



LEGISLATIVE COVER MEMO

Introduction:	November 6, 2023
Public Hearing:	November 20, 2023
Effective Date:	December 20, 2023
Agenda Item:	Ordinance 2023-25 AMENDING SECTIONS 753.03, 753.06, 753.09, 753.10 and 753.21 OF THE CITY OF FRANKLIN MUNICIPAL INCOME TAX CODE
Submitted by:	Jenna Trice, Finance Director
Scope/Description:	<p>This Ordinance amends several sections of the City's Municipal Income Tax code, which is Chapter 753 of the codified ordinances. The Ohio General Assembly enacted House Bill 33 in July of 2023. HB 33 revised the municipal income tax provisions of the Ohio Revised Code and all municipalities with an income tax are required to incorporate these changes into local tax codes. Though the amendments appear extensive, they are rather straightforward and can be summarized as follows:</p> <ul style="list-style-type: none">- Section 753.03 Definitions- exempt income is amended to exempt all income earned by individuals under 18 years of age- Section 753.06 Income Subject to Net Profit Tax- this amendment allows for businesses to have an alternative apportionment formula for net profit. Businesses can now elect to apportion net profits to employees' reporting location and not the location where employees are performing remote work. This change only applies to net profit filings and does not affect the employer's obligation to withhold in remote work locations. For example, if a company's headquarters is based in Franklin, and the company has employees working remotely all over the state, the business can elect to file one net profit return at the "reporting location" which would likely be its headquarters location in Franklin.- Section 753.09 Annual Return- these amendments: give an extra one month extension for businesses to file a municipal return if they have a federal extension; prohibit the City from sending notices to the taxpayer during an extension; and, require the City to reimburse the taxpayer for costs incurred if the City sends a prohibited notice.- Section 753.10 Penalty; Interest; Fees and Charges – this amendment limits the penalty amount the City can charge for failure to timely file a return to \$25; and the City shall refund the \$25 penalty for the first failure to timely file after the taxpayer files that return.- Section 753.21 Returns Filed Pursuant to RC 718.80-718.95 – this amendment removes a requirement that taxpayer businesses which file returns with the Ohio Business Gateway also file a copy of a tax return with the City.
Vote Required for Passage:	Per Section 4.12 of the City Charter, the passage, amendment, or rejection of this Ordinance requires the affirmative vote of not less than four members of the Council.
Exhibits:	Exhibit A: Sections 753.03, 753.06, 753.09, 753.10 and 753.21
Recommendation:	Approval

CITY OF FRANKLIN, OHIO
ORDINANCE 2023-25
**AMENDING SECTIONS 753.03, 753.06, 753.09, 753.10 and 753.21 OF THE CITY OF
FRANKLIN MUNICIPAL INCOME TAX CODE**

WHEREAS, the Ohio General Assembly enacted House Bill 33 which was signed into law by Governor DeWine on July 3, 2023; and,

WHEREAS, HB 33 contains several revisions to the municipal income tax code which must be adopted by all Ohio municipalities with an income tax by the end of 2023; and

WHEREAS, City Council intends to enact said revisions as more completely delineated herein,

WHEREAS, City Council finds it to be in the best interests of the health, safety and welfare of the City and its residents to amend Sections 753.03, 753.06, 753.09, 753.10 and 753.21 of the municipal income tax code in accordance with Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FRANKLIN, WARREN COUNTY, OHIO THAT:

Section 1. Council hereby amends Sections 753.03, 753.06, 753.09, 753.10 and 753.21 of the City's Codified Ordinances as set forth in Exhibit A.

Section 2. All ordinances or parts of ordinances that conflict with this Ordinance are hereby repealed.

Section 3. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action occurred in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

INTRODUCED: November 6, 2023

ADOPTED: November 20, 2023

ATTEST: _____ APPROVED: _____

Khristi Dunn, Clerk of Council

Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council do hereby certify that the foregoing is a true and correct copy of Ordinance 2023-25 passed by that body on November 20, 2023.

