

VILLAGE OF COVINGTON, OHIO

ORDINANCE NO. 18-23

**AN ORDINANCE REPEALING AND REPLACING SECTIONS 100.062, 100.094, 100.96, AND 100.10 OF THE INCOME TAX CODE ADOPTED BY ORDINANCE 16-15 AND AMENDED PREVIOUSLY BY ORDINANCE 03-18, ORDINANCE 22-18 AND ORDINANCE 23-18 TO COMPLY WITH H.B. 33.**

**WHEREAS**, the present income tax ordinance will fail to meet statutory requirements set forth by the state legislature beginning January 1, 2024;

**WHEREAS**, it is necessary to revise certain sections of the income tax code for the Village in accordance with Chapter 718 of the Ohio Revised Code;

**WHEREAS**, it is necessary to adopt said ordinance in order to maintain the ability to collect income taxes for the Village; and

**NOW THEREFORE, BE IT ORDAINED** by the Council of the Village of Covington, State of Ohio, as follows:

**SECTION 1:** The income tax sections attached hereto will be repealed and replaced as necessary to meet statutory requirements of H.B. 33; and

**SECTION 2:** The changes to Ordinance 16-15 shall be as follows:

**NET PROFIT ALLOCATION**

The current Section 100.062 of Ordinance 16-15 shall be repealed in its entirety and shall be replaced as follows:

**100.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT**

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

- (A) Except as otherwise provided in division (B) and (I) of this section, net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:
- (1) The average original cost of the real property and tangible

personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

- (2.) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 100.052 of this Chapter;
  - (3.) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (B.)
- (1.) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Administrator of the Municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
    - (a.) Separate accounting;
    - (b.) The exclusion of one or more of the factors;
    - (c.) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;
    - (d.) A modification of one or more of the factors.
  - (2.) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 100.19 of this Chapter.
  - (3.) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of Section 100.19 of this Chapter.
  - (4.) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator

or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(C.) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

- (1.) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
  - (a.) The employer;
  - (b.) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
  - (c.) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.
- (2.) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
- (3.) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(D.) For the purposes of division (A)(3) of this section, and except as provided in division (I) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

- (1.) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:
  - (a.) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
  - (b.) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
  - (c.) The property is shipped from a place within the municipal corporation to purchasers outside the municipal

corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

- (2.) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.
  - (3.) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.
  - (4.) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.
  - (5.) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (E.) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.
- A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.
- (F.)
- (1.) Except as provided in division (F)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
  - (2.) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 100.081 of this Chapter.
- (G.) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (11)(L) and (34)(A)(iv) of

Section 100.03 of this Chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation. This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

(H.) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(I.) As used in this division:

(1.) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

(a.) The taxpayer has assigned the individual to a qualifying reporting location.

(b.) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

(2.) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(3.) "Reporting location" means either of the following:

(a.) A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

(b.) Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section 100.05 of this Chapter, on qualifying wages paid to an employee for the performance of personal services at that location.

(4.) "Qualifying reporting location" means one of the following:

(a.) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular

- or periodic basis during the taxable year;
- (b.) If no reporting location exists in this state for an employee or owner under division (I)(4)(a) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;
  - (c.) If no reporting location exists in this state for an employee or owner under division (I)(4)(a) or (b) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.
- (5.) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of Section 100.062 of this Chapter apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

- (6.) For the purpose of calculating the ratios described in division (A) of this section, all of the following apply to a taxpayer that has made the election described in division (I)(5):
  - (a.) For the purpose of division (A)(1) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
  - (b.) For the purpose of division (A)(2) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
  - (c.) For the purpose of division (A)(3) of this section, and notwithstanding division (D) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
- (7.) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (B) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.
- (8.) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 100.05 of this Chapter.

#### **EXTENSION OF TIME TO FILE**

The current Section 100.094 of Ordinance 16-15 shall be repealed in its entirety and shall be replaced as follows:

**100.094      EXTENSION OF TIME TO FILE**

- (A.) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of the municipal income tax return for a taxpayer that is not an individual shall be the fifteenth day of the eleventh month after the last day of the taxable year to which the return relates.
- (B.) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.
- (C.) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (D.) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (E.) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.
- (F.) A copy of the federal extension request shall be included with the filing of municipality's income tax return.
- (G.) If a taxpayer receives an extension for the filing of a municipal income tax return under division (A), (B), (C), (D), or (E) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.



If a tax administrator violates division (G) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (G) of this section does not apply to an extension received under division (A) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (A) of this section or failed to file for an extension under division (C) of this section.

- (H.) To the extent that any provision in division (G) of this section conflicts with any provision in 100.092, the provisions in 100.092 prevail.

**OPT-IN UPDATES - ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95**

The current Section 100.96 of Ordinance 16-15 shall be repealed in its entirety and shall be replaced as follows:

**100.96 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95**

- (A.) The Municipality hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the ORC for tax years beginning on or after January 1, 2018.
- (B.) A taxpayer, as defined in division (C) of this section, may elect to be subject to Sections 718.80 to 718.95 of the ORC in lieu of the provisions of this Chapter.
- (C.) "Taxpayer" has the same meaning as in section 718.01 of the ORC, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745 of the ORC. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

**PENALTY, INTEREST, FEES, AND CHARGES**

The current Section 100.10 (C)(4) of Ordinance 16-15 shall be repealed in its entirety and shall be replaced as follows:


**100.10 PENALTY, INTEREST, FEES, AND CHARGES**

(C) (4)(a) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the Municipality may impose a monthly penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars in assessed penalty for each failure to timely file a return.

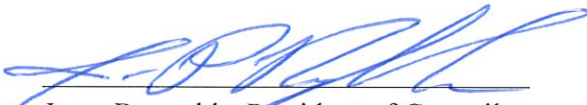
(4)(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the Municipality may impose a penalty not exceeding twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon, except that Municipality shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

**SECTION 3:** The effective date of these changes shall be effective January 1, 2024.

ADOPTED December 18, 2023



Edward L. McCord, Mayor

  
Jesse Reynolds, President of Council  
Rhonda Gill, Fiscal Officer