

ORIGINAL

IN THE SUPREME COURT OF OHIO

NEW YORK FROZEN FOODS, INC. AND AFFILIATES,	:	CASE NO. 15-0575
	:	
Appellants/Cross-Appellees,	:	On Appeal from the Ohio Board of Tax Appeals
	:	
v.	:	Board of Tax Appeals Case No. 2012-55
	:	
BEDFORD HEIGHTS INCOME TAX BOARD OF REVIEW, <i>et al.</i> ,	:	
	:	
Appellees/Cross-Appellants.	:	
	:	
	:	
	:	

**SECOND BRIEF
APPELLEES'/CROSS-APPELLANTS' MERIT BRIEF**

STEPHEN K. HALL (0069009)
 RICHARD C. FARRIN (0022850)
 Zaino, Hall & Farrin LLC
 41 S. High Street, Suite 3600
 Columbus, Ohio 43215
 (614) 326-1120
 (614) 754-6368 (fax)
 SHall@zhftaxlaw.com
 RFarrin@zhftaxlaw.com

Counsel for Appellants/Cross-Appellees,
 New York Frozen Foods, Inc. and Affiliates

ANTHONY F. STRINGER (0071691)
 Counsel of Record
 MATTHEW A. CHIRICOSTA (0089044)
 THOMAS R. O'DONNELL (0067105)
 CALFEE, HALTER & GRISWOLD LLP
 The Calfee Building, 1405 East Sixth Street
 Cleveland, Ohio 44114
 (216) 622-8200 (phone)
 (216) 241-0816 (fax)
 AStringer@Calfee.com
 MChiricosta@Calfee.com
 TODonnell@Calfee.com

Counsel for Appellees/Cross-Appellants,
 Bedford Heights Income Tax Board of Review
 and City of Bedford Heights Income Tax
 Administrator

FILED
SEP 18 2015
CLERK OF COURT SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF CONTENTS	i
CONTENTS OF THE APPENDIX.....	iv
TABLE OF AUTHORITIES	v
STATEMENT OF THE CASE AND FACTS	1
A. The nature of this tax appeal.....	1
B. The Bedford Heights Ordinances and RITA Rules govern Bedford Heights' assessment and collection of municipal income taxes, and each include regulations that bar NYFF's refund claim.....	2
C. NYFF attempts to seek a nearly \$700,000 refund from Bedford Heights by amending New York's prior tax returns to change them from single to consolidated filer status.....	4
D. NYFF's tax refund claim is denied by three separate adjudicatory bodies, including the BTA.....	5
E. NYFF files an untimely appeal in this Court.....	6
ARGUMENT.....	8
I. RESPONSES TO NYFF'S PROPOSITIONS OF LAW	8
NYFF PROPOSITION OF LAW NO. 1: The City of Bedford Heights' refusal to accept Appellants' amended consolidated Bedford Heights' net profits tax return is contrary to R.C. 718.06, which authorizes a taxpayer to file a municipal consolidated net profits tax return if the taxpayer filed a consolidated federal income tax return for the same tax period.....	8
A. The Ohio General Assembly can only limit a municipality's power of taxation through an <i>express</i> statutory act.....	8
B. Section 718.06 does not expressly require a municipality to accept for filing an <i>amended return</i> from an affiliated group of corporations that changes their method of filing from single filer to consolidated filer.....	10
C. NYFF's construction of Section 718.06 has far-reaching constitutional ramifications.....	12

D. Accepting NYFF’s construction of Section 718.06 would trample Home Rule concerns and destroy municipalities’ ability to set their annual budgets based on anticipated and actual tax revenues13

E. NYFF’s failure to comply with Bedford Heights Ordinance § 173.14(a) is dispositive of this case.14

NYFF PROPOSITION OF LAW NO. 2: Bedford Heights Ordinance Section 173.56, which was last amended by the City Council of Bedford Heights on December 21, 2004, may only incorporate by reference those R.I.T.A. Rules that were in existence on December 21, 2004; to attempt to incorporate later amendments to the R.I.T.A. Rules amounts to an unconstitutional delegation of legislative authority.15

A. Statutes enjoy a “strong presumption of constitutionality” and should be upheld unless they are unconstitutional “beyond a reasonable doubt.”16

B. The nondelegation doctrine is seldom used to strike down a law as unconstitutional.....17

C. This Court has never held that incorporating future amendments to other laws and regulations violates the nondelegation doctrine; in fact, it *endorsed* future incorporation in *State v. Gill* and *State ex rel. Timken Roller Bearing Co. v. Indus. Comm’n*.18

D. Bedford Heights’ incorporation of the RITA Rules is consistent with RITA’s function as tax administrator for Bedford Heights and is properly constrained under this Court’s nondelegation precedent.....21

E. None of NYFF’s cases are applicable here.....23

F. NYFF’s proposed constitutional rule leads to inefficient and unworkable results.25

NYFF PROPOSITION OF LAW NO. 3: The July 2009 amendment to R.I.T.A. Rule Section 5.06(A) exceeds the prohibition in City of Bedford Heights Ordinance Section 173.15(a) regarding the filing of amended returns and is invalid.....27

A. There is no conflict between Section 5.06(A) and BHO § 173.15(a) under the test articulated by this Court because Section 5.06(A) is merely additive of BHO § 173.15(a).27

B. NYFF’s cases are factually distinguishable.....30

NYFF PROPOSITION OF LAW NOS. 4 and 5:31

(4): Because the 2009 amendment to R.I.T.A. Rule Section 5.06(A) was not expressly made retrospective, it cannot be applied to taxpayers whose tax years ended and for

which the due date for the initial returns has passed prior to the effective date of the R.I.T.A. Rule's amendment.....	31
(5): Bedford Heights' application of the 2009 amendment to R.I.T.A. Rule Section 5.06(A) to Appellants' tax returns for Tax Years 2005, 2006, and 2007 amounts to a retroactive law in violation of the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution. Even if the 2009 amendment to R.I.T.A. Rule Section 5.06(A) had expressly stated that it was intended to apply retrospectively, it would violate the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution because it attaches a new disability to transactions (the filing of initial returns for closed tax years) already past.....	31
A. RITA Rule § 5.06(A) is not being applied retroactively because it was enacted several months before NYFF actually filed the amended returns at issue.....	31
B. Because NYFF's retroactivity premise is flawed from the outset, this Court need not address whether Section 5.06(A) was intended to apply retroactively.....	33
II. BEDFORD HEIGHTS' PROPOSITION OF LAW ON CROSS-APPEAL.....	34
A. If this Court determines that BHO § 173.15(a) prohibits NYFF's conduct, then NYFF's entire appeal is moot.....	34
B. NYFF's change from single to consolidated filer also constitutes a "change" in NYFF's "method of accounting or apportionment of net profits" and is therefore barred by BHO § 173.15(a) and the pre-July 2009 version of RITA Rule § 5.06(A) without regard to the July 2009 version of Section 5.06(A).....	34
C. BHO § 173.15(a) and the pre-July 2009 version of RITA Rule § 5.06(A) should be liberally construed to avoid NYFF's constitutional arguments in any event.....	36
CONCLUSION.....	37

CONTENTS OF THE APPENDIX

Bedford Heights' Date-Stamped Notice of Cross-Appeal.....	Appx. 1-9
March 20, 2015 Decision and Order of the Ohio Board of Tax Appeals.....	Appx. 10-13
March 9, 2015 Decision and Order of the Ohio Board of Tax Appeals.....	Appx. 14-17
R.C. 80.05.....	Appx. 18-19
Akron Ord. 98.92.....	Appx. 20
Columbus Ord. 1145.02.....	Appx. 21-29
O.A.C. 4123-21-01.....	Appx. 30
R.C. 2923.124.....	Appx. 31-32
R.C. 3903.01.....	Appx. 33-36
R.C. 5747.10.....	Appx. 37-39
R.C. 718.41.....	Appx. 40-41
R.C. 718.06 (effective 1/1/16).....	Appx. 42-44
Bedford Heights Ord. 173.14.....	Appx. 45
Ohio Constitution, Art. XVIII, § 7.....	Appx. 46
R.C. 718.01.....	Appx. 47-58

TABLE OF AUTHORITIES

Cases

<i>Asish Enters. v. Fairview Park</i> , 8th Dist. No. 75088, 2000 Ohio App. LEXIS 71 (Jan. 13, 2000)	34
<i>Badaracco v. Commissioner of Internal Revenue</i> , 464 U.S. 386, (1984).....	11, 12
<i>Blue Cross of N.E. Ohio v. Ratchford</i> , 64 Ohio St. 2d 256, 416 N.E.2d 614, syllabus (1980).....	19, 20, 26
<i>Cincinnati Bell Tel. Co. v. Cincinnati</i> , 81 Ohio St. 3d 599, 693 N.E.2d 212 (1998).....	10, 11, 12, 13, 25
<i>Cincinnati v. De Golyer</i> , 26 Ohio App. 2d 178, 270 N.E.2d 664 (1st Dist. 1969).....	36
<i>Columbia Gas Transmission Corp. v. Levin</i> , 117 Ohio St. 3d 122, 2008-Ohio-511.....	9, 10
<i>Couchot v. State Lottery Comm'n</i> , 74 Ohio St. 3d 417, 659 N.E.2d 1225 (1996)	40
<i>Desenco, Inc. v. Akron</i> , 84 Ohio St. 3d 535, 706 N.E.2d 323 (1999).....	20, 25
<i>Doe v. Ronan</i> , 127 Ohio St. 3d 188, 2010-Ohio-5072	40
<i>Dukes v. Ohio Dept. of Job & Family Servs.</i> , 10th Dist. No. 09AP-515, 2009- Ohio-6781	39
<i>Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council</i> , 485 U.S. 568 (1988).....	44
<i>Emery</i> , 59 Ohio App. 2d 7, 391 N.E.2d 746 (1st Dist. 1978).....	39
<i>First Merchs. Bank v. Gower</i> , 2d Dist. No. 2011-CA-11, 2012-Ohio-833	44
<i>Fondessy Enters., Inc. v. City of Oregon</i> , 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986).....	32, 34, 35, 36
<i>Froelich v. Cleveland</i> , 99 Ohio St. 376, 124 N.E. 212 (1919)	15
<i>Hachem v. Holder</i> , 656 F.3d 430 (6th Cir. 2011).....	20
<i>Harding Pointe, Inc. v. Ohio Dept. of Job & Family Servs.</i> , 10th Dist. No. 13AP- 258, 2013-Ohio-4885.....	40
<i>Hughes v. Lindley</i> , 8th Dist. No. 41671, 1980 Ohio App. LEXIS 12207 (May 22, 1980).....	27, 29, 30
<i>Independent Ins. Agents, Inc. v. Duryee</i> , 95 Ohio App. 3d 7, 641 N.E.2d 1117 (10th Dist. 1994).....	20
<i>Lima v. Stepleton</i> , 3d Dist. No. 1-13-28, 2013-Ohio-5655.....	14
<i>N. Ohio Patrolmen's Benevolent Ass'n v. Parma</i> , 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980).....	14
<i>Nat'l Ass'n of Forensic Counselors v. Fleming</i> , 143 Ohio App. 3d 811, 729 N.E.2d 389 (10th Dist. 2001).....	18

<i>Ohio Democratic Party v. Ohio Elections Comm'n</i> , 10th Dist. No. 07AP-876, 2008-Ohio-4256.....	19
<i>Ohioans for Concealed Carry, Inc. v. City of Clyde</i> , 120 Ohio St. 3d 96, 2008- Ohio-4605.....	32
<i>Ohioans for Fair Representation v. Taft</i> , 67 Ohio St. 3d 180, 616 N.E.2d 905 (1993).....	44
<i>One Columbus Bldg. Assocs. Ltd. v. Columbus Div. of Income Tax</i> , 10th Dist. No. 98AP-1309, 1999 Ohio App. LEXIS 5590 (Nov. 30, 1999).....	27, 28, 29, 30
<i>Osborne v. Leroy Twp.</i> , 11th Dist. No. 2014-L-008, 2014-Ohio-5774.....	34, 35
<i>Peachtree Dev. Co. v. Paul</i> , 67 Ohio St. 2d 345, 423 N.E.2d 1087 (1981).....	26
<i>Ransom & Randolph Co. v. Evatt</i> , 142 Ohio St. 398, 52 N.E.2d 738 (1944).....	36
<i>Robinson v. Tax Comm'r of Indian Hill</i> , 61 Ohio Misc. 2d 95, 572 N.E.2d 596 (C.P. 1989).....	29, 30
<i>Shimola v. Cleveland</i> , No. C81-751, 1984 U.S. Dist. LEXIS 15320 (N.D. Ohio June 30, 1984).....	21
<i>State ex rel. Haylett v. Ohio Bureau of Workers' Comp.</i> , 87 Ohio St. 3d 325, 720 N.E.2d 901 (1999).....	18
<i>State ex rel. Matz v. Brown</i> , 37 Ohio St.3d 279, 525 N.E.2d 805 (1988).....	39
<i>State ex rel. Shady Acres Nursing Home, Inc. v. Rhodes</i> , 7 Ohio St. 3d 7, 455 N.E.2d 489 (1983).....	39
<i>State ex rel. Timken Roller Bearing Co. v. Indus. Comm'n</i> , 136 Ohio St. 148, 24 N.E.2d 448 (1939).....	17, 22, 23, 29
<i>State v. Cook</i> , 83 Ohio St.3d 404, 700 N.E.2d 570 (1998).....	39
<i>State v. Gill</i> , 63 Ohio St. 3d 53, 584 N.E.2d 1200 (1992).....	17, 18, 21, 22, 23, 27, 29, 30, 31
<i>State v. Sinito</i> , 43 Ohio St. 2d 98, 101, N.E.2d 896 (1975).....	19
<i>Wardrop v. Middletown Income Tax Review Bd.</i> , 12th Dist. No. CA2007-09-235, 2008-Ohio-5298.....	35
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001).....	20

Statutes

26 U.S.C. 1.....	22
30 U.S.C. 945.....	24
Internal Revenue Code of 1986,' 100 Stat. 2085.....	22
O.A.C. 4123-21-01.....	24
R.C. 5747.01.....	29
R.C. 2913.46.....	22, 30, 31

R.C. 2915.01	22
R.C. 2923.124	23
R.C. 3731.01	35
R.C. 3903.01	23
R.C. 5717.04	7
R.C. 5747.10	12
R.C. 718.01	25
R.C. 718.06	8, 9, 11, 12, 13, 14, 15, 16
R.C. 718.41	12
Revised R.C. 718.06	13
Section 2011, Title 7, U.S.Code	30

Constitutional Provisions

Article II, Section 28 of the Ohio Constitution.....	31, 32
Section 7 of Article XVIII of the Ohio Constitution	8

Ordinances and Administrative Rules

Akron Ordinance § 98.92	20
Bedford Heights Ordinance § 173.14	14, 15, 16
Bedford Heights Ordinance § 173.15	1, 3, 4, 5, 7, 14, 27, 28, 29, 30, 31, 34, 35, 36, 37
Bedford Heights Ordinance § 173.32	5
Bedford Heights Ordinance § 173.56	3, 6, 15, 18, 22, 23, 25, 26, 27, 28, 30
Bedford Heights Ordinance Chapter 173	9
Columbus Ordinance § 1145.02	20
Dayton Ordinance § 80.05	21
RITA Rule § 5.06(A)	3, 4, 5, 6, 14, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

Other Authorities

Ohio Substitute House Bill 5	12
Sutherland on Statutory Construction (2 Ed.), 787 and 788, Section 405	19

STATEMENT OF THE CASE AND FACTS

A. The nature of this tax appeal.

This tax appeal arises from the attempt of Appellants New York Frozen Foods, Inc. (“New York”) and Affiliates (collectively, “NYFF”) to obtain from Appellees (“Bedford Heights”) a refund of net profits taxes that NYFF paid to Bedford Heights for tax years 2005, 2006, and 2007. NYFF seeks this refund on the basis that, after New York initially filed Bedford Heights net profits tax returns on a single-filer basis, NYFF later submitted amended returns for the tax years in question, in which NYFF sought to change its status from a single to a consolidated filer. That change, if permissible, would allegedly entitle NYFF to a refund of nearly \$700,000.

NYFF’s refund claim was properly denied by three separate adjudicatory bodies—the Bedford Heights City Tax Administrator, the Bedford Heights Income Tax Board of Review, and most recently, the Ohio Board of Tax Appeals (“BTA”). The BTA concluded that the Regional Income Tax Agency’s (“RITA”) Rules and Regulations (which are incorporated into Bedford Heights’ ordinances) prevent NYFF from amending its returns in this manner and, therefore, bar NYFF’s tax refund claims. The BTA’s decision in this regard—and its predecessors’ decisions—were reasonable, lawful, and correct and should thus be affirmed. The BTA’s decision, however, should be reversed in one narrow respect, as reflected in Bedford Heights’ cross-appeal: Bedford Heights Ordinance § 173.15 (a) independently bars NYFF’s refund claim without regard to the RITA Rules. As detailed below, reversal of the BTA’s decision on the issue on cross-appeal renders NYFF’s appeal moot.

B. The Bedford Heights Ordinances and RITA Rules govern Bedford Heights' assessment and collection of municipal income taxes, and each include regulations that bar NYFF's refund claim.

Bedford Heights—like many Ohio municipalities—exercises its home rule power to collect municipal taxes. Bedford Heights—again, like many Ohio municipalities—promulgates ordinances and regulations governing the administration and enforcement of its system of municipal income taxation, including regulations governing the filing and amending of income tax returns. In doing so, Bedford Heights relies not only on its own duly enacted ordinances and regulations, but also on RITA's Rules & Regulations (“RITA Rules”).

RITA assists Bedford Heights (and numerous other Ohio municipalities) with municipal income taxes by (among other things) promulgating rules and regulations, and collecting taxes from taxpayers. To facilitate this relationship, the Bedford Heights Ordinances (“BHO”) incorporate RITA's Rules in their “most current edition,” including “additions, deletions, and amendments”:

(a) Effective January 1, 1996, there is hereby adopted for the purpose of establishing rules and regulations for the collection of municipal income taxes and the administration and enforcement of this chapter the Rules and Regulations of the Regional Income Tax Agency (R.I.T.A.), in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto, and the same are hereby incorporated herein as if fully set out at length save and except such portions as may be hereinafter added, modified, or deleted therein.

(b) R.I.T.A.'s Rules and Regulations shall be in addition to any rules and regulations adopted and promulgated by the Tax Administration pursuant to authority granted under Section 173.04 herein. In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights.

See BHO § 173.56; (NYFF Supp. at 3, Stip. ¶ 13, first);¹ (NYFF App'x at 33).

RITA, in turn, promulgates the rules and regulations that are expressly incorporated by BHO § 173.56. See generally RITA Rules, available at <https://www.ritaohio.com/media/38391/rita-rules.pdf> (last accessed Aug. 6, 2015 at 4:46 p.m.). Among these is the RITA Rule at issue here, Section 5.06(A). Section 5.06(A), as amended in July 2009, provides that a taxpayer cannot change its method of accounting or apportionment of net profits or its method of filing (*i.e.*, single or consolidated) after the due date for filing the original return:

Where necessary, 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 or limitations contained in the Ordinance. Such return shall be clearly marked "Amended." *A taxpayer may not change the method of accounting or apportionment of net profits, nor the method of filing (i.e., single or consolidated), after the due date for filing the original return.* Amended returns cannot be filed after three (3) years from the original filing date.

RITA Rule § 5.06(A) (unless otherwise stated, all emphasis in this Brief is added); (NYFF Supp. at 2-3, Stip. ¶ 8(b)); (NYFF App'x at 24). BHO § 173.15(a) contains a similar prohibition:

Where necessary an amended return must be filed in order to report additional income and pay additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 173.30 through 173.35. Such amended return shall be on a form obtainable on request from the Tax Administrator. *A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.*

¹ The parties filed Stipulations with the BTA on February 12, 2014. NYFF filed those Stipulations here on July 31, 2015 as part of its Supplement. The Stipulations inadvertently contained two paragraphs numbered "13." Bedford Heights cites the first paragraph 13 as "¶ 13, first" and the second as "¶ 13, second."

See BHO § 173.15(a); (NYFF Supp. at 2, Stip. ¶ 7(c)); (NYFF App'x at 32). These regulations impose specific restrictions on the filing of amended returns. When filing an amended return, a taxpayer may not change its (1) method of accounting; (2) apportionment of net profits; or (3) method of filing (*i.e.*, single or consolidated). See RITA Rule § 5.06(A); BHO § 173.15(a); (NYFF Supp. at 2-3, Stip. ¶¶ 7(c), 8(b)); (NYFF App'x at 24, 32).

C. NYFF attempts to seek a nearly \$700,000 refund from Bedford Heights by amending New York's prior tax returns to change them from single to consolidated filer status.

In this appeal, NYFF seeks a refund of net profits tax of \$698,294.00 (plus interest) (the "Refund Amount"). The Refund Amount represents a portion of the net profits taxes that New York paid for tax years 2005, 2006, and 2007 (the "Tax Years"). (NYFF Supp. at 2, Stip. ¶ 6).²

For each of the Tax Years, New York timely filed, on a single-filer basis, its initial Bedford Heights net profits tax returns and timely paid the net profits tax that was due. (NYFF Supp. at 1, Stip. ¶ 2). On March 9, 2010, NYFF (that is, New York and its Affiliates) filed amended Bedford Heights net profits tax returns for the Tax Years. (NYFF Supp. at 1-2, Stip. ¶ 5). By doing so, NYFF sought to both (a) change New York's original decision to file on a single filer basis for the Tax Years to filing on a consolidated filer basis; and (b) obtain the Refund Amount, to which NYFF contended it was entitled based on the attempted change from single to consolidated filer.

² As this Court knows, the "net profits tax" imposed on corporations by many Ohio municipalities is essentially a local income tax on corporations doing business within the municipalities.

D. NYFF's tax refund claim is denied by three separate adjudicatory bodies, including the BTA.

In July 2011, the Bedford Heights City Tax Administrator denied NYFF's refund claims for the Tax Years because the "rules and regulations adopted by the City of Bedford Heights prohibited the filing of amended returns to change the method of filing." (NYFF App'x at 21).