Khristi Dunn, Clerk of Council

Approved as to form: _____
Ben Yoder, Law Director

SECTION 1:**AMENDMENT** “753.03 Definitions” of the City of Franklin Municipal Code is hereby *amended* as follows:

AMENDMENT

753.03 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 LVII of the Ohio Revised Code, unless a different meaning is clearly required. Except as provided in section 753.21 of this 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 ORC Title LVII 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 ORC Title LVII.

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

Except as otherwise provided in section 753.21 of this Code, as used in this chapter:

"Adjusted Federal Taxable Income." For a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under definition "Net profit" division (e) of the definition "Net Profit", adjusted Federal taxable income 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:

- (a) 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.
- (b) Add an amount equal to five percent (5%) of intangible income deducted under definition "Adjusted Federal Taxable Income" division (a) 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.
- (c) 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.
- (d) (1) Except as provided in definition "Adjusted Federal Taxable Income" division (d)(2) 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;
- (2) Definition "Adjusted Federal Taxable Income" division (d)(1) 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.

- (e) Add taxes on or measured by net income allowed as a deduction in the computation of Federal taxable income.
- (f) 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.
- (g) 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 ORC 4313.02.
- (h) For tax years beginning on and after January 1, 2018, deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

For tax years beginning before January 1, 2018, the following shall apply:

- (1) Except as limited by divisions (h)2, 3 and 4 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 (5) 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.
- (2) No person shall use the deduction allowed by division (h) of this section to offset qualifying wages.
- (3) (A) For taxable years beginning in 2018, 2019, 2020, 2021 or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (h)(1) of this section.
(B) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (h)(1) of this section.
- (4) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (h) of this section.
- (5) Nothing in division (h)(3)(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 (h)(3)(A) of this section. To the extent that an amount of net operating loss that was not fully utilized in one (1) or more taxable years by operation of division (h)(3)(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 (h)(3)(A) of this section shall apply to the amount carried forward.
- (i) 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 Section 753.06(c)(5)C.(ii) of this chapter.

- (j) 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 Section 753.06(c)(5)C.(ii) of this chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in definition "Taxpayer" division (b) of this section, is not a publicly traded partnership that has made the election described in definition "Net Profit" division (e) of this section, 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 definition "Adjusted Federal Taxable Income" 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.

"Assessment."

- (a) "Assessment" means any of the following:
- (1) A written finding by the Tax Administrator that a person has underpaid City income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the City;
 - (2) A full or partial denial of a refund request issued under Section 753.09(f)(2)B. of this chapter;
 - (3) A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method issued under Section 753.06(b)(2)B. of this chapter; or
 - (4) A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method issued under Section 753.06(b)(2)C. of this chapter.
 - (5) For purposes of division (a)1, 2, 3 and 4 of this section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section 753.18 of this chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.
- (b) "Assessment" does not include notice(s) denying a request for refund issued under

Section 753.09(f)(2)C. of this chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the City, 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 not meet the criteria prescribed by division (a) of this section.

"Audit." The examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for City income tax.

"Board of Review." Has same meaning as "Local Board of Tax Review."

"Calendar Quarter." The three- (3) month period ending on the last day of March, June, September or December.

"Casino Operator" and "Casino Facility." Have the same meanings as in ORC 3772.01.

"Certified Mail," "Express Mail," "United States Mail," and/or "Postal Service" (and similar terms). Include any delivery service authorized pursuant to ORC 5703.056.

"Compensation." Any form of remuneration paid to an employee for personal services.

"Disregarded Entity." 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.

"Domicile." The true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

"Exempt Income." Exempt income includes all of the following:

- (a) 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.
- (b) Intangible income.
- (c) 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) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.
- (d) 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.
- (e) Compensation paid under ORC 3501.28 or 3501.36 to a person serving as a precinct

election official to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000.00) for the taxable year may be subject to taxation by the City. The City shall not require the payer of such compensation to withhold any tax from that compensation.

