



## Legislation Details (With Text)

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**File created:** 4/13/2018      **In control:** Rules & Reference Committee

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**Title:** To amend Chapter 362 of the Columbus City Codes by implementing modifications mandated by changes enacted by the Ohio General Assembly relating to the administration and collection of municipal net profit tax by the Ohio Department of Taxation if so elected by the taxpayer; and to declare an emergency.

**Sponsors:** Elizabeth Brown

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
5/10/2018	1	CITY CLERK	Attest	
5/8/2018	1	ACTING MAYOR	Signed	
5/7/2018	1	COUNCIL PRESIDENT	Signed	
5/7/2018	1	Columbus City Council	Approved	Pass

The 132<sup>nd</sup> Ohio General Assembly enacted Am. Sub. H.B. 49, the State's general appropriations bill for the biennium, which included modifications to Ohio Revised Code Chapter 718, Municipal Income Tax. Section 803.100 of that Bill relies upon R.C. Section 718.04(A) purporting to make municipal income tax authority conditional upon the adoption of code sections as dictated by the State. This ordinance authorizes the adoption of a new Section 362.067 and the modification of existing Section 362.093(D) of Chapter 362, Columbus City Codes. These modifications incorporate the language found in R.C. Sections 718.80 through 718.95, which permits non-individual taxpayers doing business in Columbus to elect to be subject to the referenced sections of the Revised Code as relates to the administration and collection of the Columbus net profits income tax, and designates the State Tax Commissioner as the sole administrator of the municipal tax, prescribing all forms, adopting any rules and applying the laws of the State of Ohio with regard to those making such election.

Emergency Action is being requested in order amend the Columbus City Code, Chapter 362 in order to incorporate the modifications to the Ohio Revised Code Chapter 718, Municipal Income Tax.

These amendments facilitate the administration and collection of the net profit tax due to the City of Columbus, in the form of quarterly declarations of estimated tax as well as any annual payments and filings, by the State of Ohio Department of Taxation, and the payment of such tax due to the Treasurer of the State of Ohio. The Treasurer of the State of Ohio will remit any taxes paid by those taxpayers electing to state administration of municipal net profit tax no less than 60 days following payment by the taxpayer as opposed to immediately upon receipt as when administered and collected by the City. This deferred receipt will impact the daily revenue stream of the City and skew all reports relating to revenue.

To amend Chapter 362 of the Columbus City Codes by implementing modifications mandated by changes enacted by the Ohio General Assembly relating to the administration and collection of municipal net profit tax by the Ohio Department

of Taxation if so elected by the taxpayer; and to declare an emergency.

**WHEREAS**, House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, included Section 803.100 purporting to require that municipalities adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

**WHEREAS**, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

**WHEREAS**, the City is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

**WHEREAS**, the City, by enacting this Ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the City is participating, and reserves its right to continue prosecution of that lawsuit; and

**WHEREAS**, an emergency exists in the usual daily operation of the Income Tax Division in that it is immediately necessary to amend the Columbus City Code in order to incorporate the modifications of the Ohio Revised Code Chapter 718; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**SECTION 1.** That new Section 362.067 of the Columbus City Codes is hereby enacted, reading as follows:

**362.067 ELECTION BY A NET PROFIT TAXPAYER TO BE SUBJECT TO THE PROVISIONS OF OHIO REVISED CODE CHAPTER 718**

This section applies to any taxpayer, not an individual, engaged in a business or profession in the Municipality and electing to be subject to Sections 718.80 through 718.95 of the Ohio Revised Code, applicable for tax years beginning on or after January 1, 2018, pursuant to the language enacted by the Ohio Legislature during the 132<sup>nd</sup> General Assembly in the form of Am. Sub House Bill 49, which required municipal corporations to conform to and adopt the provisions of Ohio Revised Code Chapter 718 in order to retain the authority to impose, enforce, administer and collect a municipal income tax.