NYFF appealed the Tax Administrator's decision to the Bedford Heights Income Tax Board of Review. The Board of Review held a hearing and, in November 2011, affirmed the Tax Administrator's decision. (NYFF Supp. at 9-12). The Board of Review concluded that BHO §§ 173.15 and 173.32 and RITA Rule § 5.06(A) were "substantially similar" and of "identical [fatal] effect" for NYFF and thus prevented NYFF from changing from single to consolidated filing status by amending their returns:

Taken together, Sections 173.15, 173.32 of the Bedford Heights Administrative Code and Section 5.06(A) of the R.I.T.A. Rules and Regulations are *identical in effect*. Neither permits a taxpayer to **change the method of accounting or the apportionment of net profits, nor the method of filing after the due date for filing the original return.** It cannot be reasonably or logically argued that attempting to change from a single filer to a consolidated filer is not a "change in the method of accounting or the apportionment of net profits or the method of filing" all of which are prohibited by Sections 173.15, 173.32 of the Bedford Heights Administrative Code and Section 5.06(A) of the R.I.T.A. Rules and Regulations.

(NYFF App'x at 20) (bold and italic emphasis added; bold and underline emphasis in original); *see also id.* at 19 (concluding that BHO § 173.15(a) and RITA Rule § 5.06(A) are "substantially similar").³

NYFF next appealed the Board of Review's decision to the BTA. The parties waived the hearing and submitted the appeal on stipulations and briefs. On March 9, 2015, the BTA issued

³ Although the Board of Review cited BHO § 173.32, Bedford Heights does not rely on that section here.

a Decision and Order that affirmed the decisions below and denied NYFF's request for a refund. (NYFF App'x at 15-18). The BTA concluded that the July 2009 version of RITA Rule § 5.06(A), as incorporated into the BHO, barred NYFF's refund claims:

Based upon the foregoing case law and the language of the BHAC Section 173.56, we find that the City, in its most recent incorporation of RITA Rules and Regulations in December 2004, clearly incorporated the July 2009 change to RITA Rule 5:06(A) which prohibits changing the method of filing in an amended return. Accordingly, we find that the rule did bar appellants' filings.

(NYFF App'x at 18). Accordingly, the BTA denied NYFF's refund claim.

On March 18, 2015, NYFF filed a motion for reconsideration with the BTA. On March 20, 2015 (before Bedford Heights had an opportunity to oppose the motion), the BTA summarily denied NYFF's request for reconsideration of any of the issues now raised in NYFF's appeal. (NYFF App'x at 11).

E. NYFF files an untimely appeal in this Court.

NYFF filed its notice of appeal in this Court on April 10, 2015—two days after its deadline for appealing the BTA's March 9, 2015 decision under R.C. 5717.04 had expired, and 19 days after the March 20, 2015 decision was issued. (NYFF App'x at 1-5). Even though the BTA's March 20, 2015 Decision and Order denied NYFF's motion to reconsider the BTA's March 9 decision on the issues NYFF now appeals and did not otherwise change how any of the issues NYFF has appealed were decided on March 9, NYFF nonetheless purported to appeal the March 20 decision. (NYFF App'x at 2). Consequently, on April 16, 2015, Bedford Heights filed a Motion to Dismiss for lack of appellate jurisdiction based on NYFF's untimely appeal.

That Motion remains pending.⁴ Out of an abundance of caution, and subject to the Court's ruling on the motion to dismiss, Bedford Heights filed its notice of cross-appeal on April 17, 2015. (Bedford Heights App'x at 1-9). On July 31, 2015, NYFF filed its First Merits Brief in this appeal, propounding five propositions of law. Bedford Heights now addresses these issues, as well as its own cross-appeal, below.

⁴ In an apparent effort to avoid the untimeliness of its appeal, NYFF goes to great lengths to characterize the March 20 decision as "new and substantively different" from the March 9 decision. See NYFF's First Merits Br. at 4. Not so. The BTA's March 20 decision merely corrected a single typographical error that, when read in context of the entire March 9 decision, had no substantive effect on any issue and did not relate to any of the issues NYFF appealed to this Court. In the March 9 decision, the BTA found against Bedford Heights on the points at issue in the cross-appeal (which points constitute an independent basis to deny NYFF's refund claim irrespective of the issues raised by NYFF here), but inadvertently stated "[w]e disagree" with NYFF's position in its introductory paragraph of its analysis of that issue instead of "[w]e agree." The rest of the BTA's analysis on that issue in the following paragraphs, however, clearly indicates that the BTA found in NYFF's favor on this issue on March 9, 2015:

[NYFF] argue[s] that filing amended consolidated returns is not a "change in the method of accounting or apportionment of net profits." We disagree... [The BTA then continued to analyze the parties' competing arguments on this issue in the next several sentences before ultimately and clearly concluding in NYFF's favor as follows]:

[I]t is clear that changing from single filing to consolidated filing is not the same as changing the method of accounting or apportionment, which were already prohibited by the rule. We therefore find that appellants' filing of amended returns as a consolidated filer was not prohibited by BHAC Section 173.15(a).

(NYFF App'x at 16-17). The BTA then changed "disagree" to "agree" in the March 20 decision but otherwise did not change a single word or finding from the March 9 decision. Accordingly, in its Merits Brief, NYFF mischaracterizes both decisions.

ARGUMENT

I. RESPONSES TO NYFF'S PROPOSITIONS OF LAW

NYFF PROPOSITION OF LAW NO. 1: The City of Bedford Heights' refusal to accept Appellants' amended consolidated Bedford Heights' net profits tax return is contrary to R.C. 718.06, which authorizes a taxpayer to file a municipal consolidated net profits tax return if the taxpayer filed a consolidated federal income tax return for the same tax period.

Bedford Heights is a charter municipality under Section 7 of Article XVIII of the Ohio Constitution. (NYFF Supp. at 3, Stip. ¶ 13, second and Bedford Heights Supp. at 2-30); (NYFF App'x at 36-37). In this case, Bedford Heights is properly exercising its power to tax in accordance with its Home Rule authority by placing certain restrictions on amended returns. Section 718.06 does not expressly prohibit Bedford Heights from doing this. In fact, Ohio municipal tax ordinances typically contain similar restrictions on amended returns. By construing Section 718.06 to include amended returns, NYFF is asking this Court to invoke implied preemption. Because the General Assembly can only limit a municipality's power of taxation through an express act, NYFF's first proposition of law should be rejected.⁵

A. The Ohio General Assembly can only limit a municipality's power of taxation through an *express* statutory act.

Bedford Heights is a charter municipality. Section 4.01 of the Bedford Heights Charter expressly reserves to Bedford Heights "all powers, general or special, governmental or

⁵ As a preliminary matter, NYFF's assertion that courts "must construe the provisions of the Revised Code and Bedford Heights' ordinances strictly, and resolve all doubts in favor of the taxpayer" is incorrect. See NYFF's First Merits Br. at 13 (citing *Columbia Gas Transmission Corp. v. Levin*, 117 Ohio St. 3d 122, 2008-Ohio-511, ¶ 34). NYFF omits the considerable limitation that this Court placed on that rule in *Levin*. This Court also stated in *Levin* that such "rules of strict construction do not apply if the statutory language is plain and unambiguous, because such statutes are to be applied as written, not construed in any party's favor." *Levin* at ¶ 34. NYFF does not contend that any of the laws at issue here are ambiguous. Also, as further detailed below, laws cannot be strictly construed in a challenger's favor when that party is—as NYFF is—raising constitutional challenges to such laws.

proprietary, which may now or hereafter lawfully be possessed or exercised by any municipal corporation of Ohio.” See Bedford Heights Charter § 4.01; (NYFF Supp. at 4, Stip. ¶ 13, second and Bedford Heights Supp. at 3). Section 4.02 of the Charter, in turn, provides that all powers of local self-government “may be exercised in the manner prescribed in this Charter; or, if not prescribed herein, in such manner as the Council may prescribe.” (NYFF Supp. at 4, Stip. ¶ 13, second and Bedford Heights Supp. at 3). Bedford Heights has chosen to exercise one of its “powers of local self-government” by giving itself (in both its Charter and its Ordinances) the power to impose a municipal income tax. *Id.*; see also BHO Chapter 173.

As a charter municipality, Bedford Heights has home rule authority, which enables it to exercise all power of local self-government including the power of taxation. In *Cincinnati Bell Tel. Co.*, this Court stated:

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 power of local self-government.” As this court stated in *State ex rel. Zielonka v. Carrel*, “there can be no doubt that the grant of authority to exercise all power of local government includes the power of taxation.”

Cincinnati Bell Tel. Co. v. Cincinnati, 81 Ohio St. 3d 599, 601, 693 N.E.2d 212 (1998) (internal citations omitted).

This Court also recognized that the Ohio Constitution gives the General Assembly the power to limit municipal taxing authority. See *id.* at 602. However, because the intention of the Home Rule Amendment was to eliminate statutory control over municipalities by the General Assembly, this Court held that the General Assembly can only preempt a municipality’s taxing authority by “an express act.” *Id.* As this Court noted:

[G]iven the delegation, by the people of the state, of power to levy taxes for municipal purposes, the exercise of that power is to be considered in all respects valid, unless the General Assembly has acted affirmatively by exercising its constitutional prerogative. In

the absence of an express statutory limitation demonstrating the exercise, by the General Assembly, of its constitutional power, acts of municipal taxation are valid.

Id. at 606.

Therefore, the General Assembly cannot restrict a municipality's power of taxation through implied preemption. *Id.* at 606-08 ("Very clearly, there is no provision in the Ohio Constitution that contains words preventing a municipality from exercising its taxing power simply because the General Assembly has enacted tax legislation of its own... [T]here is no constitutional basis that supports the doctrine of implied preemption[.]").

B. Section 718.06 does not expressly require a municipality to accept for filing an amended return from an affiliated group of corporations that changes their method of filing from single filer to consolidated filer.

Under the tax laws of the United States and Ohio, amended returns are treated differently than original returns. The United States Supreme Court articulated this difference as follows:

Indeed, as this Court recently has noted, the Internal Revenue Code does not explicitly provide either for a taxpayer's filing, or for the Commissioner's acceptance, of an amended return; instead, an amended return is a creature of administrative origin and grace. Thus, when Congress provided for assessment at any time in the case of a false or fraudulent 'return,' it plainly included by this language a false or fraudulent *original* return. In this connection, we note that until the decision of the Tenth Circuit in *Dowell v. Commissioner*, courts consistently had held that the operation of Section 6501 and its predecessors turned on the nature of the taxpayer's original, and not his amended, return.

See Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 393 (1984) (internal citations omitted). The Court further elaborated on the different tax treatment of amended return filings in a footnote:

The significance of the original, and not the amended, return has been stressed in other, but related, contexts. It thus has been held consistently that the filing of an amended return in a nonfraudulent situation does not serve to extend the period within which the Commissioner may assess a deficiency. [sic] It also has been held that filing an amended return does not serve to reduce the period within which the Commissioner may assess taxes where the original return omitted enough income to trigger the operation of the extended limitations period

provided by Section 6501(e) or its predecessors. [sic] And the period of limitations for filing a refund claim under the predecessor of Section 6501(a) begins to run on the filing of the original, not the amended, return.

Id. at 393 n.8.

The differential tax treatment of amended returns is also evidenced in R.C. Chapters 718 and 5747, governing municipal and state taxation, respectively. Each chapter contains a section relating specifically and only to amended returns. *See* R.C. 718.41 and 5747.10 (Bedford Heights App'x at 37-41).

NYFF asks this Court to construe Section 718.06 to apply to amended returns. In its Merit Brief, NYFF notes that "R.C. 718.06 does not contain any requirement that the consolidated group filing be made on the initial return or prohibiting such filing on an amended return." *See* NYFF's First Merits Br. ("NYFF Br.") at 17. But when it comes to preemption of a municipality's home rule power of taxation, silence is not golden. Preemption requires an express act. NYFF's statutory construction is the type of implied preemption that *Cincinnati Bell Tel. Co.* prohibits.

Section 718.06 does not reference amended returns. Rather, it references "a consolidated income tax *return*." Similarly, in *Badaracco*, the code provision referred to "a false or fraudulent *return*." *Badaracco*, 464 U.S. at 392-93. As noted above, the United States Supreme Court found that the provision plainly meant an original, and not amended, return.

If the General Assembly wanted Section 718.06 to include amended returns, it could have added amended returns to the statutory language. It chose not to do so. Moreover, the General Assembly used the article "a" to modify the term "consolidated income tax return." The General Assembly could have used the words "any" or "all" to modify the term, but did not do so. Equally telling, Section 718.06 recently was substantially revised by the General Assembly.

Those revisions become effective January 1, 2016. *See* Ohio Substitute House Bill 5.⁶ In the revised version of Section 718.06, the General Assembly again chose not to add amended returns to the statutory language. *See* Revised R.C. 718.06 (Bedford Heights App'x at 42-44).⁷ Consequently, pursuant to this Court's holding in *Cincinnati Bell Tel. Co.* and the well-recognized differential treatment of amended returns in the tax laws of the United States and Ohio, Section 718.06 should be construed *not* to apply to amended returns.

C. NYFF's construction of Section 718.06 has far-reaching constitutional ramifications.

Like hundreds of other Ohio municipal corporations, Bedford Heights imposes certain restrictions on amended returns, namely:

- A taxpayer cannot change its method of accounting.
- A taxpayer cannot change its apportionment of net profits.
- A taxpayer cannot change its method of filing (*i.e.*, single or consolidated).

Therefore, if an affiliated group of corporations files an amended return that changes their method of accounting, apportionment of net profits, and/or method of filing (which is the case here), Bedford Heights, like the hundreds of other Ohio municipalities with similar restrictions on amended returns, will not accept it for filing.

Under NYFF's construction of Section 718.06, every Ohio municipal tax ordinance that contains restrictions on amended returns will be deemed unlawful, because they would conflict with Section 718.06. NYFF's construction would require municipalities to accept a consolidated

⁶ House Bill 5 not only revises Section 718.06, but also revises several of Chapter 718's municipal income tax provisions.

⁷ In fact, the revised version of Section 718.06 now implements specific requirements that *taxpayer-affiliated groups* must meet in filing consolidated returns and completely omits the language in the current Section 718.06 relied on by NYFF. *See, e.g.*, Revised R.C. 718.06(E) (Bedford Heights App'x at 43).

amended income tax return for filing even if the amended return changes the taxpayer's method of accounting *or* apportionment of net profits *or* method of filing. Thus, all municipal tax ordinances that contain these common restrictions on amended returns would be preempted by Section 718.06 and declared unlawful.

D. Accepting NYFF's construction of Section 718.06 would trample Home Rule concerns and destroy municipalities' ability to set their annual budgets based on anticipated and actual tax revenues

For nearly a century, Ohio courts have recognized that “[t]he purpose of the Home Rule Amendments was to put the conduct of municipal affairs in the hands of those who know the needs of the community best, to-wit, the people of the city.” *Lima v. Stepleton*, 3d Dist. No. 1-13-28, 2013-Ohio-5655, ¶ 13 (quoting *N. Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St. 2d 375, 379, 402 N.E.2d 519 (1980)); *Froelich v. Cleveland*, 99 Ohio St. 376, 385, 124 N.E. 212 (1919) (“[T]he object of the home rule amendment was to permit municipalities to use [their] intimate knowledge and determine for themselves in the exercise of all powers of local self-government how local affairs should be conducted.”).

Rejecting NYFF's construction of Section 718.06 would further this objective. Bedford Heights exercises its Home Rule prerogative to bar taxpayers from changing from single to consolidated filer status via amended returns that are filed *after the due date for the original return*. This prohibition is rooted in a practical concern shared by “those who know the needs of the community best”: the ability to accurately set a municipal budget. Bedford Heights (presumably, like many municipalities) sets its operating budget based in large part on expected and actual tax revenues. So, once a return is filed by a taxpayer on a single filer basis, Bedford Heights balances its budget by (among other things) factoring in the anticipated tax revenues reflected in that return. Moreover, the State *requires* Bedford Heights to operate on a balanced

budget. *Cleveland Police Patrolmen's Ass'n v. Voinovich*, 15 Ohio App. 3d 72, 73, 472 N.E.2d 759 (8th Dist. 1984) ("R.C. Chapter 5705 of the Revised Code mandates that the city... operate on a balanced budget."). Barring a taxpayer from changing from single to consolidated filer status (or vice versa) long after the due date for the original returns—and seeking substantial "refunds" as a result—protects these expectations. As reflected by the express prohibitions against this conduct in RITA Rule § 5.06(A) (and BHO § 173.15(a)), this concern is apparently shared by many municipalities that work with RITA.

The facts here demonstrate why RITA and Bedford Heights proscribe this conduct. Despite being able to file consolidated returns in the first instance, New York originally filed on a single-filer basis for the Tax Years. NYFF as a collective entity then waited until years later to claim a refund of nearly \$700,000 by submitting amended consolidated returns for the Tax Years. Neither Bedford Heights nor RITA nor any other municipality relying on this prohibition has any way to anticipate or budget for taxpayers who suddenly decide to try to change their filing status several years after their original filing and tax payments. Consequently, RITA and Bedford Heights enacted a reasonable limitation to restrict when consolidated returns may otherwise be filed.

E. NYFF's failure to comply with Bedford Heights Ordinance § 173.14(a) is dispositive of this case.

Bedford Heights complies with Section 718.06. Bedford Heights Ordinance § 173.14(a) states:

Any affiliated group which files a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code may file a consolidated return with the City of Bedford Heights. However, once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change their method of filing in any

subsequent tax year without written approval from the Administrator.

See BHO § 173.14(a) (Bedford Heights App'x at 45). Thus, Bedford Heights accepts consolidated returns in accordance with Section 718.06.

However, under Bedford Heights Ordinance § 173.14(a), "once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Administrator." This provision is found in several municipal tax ordinances relating to consolidated returns. It provides the municipality with another mechanism for managing its budgeting concerns and expectations. As is evidenced in this case, a corporate taxpayer's change in method of filing (single or consolidated) can have an extremely significant impact on a municipality's budget.

Here, for tax year 2004, New York filed on a single-filer basis. Similarly, for the tax years at issue in this case (2005-2007), New York filed on a single-filer basis. (NYFF Supp. at 1, Stip. ¶ 2). Now, via amended returns, New York and its affiliates (NYFF) seek to change the method of filing to consolidated. However, NYFF never obtained written approval from Bedford Heights or RITA to make this change. Consequently, Bedford Heights Ordinance § 173.14(a) prohibits the change.

NYFF PROPOSITION OF LAW NO. 2: Bedford Heights Ordinance Section 173.56, which was last amended by the City Council of Bedford Heights on December 21, 2004, may only incorporate by reference those R.I.T.A. Rules that were in existence on December 21, 2004; to attempt to incorporate later amendments to the R.I.T.A. Rules amounts to an unconstitutional delegation of legislative authority.

Bedford Heights' incorporation of the RITA Rules and future amendments thereto is a permissible exercise of legislative power. In the *Timken* and *Gill* cases on which NYFF relies, this Court actually *approved* the type of incorporation that NYFF asserts is unconstitutional.

Indeed, the incorporation of future amendments is a concept reflected in many Ohio statutes, ordinances, and administrative code sections. Thus, adopting NYFF's proposition of law would nullify as unconstitutional not only the Bedford Heights ordinance here, but also those other laws. Moreover, the incorporation of RITA Rules into Bedford Heights' Ordinances logically furthers the relationship between RITA and Bedford Heights by facilitating RITA's role as the tax administrator for Bedford Heights. Accordingly, NYFF's constitutional arguments fail as a matter of law.⁸

A. Statutes enjoy a “strong presumption of constitutionality” and should be upheld unless they are unconstitutional “beyond a reasonable doubt.”

Statutes “enjoy a strong presumption of constitutionality.” *State v. Gill*, 63 Ohio St. 3d 53, 55, 584 N.E.2d 1200 (1992) (“[B]efore a court may declare a statute unconstitutional, it must appear beyond a reasonable doubt that the legislation and constitutional provision are clearly incapable of coexisting.”). Thus, “every reasonable presumption” will be made in favor of a statute's validity in the face of a constitutional challenge. *State ex rel. Haylett v. Ohio Bureau of Workers' Comp.*, 87 Ohio St. 3d 325, 328, 720 N.E.2d 901 (1999); *Nat'l Ass'n of Forensic Counselors v. Fleming*, 143 Ohio App. 3d 811, 815, 729 N.E.2d 389 (10th Dist. 2001). Indeed, it is a “well-settled principle of statutory construction that” when “constitutional infirmities are raised, courts will liberally construe a statute to save it from constitutional infirmities.” *Ohio Democratic Party v. Ohio Elections Comm'n*, 10th Dist. No. 07AP-876, 2008-Ohio-4256, ¶ 46 (quoting *State v. Sinito*, 43 Ohio St. 2d 98, 101, 330 N.E.2d 896 (1975)).

⁸ This Court need not address the constitutional argument if it finds that Bedford Heights Ordinance § 173.14(a) prohibits NYFF from changing the method of filing from single-filer to consolidated-filer.

B. The nondelegation doctrine is seldom used to strike down a law as unconstitutional.

For its constitutional challenge, NYFF invokes the seldom successful nondelegation doctrine. “A statute does not unconstitutionally delegate legislative power if it establishes, through legislative policy and such standards as are practical, an intelligible principle to which the administrative officer or body must conform and further establishes a procedure whereby exercise of the discretion can be reviewed effectively.” *Ohio Democratic Party*, 2008-Ohio-4256 at ¶ 24 (citing *Blue Cross of N.E. Ohio v. Ratchford*, 64 Ohio St. 2d 256, 416 N.E.2d 614, syllabus (1980)). Further, “the establishment of standards can be left to the administrative body or officer if it is reasonable for the General Assembly to defer to the officer’s or body’s expertise.” *Ratchford*, 64 Ohio St. 2d at 260. These rules mirror those established by the U.S. Supreme Court under the U.S. Constitution. See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001) (stating the same test for nondelegation challenges).