- (f) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.
- (g) Alimony and child support received.
- (h) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages.
- (i) Income of a public utility when that public utility is subject to the tax levied under ORC 5727.24 or 5727.30. Definition "Disregarded Entity" of this section does not apply for purposes of ORC Chapter 5745.
- (j) 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.
- (k) Compensation or allowances excluded from Federal gross income under section 107 of the Internal Revenue Code.
- (l) Employee compensation that is not qualifying wages as defined in definition "Qualifying Wages" of this section.
- (m) 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.
- (n) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of 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.
- (o) A portion of the municipal taxable income earned by individuals or a class of individuals under eighteen (18) years of age, specifically exempting income earned by an individual under eighteen (18) years of age that is equal to or below the Federal standard tax deduction for a single individual for the taxable year in which the taxable income was earned. For tax years 2024 and after, all income of individuals under 18 years of age.
- (p)
 - (1) Except as provided in divisions (k)(16)B., C. and D. of this section, qualifying wages described in Section 753.05(b)(2)A. or (b)(5) of this chapter to the extent the qualifying wages are not subject to withholding for the City under either of those divisions.
 - (2) The exemption provided in division (k)(16)A. of this section does not apply with respect to an employee who resided in the City at the time the employee earned the qualifying wages.

- (3) The exemption provided in division (k)(16)A. of this section does not apply to qualifying wages that an employer elects to withhold under Section 753.05(b)(4)B. of this chapter.
- (4) The exemption provided in division (k)(16)A. of this section does not apply to qualifying wages if both of the following conditions apply:
 - (A) For qualifying wages described in Section 753.05(b)(2)A. of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the City and the employee's principal place of work is situated in the City, or, for qualifying wages described in Section 753.05(b)(5) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the City and the employer's fixed location is located in the City;
 - (B) The employee receives a refund of the tax described in division (k)(16)D.(i) of this section on the basis of the employee not performing services in the City.
- (q)
 - (1) Except as provided in division (q)(2) or (3) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City on not more than twenty (20) days in a taxable year.
 - (2) The exemption provided in division (q)(1) of this section does not apply under either of the following circumstances:
 - (A) The individual's base of operation is located in the City; or
 - (B) 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 (q)(2)(B) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 753.05(b) of this chapter.
 - (3) Compensation to which division (q) 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.
 - (4) For purposes of division (q) 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.
- (r) 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 the City pursuant to ORC 709.023 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.
- (s) In the case of a tax administered, collected, and enforced by the City pursuant to an

agreement with the board of directors of a joint economic development district under ORC 715.72, the net profits of a business, and the income of the employees of that business, exempted from the tax under ORC 715.72(Q).

- (t) 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 definition "Exempt Income" 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.

"Form 2106." Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

"Generic Form." An electronic or paper form that is not prescribed by the City 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, including a request for refund.

"Income."

- (a) "Income" means the following:

- (1) 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, except as provided in definition "Net Profit" division (d) of this section.
- (2) For the purposes of division (a)(1) of this section:
- (A) 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 (5) 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 (a)(4) of this section;
- (B) 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.
- (3) Division (a)(2) 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 definition "Exempt Income" division (n) of this section.

- (4) 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.
- (b) 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 City, 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.
- (c) For taxpayers that are not individuals, net profit of the taxpayer.
- (d) 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. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 753.08(a) of this chapter.

"Intangible Income." 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 ORC Chapter 5701, and patents, copyrights, trademarks, trade names, 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.

"Internal Revenue Code." The "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C. 1, as amended.

"Limited Liability Company." A limited liability company formed under ORC Chapter 1705 or under the laws of another state.

"Local Board of Tax Review." The entity created under Section 753.18 of this chapter (also "Board of Tax Review" or "Board of Review").

"Municipal Corporation."

- (a) In general terms, a status conferred upon a local government unit, by State law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under ORC 715.691, 715.70, 715.71, or 715.74.

