

IN THE SUPREME COURT OF OHIO

ORIGINAL

James L. Gesler and Angeline O. Gesler, :

Appellants, :

v. :

City of Worthington Income Tax Board of :
Appeals and Steven R. Gandee (Molly :
Roberts), Finance Director, :

Appellees. :

Case No. 2012-2105

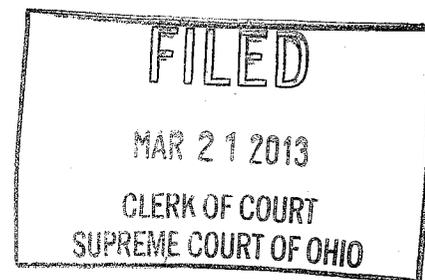
Appeal from the Ohio
Board of Tax Appeals
Case No. 2009-K-1010

APPELLANTS' REPLY BRIEF

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Introduction

Appellants' argued in their Merit Brief that City of Worthington ("City" or Worthington") Codified Ordinance 1701.15 ("Tax Ordinance") was either lawful, in which case Appellants are entitled to their requested refund or, the Tax Ordinance was unlawful in which case the Tax Ordinance should be invalidated, the result of which is that Appellants are entitled to their requested refund.

Appellees concede the Tax Ordinance was unlawful and should be invalidated. In spite of that concession Appellees argue the remedy of such invalidation is not to grant Appellants their requested refund. Instead Appellees argue the remedy is to allow Worthington to replace the Tax Ordinance with a state statute as if Worthington city council enacted such statute in lieu of Worthington's Tax Ordinance. Since the state statute as written does not entitle Appellants' to their requested refund Appellees' advance an argument where the remedy of an unlawful city tax ordinance benefits the party that drafted and enacted the unlawful and invalid ordinance. Appellees have it backward. The remedy must benefit Appellants. It is manifestly unreasonable and unlawful to hold the Tax Ordinance is unlawful and invalid yet deny Appellants their requested refund. Appellees propose a remedy that is completely at odds with Article XVIII, Section 3 of the Ohio Constitution and multiple Ohio Supreme Court decisions interpreting same. See e.g., *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 124 N.E. 134 (1919), and *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950).

Appellees do not contest the Ohio Board of Tax Appeals' ("BTA") decision that the Tax Ordinance was "clear and its terms unambiguous." Decision at 4.

The BTA determined that Worthington city council intended to enact the Tax Ordinance as written. Decision at 4. The BTA further determined that Worthington city council did not

make a scrivener's error in drafting the Tax Ordinance. *Id.* The BTA considered the Tax Ordinance "to be clear and its terms unambiguous, therefore requiring no interpretation by this board." *Id.* Thus, the BTA held that the City's intent was to enact a Tax Ordinance that did not impose tax upon Schedule C income. Appellees do not contest the BTA's findings in that regard. Similarly, the scrivener's error argument and other arguments that Appellees made to the BTA suggesting the Tax Ordinance should not be interpreted as written have not been argued in brief to this Court; therefore Appellees have abandoned such arguments. *See Household Finance Corp. v. Porterfield*, 24 Ohio St.2d 39, 46, 263 N.E. 2d 243 (1970) (an argument not pursued in brief is "deemed to be abandoned."). Accordingly, Appellees' argument is that the City properly imposed tax upon schedule C income even though city council intended just the opposite by enacting a Tax Ordinance that the BTA determined "to be clear and its terms unambiguous.

The Court must apply the Tax Ordinance as written. *See, Boshier v. Euclid Income Tax Bd. of Rev.*, 2003-Ohio-3886 ¶14, 99 Ohio St.3d 330 (2003). *See also, Provident Bank v. Wood*, 36 Ohio St.2d 101, 105-106, 304 N.E.2d 378 (1973) citing *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249 (1970)

It is a cardinal rule of statutory construction that a court must look first to the language of the statute itself to determine the legislative intent. *See, e.g. Katz v. Department of Liquor Control* (1957), 166 Ohio St. 229. **If that inquiry reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretive effort is at an end, and the statute must be applied accordingly.** Emphasis added.

Notwithstanding the holdings of *Boshier* and *Provident Bank* Appellees ask the Court to impose tax on behalf of the City. This the Court cannot do. "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators." *See, Stoll v. Gottlieb*, 305 U.S. 165 (1938), at 171. Moreover, Appellees'

request is contrary to Article XVIII, Section 3 of the Ohio Constitution and *Zielonka, Angell*, and other Court decisions.

Appellees misread the Ohio Constitution and Worthington's City Charter to argue the Tax Ordinance is unnecessary because Worthington can rely on state law to impose Worthington income tax on Worthington residents.

Appellees devote much of their brief to arguing in various ways that Worthington can rely upon state statutes and/or replace city ordinances with state statutes, as if Worthington city council enacted such state statutes in the first instance. Appellees' argument requires all taxpayers to review state law and then reconcile city law with state law in order to determine if city law is consistent with state law. That is city council's job, not taxpayers'!

Appellees' brief is replete with statements conceding that Worthington city council adopted a definition of "net profit" that was contrary to R.C. 718.01(A)(7) and R.C. 718.01(G)(1). The inference of Appellees' argument is that state law acts as an insurance policy to a city when the city enacts tax ordinances that are unlawful to the detriment of taxpayers. This approach is convenient to Appellees but the Ohio Constitution and R.C. Chapter 718 set forth protections for taxpayers; not municipalities. Stated differently, the Ohio Constitution and R.C. Chapter 718 serve as a shield to protect taxpayers and not as a sword for municipalities.

The starting point for any Ohio Constitution analysis is Article XVIII, Section 3 which states:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

In 1919 this Court held, "there can be no doubt that the grant of authority to exercise all powers of local government includes the power of taxation." *See, Zielonka* at 227.

Appellees ignore Article XVIII, Section 3 of the Ohio Constitution. Indeed Appellees do not cite Article XVIII, Section 3 anywhere in their brief. Nor do Appellees cite *Zielonka*. Appellees fail to understand the interplay of Article XVIII, Section 3 on the one hand, and Article XIII, Section 6 (The General Assembly has the power to restrict the constitutional grant of municipal taxing power.) and Article XVIII, Section 13 (Laws may be passed to limit the power of municipalities to levy taxes.) on the other hand. This Court provided an excellent synopsis of the interplay of these provision in *Cincinnati Bell Telephone Co. v. City of Cincinnati*, 81 Ohio St.3d 599, 602, 693 N.E.2d 212 (1998) as follows:

Municipal taxing power in Ohio is derived from the Ohio Constitution. Section 3, Article XVIII of the Constitution, the Home Rule Amendment, confers sovereignty upon municipalities to “exercise all powers of local self-government.” As this court stated in *State ex rel. Zielonka v. Carrel* (1919), 99 Ohio St. 220, 227, 124 N.E. 134, 136, “there can be no doubt that the grant of authority to exercise all powers of local government includes the power of taxation.”

However, the Constitution also gives to the General Assembly the power to limit municipal taxing authority. Section 6, Article XIII provides that “the General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation * * * so as to prevent the abuse of such power.” Section 13, Article XVIII provides that “laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes * * * .” See *Franklin v. Harrison* (1960), 171 Ohio St. 329, 14 Ohio Op.2d 4, 170 N.E.2d 739.

Conveniently, Appellees ignore *Cincinnati Bell* in their brief.

Municipalities have the power of taxation. However, a municipality’s taxing power is not absolute. The Ohio Constitution confers upon the Ohio General Assembly the power to restrict and limit municipalities’ power to impose tax. That said, nowhere does the Ohio Constitution confer upon the Ohio General Assembly the power to *impose* municipal tax on

behalf of a municipality, or even to compel a municipality to impose a tax. Such power would be inconsistent with the municipality's constitutionally granted home rule powers, which include the power of taxation.

If a municipal tax ordinance exceeds restrictions set forth by the General Assembly (i.e., R.C. Chapter 718) then the municipal tax ordinance is invalid and by extension the municipality's attempt to exercise its taxing power is invalid. The municipality does not get the benefit of the state law that was in conflict with the municipal law. In the present matter, Worthington's failure to abide by statutory restrictions cannot broaden Worthington's tax to include additional subject matter. To hold otherwise is contrary to Article XVIII, Section 3, and the court's holdings in *Zielonka* and *Cincinnati Bell*. Ironically Appellees devote their entire brief to advancing various arguments that undercut Worthington's home rule power to impose tax as set forth by Article XVIII, Section 3.

