



## Legislation Details (With Text)

**File #:** 3234-2019      **Version:** 1

**Type:** Ordinance      **Status:** Passed

**File created:** 12/4/2019      **In control:** Rules & Reference Committee

**On agenda:** 12/16/2019      **Final action:** 12/18/2019

**Title:** To amend Columbus City Code Sections 362.014, 362.03, and 362.067 to implement modifications mandated by the Ohio General Assembly relating to the exemption of retirement plan payments from municipal income tax and to the administration and collection of municipal net profit tax income by the Ohio Department of Taxation if so elected by the taxpayer; and to declare an emergency.

**Sponsors:** Elizabeth Brown

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment to Ordinance to Amend Chapter 362 FINAL.pdf

Date	Ver.	Action By	Action	Result
12/18/2019	1	CITY CLERK	Attest	
12/17/2019	1	MAYOR	Signed	
12/16/2019	1	COUNCIL PRESIDENT	Signed	
12/16/2019	1	Columbus City Council	Approved	Pass

This ordinance amends Sections 362.014, 362.03, and 362.067 of the Columbus City Codes to bring the Code into conformity with Ohio Revised Code Chapter 718, Municipal Income Tax.

This ordinance also amends Section 362.081 of the Columbus City Codes to further clarify the circumstances under which a resident individual taxpayer may seek a nonrefundable credit for municipal income taxes already paid on the resident's distributive or proportionate share of the income of a pass-through entity.

### Sections 362.014, 362.03, and 362.017

R.C. Section 718.04(A) provides that a municipal corporation that levies an income tax may not enact code provisions that conflict with R.C. Chapter 718.

The 133<sup>rd</sup> Ohio General Assembly enacted House Bill (H.B.) 166, the State's general appropriations bill for the biennium, which modified R.C. Chapter 718 in two ways that necessitate modifications to the Columbus City Codes. First, H.B. 166 amended R.C. Section 718.01 by defining the terms "pension" and "retirement benefit plan." Under the Ohio Revised Code, pensions and retirement benefit payments are "exempt income" not subject to municipal income taxation. R.C. § 718.01(C)(3). By defining "pension" to include retirement benefit plans that do not qualify for federal income tax deferment or exemption from FICA or Medicare taxes, H.B. 166, in effect, prevents municipalities from treating nonqualified deferred compensation plans, including selective executive retirement plans, as taxable income. Because both terms were previously undefined in the Ohio Revised Code, the City of Columbus adopted code provisions in 2014 that treat such nonqualified deferred compensation plans as taxable income. Therefore, the Code must be amended to bring it into conformity with R.C. Chapter 718, as amended by H.B. 166.

Second, H.B. 166 amended certain provisions of R.C. Sections 718.80 to 718.95, which permit non-individual taxpayers doing business in Columbus to elect to be subject to state administration and collection of municipal net profits income tax. H.B. 166 amended these provisions by setting forth the procedures by which a non-individual municipal taxpayer

may terminate or opt out of the state administration and collection system.

This ordinance modifies Columbus City Code Section 362.03 effective January 1, 2020 to adopt the new definitions of “pension” and “retirement benefit plan” required by H.B. 166. This ordinance also modifies Section 362.014 to make clear that the new definitions of “pension” and “retirement benefit plan” apply only to taxable years beginning on or after January 1, 2020. Finally, this ordinance modifies Section 362.07 to incorporate the updated language from H.B. 166 regarding the procedures by which a non-individual municipal taxpayer may opt out of state administration and collection of municipal income taxes pursuant to the procedures set forth in R.C. 718.80 to 718.95.

It should be noted that the City is a party to ongoing litigation seeking a declaration that H.B. 49, enacted by the 132<sup>nd</sup> Ohio General Assembly, which created the procedures set forth in R.C. Sections 718.80 to 718.95 for the state administration and collection of municipal income taxes, is unconstitutional and usurps the powers of local self-government. This ordinance does not concede the legality of unconstitutional state actions.

### **Section 362.081**

Section 362.081(A) of the Columbus City Codes sets forth the circumstances under which a resident individual taxpayer may receive credits.

Section 362.081(A)(2) provides that a resident individual is allowed a non-refundable credit for municipal income taxes paid by a pass-through entity on the resident individual’s distributive or proportionate share of the pass-through entity income. The Division of Income Tax wishes to amend Section 362.081(A)(2) to make clear that such non-refundable credit is allowed regardless of whether the pass-through entity paid municipal income taxes to another municipal corporation or to the City of Columbus.

**FISCAL IMPACT:** This code change will have a significant financial impact upon the City of Columbus because the exemption of certain retirement plan payments from municipal income tax will diminish Columbus’ income tax revenue. Although it is not possible to quantify this amount with certainty, past collections indicate income from nonqualified deferred compensation plans generated over \$1 million in income tax revenue over the last three tax years.

**EMERGENCY ACTION:** Emergency Action is being requested in order to amend the Columbus City Code Chapter 362 to make it consistent with R.C. Chapter 718. Because the updated language of H.B. 166 applies to municipal tax years beginning on or after January 1, 2020, the City must ensure that it updates conflicting provisions in the Columbus City Codes before that time.

To amend Columbus City Code Sections 362.014, 362.03, and 362.067 to implement modifications mandated by the Ohio General Assembly relating to the exemption of retirement plan payments from municipal income tax and to the administration and collection of municipal net profit tax income by the Ohio Department of Taxation if so elected by the taxpayer; and to declare an emergency.

**WHEREAS,** Section 101.01 of House Bill (H.B.) 166 of the 133<sup>rd</sup> General Assembly, the State's general appropriations bill for the biennium, included amendments to Ohio Revised Code Sections 718.01, definitions applicable to municipal income tax, and 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 they relate to the administration and collection of the Columbus net profits income tax; and

**WHEREAS,** Section 101.01 of H.B. 166 references and relies upon Section 718.04(A) of the Ohio Revised Code, which was enacted by the 132<sup>nd</sup> Ohio General Assembly in H.B. 49 and 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 the municipal income tax provisions of H.B. 49, 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**, the City, in accordance with Section 718.04 of the Ohio Revised Code, wishes to clarify that a resident taxpayer may seek a nonrefundable credit for municipal income taxes already paid on resident's income from an ownership interest in a pass-through entity, regardless of whether the municipal income taxes already paid were paid to the City of Columbus or to another municipal corporation; and

**WHEREAS**, an emergency exists in the usual daily operation of the City Auditor's Office, 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 prior to January 1, 2020; now, therefore,

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

**SECTION 1.** That Section 362.014 of the Columbus City Codes is hereby amended to read as set forth in the attachment hereto, which is incorporated herein by reference.

**SECTION 2.** That Section 362.03 of the Columbus City Codes is hereby amended to read as set forth in the attachment hereto, which is incorporated herein by reference.

**SECTION 3.** That Section 362.067 of the Columbus City Codes is hereby amended to read as set forth in the attachment hereto, which is incorporated herein by reference.

**SECTION 3.** That Section 362.081 of the Columbus City Codes is hereby amended to read as set forth in the attachment hereto, which is incorporated herein by reference.

**SECTION 4.** That prior existing Sections 362.014, 362.03, 362.067, and 362.081 are hereby repealed.

**SECTION 5.** That for reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is declared to be 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.