- (b) For the purposes of this chapter "municipal corporation" includes the City of Franklin, Ohio, and "Municipality" or "City" means the City of Franklin, Ohio.

"Municipal Taxable Income."

- (a) Means the following:

- (1) For a person other than an individual, income, apportioned or sitused to the City under Section 753.06(b) of this Chapter, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the City.
- (2) (A) For an individual who is a resident of the City, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.
(B) For an individual who is a nonresident of the City, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the City under Section 753.06(b) of this chapter, then reduced as provided in division (b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

- (b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (a)(2)(A) or (B) 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.

- (1) If the taxpayer is a resident of the City, the taxpayer may deduct all such expenses allowed for Federal income tax purposes.
- (2) If the taxpayer is not a resident of the City, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in the City.

"Municipality." The City of Franklin, Ohio.

"Net Operating Loss." 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.

"Net Profit."

- (a) For a person who is an individual, "net profit" means the individual's net profit required to be reported on IRS schedule C, schedule E or schedule F reduced by any net operating loss carried forward. For the purposes of division (a) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (c) 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 (c) of this section.

- (c)
 - (1) 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 (5) 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.
 - (2) No person shall use the deduction allowed by division (c) of this section to offset qualifying wages.
 - (3)
 - (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 the City, more than fifty percent (50%) of the amount of the deduction other allowed by division (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 the City, the full amount allowed by division (c) of this section without regard to the limitation of division (c)(3)(A) of this section.
 - (4) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (c) of this section.
 - (5) Nothing in division (c)(3)(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)(3)(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)(3)(A) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, 2022, the limitation described in division (c)(3)(A) of this section shall apply to the amount carried forward.
- (d) For the purposes of this chapter, and notwithstanding division (c) 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)
 - (1) 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.
 - (2) 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 (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.
 - (3) 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 (1) or more municipal corporations in this State may elect to be treated as a C corporation for City income tax purposes. The publicly traded partnership

shall make the election in the City if the partnership is subject to taxation on its net profits by the City. The election shall be made on the annual tax return filed with the City. Once the election is made, the election is binding for a five- (5) year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five- (5) year period unless the taxpayer elects to discontinue filing City income tax returns as a C corporation for municipal purposes under division (e)(4) of this section.

- (4) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five- (5) year election period in effect under division (e)(3) of this section. The election to discontinue filing as a C corporation is binding for a five- (5) year period beginning with the first taxable year of the election and continues to be binding for each subsequent five- (5) year period unless the taxpayer elects to discontinue filing City income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five- (5) year election period.
- (5) The publicly traded partnership shall not be required to file the election with the City if the partnership is not subject to taxation on its net profits by the City, but division (e) of this section applies to the City if an individual owner of the partnership resides within the City.
- (6) The individual owners of the partnership not filing as a C Corporation, if residents of the City, shall be required to file with the City and report partnership distribution of net profit.

"Nonresident." An individual that is not a resident of the City.

"Ohio Business Gateway." The online, computer-network system created under ORC 125.30 that allows persons to electronically file business reply forms with State agencies and includes any successor electronic filing and payment system.

"Other Payer." 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.

"Pass-Through Entity." 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.

"Pension." Any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

"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.

"Postal Service." The United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

"Postmark Date" or "Date of Postmark" (and similar terms). Include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course if its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.

"Pre-2017 Net Operating Loss Carryforward."

- (a) 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 City that was adopted by the City before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such City in future taxable years.
- (b) 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.

"Qualifying Wages." Wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

- (a) Deduct the following amounts:
 - (1) 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.
 - (2) 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.
 - (3) Any amount included in wages that is exempt income.
- (b) Add the following amounts:
 - (1) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
 - (2) 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. Division (hh)(2)B. of this section applies only to those amounts constituting ordinary income.
 - (3) 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 (b)(3) of this section applies only to employee contributions and employee deferrals.