Appellees' position that a municipality's decision *not* to impose tax can be "restricted" or "limited" by the General Assembly to thereby tax new subject matter is contrary to law.

Appellants do not advocate that Worthington's tax base must prevail over a conflicting provision of the state's general law. Appellees Brief at 4. Appellees are confused. In this regard, throughout Appellees' brief, Appellees argue that R.C. 718.01 must be "enforced" as if Appellants are of a contrary view. Appellants agree that R.C. 718.01 is an enforceable statute. However, Appellants' position, as stated in their Merit Brief, is that the municipality is the legislative authority imposing tax, and the General Assembly's powers are constitutionally limited to "restricting" or "limiting" municipal exercises of a municipality's taxing power. Thus, the General Assembly has no authority to either impose tax on behalf of the municipality, or even to compel a municipality to impose a tax. To the extent that the municipality chooses not to

impose tax, there is no municipal exercise of taxing power for the General Assembly to “limit” or “restrict.” This distinction is critical because it makes crystal clear the proper remedy under circumstances where a municipality has failed to impose tax contrary to uniformity requirements of R.C. 718. In other words, “enforcement” of R.C. 718.01 should invalidate illegal taxes; “enforcement” of R.C. 718.01 should not serve to make illegal taxes valid. See, Ohio Constitution, Article XVIII, Section 3.¹

Appellees assert the BTA’s decision below is in accordance with the precedent established by the Court in *Fisher v. Neusser*, 1996 Ohio 172, 74 Ohio St.3d 506 (1996). Appellees’ Brief at 3. Appellees reliance on *Fisher* is misguided. In *Fisher*, the city of Akron imposed its income tax on lottery winnings. *Fisher*, citing R.C. 718.01(F)(3), argued state law precluded Akron from imposing tax on intangible income (i.e., the taxpayer attempted to use the shield provided by R.C. 718). This Court held lottery winnings do not fall with the definition of intangible income set forth in R.C. 718.01(A)(4). Therefore the state law set forth in R.C. 718.01(F)(3) precluding municipalities from imposing tax on intangible income did not apply. Since Akron’s tax ordinance did not conflict with state law, Akron was free to tax Fisher’s lottery winnings. *Fisher* has no precedential value to the resolution of the present appeal. Worthington’s Tax Ordinance through its express language did not impose tax on schedule C stock option income. Decision at 3 (“the stock options exercised by Mr. Gesler and reported on schedule C of appellants’ federal tax return would not constitute ‘net profit’ for purposes of city income tax.”).

¹ While R.C. 718 does provide for uniformity among municipalities such uniformity does not extend to stock option income. In 2003 the 125th Ohio General Assembly adopted R.C. 718.01(E) as part of Am. Sub. H.B. 95. R.C. 718.01(E) clearly provides each municipality the discretion to tax or exempt stock option income. (Appx. 12.)

R.C. 718.01 cannot be used as a sword to create new taxes or otherwise extend municipal tax to new subject matter beyond that specified by the municipal legislative authority. Ohio Constitution, Article XVIII, Section 3. If a city tax ordinance violated R.C. 718.01 then enforcement of R.C. 718.01 would require the municipal exercise of its taxing power to be invalidated.² *Id.* Appellees offer, without any analysis or authority in support, that it was the municipality's *failure* to exercise its powers to tax that was illegal, and therefore the City should be deemed to have exercised those powers, or alternatively, as held by the BTA, the General Assembly could exercise those powers on behalf of the City.

The General Assembly has no more authority to fill in blanks in a municipal tax ordinance than does a court. "Where statutes are ambiguous there is room for judicial interpretation but where instead of an ambiguity there is an absence of enactment, courts are without power to supply the deficiency." *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 104-105, 56 N.E.2d 265 (1944). In the instant case, the General Assembly could dictate to Worthington the requirements for a valid municipal income tax ordinance. However, the General Assembly was without power to fill in the legislative blanks on behalf of Worthington to the same extent courts are without such power. Ohio Constitution, Article XVIII, Section 3. Thus, if Worthington did not impose tax where Worthington was statutorily required to do so, i.e., an "absence of enactment," only Worthington's legislative authority could remedy that defect. *Id.*

² Whether the City's tax on other types of income was invalid is not before the Court. Appellants have no need for the Court to find the tax ordinance invalid *in toto*. The City's ordinance, as written, does not extend tax to Appellants' schedule C income. Appellants are simply pointing out that illegality of the ordinance under R.C. 718.01 cannot form the basis for extending tax to Appellants as Appellees' contend. Notably, in 2008 Worthington city council amended the Tax Ordinance and the statute of limitations for pursuing a refund under the "old" Tax Ordinance has long since closed.

A tax ordinance is “void for vagueness” when such tax ordinance expressly states that no tax is due yet city employees conclude the city can nevertheless collect tax.

Pursuant to the Tax Ordinance as written, “the stock options exercised by Mr. Gesler and reported on schedule C of appellants’ federal tax return would not constitute ‘net profit’ for purposes of city income tax.” Decision at 3. The BTA found the Tax Ordinance “to be clear and its terms unambiguous.” Decision at 4. The Court “must strictly construe tax ordinances and resolve any doubt as to their meaning in favor of the taxpayer.” See, *Bosher* at ¶14. The Tax Ordinance is prima facie “void for vagueness” since the BTA held the Tax Ordinance clearly and unambiguously stated the definition of net profits did not include schedule C income, yet Worthington could tax such income anyway.

Worthington city council did not incorporate the definitions contained in R.C. 718.01 into Worthington’s ordinances. Worthington city council knows how to incorporate the Ohio Revised Code into Worthington’s codified ordinances. See for example, Worthington’s Motor Vehicle License Tax set forth at Cod. Ord. 1717.01 and specifically division (c), “[a]s used in this chapter, the term “Motor Vehicle” means any and all vehicles included within the definition of motor vehicle in Section 4501.01 and 4505.01 of the Ohio Revised Code.”³ (Appx. 1.)

A “cross reference” to R.C. Chapter 718 is wholly insufficient to incorporate the definitions within R.C. Chapter 718. Moreover a “cross reference” does not suggest in any way

³ For Ohio individual income tax purposes the State of Ohio does incorporate definitions within the Internal Revenue Code in limited instances. See, R.C. 5747.01. See also, Ohio corporation franchise tax statute R.C. 5733.04(J). Worthington city council has not effectively adopted the definitions set forth in R.C. Chapter 718. Perhaps in the near future all cities will be required to incorporate such definitions by reference. See, H.B. 5 as introduced, 130th General Assembly, page 43, lines 1296 – 1309 whereby R.C. 718.04(A)(2) proposes: “On or after January 1, 2005, no municipal corporation shall levy such a tax unless the ordinance or resolution levying the tax...includes...a statement that the municipal corporation is levying the tax in accordance with the limitations specified in this chapter and that the resolution or ordinance thereby incorporates, by reference, the provisions of this chapter.” (Appx. 5-6.)

the intention of city council. Indeed the BTA held Worthington city council intended to enact the Tax Ordinance as written. Decision at 4 (“...we are not persuaded by the city’s arguments regarding its claimed intent in enacting the statute... We consider Cod. Ord. 1701.15 to be clear and its terms unambiguous, therefore requiring no interpretation by this board”).

Cross references do not “adopt” contrary statements within the cross referenced body of law. Indeed if the “cross reference” had legal effect then Appellees conveniently ignored the “cross reference” to R.C. 718.01(E) which allows municipalities to exempt stock option income from tax.

Appellees also suggest taxpayers receive all the process they are due with a taxing ordinance that means the opposite of what it says (i.e., “not subject to tax” is to be modified to mean “subject to tax”), so long as taxpayers can go to Court to clear things up. Such a reading of due process requirements simply throws out the body of law dealing with the “void for vagueness” doctrine. Similarly, such an interpretation ignores this own Court’s statement that a “substantially incomprehensible” tax statute is void. *Buckley v. Wilkins*, 2005 Ohio 2166, ¶19, 105 Ohio St.3d 350 (2005). *Buckley* does not stand for the proposition that the ability to go to court allows tax statutes to be interpreted to mean the opposite of what they say. Indeed, such ordinances or statutes would not just be “vague,” they would be actively misleading. A taxing ordinance cannot be interpreted to apply tax where it says it does not without violating the void for vagueness due process requirements provided by the U.S. and Ohio Constitutions.