Notably, nondelegation challenges are almost never successful in Ohio or federal courts. See, e.g., *id.* at 474 (2001) (explaining that in “*the history of the [U.S. Supreme] Court, we have found the requisite ‘intelligible principle’ lacking in only two statutes*” and that the Court has “almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law”); *Independent Ins. Agents, Inc. v. Duryee*, 95 Ohio App. 3d 7, 20, 641 N.E.2d 1117 (10th Dist. 1994) (noting that “the nondelegation of legislative power argument” was “discredited generally at the federal level after the Great Depression and New Deal...” and, consequently, “wins on this ground have been few and far between in Ohio as well”); *Hachem v. Holder*, 656 F.3d 430, 439 (6th Cir. 2011) (“The cases where Congress violates the nondelegation principle are few and far between.”).

Given Ohio and federal courts' reluctance to invoke the nondelegation doctrine, the case law is rife with courts rejecting constitutional challenges under the doctrine. *See, e.g., Ratchford*, 64 Ohio St. 2d at 261 (upholding against a nondelegation challenge the power delegated by the Ohio Revised Code to the insurance commissioner to determine whether proposed insurer premium rates are "lawful, fair, and reasonable"); *Desenco, Inc. v. Akron*, 84 Ohio St. 3d 535, 545-46, 706 N.E.2d 323 (1999) (rejecting nondelegation challenge asserting that the statutory creation of joint economic development districts to administer and levy taxes within certain geographic districts unlawfully delegated taxing power from the General Assembly to the districts); *Shimola v. Cleveland*, No. C81-751, 1984 U.S. Dist. LEXIS 15320, at *25 (N.D. Ohio June 30, 1984) (rejecting a nondelegation challenge under the U.S. Constitution to a municipal ordinance granting discretion to building commissioner to identify, in her "opinion," which buildings needed to be immediately destroyed in emergency situations and basing ruling on Home Rule concerns).

Notwithstanding the long line of cases rejecting constitutional challenges under this doctrine and its general disfavor among Ohio and federal courts, NYFF asserts that Bedford Heights' incorporation of RITA's Rules in their most current edition violates the nondelegation doctrine. NYFF is wrong.

- C. This Court has never held that incorporating future amendments to other laws and regulations violates the nondelegation doctrine; in fact, it endorsed future incorporation in *State v. Gill* and *State ex rel. Timken Roller Bearing Co. v. Indus. Comm'n.***

Bedford Heights' incorporation of the RITA Rules through BHO § 173.56 is constitutional. Section 173.56 incorporates into the Bedford Heights Ordinances the RITA Rules "in the[ir] most current edition or update thereof, including all additions, deletions, and

amendments made subsequent hereto.” In *State v. Gill*—on which NYFF principally relies for its constitutional argument—this Court endorsed such incorporation:

[If] the General Assembly intended to incorporate the federal law subsequent to the enactment of R.C. 2913.46(A), it certainly knew how to do so. For example, R.C. 2915.01(AA) provides that the “‘Internal Revenue Code’ means the ‘Internal Revenue Code of 1986,’ 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended”. . . . In utilizing the language “as now or hereafter amended,” the General Assembly obviously intended to incorporate amendments subsequent to the time R.C. 2915.01(AA) was enacted.

Gill, 63 Ohio St. 3d at 55-56. NYFF also cites *State ex rel. Timken* for the proposition that “a law that adopts the provisions of another law or rule through incorporation by reference may only adopt the other law or rule as it existed at the time the incorporating law was enacted or last modified.” NYFF Br. at 18. NYFF again mischaracterizes what this Court said in that case. In *Timken*, this Court, as it did in *Gill* over 50 years later, expressly endorsed the concept of incorporating future amendments to cross-referenced statutes:

Where one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted, such adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications of the statute so taken unless it does so by express intent.

State ex rel. Timken Roller Bearing Co. v. Indus. Comm’n, 136 Ohio St. 148, 153, 24 N.E.2d 448 (1939) (citing Sutherland on Statutory Construction (2 Ed.), 787 and 788, Section 405).

As the above quotes show, neither *Gill* nor *Timken* stand for what NYFF claims they do. *Gill* merely interpreted a Revised Code section incorporating a federal statute “as amended” to mean that the Revised Code section incorporated the federal law as it existed on the date that the Revised Code section was enacted. *Gill* then went on to note that the General Assembly can “incorporate amendments subsequent to the time” the incorporating statute is enacted, and that it

“certainly kn[ows] how to do so” if desired. Likewise, in *Timken*, this Court expressly acknowledged the concept of future incorporation and, citing a treatise on statutory construction, went so far as to state the rule that a statute may incorporate future amendments to another statute by “express intent.”

Given this Court’s endorsement of future incorporation in *Timken* and *Gill*, it is unsurprising that many Ohio statutes, Ohio administrative code provisions, and municipal ordinances incorporate future amendments to cross-referenced statutes and regulations. The examples are numerous, but they include the following:

- R.C. 3903.01(L) provides, “‘Forward contract’ has the same meaning as in the federal ‘Deposit Insurance Act,’ 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), *as now and hereafter amended.*” (Bedford Heights App’x at 34);
- R.C. 3903.01(T), (V), and (Z) incorporate federal statutory definitions of certain other statutory terms of art “*as now and hereafter amended.*” (Bedford Heights App’x at 35);
- R.C. 2923.124(L) incorporates federal statutory definitions of certain other statutory terms of art “*as now or hereafter amended.*” (Bedford Heights App’x at 31);
- O.A.C. 4123-21-01 provides, “As used in sections 4131.01 to 4131.06 of the Revised Code, ‘operator’ and ‘operator of a coal mine’ have the same meaning as ‘operator’ as defined in the ‘Federal Coal Mine Health and Safety Act of 1969,’ 83 Stat. 742, 30 U.S.C. 801 *et seq.*, *as now or hereafter amended, and as implemented by the regulations of the secretary of labor under Title IV of the act, who, by reason of operations within the territorial boundaries of Ohio is amenable to Title IV of the act, including claims reviewed and allowed under 30 U.S.C. 945.*” (Bedford Heights App’x at 30);
- Columbus Ordinance § 1145.02 defines “standard industrial classification” by cross-referencing the “*most current edition*” of the Federal Standard Industrial Classification Manual and North American Industrial Classification System, as published by the Executive Office of the President, Office of Management and Budget. (Bedford Heights App’x at 27);

- Akron Ordinance § 98.92 provides that improvements subject to Planning Commission Approval shall include “[s]urface improvements especially designed to fit the existing conditions, *financed under the conditions of the Equal Assessment Ordinance as it now exists or is hereafter amended.*” (Bedford Heights App’x at 20); and
- Dayton Ordinance § 80.05(K) requires all watercraft to carry equipment required by “*any applicable United States laws and state laws as now or hereafter amended*” or else face a penalty. (Bedford Heights App’x at 19);

Consequently, Bedford Heights’ incorporation of the RITA Rules in their “most current edition” is a common statutory drafting concept used by the Ohio General Assembly and municipal legislatures across the State. Adopting NYFF’s proposition of law would effectively nullify, as unconstitutional, numerous other laws enacted by the General Assembly and municipalities across the State.

D. Bedford Heights’ incorporation of the RITA Rules is consistent with RITA’s function as tax administrator for Bedford Heights and is properly constrained under this Court’s nondelegation precedent.

RITA functions as the tax administrator not only for Bedford Heights, but also for many other Ohio municipalities. To that end, R.C. 718.01(U) defines “Tax Administrator” to mean “the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter.” It also specifically defines “Tax Administrator” to include “the regional income tax agency or their successors in interest.” See R.C. 718.01(U)(3) (Bedford Heights App’x at 55). Accordingly, as NYFF notes, RITA “acts... as the tax administrator for the Bedford Heights net profit tax,” and it “assists in the administration and enforcement of the tax laws of Bedford Heights.” NYFF Br. at 19.

By incorporating RITA’s Rules on a continual basis, Bedford Heights is able to rely on RITA’s experience and expertise as a tax administrator for many municipalities:

The Legislature... may delegate to other competent agencies the power to determine whether or not they will avail themselves of the privileges conferred, and also delegate to certain named executive or administrative agencies authority involving discretion in relation to the execution of the law.

Desenco, Inc., 84 Ohio St. 3d at 539-40. In *Desenco*, this Court reasoned that the General Assembly's broad power to tax allows the General Assembly to give local boards "the authority to provide, within definite limitations, rules and regulations, which necessarily include taxing authority." *Id.* at 538, 540 ("[T]he authority to execute a general purpose [*i.e.*, to tax] includes the authority to confer the power to tax within the district."). Under Home Rule, municipalities have similarly broad taxing power. *Cincinnati Bell Tel. Co.*, 81 Ohio St. 3d at 605. Thus, given RITA's role as tax administrator for many municipalities, "the establishment of standards can be left to [RITA]," as it "is reasonable for [Bedford Heights] to defer to [RITA's] expertise." *Ratchford*, 64 Ohio St. 2d at 260.

Furthermore, the delegation to RITA is strictly constrained by an important limiting principle: the RITA Rules are incorporated only to the extent that they do not conflict with a rule promulgated by Bedford Heights. See BHO § 173.56(b) (providing that any RITA Rule that "conflicts with" a rule adopted and promulgated by the Bedford Tax Administrator, the Tax Administrator's rule "shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights"). This Court has recognized that delegation is permissible when the administrative agency "exercises discretion, but only within the confines of sufficiently precise and definite standards, which standards enable a reviewing court to determine if the will of the [legislative body] has been obeyed." *Peachtree Dev. Co. v. Paul*, 67 Ohio St. 2d 345, 353-54, 423 N.E.2d 1087 (1981).

In *Peachtree*, a municipal board of county commissioners delegated the power to approve zoning variations to a regional planning commission via a zoning resolution. The zoning resolution, however, expressly provided that the planning commission could only approve variations if “such plan [was] consistent with the approved plan and the purposes and intent of th[e] zoning resolution” and the variations were “not in violation of any standards and requirements prescribed in the [zoning resolution].” *Id.* at 353. This Court concluded that these standards were “sufficiently definite to pass constitutional muster.” *Id.* at 352. In nearly identical fashion, BHO § 173.56(b) constrains RITA’s rulemaking authority by providing that Bedford Heights’ own ordinances prevail over, and nullify, any conflicting RITA Rules.⁹ Accordingly, Bedford Heights’ incorporation of the RITA Rules also contains “sufficiently definite” constraints to “pass constitutional muster.”

E. None of NYFF’s cases are applicable here.

None of the cases NYFF cites are on point for several reasons. First, *Gill, Hughes v. Lindley*, and *One Columbus Bldg. Assocs. Ltd. v. Columbus Div. of Income Tax* are all readily distinguishable because they address situations where the state statute or municipal ordinance at issue cross-referenced a *federal* statute, rather than a set of regulations promulgated by an agency specifically created to administer and collect municipal income taxes. *See Gill*, 63 Ohio St. 3d at 55 (addressing Revised Code section incorporating liability concepts from the Federal Food Stamp Act); *Hughes v. Lindley*, 8th Dist. No. 41671, 1980 Ohio App. LEXIS 12207, at *5 (May 22, 1980) (addressing Revised Code section incorporating exclusions from gross estate

⁹ The RITA Rules and RITA website also note that municipal ordinances “will supersede” RITA’s Rules “in the event of a conflict.” *See, e.g.,* RITA Rules at 5, available at <https://www.ritaohio.com/media/38391/rita-rules.pdf> (last accessed Aug. 13, 2015 at 2:35 p.m.); RITA Rules and Regulations, <https://www.ritaohio.com/municipalities/rita-rules-and-regulations/> (last accessed Aug. 13, 2015 at 2:36 p.m.).

value set forth in the Internal Revenue Code); *One Columbus Bldg. Assocs. Ltd. v. Columbus Div. of Income Tax*, 10th Dist. No. 98AP-1309, 1999 Ohio App. LEXIS 5590, at *8 (Nov. 30, 1999) (addressing municipal ordinance that defined “net profits” as “the net gain from the operation of a business 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”).

That distinction is significant even under NYFF’s line of cases. As the *One Columbus* court explained, the purported issue with state or municipal laws incorporating future federal laws, at least absent a clear intent to do so, is that “a review of the federal tax law over the years shows that [the nuances of certain aspects of federal tax law] ha[ve] waxed and waned in response to political policies.” 1999 Ohio App. LEXIS 5590, at *8. Thus, the “same political and social considerations which are of significance to the Federal tax policy are not necessarily of significance to the state’s tax collection scheme.” *Id.*¹⁰

Here, by contrast, RITA is an agency specifically designed and appointed to administer Bedford Heights’ (and many other municipalities’) municipal income tax systems. As the RITA-Bedford Heights relationship and Bedford Heights’ incorporation of the RITA Rules shows, the “same political and social considerations which are of significance” to RITA’s state-wide tax administration duties are “of significance to” Bedford Heights’ “tax collection scheme.” *Id.* And as detailed above, to the extent that Bedford Heights’ and RITA’s respective regulations conflict on a particular issue, Bedford Heights reserves ultimate legislative power to itself, as required. Therefore, the stated concern of the *One Columbus* court is not present on these facts.

¹⁰ To be clear, Bedford Heights does not necessarily agree with the *One Columbus* court’s reasoning even as it applies to incorporating federal laws into state laws. But nonetheless, even if incorporating future federal laws were found problematic for this reason, the situation here is completely different.

Second, neither *Gill* nor *Timken* nor *One Columbus* nor *Robinson v. Tax Comm'r of Indian Hill* addressed a statute or regulation that actually incorporated future amendments, and none of them holds that such incorporation is unconstitutional. In fact, as detailed above, *Gill* and *Timken* acknowledged and endorsed the concept of future incorporation. See also *One Columbus Bldg. Assocs. Ltd.*, 1999 Ohio App. LEXIS 5590, at *8 (addressing ordinance that did not expressly incorporate any statute, but rather simply defined “net profits” with reference to “the accounting system used by the taxpayer for federal income tax purposes”); *Robinson v. Tax Comm'r of Indian Hill*, 61 Ohio Misc. 2d 95, 97, 572 N.E.2d 596 (C.P. 1989) (addressing municipal ordinance that defined “adjusted gross income” to be “as defined in R.C. § 5747.01” and concluding that such language, without more, did not encompass future amendments to that Revised Code provision).

Lastly, *Hughes*, *Robinson*, and *One Columbus* are lower court decisions which are not binding on this Court. They were decided 35, 26, and 16 years ago, respectively. Notably, in the decades since they were decided, none of them have been cited by this Court or any intermediate Ohio appellate court.¹¹

F. NYFF’s proposed constitutional rule leads to inefficient and unworkable results.

As detailed above, RITA and Bedford Heights work together to administer Bedford Heights’ municipal income tax scheme. NYFF asserts that to effectively incorporate the current version of RITA’s Rules, Bedford Heights would have to re-enact BHO § 173.56 each and every time the RITA Rules are amended. See NYFF Br. at 25. In *Gill*, this Court tacitly recognized that such a system could create problems. So, despite ultimately holding that a statute

¹¹ Bedford Heights’ counsel’s research shows that *Hughes* was cited only once—by the common pleas court that decided *Robinson*. Counsel’s research shows that *Robinson* and *One Columbus* have never been cited by another Ohio court.

incorporating another federal statute “as amended” incorporates the cross-referenced statute as it existed on the date the incorporating statute was enacted, this Court advised the General Assembly that it could revise the incorporating statute at issue to expressly incorporate future amendments:

Appellee further contends that to interpret and limit R.C. 2913.46(A) as incorporating Section 2011, Title 7, U.S.Code, as it read on the date R.C. 2913.46(A) was enacted, would create an unworkable situation. Appellee argues that since the enactment of R.C. 2913.46(A), the federal food stamp law has been revised and some present lawful recipients would commit an Ohio crime by obtaining food stamps.

Appellee makes a valid point. *However, to avoid this problem, the General Assembly may update and revise R.C. 2913.46(A) to incorporate amended versions of the federal food stamp law.*

See Gill, 63 Ohio St. 3d at 56; *see also id.* at 55-56 (detailing how the General Assembly may demonstrate its intent to “incorporate amendments subsequent to the time [the incorporating statute] was enacted” and noting that the General Assembly has done so in other parts of the Revised Code).

To facilitate RITA’s relationship as Bedford Heights’ tax administrator, and to ensure administrative efficiency, Bedford Heights incorporates the RITA Rules in their “most current edition.” Requiring Bedford Heights to call a special legislative session to re-enact BHO § 173.56 every time the RITA Rules are amended would be an inefficient result that would thwart the efficiency of the RITA-Bedford Heights relationship. Moreover, requiring such a hollow formality makes virtually no sense here, given that both BHO § 173.56(b) and the RITA Rules state that any conflicts between the two are resolved in favor of the Ordinances. So, any concern that RITA could somehow supersede the will of the Bedford Heights legislature by enacting

future regulations that conflict with Bedford Heights' ordinances is non-existent. Accordingly, Bedford Heights respectfully requests that this Court reject NYFF's second proposition of law.

NYFF PROPOSITION OF LAW NO. 3: The July 2009 amendment to R.I.T.A. Rule Section 5.06(A) exceeds the prohibition in City of Bedford Heights Ordinance Section 173.15(a) regarding the filing of amended returns and is invalid.

- A. **There is no conflict between Section 5.06(A) and BHO § 173.15(a) under the test articulated by this Court because Section 5.06(A) is merely additive of BHO § 173.15(a).**

NYFF's third proposition of law is based on an unfounded interpretation of the rules of statutory construction regarding potentially conflicting laws. Under the applicable case law and a common sense reading of RITA Rule § 5.06(A) and BHO § 173.15(a), there is no conflict between the two sections. Nor does Section 5.06(A) "exceed" any prohibition in BHO § 173.15(a). A regulation conflicts with an ordinance if, and only if, "the [regulation] permits or licenses that which the [ordinance] forbids, and vice versa." *Fondessy Enters., Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 217, 492 N.E.2d 797 (1986); *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, ¶ 26.¹²

Under this standard, and contrary to NYFF's assertions, there is no legal conflict between the two sections because Section 5.06(A) does not purport to prohibit anything that is allowed by BHO § 175.15 (a) (or vice versa). These sections are designed and intended to work harmoniously. At most, Section 5.06(A) merely *adds* to the substance of BHO § 173.15(a), which additions Bedford Heights expressly *intended* to incorporate. In incorporating the RITA Rules, Bedford Heights intended RITA's Rules to be additive when necessary. See BHO § 173.56(b) (incorporating the RITA Rules and providing that they "*shall be in addition to* any

¹² Although *Fondessy* and *Clyde* frame this test in the context of analyzing whether a municipal ordinance conflicts with a state statute, the general rule is nonetheless instructive.

rules and regulations adopted and promulgated by the Tax Administration[.]”); (NYFF Supp. at 3, Stip. ¶ 13, first); (NYFF App’x at 33). Bedford Heights thus expressly intended to fully incorporate the RITA Rules absent any actual conflict. *See* BHO § 173.56(b) (providing also that if a rule or regulation adopted by the City Tax Administrator conflicts with any of the RITA Rule, the City rule or regulation prevails).

There is no such conflict here. The two regulations are, in all substantive respects, semantically identical besides the addition of the “nor the method of filing” phrase in Section 5.06(A):

<p>BHO § 173.15(a):</p> <p>Where necessary an amended return must be filed in order to report additional income and pay additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 173.30 through 173.35. Such amended return shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.</p>	<p>RITA Rule § 5.06(A), as amended in July 2009:</p> <p>Where necessary, 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 or limitations contained in the Ordinance. Such return shall be clearly marked “Amended.” A taxpayer may not change the method of accounting or apportionment of net profits, nor the method of filing (<i>i.e.</i>, single or consolidated), after the due date for filing the original return. Amended returns cannot be filed after three (3) years from the original filing date.</p>
--	---

(NYFF Supp. at 2-3, Stip. ¶¶ 7(c), 8(b)); (NYFF App’x at 24, 32). Thus, at the very most, Section 5.06(A) *adds to*—rather than contradicts—anything in BHO § 173.15(a) by adding the “method of filing” language. NYFF tries to intimate that, because BHO § 173.15(a) does not contain an express restriction on changing the method of filing, then Section 5.06(A) somehow “exceeds” BHO § 173.15(a). Not so. *Fondessy* refutes this theory. Nothing in BHO § 173.15(a)

purports to *authorize* changing from single to consolidated filer status (or vice versa) after the due date for filing the original return. Thus, by expressly forbidding such a change, Section 5.06(A) does not purport to prohibit any action that is permitted by BHO § 173.15(a) (or vice versa). Put differently, “since [BHO § 173.15(a)] [does] not address the issue of” whether a taxpayer may make such a change, there is no actual conflict. *Osborne v. Leroy Twp.*, 11th Dist. No. 2014-L-008, 2014-Ohio-5774, ¶ 40.

Accordingly, under the *Fondessy* standard, there is no legal conflict between these sections. *See, e.g., Fondessy*, 23 Ohio St. 3d at 217 (no conflict between state statute empowering state to license and regulate hazardous waste facilities and a municipal ordinance imposing a permit fee and recordkeeping requirements on all such facilities within the municipality, because the ordinance did not permit anything prohibited by the state statute or prohibit anything permitted by the statute); *Asish Enters. v. Fairview Park*, 8th Dist. No. 75088, 2000 Ohio App. LEXIS 71, at *11-*14 (Jan. 13, 2000) (applying *Fondessy* to conclude that local municipal ordinances regulating extended stay motels and requiring them to comply with the building code before allowing guests to stay for more than 30 days did not conflict with hotel licensing and extended stay requirements set forth in the Ohio Revised Code, as the “ordinances did not prohibit what is otherwise allowed by R.C. 3731.01(A)(2)”; *Osborne*, 2014-Ohio-5774 at ¶¶ 40-41 (same result when construing a prohibition in a town zoning ordinance that prohibited the storage of certain construction debris against a comprehensive Ohio Revised Code regulatory scheme that generally applied to the situation at hand but was silent on the precise issue of storage addressed by the zoning ordinance). NYFF does not cite *Fondessy* or apply its well-established test for conflicting laws, and for good reason: its proposition of law fails under that standard.