- (4) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.
- (5) 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.
- (6) Any amount not included in wages if all of the following apply:
 - (A) For the taxable year, the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for Federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;
 - (B) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
 - (C) For no succeeding taxable year will the amount constitute wages; and
 - (D) For any taxable year the amount has not otherwise been added to wages pursuant to either division (b) of this section or ORC 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

"Related Entity." Any of the following:

- (a) 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 percent (50%) of the value of the taxpayer's outstanding stock;
- (b) 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 percent (50%) of the value of the taxpayer's outstanding stock;
- (c) 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 (d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock; and/or
- (d) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (a) to (c) of this section have been met.

"Related Member." 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 percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in section 1563(e) of the Internal Revenue Code.

"Resident." An individual who is domiciled in the City as determined under Section 753.04(b) of this chapter.

"S Corporation." 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.

"Schedule C." Internal Revenue Service Schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

"Schedule E." Internal Revenue Service Schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

"Schedule F." Internal Revenue Service Schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

"Single Member Limited Liability Company." A limited liability company that has one (1) direct member.

"Small Employer." Any employer that had total revenue of less than five hundred thousand dollars (\$500,000.00) 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; 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.

"Tax Administrator."

- (a) The individual charged with direct responsibility for administration and enforcement of the income tax levied by City in accordance with this chapter, and also includes the following:
 - (1) A municipal corporation acting as the agent of the City;
 - (2) A person retained by the City to administer the income tax levied by the City,

but only if the City does not compensate the person in whole or in part on a contingency basis;

- (3) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) 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.

- (b) "Tax Administrator" does not include Tax Commissioner. "Tax Commissioner" means the State Tax Commissioner appointed under section 121.03 of the Revised Code.

"Tax Return Preparer." Any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

"Taxable Year." The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

"Taxpayer."

- (a) A person subject to the tax levied on income by the City in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (b)(1) of this section, a disregarded entity.
- (b) (1) A single member limited liability company that is a disregarded entity for Federal tax purposes may be a separate taxpayer from its single member if it either filed as a separate taxpayer with the City or did not file for its taxable year ending in 2003, if all of the following conditions are met:
- (A) The limited liability company's single member is also a limited liability company;
 - (B) The limited liability company and its single member were formed and doing business in one (1) or more Ohio municipal corporations for at least five (5) years before January 1, 2004;
 - (C) 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 ORC 718.01(L), as that section existed on December 31, 2004;
 - (D) 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; and
 - (E) The City that was the primary place of business of the sole member of the limited liability company and the City consented to the election.
- (2) For purposes of division (b)(1)(E) of this section, the City 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 the City than in any other municipal corporation in Ohio, and that tax liability to the City for its taxable year ending in 2003 was at least four hundred thousand dollars (\$400,000.00).

"Taxpayers' Rights and Responsibilities." The rights provided to taxpayers in ORC 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 and 5717.03 and any corresponding ordinances of the City, and the responsibilities of taxpayers to file, report, withhold, remit and pay City income tax and otherwise comply with ORC Chapter 718 and resolutions, ordinances, and rules adopted by the City for the imposition and administration of the City income tax.

"Video Lottery Terminal." Has the same meaning as in ORC 3770.21.

"Video Lottery Terminal Sales Agent." A lottery sales agent licensed under ORC Chapter 3770 to conduct video lottery terminals on behalf of the State pursuant to the Ohio Revised Code.

(Ord. 2015-17. Passed 11-16-15; Ord. 2016-10. Passed 8-15-16.)

Statutory reference: Related definitions, see ORC 718.01

SECTION 2:**AMENDMENT** "753.06 Income Subject To Net Profit Tax" of the City of Franklin Municipal Code is hereby *amended* as follows:

AMENDMENT

753.06 Income Subject To Net Profit Tax

- (a) Determining Municipal Taxable Income for Taxpayers who are not Individuals. Municipal taxable income for a taxpayer who is not an individual is calculated as follows: Income reduced by exempt income to the extent otherwise included in income, multiplied by apportionment, further reduced by any pre-2017 net operating loss carryforward equals Municipal taxable income.

$$[(I - EI) \times APP] - NOL = \text{Municipal taxable income}$$

Where: I = Income;

APP = Apportionment;

EI = Exempt income;

NOL= Net operating loss carryforward.