“[A] tax law must be no less definite and certain in what it requires a citizen to do in order to avoid the consequences of its violation than a criminal statute.” *See Lee v. Bond-Howell Lumber Co.*, 123 Fla. 202, 214-215, 166 So. 733 (Fl. 1935). Where the constitutional and unconstitutional portions of a taxing statute are so intermingled such that a judicial construction

is required to determine which portions of the statute must be excised, the taxing statute is “unenforceable for uncertainty” until the court has ruled. *Id.* At a minimum, the Tax Ordinance at issue here was unenforceable due to vagueness until this Court or another authoritative tribunal declared what the Tax Ordinance actually meant. Taxpayers were entitled to rely on the Tax Ordinance unless and until it was either repealed by city council, or its meaning properly interpreted by a court of law. Billing taxpayers for delinquent taxes where the relevant ordinance plainly and unambiguously states no tax is due violates due process of law.

This Court stated that a tax statute that is “substantially incomprehensible” is void. *Buckley* at ¶19. The BTA’s decision is unreasonable and unlawful because the BTA’s decision renders the Tax Ordinance “substantially incomprehensible.” In accordance with *Buckley* the Court must reverse.

Appellees misunderstand when city employees have standing and when city employees do not have standing. City employees have standing to defend the lawfulness of city ordinances; however City employees do not have standing to argue city ordinances (that its city council lawfully enacted) are unlawful in order to impose tax. If a city employee believes a city ordinance is unlawful then action against city council is required; not against the taxpayer asserting the city ordinance is lawful.

Appellees lose sight of the fact that the City Finance Director is not responding to a legal challenge. Appellees Brief at 15. The City Finance Director *created* the legal challenge. Indeed the City Finance Director and Appellees concede the Tax Ordinance reads as Appellants and the BTA asserted. Appellants simply asked the City Finance Director to apply the Tax Ordinance as written. The City Finance Director refused to do so. Thus, the City Finance Director created the legal challenge.

City Council decided not to tax schedule C income and promulgated legislation to that effect. The City Charter is clear that City Council is the supreme authority within the City. By what right did the City Finance Director oppose the Tax Ordinance to the extent that it *failed* to impose tax? In the absence of a court ruling, the City Finance Director lacked standing to oppose the Tax Ordinance.

The City Finance Director lacked the authority to impose city tax contrary to the plain language of the Tax Ordinance. The City Finance Director lacked veto power over City Council. The City Finance Director lacked the authority to enact any tax ordinance. Accordingly, there was no legal basis for the City Finance Director to ignore the Tax Ordinance, which was the law of Worthington unless and until it was repealed by city council or nullified by a court. Appellees' argument that a city employee may assert the city's properly enacted ordinance violates state law, and use that assertion as the basis for infringing upon property rights of Ohio citizenry is absolutely indefensible.

Appellees' claims that city employees were bound to follow state law as well as the applicable ordinances simply ignores that city employees were not qualified to make the call as to what state law required. Similarly, this Court has rejected such excuses in the past. *Kasper v. Coury*, 51 Ohio St.3d 185, 188, 555 N.E.2d 310 (1990) ("Nevertheless, the appellee's responsibility to protect the public interest does not authorize it to act as a representative of the public for the purpose of opposing the decision that it had empowered the board of zoning appeals to make on appellee's behalf.").

In the absence of an authoritative statement to the contrary, city council's Tax Ordinance stating that no tax is owed is the law of Worthington and must govern the actions of city employees.

Appellants recognize that all local government employees are bound to follow the law, and where a superior body of law clearly requires greater *protections* than those provided under local law, the employees may properly acknowledge that superior law. However, this observation does not justify what the City Finance Director has done here. Taxation involves direct infringement on the property rights of Ohio citizens. It is fundamental that municipal taxation requires an ordinance imposing tax in order to create the necessary legal liability to deprive the citizen of property, and that ordinance must clearly impose tax on the subject matter at issue. A non-uniform and therefore illegal tax applying to only some taxpayers may not be remedied via a non-legislative imposition of tax on other taxpayers via executive action.

It is axiomatic that if there are open and obvious questions as to the validity of a municipal tax ordinance because of serious questions regarding uniformity of the levy, the proper action to be taken by a city employee is not to enforce the tax at all unless and until those questions are authoritatively resolved. Indeed Worthington city council amended the Tax Ordinance in 2008.⁴ Appellants' Merit Brief at 4.

Worthington's definition of "net profits" set forth in the Tax Ordinance is not severable from Worthington's ordinance imposing tax on "net profits." To sever the unlawful component of the Tax Ordinance results in Worthington imposing a tax on net profits without providing a definition of net profits.

The Tax Ordinance defines "net profits" *entirely* in terms of what net profits are *not* rather than what constitutes net profits. Under the traditional test for severability that the Court applies to constitutional matters, Appellants are hard pressed to understand how the entire

⁴ Of course there was no need for Worthington city council to amend the Tax Ordinance if state law governed all along as Appellees argue.

definition of “net profits” can be severed such that there is nothing left, leaving taxpayers to guess at what “net profits” means.

Appellee’s restructuring of Codified Ord. 1701.15 would go from this:

... ‘net profit’ for a taxpayer who is an individual means the individual’s profit, other than amounts required to be required to be reported on Schedule C, Schedule E, or Schedule F.”

to this:

‘net profit’ for a taxpayer who is an individual means the individual’s profit.

It is clear from the definition provided that “net profit” was defined by the City entirely by reference to what it was not, rather than what it is. This means of defining a tax term is not unusual. For example, Internal Revenue Code section 1221 defines “capital asset” entirely by reference to what it is not. (Appx. 7-8.) Appellees would leave us with the meaningless absurdity “net profit means profit.” This is no definition at all. In short, Worthington saw fit to provide a definition limiting the scope of tax on business income of individuals, and Appellees would strike all limiting language. This is contrary to law.

Although the instant question involves the General Assembly’s exercise of power to “limit” or “restrict” municipal taxation via statutory rather than constitutional restrictions, it is nevertheless instructive to review the instant question under traditional notions of severability. This Court set forth the proper three part test of severability in *Geiger v. Geiger*, 117 Ohio St. 451, 466, 160 N.E. 28 (1927):

- (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself?
- (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out?
- (3) Is the insertion of words or terms necessary in order to separate the

constitutional part from the unconstitutional part, and to give effect to the former only? (emphasis added).

The BTA held the subject ordinance is plain and unambiguous, and Appellees concede that is the case. Legislative intent is determined from the language used. It is self evident that it is not possible to strike all limiting language within the definitional section of an ordinance defining the subject matter of a tax without running grossly afoul of element No. 2 of the *Geiger* test. That proposition is particularly true where the subject definition is written entirely in terms of negative phrasing, i.e., defining the specified subject matter in terms of what it is not rather than what it is. Worthington's city council set forth in precise terms the boundaries of the city's income tax upon individuals engaged in business. We must presume those boundaries were part and parcel of city council's decision to impose tax. Accordingly, it is not possible to do such gross violence to the Tax Ordinance and still "give apparent effect to the intent of the legislature." Removal of all of the boundaries defining the scope of Worthington's tax would be to engage in municipal legislation. That is well outside the role of the courts.

Codified Ordinance 1703.01(a) does not impose tax on schedule C business income of an individual by virtue of its reference to "other compensation."

Codified Ordinance 1703.01(a) states, "...there is hereby levied a tax....on all qualifying wages, salaries, commissions and other compensation earned...by residents of the City." "Other compensation" does not reach schedule C business income. The pertinent phrase is "qualifying wages, salaries, commissions and other compensation." "Qualifying Wages" is defined at Codified Ordinance 1701.21 as follows:

"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. (Appx. 4.)

Section 3121(a) of the Internal Revenue Code defines “wages” as follows in pertinent part:

“For purposes of this chapter, the term ‘wages’ means all remuneration for employment,” . . .

(emphasis added). (Appx. 9.) Section 3121(b) of the Internal revenue Code defines

“employment” in Section 3121(a) in pertinent part as follows: “For purposes of this chapter, the term “employment” means any service, of whatever nature, performed (A) by an employee for the person employing him, . . .”. (Appx. 10.) Accordingly, “qualifying wages” is expressly limited to income received by an employee. The terms “salaries and commissions” are also terms commonly understood to refer to payments for services by employees.