B. NYFF's cases are factually distinguishable.

The cases NYFF cites are distinguishable and inapposite. As general matters, none of them deal with a situation like here, when a regulation incorporated by reference merely adds to what is already prohibited by the existing law, and none of them use the applicable *Fondessy* test.

NYFF's cases are also factually distinguishable. In *Wardrop*, a city ordinance prohibited the city from taxing a person for work done outside the city limits, while a rule promulgated by the city tax commissioner purported to tax work done outside the city limits if it was done as a result of the person's employment within the city. *Wardrop v. Middletown Income Tax Review Bd.*, 12th Dist. No. CA2007-09-235, 2008-Ohio-5298, ¶ 23. There is no such express contradiction or conflict between the BHO and the RITA Rules, as Section 5.06(A) is (at most) additive of BHO § 173.15(a).

Likewise, in *De Golyer*, a rule promulgated by a city tax commissioner exceeded the rulemaking power granted to him by city ordinance by changing the definition of a "debt" as that term was defined in the city ordinances. *Cincinnati v. De Golyer*, 26 Ohio App. 2d 178, 270 N.E.2d 664 (1st Dist. 1969). Here, by contrast, Section 5.06(A) is (at most) additive of BHO § 173.15(a). That addition is consistent with the rulemaking authority Bedford Heights extended to RITA in BHO § 173.56, which provides that the RITA Rules "shall be *in addition to any rules and regulations adopted and promulgated by the Tax Administration.*"

Lastly, in *Ransom & Randolph Co.*, the Ohio Tax Commissioner promulgated regulations purporting to change the Ohio Revised Code's definition of when accounts and notes receivable arising from the transaction of out-of-state business constituted nontaxable property under Ohio's tax laws. *Ransom & Randolph Co. v. Evatt*, 142 Ohio St. 398, 409, 52 N.E.2d 738

(1944). Again, unlike that situation, Section 5.06(A) does not prohibit anything permitted by BHO § 173.15(a) (or vice versa)—it merely adds to it. That is permissible under *Fondessy*, and NYFF's cases do not alter that result.

In short, the result might be different if a Bedford Heights Ordinance *expressly allowed* the taxpayer to change its method of filing through an amended return, while Section 5.06(A) purported to bar the taxpayer from doing so. But that is not the case here. Accordingly, Bedford Heights respectfully requests that this Court reject NYFF's third proposition of law.

NYFF PROPOSITION OF LAW NOS. 4 and 5:

(4): Because the 2009 amendment to R.I.T.A. Rule Section 5.06(A) was not expressly made retrospective, it cannot be applied to taxpayers whose tax years ended and for which the due date for the initial returns has passed prior to the effective date of the R.I.T.A. Rule's amendment.

(5): Bedford Heights' application of the 2009 amendment to R.I.T.A. Rule Section 5.06(A) to Appellants' tax returns for Tax Years 2005, 2006, and 2007 amounts to a retroactive law in violation of the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution. Even if the 2009 amendment to R.I.T.A. Rule Section 5.06(A) had expressly stated that it was intended to apply retrospectively, it would violate the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution because it attaches a new disability to transactions (the filing of initial returns for closed tax years) already past.

NYFF's Proposition of Law Nos. 4 and 5 are interrelated, as both generally (and incorrectly) assert that RITA Rule § 5.06(A) was improperly applied retrospectively to NYFF's attempted filing of amended returns. Accordingly, Bedford Heights addresses them simultaneously.

A. RITA Rule § 5.06(A) is not being applied retroactively because it was enacted several months before NYFF actually filed the amended returns at issue.

NYFF's retroactivity arguments rely on the erroneous premise that applying RITA Rule § 5.06(A), as amended in *July 2009*, to NYFF's *March 9, 2010* filing of its amended consolidated returns constitutes improper retroactive application. NYFF is incorrect. Article II, Section 28 of

the Ohio Constitution prohibits the General Assembly from passing retroactive laws. A retroactive law is one that impairs rights that are vested or acquired before the statute came into force or it attaches a new disability in respect to past transactions or considerations. *State ex rel. Shady Acres Nursing Home, Inc. v. Rhodes*, 7 Ohio St. 3d 7, 10, 455 N.E.2d 489 (1983). “A right is not regarded as vested in the constitutional sense unless it amounts to something more than a mere expectation or interest based upon an anticipated continuance of existing law.” *Dukes v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-515, 2009-Ohio-6781, ¶ 20 (quoting *In re Emery*, 59 Ohio App. 2d 7, 11, 391 N.E.2d 746 (1st Dist. 1978)). If “no vested right has been created, a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration... created at least a reasonable expectation of finality.” *Id.* (quoting *State v. Cook*, 83 Ohio St.3d 404, 412, 700 N.E.2d 570 (1998)); see also *State ex rel. Matz v. Brown*, 37 Ohio St.3d 279, 281, 525 N.E.2d 805 (1988).

Under these well-settled rules, NYFF’s premise is incorrect. Even if NYFF had the “right” to amend its returns to change from single filer to consolidated filer status before Section 5.06(A)’s July 2009 amendment, that right was not constitutionally vested. The applicable precedents, including case law reviewing the application of tax statutes for purportedly improper retroactivity, demonstrate that it is the *timing of the challenged conduct relative to the passage of the law* that determines whether a statute is being applied prospectively, and not, for instance, the tax years to which that conduct pertains. See, e.g., *Couchot v. State Lottery Comm’n*, 74 Ohio St. 3d 417, 426-27, 659 N.E.2d 1225 (1996) (no improper retroactive application of 1989 statutory amendment taxing lottery winnings income received in payments made after the 1989 amendment, even though the taxpayer-plaintiff actually won the lottery before the 1989

amendment); *Doe v. Ronan*, 127 Ohio St. 3d 188, 2010-Ohio-5072, ¶ 27 (no improper retroactive application of 2007 statutory amendment requiring criminal background checks for certain state employees when an 11-year employee was terminated during his 2008 contract renewal, because the statutory amendment was being applied only to conduct after the amendment, *i.e.*, continued employment after a disqualifying background check); *Harding Pointe, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 13AP-258, 2013-Ohio-4885, ¶¶ 40-41 (similar outcome with respect to an amendment to a statute governing Medicaid reimbursement rates for healthcare providers).

Here, the challenged conduct—NYFF’s attempt to file consolidated amended returns for the Tax Years—occurred in March 9, 2010, *several months after* the July 2009 amendment of Section 5.06(A). (NYFF Supp. at 1-2, Stip. ¶ 5). The fact that tax years predating the amendment are at issue is immaterial. Under the well-settled principles governing retroactive laws, that fact does not negate the fact that NYFF attempted to file such consolidated amended returns at a time when that conduct was expressly prohibited. Notably, NYFF does not cite any analogous cases applying the general principles against retroactive laws to bar the application of a tax law (or any law) under circumstances like these.

B. Because NYFF’s retroactivity premise is flawed from the outset, this Court need not address whether Section 5.06(A) was intended to apply retroactively.

This Court need not address NYFF’s argument in Proposition of Law No. 4 that Section 5.06(A) cannot be applied retroactively because it “does not expressly state” that it is intended to apply retroactively. NYFF Br. at 29. Put succinctly, as detailed above, NYFF’s premise is flawed from the outset. Section 5.06(A) is not being applied retroactively at all, so it is immaterial whether it expresses an intent about its retroactivity or prospectivity.

In sum, applying Section 5.06(A) to bar NYFF's filing of their amended consolidated returns filed several months after Section 5.06(A) was amended does not constitute improper retroactive application. Neither Section 5.06(A) nor any other RITA Rule or BHO is being improperly retroactively applied here. Accordingly, Bedford Heights respectfully requests that this Court reject NYFF's Propositions of Law Nos. 4 and 5.

II. BEDFORD HEIGHTS' PROPOSITION OF LAW ON CROSS-APPEAL

BEDFORD HEIGHTS PROPOSITION OF LAW NO. 1: BHO § 173.15(a) and the prior version of RITA Rule § 5.06(A) bar NYFF from changing from single to consolidated filer status after the due date for filing the original returns, irrespective of whether the July 2009 version of RITA Rule § 5.06(A) is properly incorporated into the Bedford Heights Ordinances.

- A. If this Court determines that BHO § 173.15(a) prohibits NYFF's conduct, then NYFF's entire appeal is moot.**

Putting aside RITA Rule § 5.06(A), as amended in July 2009, NYFF would still be prevented from filing their consolidated returns in any event because BHO § 173.15(a) and the pre-July 2009 version of Section 5.06(A) also prohibit NYFF from doing so. As an initial matter, Bedford Heights notes that all of NYFF's propositions of law are moot if this Court adopts Bedford Heights' proposition of law because in that event, NYFF's refund claim is barred without any reference to the July 2009 version of Section 5.06(A) or the various issues NYFF raises regarding its incorporation into Bedford Heights' ordinances.

- B. NYFF's change from single to consolidated filer also constitutes a "change" in NYFF's "method of accounting or apportionment of net profits" and is therefore barred by BHO § 173.15(a) and the pre-July 2009 version of RITA Rule § 5.06(A) without regard to the July 2009 version of Section 5.06(A).**

Here, both BHO § 173.15(a) and the December 2004 version of RITA Rule § 5.06(A) prohibit filers from changing their "method of accounting or apportionment of net profits" after the due date for the original return. (NYFF Supp. at 2, Stip. ¶¶ 7(c), 8(a)); (NYFF App'x at 23,

32). NYFF changed the “method of accounting or apportionment of net profits” contained in New York’s original single-filer returns by filing amended returns on a consolidated basis after the due date for the original returns. Indeed, the mere fact that NYFF claims entitlement to a refund of almost \$700,000 on net profits taxes that New York had to pay when it filed on a single-filer basis shows that NYFF’s attempt to file amended consolidated returns constitutes a prohibited “change” in NYFF’s “method of accounting... of net profits.” The refund claim likewise shows that NYFF also tried to effectuate a prohibited change in its “apportionment of net profits.” New York as a single entity had different expenses and sales than NYFF collectively, and consequently, had different net profits. Consequently, when NYFF tried to file on a consolidated basis, the apportionment of net profits for each Tax Year changed, as well. Both BHO § 173.15(a) and the December 2004 version of RITA Rule § 5.06(A) barred NYFF from making such changes. NYFF does not and cannot dispute that these regulations apply to it. Accordingly, NYFF’s refund claim is barred by these regulations without regard to the July 2009 version of Section 5.06(A).

Although the BTA concluded that NYFF’s changing from single to consolidated filer status did not constitute a change in the “method of accounting or apportionment of net profits,” its decision was erroneous. As the Board of Review concluded before the BTA, RITA Rule § 5.06(A) and BHO § 173.15(a) are “identical in effect,” as “neither permits [NYFF]” to do what it did here. (NYFF App’x at 20) (“It cannot be reasonably or logically argued that attempting to change from a single filer to a consolidated filer is not a ‘change in the method of accounting or the apportionment of net profits or the method of filing’ all of which are prohibited by Sections 173.15, 173.32 of the Bedford Heights Administrative Code and Section 5.06(A) of the R.I.T.A.

Rules and Regulations.”). Accordingly, NYFF plainly changed its “method of accounting or apportionment of net profits.”

C. BHO § 173.15(a) and the pre-July 2009 version of RITA Rule § 5.06(A) should be liberally construed to avoid NYFF’s constitutional arguments in any event.

Moreover, even if the BTA’s reading of BHO § 173.15(a) and the pre-July 2009 version of RITA Rule § 5.06(A) were “acceptable” in the abstract, the BTA did not and could not consider the constitutional challenges NYFF raised below. (NYFF App’x at 18) (“[T]his board is without jurisdiction to declare a given statute or ordinance unconstitutional.”). This is significant to this Court’s construction of both of these regulations, as the well-settled doctrine of “constitutional avoidance” dictates that when “an otherwise acceptable construction of a statute would raise serious constitutional problems, [courts] will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); accord *Ohioans for Fair Representation v. Taft*, 67 Ohio St. 3d 180, 183, 616 N.E.2d 905 (1993) (“Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary.”); *First Merchs. Bank v. Gower*, 2d Dist. No. 2011-CA-11, 2012-Ohio-833, ¶ 16 (“[C]ourts have an obligation to liberally construe statutes to avoid constitutional infirmities[.]”).

Thus, even if this Court were to completely ignore the July 2009 version of RITA Rule § 5.06(A), and even if the incorporation of the RITA Rules posed any potential constitutional issues (which it does not), both BHO § 173.15(a) and the December 2004 version of RITA Rule § 5.06(A) should be liberally construed to avoid the constitutional issues and bar NYFF from filing amended consolidated returns in any event. Accordingly, Bedford Heights respectfully

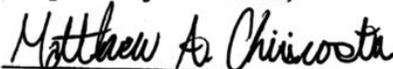
requests that this Court reject NYFF's propositions of law and instead adopt Bedford Heights' proposition of law.

CONCLUSION

Should this Court not dismiss NYFF's untimely appeal for lack of jurisdiction in the first instance, then for the foregoing reasons, Bedford Heights respectfully requests that this Court (a) affirm the decision of the BTA with respect to its conclusion that RITA Rule § 5.06(A) bars NYFF's refund claims; (b) reverse the decision of the BTA with respect to its conclusion that BHO § 173.15(a) does not bar NYFF from filing amended returns that change from single to consolidated filing; (c) reject NYFF's propositions of law; and (d) adopt Bedford Heights' proposition of law on cross-appeal.

DATED: September 18, 2015

Respectfully submitted,



ANTHONY F. STRINGER (0071691)

Counsel of Record

MATTHEW A. CHIRICOSTA (0089044)

THOMAS R. O'DONNELL (0067105)

CALFEE, HALTER & GRISWOLD LLP

The Calfee Building, 1405 East Sixth Street

Cleveland, Ohio 44114

(216) 622-8200 (phone)

(216) 241-0816 (fax)

AStringer@Calfee.com

MChiricosta@Calfee.com

TODonnell@Calfee.com

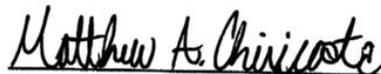
Counsel for Appellees/Cross-Appellants,
Bedford Heights Income Tax Board of Review
and City of Bedford Heights Income Tax
Administrator

CERTIFICATE OF SERVICE

I certify that under S.Ct.Prac.R. 3.02(A)(2), the foregoing *Second Brief, Appellees'/Cross-Appellants' Merits Brief* was filed on September 18, 2015 with the Clerk of Courts for the Ohio Supreme Court via hand delivery. I also certify that under S.Ct.Prac.R. 3.11(C)(1), a copy of the foregoing was served via email on the following on September 18, 2015:

STEPHEN K. HALL (0069009)
RICHARD C. FARRIN (0022850)
Zaino, Hall & Farrin LLC
41 S. High Street, Suite 3600
Columbus, Ohio 43215
(614) 326-1120
(614) 754-6368 (fax)
SHall@zhftaxlaw.com
RFarrin@zhftaxlaw.com

Counsel for Appellants/Cross-Appellees,
New York Frozen Foods, Inc. and Affiliates



One of the attorneys for Appellees/Cross-Appellants

APPELLEES' NOTICE OF CROSS-APPEAL

Under S.Ct.Prac.R. 10.01(A) and R.C. 5717.04, Appellees Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator (collectively, "Bedford Heights") give notice of a cross-appeal as of right to the Supreme Court of Ohio from a Decision and Order ("Decision") of the Ohio Board of Tax Appeals (the "BTA") in *New York Frozen Foods, Inc. and Affiliates v. Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator, et al.*, BTA Case No. 2012-55, entered upon the BTA's journal of proceedings on March 20, 2015. A true and accurate copy of the Decision being appealed is attached here as **Exhibit A** and incorporated by reference. The errors in the Decision of which Bedford Heights complains are:

1. The BTA acted unreasonably and unlawfully in holding that Bedford Heights Ordinances Section 173.15(a) did not prohibit Appellants New York Frozen Foods, Inc. and Affiliates ("NYFF") from filing amended consolidated net profits income tax returns after initially filing such returns on a single filer basis inasmuch as Section 175.15(a) prohibits a taxpayer from changing its "method of accounting or apportionment of net profits after the due date for filing the original return."

2. The BTA acted unreasonably and unlawfully in holding that "filing amended consolidated returns is not a 'change in the method of accounting or apportionment of net profits.'"

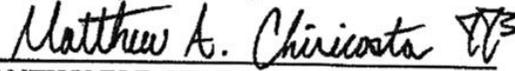
3. The BTA acted unreasonably and unlawfully in holding that "the difference in the language of BHAC Section 175.15(a) and RITA Rule 5.06(A)" makes it "clear that changing from single filing to consolidated filing is not the same as changing the method of accounting or apportionment, which were already prohibited by the rule."

4. The BTA acted unreasonably and unlawfully in holding that “[NYFF’s] filing of amended returns as a consolidated filer was not prohibited by BHAC 173.15(a).”

Bedford Heights submits this cross-appeal only out of an abundance of caution and to preserve its rights in the event that its Motion to Dismiss for Lack of Appellate Jurisdiction is denied. As detailed in that Motion, NYFF failed to timely file this appeal, and the appeal should be dismissed for lack of appellate jurisdiction. By filing this cross-appeal, Bedford Heights does not consent to subject matter jurisdiction or waive any objections to this Court’s subject matter jurisdiction over this appeal, including those stated in its Motion to Dismiss.¹

DATED: April 17, 2015

Respectfully submitted,



ANTHONY F. STRINGER (0071691)

Counsel of Record

MATTHEW A. CHIRICOSTA (0089044)

THOMAS R. O’DONNELL (0067105)

CALFEE, HALTER & GRISWOLD LLP

The Calfee Building, 1405 East Sixth Street

Cleveland, Ohio 44114

(216) 622-8200

(216) 241-0816 (fax)

AStringer@Calfee.com

MChiricosta@Calfee.com

TODonnell@Calfee.com

Counsel for Appellees,

Bedford Heights Income Tax Board of Review

and City of Bedford Heights Income Tax

Administrator

¹ Nor could Bedford Heights waive objections to subject matter jurisdiction in any event. “Subject-matter jurisdiction may not be waived or bestowed upon a court by the parties to the case.” *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St. 3d 543, 544, 684 N.E.2d 72 (1997) (*per curiam*). A party’s failure to comply with the requirements of R.C. 5717.04, including its timing requirements, is a jurisdictional defect that cannot be waived. *Global Knowledge Training, LLC v. Levin*, 127 Ohio St. 3d 34, 2010-Ohio-4411, ¶¶ 22-23; *Satullo v. Wilkins*, 111 Ohio St. 3d 399, 2006-Ohio-5856, ¶¶ 16-20 (*per curiam*).

CERTIFICATE OF SERVICE

I certify that under S.Ct.Prac.R. 3.02(A)(2) and R.C. 5717.04, the foregoing *Notice of Cross-Appeal of Appellees Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator* was filed on April 17, 2015 with the Clerk of Courts for the Ohio Supreme Court via hand delivery. I also certify that under R.C. 5717.04, the foregoing *Notice of Cross-Appeal of Appellees Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator* was filed on April 17, 2015 with the Ohio Board of Tax Appeals via hand delivery. I also certify that under S.Ct.Prac.R. 3.11(C)(1) and (2) and S.Ct.Prac.R. 10.01, a copy of the foregoing *Notice of Cross-Appeal of Appellees Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator* was served via certified mail, return receipt requested, and email on the following on April 17, 2015:

STEPHEN K. HALL
RICHARD C. FARRIN
Zaino, Hall & Farrin LLC
41 S. High Street, Suite 3600
Columbus, Ohio 43215
(614) 326-1120
(614) 754-6368 (fax)
SHall@zhftaxlaw.com
RFarrin@zhftaxlaw.com

Counsel for Appellants,
New York Frozen Foods, Inc. and Affiliates


One of the attorneys for Appellees

Exhibit A

OHIO BOARD OF TAX APPEALS

NEW YORK FROZEN FOODS, INC. AND
AFFILIATES, (et. al.),

CASE NO(S). 2012-55

Appellant(s),

(MUNICIPAL INCOME TAX)

vs.

DECISION AND ORDER

BEDFORD HEIGHTS INCOME TAX BOARD
OF REVIEW AND CITY OF BEDFORD
HEIGHTS INCOME TAX ADMINISTRATOR,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- NEW YORK FROZEN FOODS, INC. AND AFFILIATES
Represented by:
STEPHEN K. HALL
ZAINO, HALL & FARRIN, LLC
41 SOUTH HIGH STREET, SUITE 3600
COLUMBUS, OH 43215

For the Appellee(s)

- BEDFORD HEIGHTS INCOME TAX BOARD OF REVIEW AND CITY OF
BEDFORD HEIGHTS INCOME TAX ADMINISTRATOR
Represented by:
JEFFREY J. LAUDERDALE
CALFEE, HALTER & GRISWOLD LLP
THE CALFEE BUILDING
1405 EAST SIXTH STREET
CLEVELAND, OH 44114

Entered Friday, March 20, 2015

Mr. Williamson and Mr. Harbarger concur.

This matter is again considered by the Board of Tax Appeals upon appellants' motion for reconsideration. Appellants argue that this board failed to adequately respond to its arguments regarding the city's unconstitutional delegation of authority per its ordinances. Upon review of the motion, we find the request for reconsideration fails to meet the standard set forth in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, and is therefore denied.

Appellant further notes a typographical error in this board's March 9, 2015 decision. Accordingly, we hereby vacate our prior decision and order and proceed to issue the present decision and order to correct the error. This matter is again pending upon appellants' appeal from a decision of the City of Bedford Heights Board of Review ("MBOA") in which it affirmed the decision of the Bedford Heights Tax Administrator rejecting appellants' amended net profits tax returns for 2005, 2006, and 2007. We proceed to consider the matter upon the notice of appeal, the transcript certified by the MBOA, the parties' briefs, and the exhibits jointly stipulated to by the parties.