- (1) "Income" for a taxpayer that is not an individual means the "net profit" of the taxpayer.
 - (A) "Net profit" for a person other than an individual is defined in Section 753.03(w) of this chapter.
 - (B) "Adjusted Federal taxable income" is defined in Section 753.03(a) of this chapter.
- (2) "Exempt income" is defined in Section 753.03(k) of this chapter.
- (3) "Apportionment" means the apportionment as determined by Section

753.03(b) of this chapter.

(4) "Pre-2017 net operating loss carryforward" is defined in Section 753.03(ff) of this chapter.

(b) Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment. This section applies to any taxpayer engaged in a business or profession in the City, unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under ORC Chapter 5745.

(1) Except as otherwise provided within this section, Net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of City income taxation in the same proportion as the average ratio of the following:

(A) 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 City 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 this division (b)(1)A., 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 (8);

(B) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City 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 753.05(b) of this chapter;

(C) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) (A) If the apportionment factors described in division (b)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the taxpayer may request, or the Tax Administrator 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 (1) or more of the following:

(i) Separate accounting;

(ii) The exclusion of one (1) or more of the factors;

(iii) The inclusion of one (1) or more additional factors that would provide for a fairer apportionment of the income of the taxpayer to the City;

(iv) A modification of one (1) or more of the factors.

- (B) A taxpayer's 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 Section 753.19(a) of this chapter.
 - (C) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (b)(2) of this section only by issuing an assessment to the taxpayer within the period prescribed by Section 753.19(a) of this chapter.
 - (D) Nothing in division (b)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (3) As used in division (b)(1)B. 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:
- (A) A location that is owned, controlled, or used by, rented to, or under the possession of one (1) of the following:
 - (i) The employer;
 - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (iii) A vendor, customer, client, or patient of a person described in division (b)(3)A.(ii) of this section, or a related member of such a vendor, customer, client, or patient.
 - (B) 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;
 - (C) 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 (b)(3)A. or (b)(3)B. of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the 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.
- (4) For tax years beginning on and after January 1, 2018, for the purposes of division (b)(1)C. of this section, and except as provided in division (c) of this section. receipts from sales and rentals made and services performed shall be situated to the City as follows:
- (A) Gross receipts from the sale of tangible personal property shall be

situated to the City only if, regardless of where title passes, the property meets either of the following criteria:

- (i) The property is shipped to or delivered within the City from a stock of goods located within the City; or
 - (ii) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
- (B) Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
- (C) To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
- (D) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.
- (E) Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.
- (5) For tax years beginning before January 1, 2018, for the purposes of (b)(1)C. of this section, receipts from sales and rentals made and services performed shall be situated to the City as follows:
- (A) Gross receipts from the sale of tangible personal property shall be situated to the City if the sale originated in the City. For the purposes of this division, a sale of property originates in the City if, regardless of where title passes, the property meets any of the following criteria:
 - (i) The property is shipped to or delivered within the City from a stock of goods located within the City;
 - (ii) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion; or
 - (iii) The property is shipped from a place within the City to purchasers outside the City, 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.
 - (B) Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
 - (C) To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
 - (D) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.