When a list of specific terms (“wages, salaries, commissions”) are followed by a broader term (“other compensation”), “[u]nder the rule of ejusdem generis, the latter term will be read as ‘embracing only things of a similar character as those comprehended by the preceding limited and confined terms.’” See *Ohio Grocers v. Levin*, 2009-Ohio-4872, at ¶ 29, 123 Ohio St.3d 303 (2009), (citing *Moulton Gas Serv., Inc. v. Zaino*, 97 Ohio St.3d 48, 2002-Ohio-5309, quoting *State v. Aspell* (1967), 10 Ohio St.2d 1, 39 O.O.2d 1, 225 N.E.2d 226, paragraph two of the syllabus). Thus, the phrase “other compensation” in Codified Ordinance 1703.01(a) addresses income received by employees, not business income reported on schedule C.

That legislative intention is further reflected in other portions of Worthington’s tax ordinances. For example, the definition of employer and employee set forth at Codified Ordinances 1701.08 and 1701.09 are as follows:

1701.08 EMPLOYEE. “Employee” means one who works for wages, salary, commissions or other types of compensation in the service and under the control of an employer. (Appx. 2.)

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. (Appx. 3.)

Accordingly, the structure of the tax ordinance reflects that Codified Ordinance 1703.01(a) is the portion of the ordinance that forms the basis of the employee wage tax. It must be remembered that any ambiguities in statutes imposing tax are construed in favor of the taxpayer. *Bosher*. In that regard, the phrase “other compensation” cannot reasonably be stretched to include schedule C business income earned by a non-employee. *Id.* That is particularly true when Codified Ordinance 1703.01(c) applies to business income.

The tax ordinances here must be read in *pari materia*. *Clark Restaurant Co. v. Evatt*, 146 Ohio St. 86, 91, 64 N.E.2d 113, (1945). In that regard, the general phrase “other compensation” in Codified Ordinance 1703.01(a) cannot properly be read to swallow and obviate “net profits” in Codified Ordinance 1703.01(c). Codified Ordinance 1703.01(c) specifically addresses business income and through the Tax Ordinance expressly excludes schedule C income from that definition. Where specific subject matter is expressly excluded from tax, it is impermissible to apply a more general portion of the tax statute or ordinance to override the specific exclusion, *See, Clark Restaurant* at 91 (stating, “[t]hat may not be included by implication which has been expressly excluded.”).

Appellees acknowledge the truth of the foregoing interpretation of the relevant ordinances in Appellees’ rebuttal of Appellants’ alternative argument (set forth in Appellants’ Brief at Appellants’ Proposition of Law No. 5). In this regard Appellees argue, at page 17 of their brief, that use of the term “compensation” in R.C. 718.01(E) means the stock option income exemption cannot apply to income more properly defined as “net profits.” Accordingly, Appellees are well aware that “net profits” and “other compensation” are not properly interpreted

to be coextensive. The ordinances make clear that the distinction to be made between Codified Ordinances 1703.01(a) and (c) is employee income versus business income, respectively.

R.C. 718.01(E) can properly be read to allow municipality's to exempt stock option income of either employees or individuals engaged in business.

Appellants' acknowledge that the term "other compensation" in Codified Ordinance 1703.01(a) is properly interpreted to be limited to *employee* compensation. That meaning is derived from the context in which the phrase is used, and the canon of construction known as *eiusdem generis*. However, the General Assembly did not see fit to provide a definition for "compensation" in R.C. 718.01(E), nor is there any context provided in that subsection suggesting that "compensation" excludes business profits for services provided by an individual business owner. In the absence of context suggesting that "compensation" refers to employee income, the plain meaning of "compensation" is "something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc.; indemnity. *See* Websters New Universal Unabridged Dictionary (Barnes and Noble Books 1996). (Appx. 11.) Accordingly, under a plain meaning interpretation of R.C. 718.01(E), the City should have power to exempt stock option income of employees and sole proprietor service providers alike.

Similarly, it would violate Equal Protection of Laws to exempt stock option income received by individuals working as employees while imposing a tax on the same income received by individuals in business for themselves. There is no rational basis for exempting such income received by employees while taxing the same income received by self employed service providers. *Youngstown Sheet & Tube Co. v. Youngstown*, 91 Ohio App. 431, 435, 108 N.E.2d 571 (7th Dist. 1951) ("All taxpayers similarly situated are entitled to equality of treatment under any Ohio tax law.")

Accordingly, the canon of construction that statutes should be construed to be constitutional if possible would militate toward a plain meaning reading of the term “compensation” in R.C. 718.01 rather than an implied limitation to employee compensation only that would violate the Ohio and U.S. Constitutions.

Appellants’ reiterate that their R.C. 718.01(E) argument is an alternative argument that merely highlights that the City had authority to exempt the stock option income at issue here. Thus, if the decision in the instant case is to be made based purely upon the City’s “powers,” even under the broadest reading of the General Assembly’s constitutional powers, and the narrowest reading of R.C. 718.01, the City should still have power to exempt stock option income. Accordingly, if the City is found to lack power *not* to impose tax on schedule C income, its ordinance excluding schedule C income should still be applied to the extent that the income consisted of stock option income. The General Assembly has not limited the City in any fashion with regard to stock option income. *See*, R.C. 718.01(E).

The definition of “net profits” provided in the Tax Ordinance is not an exemption from tax, but even it were, this would not change the correct answer to the question before the Court.

The BTA found the Tax Ordinance to be part of Worthington’s ordinance imposing tax and defining its subject matter. Decision at 2-3 (“We begin by referring to Codified Ord. 1703.01 which provides in pertinent part... Through Codified Ord. 1701.15, the city expressly defined ‘net profit’ for purposes of its income tax...” The Tax Ordinance is not a tax exemption. *Id.* See also, Decision at 7 and *Bosher at* ¶14. Appellants note that there is no positive definition of what “net profits” are in the Tax Ordinance. If the negative portion of the definition is removed, nothing is left. Similarly, we are then left with a radically different tax. Accordingly, in order to adopt Appellees’ suggestion that the definition of “net profits” is actually an

exemption, one must conclude that the entire definition provided is an exemption. That is an extreme interpretation of the Tax Ordinance.

However, even if the definition of “net profits” were construed to be an exemption, that would not change the result. As set forth above, the General Assembly’s constitutional powers are to “limit the power of municipalities to levy taxes” or to “restrict their power of taxation...so as to prevent the abuse of such power.” *See* Article XIII, Section 6 of the Ohio Constitution; Article XVIII, Section 13 (“Laws may be passed to limit the power of municipalities to levy taxes...”).

R.C. 718.01(D) must be read as a limitation or restriction on Worthington’s power to impose tax because that is the only power the General Assembly has with regard to municipal taxation. As set forth above, and in Appellants’ Merit Brief, it is awkward at best to construe a power to limit the “levy of taxes” or to “restrict their power of taxation” to also include a power to block tax exemptions and thereby extend the scope of taxation. That observation is equally true whether the failure to tax involves a failure to impose tax, or an exemption from tax.

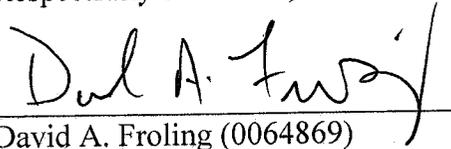
That is not to say the General Assembly may not set preconditions for a valid municipal tax. Like R.C. 718.01(D), such preconditions can be phrased in terms of a prohibition against tax exemptions. However, because the General Assembly’s constitutional power is itself limited to restricting the municipality’s power to impose tax, the remedy for a violation of R.C. 718.01(D) would be to “restrict” or “limit” the imposition of tax, not to extend the municipal tax to new subject matter. The General Assembly has no constitutional power to extend a municipal tax. Ohio Constitution, Article XVIII, Section 3.

In other words, the remedy for a prohibited tax exemption would be precisely the same as the remedy for a violation of R.C. 718.01(A)(7) or (G) involving a failure to impose tax. That remedy would be invalidation of the municipality's "levy of tax," or "power of taxation," not extension of the tax to subject matter that the City expressly chose not to tax. A City's decision to "exempt" certain subject matter from its tax is neither the "levy of taxes" nor is it "taxation." Therefore, R.C. 718.01(D) must be read as a precondition to the validity of the City's tax ordinance with regard to the subject matter that it *does* expressly reach. In that regard, R.C. 718.01(D) cannot invalidate the City's decision to enact a tax exemption.