The decision of the MBOA explains that appellants "timely filed its net profit tax returns, as a single filer, with the Regional Income Tax Agency (R.I.T.A.) for the 2005, 2006 and 2007 tax years. Subsequently, in March 2010, [appellants] sought to file amended returns as a 'consolidated filer' for the years 2005, 2006 and 2007. These 'consolidated returns' would have resulted in tax refunds to [appellants] in excess of \$698,000.00." MBOA Decision at 1. The returns were rejected by RITA. A hearing was held before the MBOA, where appellants argued that no portion of the city's ordinances prohibited the filings and that any inconsistent RITA regulation is in conflict with the relevant ordinance and therefore null and void. The MBOA affirmed the decision of RITA and the city's Tax Administrator, finding that "[taken] together Sections 1735.15 *** of the Bedford Heights Administrative Code and Section 5:06(A) of the R.I.T.A. Rules and Regulations are identical in effect," and that "[n]either permits a taxpayer to **change the method of accounting or the apportionment of net profits, nor the method of filing after the due date for filing the original return.**" Id. at 2 (emphasis sic).

Section 173.15(a) of the Bedford Heights Administrative Code ("BHAC") provides:

"Where necessary an amended return must be filed in order to report additional income and pay additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, of both, contained in Sections 173.30 through 173.35. Such amended returns shall be on a form obtainable from the Tax Administrator. *A tax payer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.*" (Emphasis added.)

The RITA Rules and Regulations, incorporated into the BHAC by Section 173.56, also contain a relevant, similar provision in Section 5:06(A):

"Where necessary, 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 or limitations contained in the Ordinance. Such returns shall be clearly marked "Amended." A taxpayer may not change the method of accounting or the apportionment of net profits, *nor the method of filing (i.e., single or consolidated)*, after the due date for filing the original return. Amended returns cannot be filed after three (3) years from the original filing date." (Emphasis added.)

In its decision, the MBOA found that, taken together, these sections prohibit an attempt to change from a single filer to a consolidated filer, as such a change is a "change in the method of accounting or apportionment of net profits or the method of filing." On appeal, appellants argue that BHAC Section 173.15(a) does not prohibit timely filing an amended return on a consolidated basis; that filing on a consolidated basis is not a change in the method of accounting or apportionment of net profits; that RITA Rule 5:06(A) adds an additional prohibition to BHAC Section 173.15(a), i.e., a prohibition on changing the method of filing in an amended return, and is therefore inconsistent and invalid; that R.C. 718.06 requires the city to accept amended consolidated returns; and that the city's incorporation of RITA rules and regulations not in place when it adopted its relevant ordinances is an unconstitutional delegation of legislative authority.

We begin our review of this matter by noting that when 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. *City of Marion v. City of Marion Bd. of Review* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, appeal dismissed, 2008-Ohio-2496. See, also, *Tellak v. Bratenahl* (2001), 92 Ohio St.3d 46, at 51. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121.

Appellants argue that filing amended consolidated returns is not a "change in the method of accounting or apportionment of net profits." We agree. Appellants point to the July 2009 change to RITA Rule 5:06(A), to additionally prohibit a change in the "method of filing (i.e., single or consolidated)" as clear support for

their argument that BHAC Section 173.15(a) did not include a change in the method of filing. Appellants argue that a change in the "method of accounting" encompasses only cash versus accrual accounting, citing to IRS Publication 538. Further, appellants argue that a change in the "method of apportionment" is already addressed by a separate ordinance that details a formula to be used to apportion net profits for tax purposes. In response, the appellees focus on the amount of refund claimed by appellants as a result of filing their amended consolidated returns, i.e., approximately \$700,000: "the mere fact that [appellants] claims entitlement to a refund of almost \$700,000 on net profits taxes that [they] had to pay when [they] filed on a single-filer basis shows that [appellants'] attempt to file amended consolidated returns constituted a prohibited 'change' in the 'method of accounting...of net profits.'" Appellees' Brief at 11. We do not find the amount claimed as a refund to be dispositive, or even telling, on this point.

What is more telling is the difference in the language of BHAC Section 173.15(a) and RITA Rule 5:06(A): because the RITA rule specifically added the language "nor the method of filing (i.e., single or consolidated)," it is clear that changing from single filing to consolidated filing is not the same as changing the method of accounting or apportionment, which were already prohibited by the rule. See, e.g., *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261, 265-266; *Wardrop v. Middletown Income Tax Review Bd.*, Butler App. No. CA2007-09-235, 2008-Ohio-5298, at ¶24; *City of Heath v. Licking Cty. Regional Airport Authority* (1967), 16 Ohio Misc. 69, 78-79. We therefore find that appellants' filing of amended returns as a consolidated filer was not prohibited by BHAC Section 173.15(a).

This board must therefore determine whether appellants' amended returns were barred by RITA Rule 5:06(A). Appellants make several arguments regarding the rule's applicability. First, they argue that the city had not incorporated the version of RITA Rule 5:06(A) that contained the prohibition on filing an amended return that changed the method of filing, which was adopted in July 2009. BHAC Section 173.56 provides:

"(a) Effective January 1, 1996, there is hereby adopted for the purpose of establishing rules and regulations for the collection of municipal income taxes and the administration and enforcement of this chapter the Rules and Regulations of the Regional Income Tax Agency (R.I.T.A.), in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto, and the same are hereby incorporated herein as if fully set out at length save and except such portions as may be hereinafter added, modified, or deleted therein.

"(b) R.I.T.A.'s Rules and Regulations shall be in addition to any rules and regulations adopted and promulgated by the Tax Administration pursuant to authority granted under Section 173.04 herein. In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights."

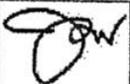
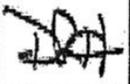
Appellants argue that the above ordinance could only adopt those RITA rules and regulations in effect at the time of its enactment – December 21, 2004, and not any changes made to the RITA rules and regulations thereafter. Therefore, appellants argue, the city did not adopt the version of RITA Rule 5:06(A) that prohibited changing the method of filing in an amended return.

Appellants further argue that the city could not adopt future changes in the RITA rules and regulations, citing appellate court cases relating to cities defining income for purposes of their own tax ordinances by referencing the federal definitions. In both these cases, the court found that the ordinances in question incorporated only those relevant portions of the internal revenue code that existed at the time the ordinance was passed, i.e., not subsequent amendments thereto. However, the Supreme Court, in *State v. Gill* (1992), 63 Ohio St.3d 53, noted the difference between incorporating law as it then existed and as it is subsequently amended:

"In 1964, Congress established a comprehensive food stamp program to aid in the fight against hunger and malnutrition. Section 2011 *et seq.*, Title 7, U.S. Code. R.C. 2913.46(A) became effective on July 1, 1983. Prior to this date, the federal food stamp law had been revised. It is clear to us that the General Assembly, by using the language 'as amended,' did not intend to adopt amendments to the federal law subsequent to the effective date of R.C. 2913.46(A), but, rather, the General Assembly simply intended to incorporate the federal food stamp law as it existed on the date R.C. 2913.46(A) was enacted. Given its common and plain meaning, the language 'as amended' does not anticipate amendments to the federal law after July 1, 1983. This is buttressed by the fact that had the General Assembly intended to incorporate the federal law subsequent to the enactment of R.C. 2913.46(A), it certainly knew how to do so. For example, R.C. 2915.01(AA) provides that the "'Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, *as now or hereafter amended.*' (Emphasis added.) There is a notable distinction between the language used in R.C. 2915.01(AA) and in 2913.46(A). In utilizing the language 'as now or hereafter amended,' the General Assembly obviously intended to incorporate amendments subsequent to the time R.C. 2915.01(AA) was enacted." *Id.* at 55-56.

Based upon the foregoing case law and the language of the BHAC Section 173.56, we find that the City, in its most recent incorporation of RITA Rules and Regulations in December 2004, clearly incorporated the July 2009 change to RITA Rule 5:06(A) which prohibits changing the method of filing in an amended return. Accordingly, we find that the rule did bar appellants' filings. To the extent appellants make constitutional arguments regarding such incorporation, it is well established that this board is without jurisdiction to declare a given statute or ordinance to be unconstitutional. *S.S. Kresge Co. v. Bowers* (1960), 170 Ohio St. 405, paragraph one of the syllabus; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130; *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 8; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229, paragraph one of the syllabus; *MCI Telecommunications Corp. v. Limbach* (1944), 68 Ohio St.3d 195, 198. Therefore, we acknowledge any such arguments, but make no findings in relation thereto.

Based upon the foregoing, we find that the MBOA did not err when it found that appellants' amended returns for tax years 2005, 2006, and 2007 were improper. Accordingly, we find that the decision of the City of Bedford Heights Board of Review must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

OHIO BOARD OF TAX APPEALS

NEW YORK FROZEN FOODS, INC. AND
AFFILIATES, (et. al.),

CASE NO(S). 2012-55

Appellant(s),

(MUNICIPAL INCOME TAX)

vs.

DECISION AND ORDER

BEDFORD HEIGHTS INCOME TAX BOARD
OF REVIEW AND CITY OF BEDFORD
HEIGHTS INCOME TAX ADMINISTRATOR,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- NEW YORK FROZEN FOODS, INC. AND AFFILIATES
Represented by:
STEPHEN K. HALL
ZAINO, HALL & FARRIN, LLC
41 SOUTH HIGH STREET, SUITE 3600
COLUMBUS, OH 43215

For the Appellee(s)

- BEDFORD HEIGHTS INCOME TAX BOARD OF REVIEW AND CITY OF
BEDFORD HEIGHTS INCOME TAX ADMINISTRATOR
Represented by:
JEFFREY J. LAUDERDALE
CALFEE, HALTER & GRISWOLD LLP
THE CALFEE BUILDING
1405 EAST SIXTH STREET
CLEVELAND, OH 44114

Entered Friday, March 20, 2015

Mr. Williamson and Mr. Harbarger concur.

This matter is again considered by the Board of Tax Appeals upon appellants' motion for reconsideration. Appellants argue that this board failed to adequately respond to its arguments regarding the city's unconstitutional delegation of authority per its ordinances. Upon review of the motion, we find the request for reconsideration fails to meet the standard set forth in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, and is therefore denied.

Appellant further notes a typographical error in this board's March 9, 2015 decision. Accordingly, we hereby vacate our prior decision and order and proceed to issue the present decision and order to correct the error. This matter is again pending upon appellants' appeal from a decision of the City of Bedford Heights Board of Review ("MBOA") in which it affirmed the decision of the Bedford Heights Tax Administrator rejecting appellants' amended net profits tax returns for 2005, 2006, and 2007. We proceed to consider the matter upon the notice of appeal, the transcript certified by the MBOA, the parties' briefs, and the exhibits jointly stipulated to by the parties.

The decision of the MBOA explains that appellants "timely filed its net profit tax returns, as a single filer, with the Regional Income Tax Agency (R.I.T.A.) for the 2005, 2006 and 2007 tax years. Subsequently, in March 2010, [appellants] sought to file amended returns as a 'consolidated filer' for the years 2005, 2006 and 2007. These 'consolidated returns' would have resulted in tax refunds to [appellants] in excess of \$698,000.00." MBOA Decision at 1. The returns were rejected by RITA. A hearing was held before the MBOA, where appellants argued that no portion of the city's ordinances prohibited the filings and that any inconsistent RITA regulation is in conflict with the relevant ordinance and therefore null and void. The MBOA affirmed the decision of RITA and the city's Tax Administrator, finding that "[taken] together Sections 1735.15 *** of the Bedford Heights Administrative Code and Section 5:06(A) of the R.I.T.A. Rules and Regulations are identical in effect," and that "[n]either permits a taxpayer to **change the method of accounting or the apportionment of net profits, nor the method of filing after the due date for filing the original return.**" Id. at 2 (emphasis sic).

Section 173.15(a) of the Bedford Heights Administrative Code ("BHAC") provides:

"Where necessary an amended return must be filed in order to report additional income and pay additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, of both, contained in Sections 173.30 through 173.35. Such amended returns shall be on a form obtainable from the Tax Administrator. *A tax payer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.*" (Emphasis added.)

The RITA Rules and Regulations, incorporated into the BHAC by Section 173.56, also contain a relevant, similar provision in Section 5:06(A):

"Where necessary, 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 or limitations contained in the Ordinance. Such returns shall be clearly marked "Amended." A taxpayer may not change the method of accounting or the apportionment of net profits, *nor the method of filing (i.e., single or consolidated)*, after the due date for filing the original return. Amended returns cannot be filed after three (3) years from the original filing date." (Emphasis added.)

In its decision, the MBOA found that, taken together, these sections prohibit an attempt to change from a single filer to a consolidated filer, as such a change is a "change in the method of accounting or apportionment of net profits or the method of filing." On appeal, appellants argue that BHAC Section 173.15(a) does not prohibit timely filing an amended return on a consolidated basis; that filing on a consolidated basis is not a change in the method of accounting or apportionment of net profits; that RITA Rule 5:06(A) adds an additional prohibition to BHAC Section 173.15(a), i.e., a prohibition on changing the method of filing in an amended return, and is therefore inconsistent and invalid; that R.C. 718.06 requires the city to accept amended consolidated returns; and that the city's incorporation of RITA rules and regulations not in place when it adopted its relevant ordinances is an unconstitutional delegation of legislative authority.

We begin our review of this matter by noting that when 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. *City of Marion v. City of Marion Bd. of Review* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, appeal dismissed, 2008-Ohio-2496. See, also, *Tetlak v. Bratenahl* (2001), 92 Ohio St.3d 46, at 51. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121.

Appellants argue that filing amended consolidated returns is not a "change in the method of accounting or apportionment of net profits." We agree. Appellants point to the July 2009 change to RITA Rule 5:06(A), to additionally prohibit a change in the "method of filing (i.e., single or consolidated)" as clear support for

their argument that BHAC Section 173.15(a) did not include a change in the method of filing. Appellants argue that a change in the "method of accounting" encompasses only cash versus accrual accounting, citing to IRS Publication 538. Further, appellants argue that a change in the "method of apportionment" is already addressed by a separate ordinance that details a formula to be used to apportion net profits for tax purposes. In response, the appellees focus on the amount of refund claimed by appellants as a result of filing their amended consolidated returns, i.e., approximately \$700,000: "the mere fact that [appellants] claims entitlement to a refund of almost \$700,000 on net profits taxes that [they] had to pay when [they] filed on a single-filer basis shows that [appellants'] attempt to file amended consolidated returns constituted a prohibited 'change' in the 'method of accounting...of net profits.'" Appellees' Brief at 11. We do not find the amount claimed as a refund to be dispositive, or even telling, on this point.

What is more telling is the difference in the language of BHAC Section 173.15(a) and RITA Rule 5:06(A): because the RITA rule specifically added the language "nor the method of filing (i.e., single or consolidated)," it is clear that changing from single filing to consolidated filing is not the same as changing the method of accounting or apportionment, which were already prohibited by the rule. See, e.g., *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261, 265-266; *Wardrop v. Middletown Income Tax Review Bd.*, Butler App. No. CA2007-09-235, 2008-Ohio-5298, at ¶24; *City of Heath v. Licking Cty. Regional Airport Authority* (1967), 16 Ohio Misc. 69, 78-79. We therefore find that appellants' filing of amended returns as a consolidated filer was not prohibited by BHAC Section 173.15(a).

This board must therefore determine whether appellants' amended returns were barred by RITA Rule 5:06(A). Appellants make several arguments regarding the rule's applicability. First, they argue that the city had not incorporated the version of RITA Rule 5:06(A) that contained the prohibition on filing an amended return that changed the method of filing, which was adopted in July 2009. BHAC Section 173.56 provides:

"(a) Effective January 1, 1996, there is hereby adopted for the purpose of establishing rules and regulations for the collection of municipal income taxes and the administration and enforcement of this chapter the Rules and Regulations of the Regional Income Tax Agency (R.I.T.A.), in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto, and the same are hereby incorporated herein as if fully set out at length save and except such portions as may be hereinafter added, modified, or deleted therein.

"(b) R.I.T.A.'s Rules and Regulations shall be in addition to any rules and regulations adopted and promulgated by the Tax Administration pursuant to authority granted under Section 173.04 herein. In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights."

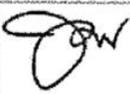
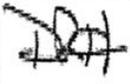
Appellants argue that the above ordinance could only adopt those RITA rules and regulations in effect at the time of its enactment – December 21, 2004, and not any changes made to the RITA rules and regulations thereafter. Therefore, appellants argue, the city did not adopt the version of RITA Rule 5:06(A) that prohibited changing the method of filing in an amended return.

Appellants further argue that the city could not adopt future changes in the RITA rules and regulations, citing appellate court cases relating to cities defining income for purposes of their own tax ordinances by referencing the federal definitions. In both these cases, the court found that the ordinances in question incorporated only those relevant portions of the internal revenue code that existed at the time the ordinance was passed, i.e., not subsequent amendments thereto. However, the Supreme Court, in *State v. Gill* (1992), 63 Ohio St.3d 53, noted the difference between incorporating law as it then existed and as it is subsequently amended:

"In 1964, Congress established a comprehensive food stamp program to aid in the fight against hunger and malnutrition. Section 2011 *et seq.*, Title 7, U.S. Code. R.C. 2913.46(A) became effective on July 1, 1983. Prior to this date, the federal food stamp law had been revised. It is clear to us that the General Assembly, by using the language 'as amended,' did not intend to adopt amendments to the federal law subsequent to the effective date of R.C. 2913.46(A), but, rather, the General Assembly simply intended to incorporate the federal food stamp law as it existed on the date R.C. 2913.46(A) was enacted. Given its common and plain meaning, the language 'as amended' does not anticipate amendments to the federal law after July 1, 1983. This is buttressed by the fact that had the General Assembly intended to incorporate the federal law subsequent to the enactment of R.C. 2913.46(A), it certainly knew how to do so. For example, R.C. 2915.01(AA) provides that the "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, *as now or hereafter amended.*' (Emphasis added.) There is a notable distinction between the language used in R.C. 2915.01(AA) and in 2913.46(A). In utilizing the language 'as now or hereafter amended,' the General Assembly obviously intended to incorporate amendments subsequent to the time R.C. 2915.01(AA) was enacted." *Id.* at 55-56.

Based upon the foregoing case law and the language of the BHAC Section 173.56, we find that the City, in its most recent incorporation of RITA Rules and Regulations in December 2004, clearly incorporated the July 2009 change to RITA Rule 5:06(A) which prohibits changing the method of filing in an amended return. Accordingly, we find that the rule did bar appellants' filings. To the extent appellants make constitutional arguments regarding such incorporation, it is well established that this board is without jurisdiction to declare a given statute or ordinance to be unconstitutional. *S.S. Kresge Co. v. Bowers* (1960), 170 Ohio St. 405, paragraph one of the syllabus; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130; *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 8; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229, paragraph one of the syllabus; *MCI Telecommunications Corp. v. Limbach* (1944), 68 Ohio St.3d 195, 198. Therefore, we acknowledge any such arguments, but make no findings in relation thereto.

Based upon the foregoing, we find that the MBOA did not err when it found that appellants' amended returns for tax years 2005, 2006, and 2007 were improper. Accordingly, we find that the decision of the City of Bedford Heights Board of Review must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

OHIO BOARD OF TAX APPEALS

NEW YORK FROZEN FOODS, INC. AND
AFFILIATES, (et. al.),

CASE NO(S). 2012-55

Appellant(s),

(MUNICIPAL INCOME TAX)

vs.

DECISION AND ORDER

BEDFORD HEIGHTS INCOME TAX BOARD
OF REVIEW AND CITY OF BEDFORD
HEIGHTS INCOME TAX ADMINISTRATOR,
(et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- NEW YORK FROZEN FOODS, INC. AND AFFILIATES
Represented by:
STEPHEN K. HALL
ZAINO, HALL & FARRIN, LLC
41 SOUTH HIGH STREET, SUITE 3600
COLUMBUS, OH 43215

For the Appellee(s)

- BEDFORD HEIGHTS INCOME TAX BOARD OF REVIEW AND CITY OF
BEDFORD HEIGHTS INCOME TAX ADMINISTRATOR
Represented by:
JEFFREY J. LAUDERDALE
CALFEE, HALTER & GRISWOLD LLP
THE CALFEE BUILDING
1405 EAST SIXTH STREET
CLEVELAND, OH 44114

Entered Monday, March 9, 2015

Mr. Williamson and Mr. Harbarger concur.

Appellants appeal a decision of the City of Bedford Heights Board of Review ("MBOA") in which it affirmed the decision of the Bedford Heights Tax Administrator rejecting appellants' amended net profits tax returns for 2005, 2006, and 2007. We proceed to consider the matter upon the notice of appeal, the transcript certified by the MBOA, the parties' briefs, and the exhibits jointly stipulated to by the parties.

The decision of the MBOA explains that appellants "timely filed its net profit tax returns, as a single filer, with the Regional Income Tax Agency (R.I.T.A.) for the 2005, 2006 and 2007 tax years. Subsequently, in March 2010, [appellants] sought to file amended returns as a 'consolidated filer' for the years 2005, 2006 and 2007. These 'consolidated returns' would have resulted in tax refunds to [appellants] in excess of \$698,000.00." MBOA Decision at 1. The returns were rejected by RITA. A hearing was held before the MBOA, where appellants argued that no portion of the city's ordinances prohibited the filings and that any inconsistent RITA regulation is in conflict with the relevant ordinance and therefore null and void. The MBOA affirmed the decision of RITA and the city's Tax Administrator, finding that "[taken] together

Sections 1735.15 *** of the Bedford Heights Administrative Code and Section 5:06(A) of the R.I.T.A. Rules and Regulations are identical in effect," and that "[n]either permits a taxpayer to change the method of accounting or the apportionment of net profits, nor the method of filing after the due date for filing the original return." Id. at 2 (emphasis sic).

Section 173.15(a) of the Bedford Heights Administrative Code ("BHAC") provides:

"Where necessary an amended return must be filed in order to report additional income and pay additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, of both, contained in Sections 173.30 through 173.35. Such amended returns shall be on a form obtainable from the Tax Administrator. *A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.*" (Emphasis added.)

The RITA Rules and Regulations, incorporated into the BHAC by Section 173.56, also contain a relevant, similar provision in Section 5:06(A):

"Where necessary, 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 or limitations contained in the Ordinance. Such returns shall be clearly marked "Amended." A taxpayer may not change the method of accounting or the apportionment of net profits, *nor the method of filing (i.e., single or consolidated)*, after the due date for filing the original return. Amended returns cannot be filed after three (3) years from the original filing date." (Emphasis added.)

