

**ORDINANCE O-2017-24**

**AN ORDINANCE TO AMEND CHAPTER 182 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF WINDHAM REGARDING MUNICIPAL INCOME TAX**

**WHEREAS**, the General Assembly enacted H. B. 5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is “levied in accordance with the provisions and limitations specified in Chapter 718”; and

**WHEREAS**, the Ohio Legislature has subsequently amended various sections of Chapter 718 of the Ohio Revised Code and to conform with these revisions portions the Village of Windham Income Tax Code need to revised and amended.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Village of Windham, Portage County, Ohio with two-thirds of the members thereto concurring that:

**Section 1.** That the revisions and amendments set forth in the attached Exhibit “A”, which is incorporated herein by reference, are hereby enacted.

**Section 2.** That this Ordinance shall take effect and be in force from and after January 1, 2018.

**Section 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council and any committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including §121.22 of the Revised Code of the State of Ohio.

PASSED IN COUNCIL on first reading November 28, 2017.

Vote of Council:      Ayes: 6  
                                 Nays: 0

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Mayor Deborah Blewitt

ATTEST:

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Fiscal Officer Cheree Taylor

Approved as to Form:

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Village Solicitor Thomas Reitz

## EXHIBIT A

### 182.03 DEFINITIONS

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 57 of the Ohio Revised Code, unless a different meaning is clearly required. [Except as provided in section 718.81 of the Ohio Revised Code,](#) 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 57 of the Ohio 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 57 of the Ohio Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

\* \* \*

- ~~(H) (i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) 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.~~
- ~~(ii) No person shall use the deduction allowed by division (1)(H) of this section to offset qualifying wages.~~
- ~~(iii) (a) 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 (1)(H)(i) of this section.~~
- ~~(b) 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 (1)(H)(i) of this section.~~
- ~~(iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.~~
- ~~(v) Nothing in division (1)(H)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(H)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(H)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(H)(iii)(a) of this section shall apply to the amount carried forward.~~

182.03 (H) Deduct, exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

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- (21) (A) **"MUNICIPAL TAXABLE INCOME"** means the following:
- (i) 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 sitused to the Municipality under Section 182.062 of this Chapter, and further as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

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- (24) ~~(A) "NET PROFIT" for a person other than an individual means adjusted federal taxable income.~~

~~(B)(A)-~~ **"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 ~~(243)~~(A) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)(H) of this section.

(B) "NET PROFIT" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division ~~(24)(C)~~ of this section.

(C) (i) The amount of such net operating loss shall be deducted from net profit 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.

(ii) No person shall use the deduction allowed by division ~~(24)(C)~~ of this section to offset qualifying wages.

(iii)(a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposed 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 ~~(24)(C)~~ of this section.

(b) 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 2, 2016, the full amount allowed by division ~~(24)(C)~~ of this section without regard to the limitation of division ~~(AD)~~(3)(B)(i) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (D)(3) of this section.

(v) Nothing in division (C)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018,

any amount of net operating loss that was not fully utilized by operation of division (C)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(iii)(a) of this section shall apply to the amount carried forward.

(D) For the purposes of this chapter, and notwithstanding division (23)(A) 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.

(DE) (i) For purposes of this chapter, “publicly traded partnership” means any partnership, an interest in which is regularly traded on an established securities market. A “publicly traded partnership” may have any number of partners.

(ii) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(E) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

(iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (D)(5) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

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(45) **"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:

(A) A municipal corporation acting as the agent of another municipal corporation;

(B) 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;

(C) The Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Regional Income Tax Agency.

(D) "Tax administrator" does not include the tax commissioner.

(E) "Tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code.

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## 182.062 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) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in the municipal corporation for purposes of municipal income taxation in the same proportion as the average ration of the following:~~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:~~

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(D) For the purposes of division (A)(3) 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 only if, regardless of where title passes, the property meets eitherany 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.~~

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## 182.063 CONSOLIDATED FEDERAL INCOME TAX RETURN

(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.

(a) 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.

(b) 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

(c) 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.

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(4) When a taxpayer makes the election allowed under section 718.80 of the Revised Code, a valid election made by the taxpayer under division (B)(1) or (2) of this section is binding upon the tax commissioner for the remainder of the five-year period.

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(5) When an election made under section 718.80 of the Revised Code is terminated, a valid election made under section 718.86 of the Revised Code is binding upon the tax administrator for the remainder of the five-year period.

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## **182.07 DECLARATION OF ESTIMATED TAX**

(A) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Except as provided in division (F) of this section, Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars. For the purposes of this section:

(a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.

(b) An overpayment of tax applied as a credit to a subsequent taxable year is

deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(c) A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(d) Taxes withheld by a casino operator or by a lottery sales agent under section 718.031 of the Ohio Revised Code are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(2) Except as provided in division (F) of this section, taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the tax administrator. Except as provided in division (F) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the tax administrator. ~~Taxpayers filing joint returns shall file joint declarations of estimated taxes.~~

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 182.091 of this Chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the tax liability for the taxable year;

(d) For an individual, on or before the fifteenth day of this first month of the following taxable year, ninety percent of the tax liability for the taxable year. For a person other than an individual, on ~~or~~ or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the tax liability for the taxable year.

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