, to reflect those changes. One of the changes that the City made was to its definition of "net profit", which mirrors the language of O.R.C. §718.01(A)(7) except for what appears to be a typographical error. Section 1701.15 of the City's income tax ordinance reads as follows:

"Net profit" means for a taxpayer other than an individual, the adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than the amounts required to be reported on schedule C, schedule E, or schedule F."

In updating this definition, the City unintentionally included some unnecessary language from O.R.C. §718.01(A)(7), unnecessarily carrying through a portion of Section 718.01(A)(7)'s reference to "other than the amounts described in division (F) of this section". The result is a definition of net profit that appears to say that an individual's net profit, for the City's purposes, does not include amounts required to be reported on Schedules C, E or F. This outcome is erroneous for several reasons.

An individual who has profit from a business operation reports those profits on either Schedule C, Schedule E or Schedule F, depending on the source of the profit. To say that, for municipal income tax purposes, an individual's net profit doesn't include amounts from Schedule C, E or F would be the same as saying that the City does not tax the net profit from the business activities conducted by individuals.

The City of Worthington:

- 1) has always taxed an individual's net profit reported on Schedule C, E and F;

- 2) when updating the ordinance, had no intention to start exempting an individual's net profit from tax by the City, as clearly indicated by Section 1703.01(c)(1) which specifically provides for the tax on this income; and
- 3) that, even if the City had wanted to start to exempt an individual's net profit from business, it is specifically prohibited from doing so under Section 718.01(D)(1) of the Ohio Revised Code.

With respect to the third item mentioned above, please take note that the Section 718.01(D)(1) states that:

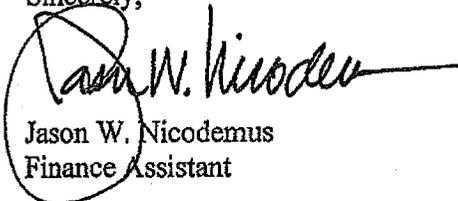
"Except as provided in division (E) or (F) of this section, no municipal corporation may exempt from a tax on income compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession."

With some limited exceptions, a municipal corporation cannot pick and choose who it is going to tax or what it is going to tax and, specifically, a municipal corporation is prohibited from exempting from a tax the net profit from business or profession. Net profit being defined, in the case of individuals, the profit reported on Schedule C, Schedule E, or Schedule F. Had the City actually intended to exempt individuals from paying tax on their net profit, that action would violate Section 718.01(D)(1).

In conclusion, Worthington has always administered the City's ordinance such that the net profit of individuals, reported on Schedules C, E and F, are taxable to individuals who are residents of the City and taxable to individuals who are not residents of the City but whose net profit is from business activity conducted in the City.

Thank you. You may reach me directly at (614) 786-7352, if necessary.

Sincerely,



Jason W. Nicodemus
Finance Assistant