In its decision, the MBOA found that, taken together, these sections prohibit an attempt to change from a single filer to a consolidated filer, as such a change is a "change in the method of accounting or apportionment of net profits or the method of filing." On appeal, appellants argue that BHAC Section 173.15(a) does not prohibit timely filing an amended return on a consolidated basis; that filing on a consolidated basis is not a change in the method of accounting or apportionment of net profits; that RITA Rule 5:06(A) adds an additional prohibition to BHAC Section 173.15(a), i.e., a prohibition on changing the method of filing in an amended return, and is therefore inconsistent and invalid; that R.C. 718.06 requires the city to accept amended consolidated returns; and that the city's incorporation of RITA rules and regulations not in place when it adopted its relevant ordinances is an unconstitutional delegation of legislative authority.

We begin our review of this matter by noting that when 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. *City of Marion v. City of Marion Bd. of Review* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, appeal dismissed, 2008-Ohio-2496. See, also, *Tetlak v. Bratenahl* (2001), 92 Ohio St.3d 46, at 51. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121.

Appellants argue that filing amended consolidated returns is not a "change in the method of accounting or apportionment of net profits." We disagree. Appellants point to the July 2009 change to RITA Rule 5:06(A), to additionally prohibit a change in the "method of filing (i.e., single or consolidated)" as clear support for their argument that BHAC Section 173.15(a) did not include a change in the method of filing. Appellants argue that a change in the "method of accounting" encompasses only cash versus accrual accounting, citing to IRS Publication 538. Further, appellants argue that a change in the "method of apportionment" is already addressed by a separate ordinance that details a formula to be used to apportion net profits for tax purposes. In response, the appellees focus on the amount of refund claimed by appellants as a result of filing their amended consolidated returns, i.e., approximately \$700,000: "the mere fact that [appellants] claims entitlement to a refund of almost \$700,000 on net profits taxes that [they] had to pay when [they] filed on a single-filer basis shows that [appellants'] attempt to file amended consolidated

returns constituted a prohibited 'change' in the 'method of accounting...of net profits.'" Appellees' Brief at 11. We do not find the amount claimed as a refund to be dispositive, or even telling, on this point.

What is more telling is the difference in the language of BHAC Section 173.15(a) and RITA Rule 5:06(A): because the RITA rule specifically added the language "nor the method of filing (i.e., single or consolidated)," it is clear that changing from single filing to consolidated filing is not the same as changing the method of accounting or apportionment, which were already prohibited by the rule. See, e.g., *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261, 265-266; *Wardrop v. Middletown Income Tax Review Bd.*, Butler App. No. CA2007-09-235, 2008-Ohio-5298, at ¶24; *City of Heath v. Licking Cty. Regional Airport Authority* (1967), 16 Ohio Misc. 69, 78-79. We therefore find that appellants' filing of amended returns as a consolidated filer was not prohibited by BHAC Section 173.15(a).

This board must therefore determine whether appellants' amended returns were barred by RITA Rule 5:06(A). Appellants make several arguments regarding the rule's applicability. First, they argue that the city had not incorporated the version of RITA Rule 5:06(A) that contained the prohibition on filing an amended return that changed the method of filing, which was adopted in July 2009. BHAC Section 173.56 provides:

"(a) Effective January 1, 1996, there is hereby adopted for the purpose of establishing rules and regulations for the collection of municipal income taxes and the administration and enforcement of this chapter the Rules and Regulations of the Regional Income Tax Agency (R.I.T.A.), in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto, and the same are hereby incorporated herein as if fully set out at length save and except such portions as may be hereinafter added, modified, or deleted therein.

"(b) R.I.T.A.'s Rules and Regulations shall be in addition to any rules and regulations adopted and promulgated by the Tax Administration pursuant to authority granted under Section 173.04 herein. In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights."

Appellants argue that the above ordinance could only adopt those RITA rules and regulations in effect at the time of its enactment – December 21, 2004, and not any changes made to the RITA rules and regulations thereafter. Therefore, appellants argue, the city did not adopt the version of RITA Rule 5:06(A) that prohibited changing the method of filing in an amended return.

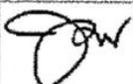
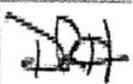
Appellants further argue that the city could not adopt future changes in the RITA rules and regulations, citing appellate court cases relating to cities defining income for purposes of their own tax ordinances by referencing the federal definitions. In both these cases, the court found that the ordinances in question incorporated only those relevant portions of the internal revenue code that existed at the time the ordinance was passed, i.e., not subsequent amendments thereto. However, the Supreme Court, in *State v. Gill* (1992), 63 Ohio St.3d 53, noted the difference between incorporating law as it then existed and as it is subsequently amended:

"In 1964, Congress established a comprehensive food stamp program to aid in the fight against hunger and malnutrition. Section 2011 *et seq.*, Title 7, U.S.Code. R.C. 2913.46(A) became effective on July 1, 1983. Prior to this date, the federal food stamp law had been revised. It is clear to us that the General Assembly, by using the language 'as amended,' did not intend to adopt amendments to the federal law subsequent to the effective date of R.C. 2913.46(A), but, rather, the General Assembly simply intended to incorporate the federal food stamp law as it existed on the date R.C. 2913.46(A) was enacted. Given its common and plain meaning, the

language 'as amended' does not anticipate amendments to the federal law after July 1, 1983. This is buttressed by the fact that had the General Assembly intended to incorporate the federal law subsequent to the enactment of R.C. 2913.46(A), it certainly knew how to do so. For example, R.C. 2915.01(AA) provides that the "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, *as now or hereafter amended.* (Emphasis added.) There is a notable distinction between the language used in R.C. 2915.01(AA) and in 2913.46(A). In utilizing the language 'as now or hereafter amended,' the General Assembly obviously intended to incorporate amendments subsequent to the time R.C. 2915.01(AA) was enacted." Id. at 55-56.

Based upon the foregoing case law and the language of the BHAC Section 173.56, we find that the City, in its most recent incorporation of RITA Rules and Regulations in December 2004, clearly incorporated the July 2009 change to RITA Rule 5:06(A) which prohibits changing the method of filing in an amended return. Accordingly, we find that the rule did bar appellants' filings. To the extent appellants make constitutional arguments regarding such incorporation, it is well established that this board is without jurisdiction to declare a given statute or ordinance to be unconstitutional. *S.S. Kresge Co. v. Bowers* (1960), 170 Ohio St. 405, paragraph one of the syllabus; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130; *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 8; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229, paragraph one of the syllabus; *MCI Telecommunications Corp. v. Limbach* (1944), 68 Ohio St.3d 195, 198. Therefore, we acknowledge any such arguments, but make no findings in relation thereto.

Based upon the foregoing, we find that the MBOA did not err when it found that appellants' amended returns for tax years 2005, 2006, and 2007 were improper. Accordingly, we find that the decision of the City of Bedford Heights Board of Review must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

Dayton, Ohio Code of Ordinances Sec. 80.05

CODE OF ORDINANCES City of DAYTON, OHIO Codified through Ordinance No. 31389-15, passed April 22, 2015. (Supp. No. 15)

Ohio Municipal Codes > Ohio > Dayton Code of Ordinances > Title VII - TRAFFIC CODE > CHAPTER 80. WATERCRAFT

§ Sec. 80.05 Equipment.

- (A) *Excessive power.* No watercraft shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of the watercraft and other existing operating conditions.
- (B) *Mufflers.* All watercraft operating in city waters shall be equipped with a suitable muffler or silencer of sufficient size and capacity to effectually muffle and prevent excessive or unusual noise from the exhaust of any engines installed or aboard such watercraft. This division shall not apply when such watercraft is operating in a regularly scheduled and duly authorized race, regatta, or other aquatic event.
- (C) *Whistles and lights.* No master, owner, or any other person in charge of any watercraft, while lying at any pier, or at anchor, or while navigating in city waters, shall unnecessarily cause any whistle or siren to be blown or sounded, nor shall any person flash the rays of a searchlight or other blinding light onto the bridge or pilot house of any watercraft under way for any purpose other than those authorized by law.
- (D) *Lights for watercraft.* Light requirements on all watercraft shall be those prescribed by R.C. Chapter 1547, under the inland rules and those prescribed under international rules.
- (E) *Flashing lights.* The installation and use of intermittently flashing lights of any type or color is prohibited, except in an emergency to attract attention for aid and relief in such emergency, and except that a blue colored revolving or flashing horizontal beam of low intensity located at any effective point on the forward exterior of the watercraft may be displayed by authorized patrol boats when engaged in law enforcement duties day or night on waters of this state.
- (F) *Life jackets.* Any watercraft in operation on the waters of this state shall carry the following equipment.
 - (1) Watercraft 16 feet or greater in length, shall carry one type 1, 2, or three personal flotation device for each person on board and one type 4 personal flotation device;
 - (2) Watercraft less than 16 feet in length, including canoes, shall carry one type 1, 2, 3, or 4 personal flotation device for each person on board.
 - (3) Each personal flotation device shall be coast guard approved and in good and serviceable condition, of appropriate size for the wearer and shall be readily accessible to each person aboard such watercraft at all times.
- (G) *Flame arrestors.* The carburetors on inboard internal combustion engines must be equipped with coast guard approved backfire flame arrestor securely attached to the carburetor and in proper working order.
- (H) *Fire extinguishers.*
 - (1) All powercraft, except those propelled by an electric motor, shall carry fire extinguishers capable of extinguishing a burning gasoline fire and such fire extinguisher shall be so placed as to be readily accessible and in such condition as to be ready for immediate and effective use.
 - (2) Any fire extinguisher carried or used on watercraft in this state shall comply with minimum or higher standards for such extinguishers then prevailing as prescribed by the United States coast guard.
 - (3) Class A and class 1 powercraft shall carry at least one B-1 fire extinguisher.
 - (4) Class 2 powercraft shall carry at least two B-1 fire extinguishers.

Dayton, Ohio Code of Ordinances Sec. 80.05

- (5) Class 3 powercraft shall carry at least three B-1 fire extinguishers.
- (6) A B-1 fire extinguisher is one containing one and three-quarters gallons foam, four pounds carbon dioxide, or two pounds dry chemical.
- (I) *Anchor.* All watercraft, except sailboats less than 16 feet long having a cockpit depth of less than 12 inches and except canoes shall carry an anchor and line of sufficient weight and length to anchor the watercraft securely. The Chief of the Division of Watercraft may, by rule, exempt other types of watercraft from this section if he determines that carrying such anchor and line would constitute a hazard.
- (J) *Ventilation.* All powercraft using gasoline or other liquid fuel having a flashpoint of less than 110F. shall be provided with ventilation as follows:
 - (1) At least two ventilators fitted with cowls or their equivalent for the purpose of properly and efficiently ventilating the bilges of every engine and fuel tank compartment in order to remove any inflammable or explosive gases;
 - (2) Any type of ventilating system approved for use by the united states coast guard;
 - (3) The ventilation of the boat is not required where the greater portion of the bilges of the engine and fuel tank compartment is open to the natural atmosphere.
- (K) *Equipment.* All watercraft shall carry the equipment required by any applicable United States laws and state laws as now or hereafter amended and a violation of the same shall be deemed a violation of this division.

HISTORY NOTE:

(Ord. 21692, passed 6-9-65)

Annotations**Cross Reference**

Penalty, see 80.99.

Municipal Codes

Copyright 2015 Municipal Code Corporation All Rights Reserved

Akron, Ohio Code of Ordinances Sec. 98.92

AKRON MUNICIPAL CODE Looseleaf Supplement Codified through **Ordinance** No. 95-2015, passed April 6, 2015. (Supp. No. 32)

Ohio Municipal Codes > Ohio > Akron Code of Ordinances > TITLE 9 - GENERAL PROVISIONS > Chapter 98 - STREETS AND SIDEWALKS > Article 8. Street Dedication Plats

§ Sec. 98.92 Improvements.

After Planning Commission approval, Council shall receive a duly endorsed dedication plat along with a report of existing conditions and recommendation for improvements. These improvements may include, but shall not be limited to, the following:

- A. Surface improvements especially designed to fit the existing conditions, financed under the conditions of the Equal Assessment **Ordinance** as it now exists or is hereafter amended;
- B. Sanitary sewers; the property owners to pay seven dollars per front foot and the remainder to come from the sewer service fee account;
- C. Water mains and appurtenances;
- D. Street lights; and
- E. Storm sewers; the property owners to pay seven dollars per front foot and the remainder from the Capital Investment Program (C.I.P.).

HISTORY NOTE:

(Res. 199-1975)

Municipal Codes

Copyright 2015 Municipal Code Corporation All Rights Reserved

Columbus, Ohio Code of Ordinances Sec. 1145.02

COLUMBUS CITY CODES Codified through Ordinance No. 1695-2015, passed June 22, 2015. (Supp. No. 46, 7/15)

Ohio Municipal Codes > Ohio > Columbus Code of Ordinances > Title 11 - WATER, SEWER AND ELECTRICITY CODE > Chapter 1145 - SEWER USE REGULATIONS > 1145.00, 1145.08 General Provisions

§ Sec. 1145.02 Definitions.

Whenever used in this Chapter 1145, the meaning of the following words and terms shall be as defined in this section:

1145.02.001 Amalgam or mercury amalgam: Any of various alloys of mercury with other metals, especially an alloy of mercury and silver used in dental fillings.

1145.02.002 Approved laboratory procedures: The measurements, tests, and analyses of characteristics of water and wastes in accordance with analytical Federal guidelines as established in Title 40, Code of Federal Regulations (CFR) Part 136; or when none exists, as required by, or approved by, the regional Administrator of the United States Environmental Protection Agency; or when none exists, by the State of Ohio, or the Director.

1145.02.003 Authorized or duly authorized representative of the user:

(A) If the user is a corporation:

- (1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (2) The manager of one (1) or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(B) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(C) If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(D) The individuals described in paragraphs A through C, above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City of Columbus.

1145.02.004 Best management practices (BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Rule 3745-3-04 of the Ohio Administrative Code. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

1145.02.005 Biodegradable: Any material capable of being decomposed by biological agents especially bacteria and is easily broken down by biologic processes to nontoxic substances that exert an acceptable oxygen demand or nondeleterious effect on the receiving environment.

Columbus, Ohio Code of Ordinances Sec. 1145.02

1145.02.006 BOD or Biochemical oxygen demand: The quantity of oxygen utilized in the biochemical oxidation of organic and inorganic matter in five (5) days at twenty (20) degrees C in accordance with an approved test procedure.

1145.02.007 Bypass: The intentional diversion of wastestreams from any portion of a user's treatment facility.

1145.02.008 Categorical industrial user: An industrial user subject to a categorical pretreatment standard or categorical standard.

1145.02.009 Categorical pretreatment standard: Any regulation containing pollutant discharge limits enacted by USEPA in accordance with section 307(b) and (c) of the Clean Water Act (33 U.S.C. Section 1317(b) and (c)) which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR Part 403. Centralized waste treatment facility: means a facility that treats or recovers hazardous or non-hazardous industrial metal-bearing waste, oily waste, and organic-bearing waste from off-site.

1145.02.010 CFR: Code of Federal Regulations.

1145.02.011 City: The City of Columbus, Ohio.

1145.02.012 City of Columbus Construction and Material Specifications: A manual compiled by the department of public service, which outlines specifications for construction of public works for the City of Columbus.

1145.02.013 Clean Water Act or CWA: Federal Water Pollution Control Act, also known as the Clean Water Act, as amended 33 U.S.C. Sec. 1251 et seq., 86 Statutes 816, Public Law 92-500.

1145.02.014 COD or Chemical oxygen demand: A quantitative measure of the oxygen equivalent of the organic matter present in a sample that is susceptible to oxidation by a strong chemical oxidant in accordance with an approved test procedure.

1145.02.015 Combined sewer: A sewer, which was designed to carry sanitary wastewater and stormwater to the POTW or waters of the state.

1145.02.016 Combined wastewater: Wastewater including any combination of sanitary wastewater and stormwater carried to the POTW treatment plants by a sewer.

1145.02.017 Composite sample: A combination of individual samples representative of water or wastewater taken at preselected intervals to minimize the effect of the variability of the individual sample. Composite samples may be collected as either:

(A) Flow proportional composite samples, collected either as a constant sample volume at time intervals proportional to stream flow, or collected by increasing the volume of each sample as the flow increases while maintaining a constant time interval between the samples.

(B) Time proportional composite samples, composed of discrete samples collected in one (1) container at constant time intervals providing representative samples irrespective of flow.

1145.02.018 Cooling water: Water used for contact and noncontact cooling, including, but not limited to, water used for equipment cooling, evaporative cooling tower makeup, or reduction of effluent heat content.

1145.02.019 Daily maximum: The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

1145.02.020 Daily maximum limit: The maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limits are expressed in terms of concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

1145.02.021 Day: Calendar day.

1145.02.022 Decontamination wastewater: Wastewater generated during the process of neutralizing contaminants that have accumulated on personnel or equipment due to a nuclear, biological or chemical emergency.

Columbus, Ohio Code of Ordinances Sec. 1145.02

- 1145.02.023 Deleterious substance:** Any material which may be harmful to the POTW, the POTW treatment plant processes, the health and safety of POTW workers, and the POTW effluents or residual products.
- 1145.02.024 Department:** The Department of Public Utilities, City of Columbus, Ohio.
- 1145.02.025 Director:** The Director of the Department of Public Utilities, City of Columbus, or designee.
- 1145.02.026 Discharge:** The introduction of liquids or wastes into the sewer system.
- 1145.02.027 DOSD:** Division of Sewerage and Drainage.
- 1145.02.028 Domestic origin waste:** Waste materials that originate solely from domestic wastewater which are removed from sewage disposal systems such as septic tanks, aeration systems, portable toilets, and sewage holding tanks.
- 1145.02.029 Domestic wastewater:** Wastewater derived solely from household sources, business buildings, and institutions, exclusive of any industrial wastewater.
- 1145.02.030 Existing source:** Any source of discharge that is not a "new source".
- 1145.02.031 Extra-strength:** Any discharge to the POTW that has strength characteristics, which exceed two hundred fifty (250) mg/l of BOD⁵, four hundred fifty (450) mg/l of COD, three hundred (300) mg/l of Total Suspended Solids (TSS), and forty (40) mg/l of Total Kjeldahl Nitrogen (TKN).
- 1145.02.032 Foundation drain:** An exterior drainage system that allows water to flow away from the lowest portion of a structure, typically a basement, without using pumps or electricity.
- 1145.02.033 Fats, oils and grease or FOG:** a semi-solid, viscous liquid organic polar compound derived from petroleum, animal or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 Code of Federal Regulations (CFR) Part 136, as may be amended.
- 1145.02.034 Flammable:** Any substance that has a flashpoint of less than or equal to one hundred forty (140) degrees Fahrenheit.
- 1145.02.035 FSE or food service establishment:** A commercial facility engaged in preparing or serving food for consumption by the public, such as but not limited to: restaurant, commercial kitchen, cafeterias, nightclubs, delicatessen, meat cutting-preparation, bakeries, bagel shops, grocery stores, caterer, hotel, school, hospital, correctional facility or care institution.
- 1145.02.036 Grab sample:** A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- 1145.02.037 Grease interceptor:** A tank that serves one (1) or more fixtures and is remotely located. Such grease interceptors include, but are not limited to, tanks that capture wastewater from dishwashers, garbage grinders, floor drains, pot and pan sinks and trenches. A grease interceptor is an outside, underground, tank that reduces the amount of FOG in wastewater prior to discharging into the POTW.
- 1145.02.038 Grease trap:** A small indoor device designed to retain grease.
- 1145.02.039 Hazardous waste:** A waste, as defined by Ohio Administrative Code Rule 3745-51-03.
- 1145.02.040 Household sources:** Any source of wastewater limited to sanitary wastes from single and multiple family residences, hotels, motels, crew quarters, camp grounds, picnic grounds, or day use recreation areas. Household sources shall not include any industrial or commercial process wastewater.
- 1145.02.041 Illicit discharge:** Discharge of any pollutant to the stormwater drainage system that occurs or may occur unless the discharge is authorized under a discharge permit issued by the Ohio EPA.
- 1145.02.042 Incompatible:** Any wastewater or other substance that is deleterious or which degrades the quality of the POTW effluent or its sludges and residual products.

Columbus, Ohio Code of Ordinances Sec. 1145.02

1145.02.043 Indirect discharge or discharge: The introduction of pollutants into the POTW from any nondomestic source.

1145.02.044 Industrial cost recovery: The system for recovery of the industrial portion of the United States Environmental Protection Agency Project Grant Funds, as required by CFR Title 40 or subsequent revisions.

1145.02.045 Industrial user or IU: Any user who discharges, or permits the discharge of industrial wastewater to the city's POTW.

1145.02.046 Industrial wastewater: Any combination of liquid and water-carried wastes, discharged from any industrial or commercial establishment, and resulting from any trade or process carried on in that establishment, including the wastewater from pretreatment facilities and polluted cooling water. Any wastewater from nondomestic sources.

1145.02.047 Instantaneous limit: The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

1145.02.048 Interference: A discharge which, alone or in conjunction with the discharge or discharges from other sources, either:

- (A) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal.
- (B) Is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with state and federal statutory provisions and regulations or permits issued thereunder.

1145.02.049 Local limit: Specific discharge limits developed and enforced by the City of Columbus upon industrial or commercial facilities or users to implement the general and specific discharge prohibitions pursuant to Section 1145.23 of this chapter.

1145.02.050 Medical waste: Isolation wastes, infectious agents, human blood and blood products, pathological wastes, hypodermic needles, disposable scalpels, and other sharp implements used in medical care, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

1145.02.051 Monthly average: The sum of all "daily discharges" measured during a calendar month by dividing by the number of "daily discharges" measured during that month.

1145.02.052 Monthly average limit: The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

1145.02.053 mg/l: Milligrams per liter.

1145.02.054 Monitoring facility: A site accessible to the city for the collection of samples, flow data, or other parameters representative of the user's discharge to the POTW.

1145.02.055 MS4: an acronym for "municipal separate storm sewer system " and is used to refer to either a large or medium municipally-owned separate storm conveyance system.