Even if the Court were to decide that the General Assembly does indeed have the power to block municipal tax exemptions (rather than simply invalidating the tax), the Court would still need to apply normal severability analysis to determine whether the invalid portion of the tax ordinance could be severed. As set forth above, it is not possible to strike the entire definition of "net profits" in the Tax Ordinance without running grossly afoul of part 2 of the Court's three-part severability test set forth in *Geiger*, i.e., "[i]s the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out?" Striking all limitations from the definition of "net profits" leaves us with a grossly different tax. That would be an inappropriate act of legislating a municipal tax.

Lastly, and perhaps most importantly, the Court would still need to address the manifest Due Process of Laws and standing issues that arise with the proposition that a City Finance Director may proceed to impose tax against Ohio citizenry contrary to the express will of City Council as set forth within the subject Tax Ordinance.

Respectfully submitted,



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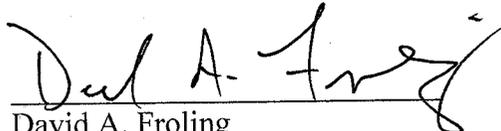
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CERTIFICATE OF SERVICE

I certify that a copy of this Brief For Appellants was sent via certified mail to counsel for appellee, Andrew M. Ferris, 65 East State Street, Suite 2100, Columbus, Ohio on March 21, 2013.



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APPENDIX

City of Worthington Codified Ordinance 1717.01(c).....1
City of Worthington Codified Ordinance 1701.082
City of Worthington Codified Ordinance 1701.093
House Bill No. 5 as Introduced, 130th General Assembly5
Internal Revenue Code 12217
Internal Revenue Code 3121(a)9
Internal Revenue Code 3121(b)10
Websters New Universal Unabridged Dictionary (Barnes and Noble Books 1996)11
Am. Sub. H.B. 9512

CHAPTER 1717
Motor Vehicle License Tax

1717.01 Motor Vehicle License Tax.

CROSS REFERENCES

Authority to levy - see Ohio R.C. Ch. 4504

1717.01 MOTOR VEHICLE LICENSE TAX.

(a) There is hereby levied an annual license tax upon the operation of motor vehicles on the public roads or highways pursuant to Section 4504.172, Ohio Revised Code, for the purposes of paying the costs and expenses of enforcing and administering the tax provided for in this section; and to provide additional revenue for the purposes set forth in Section 4504.06, Ohio Revised Code; and to supplement revenue already available for such purposes.

(b) Such tax shall be at the rate of Five Dollars (\$5.00) per motor vehicle on each and every motor vehicle the district of registration of which, as defined in Section 4503.10 of the Ohio Revised Code, is in the City of Worthington, Ohio.

(c) As used in this chapter, the term "Motor Vehicle" means any and all vehicles included within the definition of motor vehicle in Section 4501.01 and 4505.01 of the Ohio Revised Code.

(d) The tax imposed by this section shall apply to and be in effect for the registration year commencing January 1, 2006 and shall continue in effect and application during each registration year thereafter.

(e) The tax imposed by this section shall be paid to the Registrar of Motor Vehicles of the State of Ohio or to a Deputy Registrar at the time application for registration of a motor vehicle is made as provided in Section 4503.10 of the Ohio Revised Code.

(f) All monies derived from the tax hereinbefore levied shall be used by the City of Worthington, Ohio for the purposes specified in this chapter and be deposited in the "Municipal Motor Vehicle License Tax Fund".

(Ord. 23-2005. Passed 6-6-05.)

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.)

1701.21 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 12-6-04.)

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 5

Representatives Grossman, Henne

A BILL

To amend sections 715.013, 718.02, 718.03, 718.051, 1
718.07, 718.09, 718.10, 718.11, 718.121, 718.13, 2
5703.059, 5703.57, 5717.011, 5717.03, 5739.12, 3
5739.124, 5741.122, 5747.063, 5747.064, and 4
5751.07, to amend, for the purpose of adopting a 5
new section number as indicated in parentheses, 6
section 718.04 (718.50), to enact new sections 7
718.01, 718.011, 718.04, 718.05, 718.06, 718.08, 8
and 718.12 and sections 718.052, 718.18 to 718.31, 9
718.35 to 718.39, 718.41 to 718.44, and 718.99, 10
and to repeal sections 718.01, 718.011, 718.041, 11
718.05, 718.06, 718.08, 718.12, and 718.14 of the 12
Revised Code to revise the laws governing income 13
taxes imposed by municipal corporations. 14

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

Section 1. That sections 715.013, 718.02, 718.03, 718.051, 15
718.07, 718.09, 718.10, 718.11, 718.121, 718.13, 5703.059, 16
5703.57, 5717.011, 5717.03, 5739.12, 5739.124, 5741.122, 5747.063, 17
5747.064, and 5751.07 be amended, section 718.04 (718.50) be 18
amended for the purpose of adopting a new section number as 19
indicated in parentheses, and new sections 718.01, 718.011, 20
718.04, 718.05, 718.06, 718.08, and 718.12 and sections 718.052, 21

<u>Revised Code.</u>	1287
<u>(I) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of section 718.08 of the Revised Code. This division applies only to the person for whom the amount is deducted and withheld.</u>	1288 1289 1290 1291 1292 1293
<u>(J) The tax administrator shall prescribe the forms of the receipts and returns required under this section.</u>	1294 1295
<u>Sec. 718.04. (A) A municipal corporation may levy a tax on income only in accordance with the limitations specified in this chapter. On or after January 1, 2015, no municipal corporation shall levy such a tax unless the ordinance or resolution levying the tax, as adopted or amended by the legislative authority of the municipal corporation, includes all of the following:</u>	1296 1297 1298 1299 1300 1301
<u>(1) A statement that the tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation and that the tax shall be measured by municipal taxable income;</u>	1302 1303 1304 1305
<u>(2) A statement that the municipal corporation is levying the tax in accordance with the limitations specified in this chapter and that the resolution or ordinance thereby incorporates, by reference, the provisions of this chapter;</u>	1306 1307 1308 1309
<u>(3) The rate of the tax;</u>	1310
<u>(4) Whether, and the extent to which, a credit will be allowed against the tax as described in division (E) of this section;</u>	1311 1312 1313
<u>(5) The purpose or purposes of the tax;</u>	1314
<u>(6) Any other provision necessary for the administration of the tax, provided that the provision does not conflict with any</u>	1315 1316

(6) COORDINATION WITH CARRYFORWARD PROVISIONS OF SUBSECTION (b)(1).—

(A) CARRYFORWARD AMOUNT REDUCED BY AMOUNT USED AS CARRYBACK.—For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) CARRYOVER LOSS RETAINS CHARACTER AS ATTRIBUTABLE TO SECTION 1256 CONTRACT.—Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) SECTION 1256 CONTRACT.—The term "section 1256 contract" means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) EXCLUSION FOR ESTATES AND TRUSTS.—This subsection shall not apply to any estate or trust.

Amendments

• 1984, Deficit Reduction Act of 1984 (P.L. 98-369)
P.L. 98-369, §102(e)(3):

Amended Code Sec. 1212(c) by striking out "net commodity futures loss" each place it appeared (including in any headings) and inserting in lieu thereof "net section 1256 contracts loss", by striking out "regulated futures contracts" and "regulated futures contract" each place it appeared (including in any headings) and inserting in lieu thereof "section 1256 contracts" and "section 1256 contract", respectively, and by striking out "net commodity futures gain" each place it appeared (including in any headings) and inserting in lieu thereof "net section 1256 contract gain". Effective for positions established after 7-18-84, in tax years ending after such date.

• 1983, Technical Corrections Act of 1982 (P.L. 97-448)

P.L. 97-448, §105(c)(7):

Amended Code Sec. 1212(c)(4)(A) by striking out "and positions to which section 1256 applies". Effective as if included in the provision of P.L. 97-34 to which it relates.

• 1981, Economic Recovery Tax Act of 1981 (P.L. 97-34)

P.L. 97-34, §504:

Added Code Sec. 1212(c). Effective for property acquired or positions established after 6-23-81, in tax years ending after that date.

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec. 1221. Capital asset defined.

Sec. 1222. Other terms relating to capital gains and losses.

Sec. 1223. Holding period of property.

[Sec. 1221]

SEC. 1221. CAPITAL ASSET DEFINED.