- (E) Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.
- (6) 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 if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit resides in the City. The City shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division.
- (7) (A) Except as provided in division (b)(7)B. 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 City if the real estate is located in the City. Net profit reported by the real estate agent or broker shall be allocated to the City based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (B) An individual who is a resident of the City shall report the individual's net profit from all real estate activity on the individual's annual tax return. 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 753.08(a) of this chapter.
- (8) 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 Section 753.03(k)(12) of this chapter and the taxpayer has apportioned a portion of its net profit to the City, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the City. In no case shall a taxpayer be required to add to its net profit that was apportioned to the City 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 the City under this section.
- (9) When calculating the ratios described in division (b)(1) of this section for the purposes of that division or division (b)(2) 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.
- (c) (1) As used in this division:
- (A) "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: (i) The taxpayer has assigned the individual to a qualifying reporting location. (ii) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location. (B) "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. (C) "Reporting location" means either of the following: (i) 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; (ii) 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 this Chapter, on qualifying wages paid to an employee for the performance of personal services at that location. (D) "Qualifying reporting location" means one of the following: (i) 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; (ii) If no reporting location exists in this state for an employee or owner under division (c)(1)(D)(i) 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; (iii) If no reporting location exists in this state for an employee or owner under division (c)(1)(D)(i) or (ii) 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.

- (2) 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 division (b) of this section 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.

- (3) For the purpose of calculating the ratios described in division (b)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (c)(2): (A) For the purpose of division (b)(1)(A) 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 (b)(1)(B) 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 (b)(1)(C) of this section, and notwithstanding division (b)(4) 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.
- (4) 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)(2) 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.
- (5) (5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to this Chapter

(d) Consolidated Federal Income Tax Return.

- (1) As used in this section:

- (A) "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 (1) 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.
 - (B) "Consolidated Federal income tax return" means a consolidated return filed for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
 - (C) "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 (c)(1)A. of this section.
 - (D) "Incumbent local exchange carrier" has the same meaning as in ORC 4927.01.
 - (E) "Local exchange telephone service" has the same meaning as in ORC 5727.01.
- (2) (A) 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 (1) member of the affiliated group of corporations is subject to the City's 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.
- (i) The election is binding for a five- (5) year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under Federal law.
 - (ii) The election continues to be binding for each subsequent five- (5) year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (c)(2)B. of this section; or
 - (iii) A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
- (B) 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- (5) year consolidated municipal income tax return election period in effect under division (c)(2)A. of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five- (5) year period beginning with the first taxable year of the election.

- (C) An election made under division (c)(2)A. or (c)(2)B. of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
 - (D) For tax years beginning on and after January 1, 2018, when a taxpayer makes the election allowed under section 718.80 of the Revised Code, a valid election made by the taxpayer under division (c)(2)A. or (c)(2)B. of this section is binding upon the Tax Commissioner for the remainder of the five-year (5) period.
 - (E) For tax years beginning on and after January 1, 2018, 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 (5) period.
- (3) 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 City. 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.
- (4) 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.
- (5) (A) Except as otherwise provided in divisions (c)(5)B., C. and D. of this section, corporations that file a consolidated municipal income tax return shall compute adjusted Federal taxable income, as defined in Section 753.03(a) of this chapter, 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.
- (B) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under Section 753.03(a) of this chapter 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.

- (C) If the net profit or loss of a pass-through entity having at least eighty percent (80%) 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 (1) of the following with respect to that pass-through entity's net profit or loss for that taxable year:
- (i) 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 753.06(b) of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City. 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.
 - (ii) 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 753.06(b) of this chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City. 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.
- (D) If the net profit or loss of a pass-through entity having less than eighty percent (80%) 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:
- (i) 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 753.06(b) of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City;
 - (ii) The pass-through entity shall be subject to City 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.

- (6) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 753.06(b) of this chapter 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.
 - (7) 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 the City 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 (1) or more members of such an affiliated group.
 - (8) Corporations and their affiliates that made an election or entered into an agreement with the City before January 1, 2016, to file a consolidated or combined tax return 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.
- (e) Tax Credit for Businesses that Foster New Jobs in Ohio. The City, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the City. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the City derives from new employees of the taxpayer and shall be for a term not exceeding fifteen (15) years. Before the City passes an ordinance granting a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.
- (f) Tax Credit to Foster Job Retention. The City, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the City. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the City derives from the retained employees of the taxpayer, and shall be for a term not exceeding fifteen (15) years. Before the City passes an ordinance allowing such a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Ord. 2015-17. Passed 11-16-15.)