1145.02.056 Natural outlet: Any outlet for discharge of stormwater into a watercourse, pond, ditch, lake, or other body of surface water.

1145.02.057 New source:

- (A) Any building, structure, facility or installation from which there is, or may be, a discharge of pollutants, the construction of which commenced after the publication of proposed Categorical Pretreatment Standards under Section 307(c) of the Clean Water Act (33 U.S.C. Section 1317(c)) which will be applicable to such source, if such standards are thereafter enacted in accordance with that section, provided that:

Columbus, Ohio Code of Ordinances Sec. 1145.02

- (1) The building, structure, facility or installation is constructed at a site which no other source is located; or
 - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether the above criteria are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, shall be considered.
- (B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building structure, facility, or installation meeting the criteria of Section (A)(2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (C) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (1) Begun, or caused to begin, as part of a continuous onsite construction program
 - (a) Any placement, assembly, or installation of facilities or equipment; or
 - (b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

1145.02.058 Noncompliance: Any violation of this chapter.

1145.02.059 Nondomestic user: Any user, which discharges wastewater other than from household sources.

1145.02.060 NPDES: National Pollutant Discharge Elimination System.

1145.02.061 NPDES permit: A permit issued to the city pursuant to Section 402 of the Clean Water Act.

1145.02.062 Oil: Any vegetable, mineral, animal, or synthetic substance which are generally slippery, combustible, viscous, liquid or liquefiable, soluble in various organic solvents or water.

1145.02.063 Operator: The person responsible for the overall operation of a facility.

1145.02.064 ORC: Ohio Revised Code.

1145.02.065 Organic: Any compound containing carbon in any form other than carbonate.

1145.02.066 Owner: The person who owns a facility, or any part of a facility.

1145.02.067 Pass-through: A discharge which exits the POTW into the waters of the United States in quantities or concentrations which, alone, or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTWs NPDES permit (including an increase in the magnitude or duration of a violation).

1145.02.068 Person: Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents or assigns. This definition includes all federal, state, and local governmental entities.

1145.02.069 pH: The logarithm (to the base 10) of the reciprocal of the hydrogen ion concentration of a solution expressed in gram atoms per liter of solution.

Columbus, Ohio Code of Ordinances Sec. 1145.02

- 1145.02.070 Pollution:** The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.
- 1145.02.071 POTW or publicly owned treatment works:** A treatment works owned by the City of *Columbus* as defined by Section 212 of the Clean Water Act (33 U.S.C Section 1292). This definition includes any devices and systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature, including sewers, pipes and other conveyances that convey wastewater to a POTW treatment plant.
- 1145.02.072 POTW treatment plant:** That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.
- 1145.02.073 Pretreatment:** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to, or in lieu of, discharging such pollutants into a POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- 1145.02.074 Pretreatment requirements:** Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- 1145.02.075 Pretreatment standards or standards:** Shall include prohibited discharge standards, categorical pretreatment standards, and local limits as defined herein.
- 1145.02.076 Prohibited discharge standards or prohibited discharges:** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 1145.20 through 1145.29 of this chapter, as well as, regulations adopted by the director.
- 1145.02.077 Public sewer:** Any sewer owned by the city, suburb, or entity contracting with the city, including storm, sanitary, or combined sewers.
- 1145.02.078 Radioactive:** The property of a material providing spontaneous decay or disintegration of an unstable, atomic nucleus, accompanied by the emission of radiation.
- 1145.02.079 RCRA or Resource Conservation and Recovery Act:** The Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 and amendments to the Act, 42 U.S.C. Sec. 6901 et seq.
- 1145.02.080 Surface runoff:** The flow of water, from rain, snowmelt, or other sources, over land.
- 1145.02.081 SDWA:** Safe Drinking Water Act, as amended, 42 U.S.C. Sec. 300f et seq.
- 1145.02.082 Sanitary sewer:** A sewer which by design is intended to carry sanitary wastewater or industrial wastes into which storm, surface and ground waters are not intentionally admitted.
- 1145.02.083 Sanitary wastewater:** The combination of liquid and water-carried wastes discharged from toilet and other sanitary plumbing facilities of dwellings, office buildings, industrial plants or institutions.
- 1145.02.084 Septic tank waste:** Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- 1145.02.085 Sewage:** Human excrement and gray water (household showers, dishwashing operations, etc.).
- 1145.02.086 Sewer collection system, sewer system or collection system:** All of the facilities required to transport stormwater, sanitary wastewater or combined wastewater from the source to the POTW treatment plant or waters of the state.
- 1145.02.087 Sewer service charge:** The total monetary amount billable to a user for the provision of wastewater treatment and related activities.
- 1145.02.088 Significant industrial user or SIU:** Except as provided in paragraphs (C) and (D) of this section, a significant industrial user is:

Columbus, Ohio Code of Ordinances Sec. 1145.02

- (A) An industrial user subject to categorical pretreatment standards; or
- (B) An industrial user that:
- (1) Discharges an average of twenty-five thousand (25,000) gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
 - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (3) Is designated as such by the City of Columbus on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

Non-significant categorical industrial user

- (C) The City of Columbus may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user on a finding that the industrial user never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the categorical pretreatment standard) and the following conditions are met:
- (1) The industrial user, prior to the City of Columbus' finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
 - (2) The industrial user annually submits the certification statement required in Section 1145.59(B), together with any additional information necessary to support the certification statement; and
 - (3) The industrial user never discharges any untreated concentrated wastewater.
 - (4) The industrial user is not located upstream of a combined sewer overflow or a sanitary sewer overflow, unless the following conditions are met:
 - (a) The industrial user does not discharge wastewater regulated by categorical pretreatment standards at any time; or
 - (b) The industrial user has not been in significant noncompliance, as defined in OAC 3745-3-03(C)(2)(h) for any time in the past two (2) years.
- (D) Upon a finding that a user meeting the criteria in Subsection (B) under the definition of significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City of Columbus may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

1145.02.089 Slug load or slug discharge: Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 1145.20 through 1145.29 of this chapter, as well as, regulations adopted by the director. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has the reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.

1145.02.090 Standard: Any limit or prohibition on discharges as provided for by this chapter.

1145.02.091 SIC or Standard industrial classification: A classification pursuant to the most current edition of the Federal Standard Industrial Classification Manual and North American Industrial Classification System, as published by the Executive Office of the President, Office of Management and Budget.

1145.02.092 Standard methods: Standard Methods for the Examination of Water and Wastewater as published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation. References are to the current edition unless otherwise indicated.

Columbus, Ohio Code of Ordinances Sec. 1145.02

- 1145.02.093 Standard strength:** Wastewater of strength equivalent to domestic wastewater, i.e. having BOD⁵ of two hundred fifty (250) mg/l or less; COD of four hundred fifty (450) mg/l or less; TSS of three hundred (300) mg/l or less; and TKN of forty (40) mg/l or less.
- 1145.02.094 S.U.:** Standard units.
- 1145.02.095 State:** State of Ohio.
- 1145.02.096 Storm water:** Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
- 1145.02.097 Storm Water Pollution Prevention Plan (SWP3) or (SWPPP):** The plan required by the Ohio EPA for compliance with its general or individual NPDES permit.
- 1145.02.098 Storm sewer:** Unless otherwise indicated, refers to a municipal separate storm sewer.
- 1145.02.099 Stream:** A surface watercourse having a channel with a well defined bed and bank, either natural or artificial, which confines and conducts continuous or periodic flowing water.
- 1145.02.0100 Total dissolved solids (TDS):** The sum of all dissolved solids (volatile and non-volatile) in water or wastewater.
- 1145.02.0101 Total Kjeldahl Nitrogen (TKN):** Is the sum of nitrate (NO₃), nitrite (NO₂), organic nitrogen and ammonia (all expressed as N). Note: for laboratory analysis purposes, Total Kjeldahl Nitrogen (TKN) is a test performed that is made up of both organic nitrogen and ammonia.
- 1145.02.0102 Total non-filterable residue (TNFR):** Same as Total Suspended Solids (TSS).
- 1145.02.0103 Total Organic Carbon (TOC):** The measure of the concentration of covalently bonded carbon, which is combustible to carbon dioxide. It is not to be confused with elemental carbon, dissolved carbon dioxide, inorganic carbonates or bicarbonates.
- 1145.02.0104 Total silver process wastewater:** The sum of all aqueous solutions used in silver imaging processes, including photography film developers, fixers, bleach-fix, stabilizers, low flow washes, rinse waters, other washes and all similar solutions.
- 1145.02.0105 Total suspended solids (TSS):** The total suspended matter that either floats on the surface of, or is in suspension within, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed by Standard Methods (same as TNFR).
- 1145.02.0106 Toxic:** Any pollutant, or combination of pollutants, listed as toxic in regulations enacted by the Administrator of the USEPA, or under the provision of the Clean Water Act, Section 307(a) (33 U.S.C. Section 1317(a)) or other Acts.
- 1145.02.0107 Trucked waste disposal site or TWDS:** The location(s) designated by the director for receiving trucked wastes into the POTW.
- 1145.02.0108 Trucked wastes:** Any materials, usually liquid, such as, but not limited to, wastes from septic tanks, aeration systems, portable toilets, sewerage holding tanks, and industrial processes which are collected at the source by tank truck for disposal elsewhere.
- 1145.02.0109 ug/l:** Micrograms per liter.
- 1145.02.0110 USC:** United States Code.
- 1145.02.0111 USEPA:** United States Environmental Protection Agency.
- 1145.02.0112 Used oil:** Any oil that has been used, and, as a result of such use, contaminated with chemical or physical impurities.
- 1145.02.0113 User:** Any person who contributes, causes, or permits the contribution of wastewater or stormwater into the city's sewer system or POTW.

1145.02.0114 Wastewater: The combination of the liquid and water-carried wastes and sewage from residences, commercial buildings, industrial plants and institutions including polluted cooling water, whether treated or untreated.

1145.02.0115 Waters of the state: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

HISTORY NOTE:

(Ord. No. 1327-2012, 1, 7-23-2012, eff. 10-1-2012)

Annotations

Notes Applicable To Upper Hierarchy

EDITORS NOTE:

Ord. No. 1327-2012, 1, adopted July, 23, 2012, effective October 1, 2012, amended Ch. 1145, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 1145 pertained to similar subject matter. See also the Code Comparative Table and Disposition List.

CROSS REFERENCE:

Sewer taps and permits - see W.S. & E. Ch. 1135 Special tap or use permits - see W.S. & E. Ch. 1137 Sewer charges - see W.S. & E. Ch. 1147 Disorderly conduct - see G. OFF. 2317.01

Municipal Codes

Copyright 2015 Municipal Code Corporation All Rights Reserved

OAC Ann. 4123-21-01

This document is current through the Ohio Register for the week of June 19, 2015 through July 24, 2015

Ohio Administrative Code > 4123 Bureau of Workers' Compensation > Chapter 4123-21 Coal-Workers' Pneumoconiosis Fund

4123-21-01. Procedures for subscription to the coal-workers' pneumoconiosis fund.

- (A) As used in sections 4131.01 to 4131.06 of the Revised Code, "operator" and "operator of a coal mine" have the same meaning as "operator" as defined in the "Federal Coal Mine Health and Safety Act of 1969," 83 Stat. 742, 30 U.S.C. 801 et seq., as now or hereafter amended, and as implemented by the regulations of the secretary of labor under Title IV of the act, who, by reason of operations within the territorial boundaries of Ohio is amenable to Title IV of the act, including claims reviewed and allowed under 30 U.S.C. 945. Any operator as herein defined may elect to become a subscriber as defined in division (D) of section 4131.01 of the Revised Code by applying for coverage and paying the premiums required in this chapter.
- (B) An employer wishing to subscribe to the coal-workers' pneumoconiosis fund shall complete an application for subscription, which shall be provided by the bureau of workers' compensation. No disposition shall be made of any such application until the same is complete, and no such application shall be deemed complete until all information requested by the bureau in connection therewith is supplied. On reasonable advance notice, the applicant shall provide the bureau with access to all records pertinent to the application for subscription. The administrator of workers' compensation has the authority to accept or reject an application for subscription to the coal-workers' pneumoconiosis fund.
- (C) Employers who are active subscribers to the coal-workers' pneumoconiosis fund on the date of adoption of these rules shall not be required to reapply for coverage. However, renewal of the subscription to the fund thereafter shall be deemed acceptance of the terms, conditions and duties contained in these rules.

Statutory Authority

Promulgated Under:

119.03.

Statutory Authority:

4121.12, 4121.121.

Rule Amplifies:

4131.01, 4131.02, 4131.03.

History

History:

R.C. 119.032 review dates: 12/24/2013 and 11/01/2018.

Prior Effective Dates:

6/3/82, 12/18/89 (Emer.), 2/22/90.

OHIO ADMINISTRATIVE CODE

Copyright © 2015 by Matthew Bender & Company, Inc. a member of the LexisNexis Group All rights reserved.

ORC Ann. 2923.124

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > Title 29: Crimes — Procedure > Chapter 2923: Conspiracy, Attempt, and Complicity; Weapons Control; Corrupt Activity > Concealed Handgun Licenses

§ 2923.124 Definitions.

As used in *sections 2923.124 to 2923.1213 of the Revised Code*:

- (A) "Application form" means the application form prescribed pursuant to division (A)(1) of *section 109.731 of the Revised Code* and includes a copy of that form.
- (B) "Competency certification" and "competency certificate" mean a document of the type described in division (B)(3) of *section 2923.125 of the Revised Code*.
- (C) "Detention facility" has the same meaning as in *section 2921.01 of the Revised Code*.
- (D) "Licensee" means a person to whom a concealed handgun license has been issued under *section 2923.125 of the Revised Code* and, except when the context clearly indicates otherwise, includes a person to whom a concealed handgun license on a temporary emergency basis has been issued under *section 2923.1213 of the Revised Code* and a person to whom a concealed handgun license has been issued by another state.
- (E) "License fee" or "license renewal fee" means the fee for a concealed handgun license or the fee to renew that license that is to be paid by an applicant for a license of that type.
- (F) "Peace officer" has the same meaning as in *section 2935.01 of the Revised Code*.
- (G) "State correctional institution" has the same meaning as in *section 2967.01 of the Revised Code*.
- (H) "Civil protection order" means a protection order issued, or consent agreement approved, under *section 2903.214 or 3113.31 of the Revised Code*.
- (I) "Temporary protection order" means a protection order issued under *section 2903.213 or 2919.26 of the Revised Code*.
- (J) "Protection order issued by a court of another state" has the same meaning as in *section 2919.27 of the Revised Code*.
- (K) "Child day-care center," "type A family day-care home" and "type B family day-care home" have the same meanings as in *section 5104.01 of the Revised Code*.
- (L) "Foreign air transportation," "interstate air transportation," and "intrastate air transportation" have the same meanings as in *49 U.S.C. 40102*, as now or hereafter amended.
- (M) "Commercial motor vehicle" has the same meaning as in division (A) of *section 4506.25 of the Revised Code*.
- (N) "Motor carrier enforcement unit" has the same meaning as in *section 2923.16 of the Revised Code*.

History

150 v H 12, § 1, eff. 4-8-04; *150 v H 11*, § 1, eff. 5-18-05; *151 v H 347*, § 1, eff. 3-14-07; 2012 HB 495, § 1, eff. Mar. 27, 2013; 2012 SB 316, § 120.01, eff. Jan. 1, 2014; 2014 HB 234, § 1, effective March 23, 2015.

Annotations

Notes

Editor's Notes

Governor Taft's veto of HB 347 was overridden by the Ohio General Assembly.

Effect of amendments

The 2012 amendment by SB 316, deleted (M), which read: "'Type C family day-care home' means a family day-care home authorized to provide child care by Sub. H.B. 62 of the 121st general assembly, as amended by Am. Sub. S.B. 160 of the 121st general assembly and Sub. H.B. 407 of the 123rd general assembly"; and redesignated former (N) through (P) as (M) through (O).

The 2012 amendment by HB 495, added "and a person to whom a concealed handgun license has been issued by another state" to the end of (D); deleted (H), which read: "'Valid license' means a license or temporary emergency license to carry a concealed handgun that has been issued under section 2923.125 or 2923.1213 of the Revised Code, that is currently valid, that is not under a suspension under division (A)(1) of section 2923.128 or under section 2923.1213 of the Revised Code, and that has not been revoked under division (B)(1) of section 2923.128 or under section 2923.1213 of the Revised Code"; and redesignated former (I) through (P) as (H) through (O).

151 v H 347, effective March 14, 2007, added (O) and (P).

The 2014 amendment by HB 234, deleted "is prescribed pursuant to division (C) of section 109.731 of the Revised Code and that" following "that license that" in (E).

Research References & Practice Aids

Hierarchy Notes:

ORC Ann. Title 29, Ch. 2923

Page's Ohio Revised Code Annotated
Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All rights reserved. All rights reserved.

ORC Ann. 3903.01

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > Title 39: Insurance > Chapter 3903: Reserve Valuation; Rehabilitation and Liquidation

§ 3903.01 Definitions.

As used in sections 3903.01 to 3903.59 of the Revised Code:

- (A) "Admitted assets" means investment in assets which will be admitted by the superintendent of insurance pursuant to the law of this state.
- (B) "Affiliate" has the same meaning as "affiliate of" or "affiliated with," as defined in section 3901.32 of the Revised Code.
- (C) "Assets" means all property, real and personal, of every nature and kind whatsoever or any interest therein.
- (D) "Ancillary state" means any state other than a domiciliary state.
- (E) "Commodity contract" means any of the following:
 - (1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended, or a board of trade outside the United States;
 - (2) An agreement that is subject to regulation under section 19 of the "Commodity Exchange Act," 7 U.S.C. 23, as amended, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;
 - (3) An agreement or transaction that is subject to regulation under section 4c(b) of the "Commodity Exchange Act," 7 U.S.C. 6c(b), as amended, and that is commonly known to the commodities trade as a commodity option;
 - (4) Any combination of agreements or transactions described in division (E) of this section;
 - (5) Any option to enter into an agreement or transaction described in division (E) of this section.
- (F) "Creditor" means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.
- (G) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer, and any summary proceeding under section 3903.09 or 3903.10 of the Revised Code. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.
- (H) "Doing business" includes any of the following acts, whether effected by mail or otherwise:
 - (1) The issuance or delivery of contracts of insurance to persons resident in this state;
 - (2) The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;
 - (3) The collection of premiums, membership fees, assessments, or other consideration for such contracts;
 - (4) The transaction of matters subsequent to execution of such contracts and arising out of them;
 - (5) Operating under a license or certificate of authority, as an insurer, issued by the department of insurance.
- (I) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

- (J) "Fair consideration" is given for property or obligation when either of the following apply:
- (1) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed, services are rendered, an obligation is incurred, or an antecedent debt is satisfied;
 - (2) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.
- (K) "Foreign country" means any other jurisdiction not in any state.
- (L) "Forward contract" has the same meaning as in the federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), as now and hereafter amended.
- (M) "Guaranty association" means the Ohio insurance guaranty association created by section 3955.06 of the Revised Code and any other similar entity hereafter created by the general assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.
- (N) "Insolvency" or "insolvent" means:
- (1) For an insurer issuing only assessable fire insurance policies either of the following:
 - (a) The inability to pay any obligation within thirty days after it becomes payable;
 - (b) If an assessment is made within thirty days after such date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss.
 - (2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of either of the following:
 - (a) Any capital and surplus required by law for its organization;
 - (b) The total par or stated value of its authorized and issued capital stock.
 - (3) As to any insurer licensed to do business in this state as of the effective date of sections 3903.01 to 3903.59 of the Revised Code that does not meet the standard established under division (N)(2) of this section, the term "insolvency" or "insolvent" means, for a period not to exceed three years from the effective date of sections 3903.01 to 3903.59 of the Revised Code, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the superintendent under provisions of Title XXXIX of the Revised Code.
 - (4) For purposes of divisions (N)(2) to (4) of this section, "liabilities" includes, but is not limited to, reserves required by statute or by rules of the superintendent or specific requirements imposed by the superintendent upon a subject company at the time of admission or subsequent thereto.
- (O) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner, superintendent, or equivalent official. For purposes of sections 3903.01 to 3903.59 of the Revised Code, any other persons included under section 3903.03 of the Revised Code are deemed to be insurers.
- (P) "Netting agreement" means:
- (1) A contract or agreement, including a master agreement, and any terms and conditions incorporated by reference in such a contract or agreement, that provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with a qualified financial contract, or any present or future payment or delivery obligations or entitlements under a qualified financial contract, including liquidation or close-out values relating to those obligations or entitlements;
 - (2) A master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, which shall be treated as one netting agreement, and any bridge agreement for one or more master agreements;

ORC Ann. 3903.01

- (3) Any security agreement or arrangement, credit support document, or guarantee or reimbursement obligation related to any contract or agreement described in division (P) of this section.

Any contract or agreement described in division (P) of this section relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.

- (Q) "Preferred claim" means any claim with respect to which the terms of sections 3903.01 to 3903.59 of the Revised Code accord priority of payment from the assets of the insurer.
- (R) "Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the superintendent may determine by rule or order to be a qualified financial contract for purposes of this chapter.
- (S) "Reciprocal state" means any state other than this state in which in substance and effect division (A) of section 3903.18, and sections 3903.52, 3903.53, and 3903.55 to 3903.57 of the Revised Code are in force, in which provisions are in force requiring that the superintendent or equivalent official be the receiver, liquidator, rehabilitator, or conservator of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.
- (T) "Repurchase agreement" has the same meaning as in the federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), as now and hereafter amended.
- (U) "Secured claim" means any claim secured by mortgage, trust deed, security agreement, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.
- (V) "Securities contract" has the same meaning as in the federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), as now and hereafter amended.
- (W) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by assets.
- (X) "State" has the meaning set forth in division (G) of section 1.59 of the Revised Code.
- (Y) "Superintendent" or "superintendent of insurance" means the superintendent of insurance of this state, or, when the context requires, the superintendent or commissioner of insurance, or equivalent official, of another state.
- (Z) "Swap agreement" has the same meaning as in the federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), as now and hereafter amended.
- (AA) "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in property, or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

History

139 v H 830. Eff 3-7-83; 2011 HB 153, § 101.01, eff. Sept. 29, 2011.