[Sec. 1221(a)]

(a) IN GENERAL.—For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);

Internal Revenue Code

Sec. 1221(a)(5)(B)

(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

(B) such instrument is clearly identified in such dealer's records as being described in subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

Amendments

• 2010, Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

P.L. 111-312, § 301(a):

Amended Code Sec. 1221(a)(3)(C) to read as such provision would read if subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) had never been enacted. Effective for estates of decedents dying, and transfers made, after 12-31-2009. For a special rule, see Act Sec. 301(c), below.

P.L. 111-312, § 301(c), provides:

(c) SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010.—Notwithstanding subsection (a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.

P.L. 111-312, § 304, provides:

SEC. 304. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall apply to the amendments made by this title.

[Sec. 1221(b)]

(b) DEFINITIONS AND SPECIAL RULES.—

(1) COMMODITIES DERIVATIVE FINANCIAL INSTRUMENTS.—For purposes of subsection (a)(6)—

(A) COMMODITIES DERIVATIVES DEALER.—The term "commodities derivatives dealer" means a person which regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

(B) COMMODITIES DERIVATIVE FINANCIAL INSTRUMENT.—

(i) IN GENERAL.—The term "commodities derivative financial instrument" means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

(ii) SPECIFIED INDEX.—The term "specified index" means any one or more or any combination of—

- (I) a fixed rate, price, or amount, or
- (II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic information with respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

Sec. 1221(a)(6)

• 2001, Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16)

P.L. 107-16, § 542(e)(2)(A):

Amended Code Sec. 1221(a)(3)(C) by inserting "(other than by reason of section 1022)" after "is determined". Effective for estates of decedents dying after 12-31-2009.

P.L. 107-16, § 901(a)-(b), as amended by P.L. 111-312, § 101(a)(1), provides:

SEC. 901. SUNSET OF PROVISIONS OF ACT.

(a) IN GENERAL.—All provisions of, and amendments made by, this Act shall not apply—

(1) to taxable, plan, or limitation years beginning after December 31, 2012; or

(2) in the case of title V, to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2012.

(b) APPLICATION OF CERTAIN LAWS.—The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.

• 1999, Tax Relief Extension Act of 1999 (P.L. 106-170)

P.L. 106-170, § 532(a)(1)-(3):

Amended Code Sec. 1221 by striking "For purposes" and inserting "(a) IN GENERAL.—For purposes", by striking the period at the end of paragraph (5) and inserting a semicolon, and by adding at the end new paragraphs (6), (7) and (8). Effective for any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after 12-17-99.

[Sec. 3121]

SEC. 3121. DEFINITIONS.

[Sec. 3121(a)]

(a) **WAGES.**—For purposes of this chapter, the term “wages” means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) in the case of taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraph of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term “wages” only payments which are received under a workmen’s compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee,

(3) [Stricken.]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974,

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received,

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof, or

employer during any calendar year", and inserting in lieu thereof "by an employer during the calendar year with respect to which such contribution and benefit base is effective".

• 1971 (P.L. 92-5)

P.L. 92-5, § 203(b)(2):

Amended Code Sec. 3121(a)(1). Effective with respect to remuneration paid after 12-31-71, by substituting "\$9,000" for "\$7,800" each place that such figure appears.

• 1968, Social Security Amendments of 1967 (P.L. 90-248)

P.L. 90-248, § 108(b)(2):

Amended Sec. 3121(a)(1) by substituting "\$7,800" for "\$6,600" in each place it appeared. Effective only with respect to remuneration paid after 12-31-67.

P.L. 90-248, § 504(a):

Amended Sec. 3121(a) by deleting "or" at the end of paragraph (11), by substituting "or" for the period at the end of paragraph (12), and by adding new paragraph (13). Effective with respect to remuneration paid after 1-2-68.

• 1965, Social Security Amendments of 1965 (P.L. 89-97)

P.L. 89-97, § 313(c):

Added Sec. 3121(a)(12). Effective with respect to tips received by employees after 1965.

P.L. 89-97, § 320(b):

Amended Sec. 3121(a)(1) by substituting "\$6,600" for "\$4,800" in each place it appeared. Effective with respect to remuneration paid after 12-31-65.

• 1964 (P.L. 88-650)

P.L. 88-650, § 4(b):

Added Code Sec. 3121(a)(11). Effective with respect to remuneration paid on or after the first day of the first calendar month which begins more than 10 days after 10-13-64.

• 1964, Revenue Act of 1964 (P.L. 88-272)

P.L. 88-272, § 220(c)(2):

Amended subparagraph (B) of subsection (a)(5). Effective only with respect to remuneration paid after 1962. Prior to amendment, subparagraph (B) read as follows:

"(B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401(a)(3), (4), (5), and (6)."

• 1958, Social Security Amendments of 1958 (P.L. 85-840)

P.L. 85-840, § 402(b):

Amended Sec. 3121(a) by substituting "\$4,800" for "\$4,200" wherever it appeared. Effective for remuneration paid after 1958.

[Sec. 3121(b)]

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States [a citizen or resident of the United States (effective for remuneration paid after December 31, 1983)] as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act, except that such term shall not include—

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the

• 1956, Social Security Amendments of 1956 (P.L. 880, 84th Cong.)

P.L. 880, 84th Cong., § 201(b):

Amended Sec. 3121(a)(9). Effective for remuneration paid after 10-31-56. Prior to the amendment Sec. 3121(a)(9) read as follows:

"(9) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made; or"

P.L. 880, 84th Cong., 2d Sess., § 201(h)(1):

Amended Sec. 3121(a)(8)(B). Effective for remuneration paid after 1956. Prior to amendment, Sec. 3121(a)(8)(B) read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor, if the cash remuneration paid in such year by the employer to the employee for such labor is less than \$100;"

• 1954, Social Security Amendments of 1954 (P.L. 761, 83rd Cong.)

P.L. 761, 83rd Cong., § 204(a), (b):

Substituted "\$4,200" wherever it appeared in paragraph (1) for "\$3,600"; added subparagraph (C) to paragraph (7); inserted "(A)" after "(8)" in paragraph (8), added subparagraph (B) to paragraph (8), and amended subparagraph (7)(B). Effective 1-1-55. Prior to amendment, subparagraph (7)(B) read as follows:

"(B) cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in the quarter for such service is less than \$50 or the employee is not regularly employed by the employer in such quarter of payment. For purposes of this subparagraph, an employee shall be deemed to be regularly employed by an employer during a calendar quarter only if—

"(i) on each of some 24 days during the quarter the employee performs for the employer for some portion of the day domestic service in a private home of the employer, or

"(ii) the employee was regularly employed (as determined under clause (i)) by the employer in the performance of such service during the preceding calendar quarter.

"As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5)."

clemency. See sympathy. —Ant. 1. mercilessness, indifference.

com-pas-sion-ate (adj. kəm pash'ə nit; v. kəm-pash'ə nāt'), adj., v., -at-ed, -at-ing. —adj. 1. having or showing compassion: a *compassionate person*; a *compassionate letter*. 2. granted in an emergency: *compassionate military leave granted to attend a funeral*. 3. Obs. pitiable. —v.t. 4. to have compassion for; pity. [1580-90; COMPASSION + -ATE] —**com-pas-sion-ate-ly**, adv. —**com-pas-sion-ate-ness**, n.