(A) A taxpayer may elect to be subject to sections 718.80 to 718.95 of the Revised Code in lieu of the provisions set forth in the remainder of Ohio Revised Code Chapter 718. Notwithstanding any other provision of Chapter 718, upon the taxpayer's election, both of the following shall apply:

(1) The tax commissioner shall serve as the sole administrator of the municipal income tax for which the taxpayer is liable for the term of the election;

(2) The commissioner shall administer the tax pursuant to sections 718.80 to 718.95 of the Revised Code and any applicable provision of Chapter 5703. of the Revised Code.

(B)

(1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the

taxpayer's taxable year by notifying the tax commissioner and each municipal corporation in which the taxpayer conducted business during the previous taxable year, on a form prescribed by the tax commissioner.

(2)

(a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the tax commissioner and each municipal corporation in which the taxpayer conducted business during the previous taxable year of its termination of the election.

(b) A notification of termination shall be made, on a form prescribed by the tax commissioner, on or before the first day of the third month of any taxable year.

(c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to sections 718.80 to 718.95 of the Revised Code, and is instead subject to the provisions set forth in the remainder of this chapter.

(C)

(1)

(a) On or before the thirty-first day of January each year, the municipal corporation shall certify to the tax commissioner the rate of the tax in effect on the first day of January of that year.

(b) If, after the thirty-first day of January of any year, the electors of the municipal corporation approve an increase in the rate of the municipal corporation's tax on income that takes effect within that year, the municipal corporation shall certify to the tax commissioner the new rate of tax not less than sixty days before the effective date of the increase, after which effective date the commissioner shall apply the increased rate.

(2) The municipal corporation, within ninety days of receiving a taxpayer's notification of election under division (B) of this section, shall submit to the tax commissioner, on a form prescribed by the tax commissioner, the following information regarding the taxpayer:

(a) The amount of any net operating loss that the taxpayer is entitled to carry forward to a future tax year;

(b) The amount of any net operating loss carryforward utilized by the taxpayer in prior years;

(c) Any credits granted by the municipal corporation to which the taxpayer is entitled, the amount of such credits, whether the credits may be carried forward to future tax years, and, if the credits may be carried forward, the duration of any such carryforward;

(d) Any overpayments of tax that the taxpayer has elected to carry forward to a subsequent tax year;

(e) Any other information the municipal corporation deems relevant in order to effectuate the tax commissioner's efficient administration of the tax on the municipal corporation's behalf.

(3) If the municipal corporation fails to timely comply with divisions (C)(1) and (2) of this section, the tax commissioner shall notify the director of budget and management, who, upon receiving such notification, shall withhold from each payment made to the municipal corporation under section 718.83 of the Revised Code fifty per cent of the amount of the payment otherwise due to the municipal corporation under that section. The director shall compute the withholding on the basis of the tax rate most recently certified to the tax commissioner until the municipal corporation complies with divisions (C)(1) and (2) of this section.

(D) The tax commissioner shall enforce and administer sections 718.80 to 718.95 of the Revised Code. In addition to any other powers conferred upon the tax commissioner by law, the tax commissioner may:

(1) Prescribe all forms necessary to administer those sections;

(2) Adopt such rules as the tax commissioner finds necessary to carry out those sections;

(3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the tax commissioner by those sections.

(E) No tax administrator shall utilize sections 718.81 to 718.95 of the Revised Code in the administrator's administration of a municipal income tax, and those sections shall not be applied to any taxpayer that has not made the election under this section.

(F) Nothing in this chapter shall be construed to make any section of Chapter 718, other than sections 718.01 and 718.80 to 718.95 of the Revised Code, applicable to the tax commissioner's administration of a municipal income tax or to any taxpayer that has made the election under this section.

(G) The tax commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code.

**SECTION 2.** That Section 362.093 of the Columbus City Codes is hereby amended as follows:

**362.093 USE OF OHIO BUSINESS GATEWAY; TYPES OF FILINGS AUTHORIZED**

(A) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(B) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(C) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.

(D) The use of the Ohio Business Gateway by municipal corporations, taxpayers, or other persons does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. The State of Ohio shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law Ohio Revised Code sections 718.81 through 718.95.

(E) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

**SECTION 3.** That existing Section 362.093 of the Columbus City Codes is hereby repealed.

**SECTION 4.** That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.