Annotations

Notes

Editor's Notes

Not analogous to former RC § 3903.01 (GC § 628-1; 118 v 303; Bureau of Code Revision, 10-1-53), repealed 139 v H 830, § 2, eff 3-7-83.

Acts 2011, HB 153, § 803.60 provides: "Section 3903.301 of the Revised Code shall apply only to formal delinquency proceedings that commence under sections 3903.01 to 3903.59 of the Revised Code on or after the effective date of this act."

Effect of amendments

The 2011 amendment inserted (B), (E), (L), (P), (R), (T), (V), and (Z) and redesignated the remaining subsections accordingly; and updated the internal references.

Case Notes

Federal bankruptcy law

"Secured claim"

Federal bankruptcy law

Ohio Liquidation Act, R.C. 3903.01 et seq., is modeled after the Federal Bankruptcy Act of 1898 and, accordingly, courts look to federal bankruptcy law as an aid to interpreting the Ohio statutes. Covington v. HKM Direct Mkt. Conununs., Inc., 2003 Ohio 6306, 2003 Ohio App. LEXIS 5645 (Ohio Ct. App., Franklin County Nov. 25, 2003).

"Secured claim"

Pennsylvania bureau of workers' compensation did not have a "secured claim" under R.C. 3903.01(O): Fabe v. American Druggists' Ins. Co., 70 Ohio App. 3d 595, 591 N.E.2d 835, 1990 Ohio App. LEXIS 5536 (Ohio Ct. App., Franklin County 1990).

Page's Ohio Revised Code Annotated

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group.

All rights reserved. All rights reserved.

ORC Ann. 5747.10

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > Title 57: Taxation > Chapter 5747: Income Tax

§ 5747.10 Amended returns.

If any of the facts, figures, computations, or attachments required in a taxpayer's annual return to determine the tax charged by this chapter or Chapter 5748. of the Revised Code must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under this chapter or Chapter 5748. of the Revised Code, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first.

- (A) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with interest thereon. An amended return required by this section is a return subject to assessment under section 5747.13 of the Revised Code for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. It shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.
- (B) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return even if it is filed beyond the period prescribed in section 5747.11 of the Revised Code if it otherwise conforms to the requirements of such section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 5747.11 of the Revised Code. It shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

History

134 v H 475 (Eff 12-20-71); 135 v S 402 (Eff 6-10-74); 139 v H 694 (Eff 11-15-81); 139 v H 38 (Eff 6-23-82); 144 v S 358. Eff 1-15-93; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

Annotations

Notes

Effect of amendments

The 2013 amendment deleted the second sentence of (A), which read: "If the combined tax shown to be due is one dollar or less, such amount need not accompany the amended return."

Case Notes

Failure to file amended return
IRS adjustment

Time requirements

Case Notes

Failure to file amended return

IRS adjustment

Time requirements

Failure to file amended return

Taxpayers could not pursue a petition for reassessment of unpaid personal income tax because they failed to pay the assessment as required by R.C. 5747.13(E)(2) since they did not file an amended state tax return under R.C. 5747.10 after their federal tax income was adjusted; the four-year statute of limitations for assessments in § 5747.13(A) also did not apply on the basis of the failure to file an amended state tax return. Gibson v. Levin, 119 Ohio St. 3d 517, 2008 Ohio 4828, 895 N.E.2d 548, 2008 Ohio LEXIS 2581 (2008), remanded by 2008 Ohio Tax LEXIS 2131 (Ohio B.T.A. Nov. 4, 2008).

Failure to file an amended return pursuant to R.C. 5747.10 constitutes a failure to file a "return," as required by R.C. 5747.15, rendering the three year limit inapplicable: Gibson v. Limbach, 74 Ohio App. 3d 498, 599 N.E.2d 715, 1991 Ohio App. LEXIS 2649 (Ohio Ct. App., Trumbull County), dismissed, 62 Ohio St. 3d 1445, 579 N.E.2d 490, 1991 Ohio LEXIS 2531 (Ohio 1991).

IRS adjustment

When the Internal Revenue Service (IRS) adjusted a taxpayer's adjusted gross income (AGI) for a prior tax year, and the taxpayer did not file the amended return required by R.C. 5747.10, due to the IRS readjustment, the taxpayer's obligation to file the amended return did not depend on whether the taxpayer's federal tax liability had been "finally determined," because the reassessment of the taxpayer's AGI triggered the taxpayer's duty to file the amended return. Wagenknecht v. Levin, 2008 Ohio 6812, 121 Ohio St. 3d 13, 901 N.E.2d 772, 2008 Ohio LEXIS 3716 (Ohio 2008), cert. denied, 558 U.S. 823, 130 S. Ct. 116, 175 L. Ed. 2d 34, 2009 U.S. LEXIS 6805 (U.S. 2009).

When the Internal Revenue Service makes an adjustment of a taxpayer's adjusted gross income (AGI), R.C. 5747.10 requires the taxpayer to file an amended Ohio return that incorporates the new AGI figure and computes the figure's effect on the Ohio tax liability for that year. Wagenknecht v. Levin, 2008 Ohio 6812, 121 Ohio St. 3d 13, 901 N.E.2d 772, 2008 Ohio LEXIS 3716 (Ohio 2008), cert. denied, 558 U.S. 823, 130 S. Ct. 116, 175 L. Ed. 2d 34, 2009 U.S. LEXIS 6805 (U.S. 2009).

When the Internal Revenue Service (IRS) adjusted a taxpayer's adjusted gross income for a prior tax year, resulting in a reassessment of the taxpayer's Ohio income tax liability for that year, regarding which the taxpayer filed a petition for reassessment, the taxpayer was not entitled to a hearing on the taxpayer's petition because (1) the taxpayer did not file the amended return required by R.C. 5747.10, due to the IRS readjustment, (2) the taxpayer did not comply with the requirement of R.C. 5747.13(E)(2) that, since the taxpayer did not file an amended return, the taxpayer pay the taxpayer's adjusted tax liability, and (3) as a result of this noncompliance, the tax commissioner had no jurisdiction to hear the reassessment petition. Wagenknecht v. Levin, 2008 Ohio 6812, 121 Ohio St. 3d 13, 901 N.E.2d 772, 2008 Ohio LEXIS 3716 (Ohio 2008), cert. denied, 558 U.S. 823, 130 S. Ct. 116, 175 L. Ed. 2d 34, 2009 U.S. LEXIS 6805 (U.S. 2009).

R.C. 5747.13 did not limit the time in which the commissioner could collect a deficiency resulting from an IRS adjustment to the taxpayers' federal adjusted gross income: Mancino v. Tracy, 1997 Ohio 6, 79 Ohio St. 3d 151, 679 N.E.2d 1125, 1997 Ohio LEXIS 1734 (Ohio 1997).

Time requirements

R.C. 747.13(B) required dismissal of the tax payers' petition for tax reassessment because they did not comply with the 60-day statutory filing requirement. Even if they had sufficiently invoked the jurisdiction of the Ohio Tax Commissioner,

because they did not file an amended return as required by R.C. 5747.10, the assessment was not barred by the statute of limitations in R.C. 5747.13(A). Hafiz v. Levin, 2008 Ohio 6788, 120 Ohio St. 3d 447, 900 N.E.2d 181, 2008 Ohio LEXIS 3550 (Ohio 2008).

Research References & Practice Aids

Cross-References to Related Sections

Penalties, RC § 5747.99.

Failure to file return; assessment, RC § 5747.13.

Filing time for refund application form, RC § 5747.11.

Tax on qualifying pass-through entities with qualifying investor other than individuals, RC § 5733.41.

Page's Ohio Revised Code Annotated

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

ORC Ann. 718.41

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > Title 7: Municipal Corporations > Chapter 718: Municipal Income Taxes

§ 718.41 Amended municipal tax returns.

- (A) A taxpayer shall file an amended return with the tax administrator in such form as the tax administrator requires if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the municipal corporation in accordance with this chapter must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under this chapter. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the tax administrator before filing the amended return.
- (B)
- (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars or less, such amount need not accompany the amended return. Except as provided under division (B)(2) of this section, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under section 718.12 of the Revised Code has not expired for a previously filed return.
 - (2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.
- (C)
- (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (E) of section 718.12 of the Revised Code for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is ten dollars or less, no refund need be paid by the municipal corporation to the taxpayer. Except as set forth in division (C)(2) of this section, a request filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in section 718.19 of the Revised Code. Except as set forth in division (C)(2) of this section, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.
 - (2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened.

History

2014 HB 5, § 1.

Page's Ohio Revised Code Annotated

ORC Ann. 718.41

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All rights reserved. All rights reserved.

ORC Ann. 718.06

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > Title 7: Municipal Corporations > Chapter 718: Municipal Income Taxes

§ 718.06 Eligibility to file a consolidated municipal income tax return.

(A) As used in this section:

- (1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.
- (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
- (3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.
- (4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.
- (5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.

(B)

- (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (B)(2) of this section or a taxpayer receives permission from the tax administrator. The tax administrator shall approve such a request for good cause shown.
- (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.
- (3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the tax administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the tax administrator to file a separate return or a taxpayer has experienced a change in circumstances.

- (D) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.
- (E)
- (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in section 718.01 of the Revised Code, by substituting “consolidated federal taxable income” for “federal taxable income” wherever “federal taxable income” appears in that division and by substituting “an affiliated group of corporation’s” for “a C corporation’s” wherever “a C corporation’s” appears in that division.
 - (2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under division (E) of section 718.01 of the Revised Code to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
 - (3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group’s consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity’s net profit or loss for that taxable year:
 - (a) Exclude the pass-through entity’s net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 718.02 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group’s net profit sitused to a municipal corporation. If the entity’s net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity’s net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
 - (b) Include the pass-through entity’s net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 718.02 of the Revised Code, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group’s net profit sitused to a municipal corporation. If the entity’s net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity’s net profits that are included in the consolidated federal taxable income of the affiliated group.
 - (4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group’s consolidated federal taxable income for a taxable year, all of the following shall apply:
 - (a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity’s net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in section 718.02 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group’s net profit sitused to a municipal corporation;
 - (b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity’s net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (F) Corporations filing a consolidated municipal income tax return shall make the computations required under section 718.02 of the Revised Code by substituting “consolidated federal taxable income attributable to” for “net profit from” wherever “net profit from” appears in that section and by substituting “affiliated group of corporations” for “taxpayer” wherever “taxpayer” appears in that section.

- (G) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
- (H) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

History

2014 HB 5, § 1, effective March 23, 2015.

Annotations

Notes

Editor's Notes

Former § 718.06 [*148 v H 477*, Eff 7-26-2000.], was repealed by HB 5, § 2, effective March 23, 2015.

Not analogous to former *RC § 718.06*, renumbered *RC § 718.12* in *148 v H 477*, eff 7-26-2000.

The enactment by 2014 HB 5 is operative January 1, 2016. See act provisions stating: "SECTION 3. This act applies to municipal taxable years beginning on or after January 1, 2016. For municipal taxable years beginning before January 1, 2016, tax administrators may continue to administer, audit, and enforce the income tax of a municipal corporation under Chapter 718. and ordinances and resolutions of the municipal corporation as that chapter and those ordinances and resolutions existed before January 1, 2016.

Page's Ohio Revised Code Annotated

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

173.14 CONSOLIDATED RETURNS.

(a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Administrator. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code may file a consolidated return with the City of Bedford Heights. However, once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Administrator.

(Ord. 2005-078. Passed 5-3-05.)

(b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City of Bedford Heights constituting a portion only of its total business, the Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Tax Administrator finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City of Bedford Heights.

(Ord. 2004-218. Passed 12-21-04.)

Oh. Const. Art. XVIII, § 7

Current through 2014 Ohio Issue 1

Page's Ohio Revised Code Annotated > *CONSTITUTION OF THE STATE OF OHIO* > *Article XVIII*
MUNICIPAL CORPORATIONS

§ 7 Home rule.

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

History

Adopted September 3, 1912.

Page's Ohio Revised Code Annotated

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

ORC Ann. 718.01

Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 24 (HB 238), with some gaps including files 8 (SB 7), 9 (HB 3), 10 (HB 29), 11 (HB 64), 14 (HB 52), 16 (SB 110), 22 (HB 70), 23 (HB 155).

Page's Ohio Revised Code Annotated > **Title 7: Municipal Corporations** > **Chapter 718: Municipal Income Taxes**

Notice

▶ This section has more than one version with varying effective dates.

First of two versions of this section.

§ 718.01 Definitions. [Effective until January 1, 2016]

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Revised Code.

As used in this chapter:

(A)

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

- (a) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under section 718.02 of the Revised Code, and further reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.
- (b)
 - (i) For an individual who is a resident of a municipal corporation other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (A)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.
 - (ii) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Revised Code.
- (c) For an individual who is a nonresident of a municipal corporation, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under section 718.02 of the Revised Code, then reduced as provided in division (A)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

- (2) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (A)(1)(b)(i) or (c) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.
- (B) "Income" means the following:
- (1)
- (a) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident.
- (b) For the purposes of division (B)(1)(a) of this section:
- (i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (B)(1)(d) of this section;
- (ii) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.
- (c) Division (B)(1)(b) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C)(14)(b) or (c) of this section.
- (d) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.
- (2) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (3) For taxpayers that are not individuals, net profit of the taxpayer;
- (4) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.
- (C) "Exempt income" means all of the following:
- (1) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

- (2)
- (a) Except as provided in division (C)(2)(b) of this section, intangible income;
 - (b) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.
- (3) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C)(3) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.
- (4) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (5) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (6) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;
- (7) Alimony and child support received;
- (8) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages;
- (9) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code. Division (C)(9) of this section does not apply for purposes of Chapter 5745. of the Revised Code.
- (10) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;
- (11) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;
- (12) Employee compensation that is not qualifying wages as defined in division (R) of this section;
- (13) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.
- (14)
- (a) Except as provided in division (C)(14)(b) or (c) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of

ORC Ann. 718.01

net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

- (b) If, pursuant to division (H) of former section 718.01 of the Revised Code as it existed before March 11, 2004, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal corporation may continue after 2002 to tax an S corporation shareholder's distributive share of net profits of an S corporation.
 - (c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B)(1) and (2) of section 5733.05 of the Revised Code if the S corporation were a corporation subject to taxes imposed under Chapter 5733. of the Revised Code, the municipal corporation may continue to impose the tax on such distributive shares to the extent such shares would be so allocated or apportioned to this state only until December 31, 2004, unless a majority of the electors of the municipal corporation voting on the question of continuing to tax such shares after that date voted in favor of that question at an election held November 2, 2004. If a majority of those electors voted in favor of the question, the municipal corporation may continue after December 31, 2004, to impose the tax on such distributive shares only to the extent such shares would be so allocated or apportioned to this state.
 - (d) A municipal corporation shall be deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders if a majority of the electors of a municipal corporation voted in favor of a question at an election held under division (C)(14)(b) or (c) of this section. The municipal corporation shall specify by resolution or ordinance that the tax applies to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.
- (15) To the extent authorized under a resolution or ordinance adopted by a municipal corporation before January 1, 2016, all or a portion of the income of individuals or a class of individuals under eighteen years of age.
- (16)
- (a) Except as provided in divisions (C)(16)(b), (c), and (d) of this section, qualifying wages described in division (B)(1) or (E) of section 718.011 of the Revised Code to the extent the qualifying wages are not subject to withholding for the municipal corporation under either of those divisions.
 - (b) The exemption provided in division (C)(16)(a) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.
 - (c) The exemption provided in division (C)(16)(a) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of section 718.011 of the Revised Code.
 - (d) The exemption provided in division (C)(16)(a) of this section does not apply to qualifying wages if both of the following conditions apply:
 - (i) For qualifying wages described in division (B)(1) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;
 - (ii) The employee receives a refund of the tax described in division (C)(16)(d)(i) of this section on the basis of the employee not performing services in that municipal corporation.

(17)

- (a) Except as provided in division (C)(17)(b) or (c) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipal corporation on not more than twenty days in a taxable year.
- (b) The exemption provided in division (C)(17)(a) of this section does not apply under either of the following circumstances:
 - (i) The individual's base of operation is located in the municipal corporation.
 - (ii) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(17)(b)(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in section 718.011 of the Revised Code.
- (c) Compensation to which division (C)(17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.
- (d) For purposes of division (C)(17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.
- (19) Income the taxation of which is prohibited by the constitution or laws of the United States.

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

(D)

- (1) "Net profit" for a person other than an individual means adjusted federal taxable income.
- (2) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (D)(2) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (E)(8) of this section.
- (3) For the purposes of this chapter, and notwithstanding division (D)(1) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(E) "Adjusted federal taxable income," for a person required to file as a C corporation 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:

- (1) 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.
- (2) Add an amount equal to five per cent of intangible income deducted under division (E)(1) 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;

ORC Ann. 718.01

- (3) 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;
- (4)
- (a) Except as provided in division (E)(4)(b) 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;
 - (b) Division (E)(4)(a) 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.
- (5) Add 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 or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- (7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code;
- (8)
- (a) Except as limited by divisions (E)(8)(b), (c), and (d) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.
- The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
- (b) No person shall use the deduction allowed by division (E)(8) of this section to offset qualifying wages.
 - (c)
 - (i) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (E)(8)(a) of this section.
 - (ii) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (E)(8)(a) of this section.
 - (d) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (E)(8) of this section.
 - (e) Nothing in divisions (E)(8)(c)(i) and (ii) of this section precludes a person from carrying forward, for the period otherwise permitted under division (E)(8)(a) of this section, any amount of net operating loss that was not fully utilized by operation of divisions (E)(8)(c)(i) and (ii) of this section.
- (9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of section 718.06 of the Revised Code.

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

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

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

- (F) "Schedule C" means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (G) "Schedule E" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (H) "Schedule F" means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (I) "Internal Revenue Code" has the same meaning as in section 5747.01 of the Revised Code.
- (J) "Resident" means an individual who is domiciled in the municipal corporation as determined under section 718.012 of the Revised Code.
- (K) "Nonresident" means an individual that is not a resident.
- (L)
- (1) "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (L)(2)(a) of this section, a disregarded entity.
- (2)
- (a) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
- (i) The limited liability company's single member is also a limited liability company.
 - (ii) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
 - (iii) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of this section as this section existed on December 31, 2004.

ORC Ann. 718.01

- (iv) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.
 - (v) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.
- (b) For purposes of division (L)(2)(a)(v) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.
- (M) "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.
- (N) "Pass-through entity" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.
- (O) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (P) "Single member limited liability company" means a limited liability company that has one direct member.
- (Q) "Limited liability company" means a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of another state.
- (R) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
- (1) Deduct the following amounts:
 - (a) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
 - (b) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
 - (c) Any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code if the compensation is included in wages and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.
 - (d) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.
 - (e) Any amount included in wages that is exempt income.
 - (2) Add the following amounts:
 - (a) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
 - (b) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other

- disposition of stock purchased under a stock option and the municipal corporation has not, by resolution or ordinance, exempted the amount from withholding and tax adopted before January 1, 2016. Division (R)(2)(b) of this section applies only to those amounts constituting ordinary income.
- (c) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (R)(2)(c) of this section applies only to employee contributions and employee deferrals.
 - (d) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.
 - (e) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.
 - (f) Any amount not included in wages if all of the following apply:
 - (i) For the taxable year the amount is employee compensation that is included in the taxpayer's gross income for federal income tax purposes;
 - (ii) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
 - (iii) For no succeeding taxable year will the amount constitute wages; and
 - (iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (R)(2) of this section or section 718.03 of the Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly.
- (S) "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 Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.
- (T) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (U) "Tax administrator" means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:
- (1) A municipal corporation acting as the agent of another municipal corporation;
 - (2) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;
 - (3) The central collection agency or the regional income tax agency or their successors in interest, or another entity organized to perform functions similar to those performed by the central collection agency and the regional income tax agency.
- (V) "Employer" means a person that is an employer for federal income tax purposes.
- (W) "Employee" means an individual who is an employee for federal income tax purposes.
- (X) "Other payer" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.
- (Y) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

- (Z) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (AA) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.74 of the Revised Code.
- (BB) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.
- (CC) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.
- (DD) "Tax return preparer" means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.
- (EE) "Ohio business gateway" means the online computer network system, created under section 125.30 of the Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.
- (FF) "Local board of tax review" and "board of tax review" mean the entity created under section 718.11 of the Revised Code.
- (GG) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (HH) "Casino operator" and "casino facility" have the same meanings as in section 3772.01 of the Revised Code.
- (II) "Video lottery terminal" has the same meaning as in section 3770.21 of the Revised Code.
- (JJ) "Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770. of the Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Revised Code.
- (KK) "Postal service" means the United States postal service.
- (LL) "Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to section 5703.056 of the Revised Code.
- (MM) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of section 5703.056 of the Revised Code.
- (NN) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty per cent" shall be substituted for "5 percent" wherever "5 percent" appears in section 1563(e) of the Internal Revenue Code.
- (OO) "Related entity" means any of the following:
- (1) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;
 - (2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;
 - (3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (OO)(4) of this

section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;

- (4) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (OO)(1) to (3) of this section have been met.
- (PP)**
- (1) "Assessment" means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of tax review pursuant to section 718.11 of the Revised Code, and has "ASSESSMENT" written in all capital letters at the top of such finding.
- (2) "Assessment" does not include an informal notice denying a request for refund issued under division (B)(3) of section 718.19 of the Revised Code, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a tax administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a tax administrator's other written correspondence to a person or taxpayer that does meet the criteria prescribed by division (PP)(1) of this section.
- (QQ)** "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in sections 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the Revised Code and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718. of the Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.
- (RR)** "Qualified municipal corporation" means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.
- (SS)**
- (1) "Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the municipal corporation that was adopted by the municipal corporation before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such municipal corporation in future taxable years.
- (2) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.
- (TT)** "Small employer" means any employer that had total revenue of less than five hundred thousand dollars during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.
- (UU)** "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person for the purpose of determining liability for a municipal income tax.

History

2014 HB 5, § 2, effective March 23, 2015.

Page's Ohio Revised Code Annotated

Copyright © 2015 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.