—Syn. 1. pitying, sympathizing, sympathetic, tender.

com/pass north', Navig. magnetic north, as indicated on a particular compass at a given moment.

com/pass plane', Carpentry. a plane for smoothing curved surfaces. [1840-50]

com/pass plant', any of various plants having leaves that tend to lie in a plane at right angles to the strongest light, hence usually north and south, esp. *Silphium laciniatum*. [1840-50]

com/pass raft'er, a rafter cut to a curve on one or both edges.

com/pass rose', 1. Navig. a circle divided into 32 points or 360° numbered clockwise from true or magnetic north, printed on a chart or the like as a means of determining the course of a vessel or aircraft. 2. a similar design, often ornamented, used on maps to indicate the points of the compass.

com/pass saw', Carpentry. a small handsaw with a narrow, tapering blade for cutting curves of small radii; whipsaw. Cf. *keyhole saw*. [1670-80]

com-pa-ter-ni-ty (kəm'pə tūr'nī tē), n. the relationship between the godparents of a child or between the godparents and the child's parents. [1400-50; late MF *compaternite* < ML *compaternitas*, equiv. to *compater* godfather (see COM-, PATER) + (*pater*)nitas PATERNITY]

com-pa-thy (kəm'pə thē), n. feelings, as happiness or grief, shared with another or others. [COM- + -PATHY]

com-pat-i-ble (kəm pat'ə bəl), adj. 1. capable of existing or living together in harmony: *the most compatible married couple know*. 2. able to exist together with something else: *Prejudice is not compatible with true religion*. 3. consistent, congruous (often fol. by *with*): *His claims are not compatible with the facts*. 4. Computers. a. (of software) capable of being run on another computer without change. b. (of hardware) capable of being connected to another device without the use of special equipment or software. 5. Electronics. (of a device, signal, etc.) capable of being used with equipment in a system without the need for special modification or conversion. 6. noting a system of television in which color broadcasts can be received on ordinary sets in black and white. —n. 7. something, as a machine or piece of electronic equipment, that is designed to perform the same tasks as another, often in the same way and using virtually identical parts, programmed instructions, etc.: *Software written for one computer will probably run on its close compatibles*. [1425-75; late ME < ML *compatibilis*, deriv. of LL *compati* (L *com-* COM- + *patis* to suffer, undergo). See -IBLE] —**com-pat-i-bil-i-ty**, **com-pat-i-ble-ness**, n. —**com-pat-i-bly**, adv.

com-pa-tri-ot (kəm pā'trē et or, esp. Brit., -pə't-), n. 1. a native or inhabitant of one's own country; fellow countryman or countrywoman. —adj. 2. of the same country. [1605-15; < LL *compatriōtia*. See COM-, PATRIOT] —**com-pa-tri-ot-ic** (kəm pā'trē ot'ik or, esp. Brit., -pə't-), adj. —**com-pa-tri-ot-ism**, n.

Com-pa-zine (kəm'pə zēn'), Pharm., Trademark. a brand of prochlorperazine.

compd., compound.

com-peer (kəm pēr', kom'pēr), n. 1. an equal in rank, ability, accomplishment, etc.; peer; colleague. 2. close friend; comrade. —v.t. 3. Archaic. to be the equal of; match. [1325-75; ME *comper* < MF. See COM-, PEER']

com-pel (kəm pel'), v., -pelled, -pel-ling. —v.t. 1. to force or drive, esp. to a course of action: *His disregard of the rules compels us to dismiss him*. 2. to secure or bring about by force. 3. to force to submit; subdue. 4. to overpower. —v.i. 5. to use force. 6. to have a powerful and irresistible effect, influence, etc. [1350-1400; ME *compellen* (< AF < L *compellere* to crowd, force, equiv. to *com-* COM- + *pellere* to push, drive)] —**com-pel-la-ble**, adj. —**com-pel-la-bly**, adv. —**com-pel-lent**, adj. —**com-pel-ler**, n. —**com-pel-ling-ly**, adv.

—Syn. 1. constrain, oblige, coerce. COMPEL, IMPEL agree in the idea of using physical or other force to cause something to be done. COMPEL means to constrain someone, in some way, to yield or to do what one wishes: *to compel a recalcitrant debtor to pay*; *Fate compels us to face danger and trouble*. IMPEL may mean literally to push forward, but is usually applied figuratively, meaning to provide a strong motive or incentive toward a certain end: *Wind impels a ship*; *Curiosity impels me to ask*. 3. overpower, bend.

com-pel-la-tion (kəm pel'lə shən), n. 1. the act of addressing a person. 2. manner or form of address; appellation. [1595-1605; < L *compellatio*- (s. of *compellatio*) an accusing, a rebuke. See COM-, APPELLATION]

com-pel-ling (kəm pel'ing), adj. 1. tending to compel; overpowering; compelling reasons. 2. having a powerful and irresistible effect; requiring acute admiration, attention, or respect: *a man of compelling integrity*; *a compelling drama*. [1490-1500; COMPEL + -ING']

com-pen-di-ous (kəm pen'dē əs), adj. of or like a compendium; containing the substance of a subject, often an exclusive subject, in a brief form; concise: *a compendious history of the world*. [1350-1400; ME < L *compendiosus*. See COMPENDIUM, -OUS] —**com-pen-di-ous-ly**, adv. —**com-pen-di-ous-ness**, n.

—Syn. summary, comprehensive, succinct, packed.

ment. 3. a full list or inventory: *a compendium of their complaints*. Also, **com-pend** (kəm'pend). [1575-85; < L: gain, saving, shortcut, abridgment, equiv. to *com-* COM- + *pend-* (s. of *pendere* to cause to hang down, weigh) + *-ium* -IUM]

—Syn. 1. survey, digest, conspectus.

com-pen-sa-ble (kəm pen'sə bəl), adj. eligible for or subject to compensation, esp. for a bodily injury. [1655-65; COMPENS(ATE) + -ABLE] —**com-pen-sa-bil-i-ty**, n.

com-pen-sate (kəm'pen sāt'), v., -sat-ed, -sat-ing. —v.t. 1. to recompense for something: *They gave him ten dollars to compensate him for his trouble*. 2. to counterbalance; offset; be equivalent to: *He compensated his homely appearance with great personal charm*. 3. Mech. to counterbalance (a force or the like); adjust or construct so as to offset or counterbalance variations or produce equilibrium. 4. to change the gold content of (a monetary unit) to counterbalance price fluctuations and thereby stabilize its purchasing power. —v.i. 5. to provide or be an equivalent; make up; make amends (usually fol. by *for*): *His occasional courtesies did not compensate for his general rudeness*. 6. Psychol. to develop or employ mechanisms of compensation. [1640-50; < L *compensātus* (ptp. of *compensāre* to counterbalance, orig., to weigh together). See COM-, PENSIVE, -ATE] —**com-pen-sat-ing-ly**, adv. —**com-pen-sa-tor**, n.

—Syn. 1. remunerate, reward, pay. 2. counterpoise, countervail. 5. atone.

com-pen-sated grade', Railroads. a grade that has been reduced along a curve to offset the additional resistance due to the curve.

com-pen-sat-ing bal-ance, 1. Also, **com-pen-sated bal-ance**, **compensa-tion bal-ance**, a balance wheel in a timepiece, designed to compensate for variations in tension in the hair spring caused by changes in temperature. 2. Banking. a deposit balance that is required to be left on deposit by a company to maintain or guarantee credit. [1795-1805]

com-pen-sa-tion (kəm'pen sā'shən), n. 1. the act or state of compensating. 2. the state of being compensated. 3. something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc.; indemnity: *The insurance company paid him \$2000 as compensation for the loss of his car*. 4. Biol. the improvement of any defect by the excessive development or action of another structure or organ of the same structure. 5. Psychol. a mechanism by which an individual attempts to make up for some real or imagined deficiency of personality or behavior by developing or stressing another aspect of the personality or by substituting a different form of behavior. [1350-1400; ME *compensacioun* < L *compensatio*- (s. of *compensatio*), equiv. to *compensāre* (see COMPENSATE) + *-iōn* -I-ON] —**com-pen-sa-tion-al**, adj.

—Syn. 3. recompense, payment, amends, reparation; requital, satisfaction, indemnification.

compensa-tion neuro-sis, Psychiatric. an unconscious attempt to retain physical or psychological symptoms of illness when some advantage may be obtained (distinguished from *malingering*). [1920-25]

com-pen-sa-tor-y (kəm pen'sə tōr'ē, -tōr'ē), adj. 1. serving to compensate, as for loss, lack, or injury. 2. counter-cyclical. Also, **com-pen-sa-tive** (kəm'pen sāt'iv, kəm pen'sə-). [1595-1605; COMPENSATE + -ORY']

com-pen-sa-tory dam-ages, Law. damages, measured by the harm suffered, awarded to the injured person as due compensation. Cf. *punitive damages*.

com-pen-sa-tory length-en-ing, Historical Ling. the lengthening of a vowel when a following consonant is weakened or lost, as the change from Old English *niht* (nikht) to *night* (nit), with loss of (k) and lengthening of (i) to a vowel that eventually became (i).

com-père (kəm'pār), n., v., -pèred, -pèring. Brit. —n. 1. a host, master of ceremonies, or the like, esp. of a stage revue or television program. —v.t. 2. to act as com-père for: *to com-père the new game show*. Also, **com-père**. [1730-40; < F. lit., godfather; OF < early ML *compater*, equiv. to L *com-* COM- + *pater* FATHER]

com-pete (kəm pēt'), v.i., -pet-ed, -pet-ing. to strive to outdo another for acknowledgment, a prize, supremacy, profit, etc.; engage in a contest; vie: *to compete in a race*; *to compete in business*. [1610-20; < L *competere* to meet, coincide, be fitting, suffice (LL: seek, ask for), equiv. to *com-* COM- + *petere* to seek; LL and E sense influenced by COMPETITOR] —**com-pet'er**, n. —**com-pet-ing-ly**, adv.

—Syn. struggle. COMPETE, CONTEND, CONTEST mean to strive to outdo or excel. COMPETE implies having a sense of rivalry and of striving to do one's best as well as to outdo another: *to compete for a prize*. CONTEND suggests opposition or disputing as well as rivalry: *to contend with an opponent*, *against obstacles*. CONTEST suggests struggling to gain or hold something, as well as contending or disputing: *to contest a position or ground* (in battle); *to contest a decision*.

com-pet-ence (kəm'pet tans), n. 1. the quality of being competent; adequacy; possession of required skill, knowledge, qualification, or capacity: *He hired her because of her competence as an accountant*. 2. sufficiency; a sufficient quantity. 3. an income sufficient to furnish the necessities and modest comforts of life. 4. Law. (of a witness, a party to a contract, etc.) legal capacity or qualification based on the meeting of certain minimum requirements of age, soundness of mind, citizenship, or the like. 5. Embryol. the sum total of possible developmental responses of any group of blastemic cells under varied external conditions. 6. Ling. the implicit, internalized knowledge of a language that a speaker possesses and that enables the speaker to produce and understand the language. Cf. *performance* (def. 8). 7. Immunol. immunocompetence. 8. Geol. the ability of a fluid medium, as a stream or the wind, to move and carry particulate matter, measured by the size or weight of the largest particle that can be transported. [1585-95; COMPET(ENT) + -ENCE]

com-pet-en-cy (kəm'pet tən sē), n., pl. -cies. competence (defs. 1-4). [1585-95; < MF] < ML *competentia*

suitability, competence (L: proportion). See COMPETENT, -CY]

com-pet-ent (kəm'pi tant), adj. 1. having suitable or sufficient skill, knowledge, experience, etc., for some purpose; properly qualified: *He is perfectly competent to manage the bank branch*. 2. adequate but not exceptional. 3. Law. (of a witness, a party to a contract, etc.) having legal competence. 4. Geol. (of a bed or stratum) able to undergo folding without flowage or change in thickness. [1350-1400; ME (< AF) < L *competent-* (s. of *competens*, prp. of *competere* to meet, agree). See COMPETE, -ENT] —**com-pet-ent-ly**, adv.

—Syn. 1. fit, capable, proficient. See able.

com-pet-i-tion (kəm'pi tish'ən), n. 1. the act of competing; rivalry for supremacy, a prize, etc.: *The competition between the two teams was bitter*. 2. a contest for some prize, honor, or advantage: *Both girls entered the competition*. 3. the rivalry offered by a competitor: *The small merchant gets powerful competition from the chain stores*. 4. a competitor or competitors: *What is your competition offering?* 5. Sociol. rivalry between two or more persons or groups for an object desired in common, usually resulting in a victor and a loser but not necessarily involving the destruction of the latter. 6. Ecol. the struggle among organisms, both of the same and of different species, for food, space, and other vital requirements. [1595-1605; < LL *competitio*- (s. of *competitio*), equiv. to *competit(us)* (ptp. of *competere* to meet, come together) + *-iōn* -I-ON; sense influenced by COMPETITOR] —Syn. 1. emulation. 2. struggle.

com-pet-i-tive (kəm pet'i tiv), adj. 1. of, pertaining to, involving, or decided by competition: *competitive sports*; *a competitive examination*. 2. well suited for competition; having a feature that makes for successful competition: *a competitive price*. 3. having a strong desire to compete or to succeed. 4. useful to a competitor; giving a competitor an advantage: *He was careful not to divulge competitive information about his invention*. [1820-30; < L *competit(us)* (ptp. of *competere*; see COMPETITION) + -IVE] —**com-pet-i-tive-ly**, adv. —**com-pet-i-tive-ness**, n.

com-pet-i-tor (kəm pet'i tər), n. a person, team, company, etc., that competes; rival. [1525-35; < L *competitor* rival for an office, equiv. to *com-* COM- + *petitor* seeker, claimant (see PETITOR)] —**com-pet-i-tor-ship**, n.

—Syn. See opponent.

com-pet-i-tor-y (kəm pet'i tōr'ē, -tōr'ē), adj. competitive. [1725-35; COMPET(TOR) + -TOR-Y']

Comp. Gen., Comptroller General.

Com-piègne (kōn piyēn'jē), n. a city in N France, on the Oise River; nearby were signed the armistices between the Allies and Germany 1918, and between Germany and France 1940, 40,720.



com-pi-la-tion (kəm'pə lā'shən), n. 1. the act of compiling: *the compilation of documents*. 2. something compiled, as a reference book. [1400-50; late ME < L *compilatio*- (s. of *compilatio*). See COMPILE, -ATION] —**com-pi-la-tor-y** (kəm pi'lā tōr'ē, -tōr'ē), adj. —Syn. 2. collection, assemblage, assortment.

com-pile (kəm pil'), v.t., -piled, -pil-ling. 1. to put together (documents, selections, or other materials) in one book or work. 2. to make (a book, writing, or the like) of materials from various sources: *to compile an anthology of plays*; *to compile a graph showing changes in profit*. 3. to gather together: *to compile data*. 4. Computers. to translate (a computer program) from a high-level language into another language, usually machine language, using a compiler. [1275-1325; ME < L *compilare* to rob, pillage, steal from another writer, equiv. to *com-* COM- + *pilare*, perh. akin to *pila* column, pier, *pile*, *pilare* to fix firmly, plant (hence, pile up, accumulate)]

com-piler (kəm pi'lər), n. 1. a person who compiles. 2. Also called **compiling routine**. Computers. a computer program that translates a program written in a high-level language into another language, usually machine language. Cf. *interpreter* (def. 3a). [1300-50; ME *compilour* < AF; OF *compileor* < LL *compilator*-]. See COMPILE, -ER']

com-pla-cen-cy (kəm plā'sən sē), n., pl. -cies. 1. a feeling of quiet pleasure or security, often while unaware of some potential danger, defect, or the like; self-satisfaction or smug satisfaction with an existing situation, condition, etc. 2. Archaic. a. friendly civility; inclination to please; complaisance. b. a civil act. Also, **com-pla-cence** (kəm plā'səns). [1635-45; < ML *complacencia*. See COMPLACENT, -CY]

com-pla-cent (kəm plā'sənt), adj. 1. pleased, esp. with oneself or one's merits, advantages, situation, etc., often without awareness of some potential danger or de-

CONCISE PRONUNCIATION KEY: act, a-sə, b, b, ox, övər, ördər, oil, böök, b that; zh as in treasure, e easily, o as in gallop, u as l and n can serve as syllab button (but/n). See the full

income for (Brief description of the purpose of the proposed levy) be passed?

FOR THE INCOME TAX
AGAINST THE INCOME TAX"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D)(1) Except as ~~otherwise~~ provided in division ~~(D)(2) or (F)(9)(E)~~ or (E) of 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.

(2) ~~The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from a tax on income any compensation arising from the grant, 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.~~ (a) For taxable years beginning on or after January 1, 2004, no municipal corporation shall tax the net profit from a business or profession using any base other than the taxpayer's adjusted federal taxable income.

(b) Division (D)(2)(a) of this section does not apply to any taxpayer required to file a return under section 5745.03 of the Revised Code or to the net profit from a sole proprietorship.

~~(E) Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance. If a taxpayer's The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from withholding and from a tax on income the following:~~

(1) 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; or

(2) Compensation attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code.

If an individual's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation. ~~It~~

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, ~~a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation~~ 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.

In the case of a taxpayer who has a net profit from rental activity required to be reported on schedule E, 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 from rental activities required to be reported by the taxpayer on schedule E for the taxable year.

(F) A municipal corporation shall not tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) 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;

(3) Except as otherwise provided in division (G) of this section, intangible income;

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

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;

(6) The income of a public utility, when that public utility is subject to