Statutory reference: Consolidated municipal tax return, see ORC 718.06 Definitions, see ORC 718.01 Fostering job retention; tax credits, see ORC 718.151 Fostering new jobs; tax credits, see ORC 718.15 Income subject to tax, see ORC 718.02

SECTION 3: **AMENDMENT** “753.09 Annual Return” of the City of Franklin Municipal Code is hereby *amended* as follows:

AMENDMENT

753.09 Annual Return

(a) Return and Payment of Tax.

- (1) (A) An annual return with respect to the income tax levied on municipal taxable income by the City shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is subject to the tax, regardless of whether or not income tax is due.
- (B) The Tax Administrator shall accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the City under Section 753.05(a) (3) of this chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the City.
- (C) All resident individual taxpayers subject to the provisions of this chapter shall file an annual municipal income tax return with the City, regardless of income or liability.
- (2) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.
- (3) If an individual is unable to complete and file a return or notice required by the City in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations and contact information including name, address and phone number of the duly authorized agent, guardian, conservator, fiduciary or other person.
- (4) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations and contact information including name, address and phone number of the fiduciary.

- (5) The City shall not deny spouses the ability to file a joint return.
- (6) (A) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's Social Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
- (B) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's Federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator, unless the Tax Administrator requests such copies after the return has been filed.
- (C) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.
- (D) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway or a portal provided by the City. The Ohio Department of Taxation shall publish a method of electronically submitting the documents required under this division through the Ohio Business Gateway on or before January 1, 2016. The Department shall transmit all documents submitted electronically under this division to the appropriate Tax Administrator.
- (E) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements or documents required by the City to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (a)(6) of this section apply regardless of whether the taxpayer

- files on a generic form or on a form prescribed by the Tax Administrator.
- (F) Any other documentation including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return shall also be included to avoid delay in processing or disallowance by the Tax Administrator of undocumented credits or losses.
- (7) (A) (i) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of State of Ohio individual income tax returns under ORC 5747.08(G). The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City.
- (ii) Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15th) of the fourth (4th) month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City.
- (iii) In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is ten dollars (\$10.00) or less.
- (B) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.
- (C) With respect to taxpayers to whom Section 753.09(b) of this chapter applies, to the extent that any provision in this division conflicts with any provision in Section 753.09(b) of this chapter, the provision in Section 753.09(b) of this chapter prevails.
- (8) (A) For taxable years beginning on or after January 1, 2016, the City shall not require a taxpayer to remit tax with respect to net profits if the amount due is ten dollars (\$10.00) or less.
- (B) Any taxpayer not required to remit tax to the City for a taxable year pursuant to division (a)(8)A. of this section shall file with the City an annual net profit return under division (a)(6)C. and D. of this section.
- (9) (A) If any report, claim, statement, or other document required to be filed,

or any payment required to be made within a prescribed period, or on or before a prescribed date, under this chapter is delivered after that period to the Tax Administrator or other municipal official to whom the report, claim, statement or other document is required to be filed or to whom the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment. "The date of postmark" means, in the event there is more than one (1) date on the cover, the earliest date imprinted on the cover by the postal service.

- (B) If a payment under this chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.
- (10) The amounts withheld for the City by an employer, the agent of an employer or other payer as described in Section 753.05(a) of this chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient, unless the amounts withheld were not remitted to the City and the recipient colluded with the employer, agent or other payer in connection with the failure to remit the amounts withheld.
- (11) Each return required by the City to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box, the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.
- (12) The Tax Administrator shall accept for filing a generic form of any income tax return, report or document required by the City in accordance with this chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions or rules adopted by the City or established by the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter governing the filing of returns, reports, or documents.

- (13) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.
- (14) (A) As used in this division, "worksite location" has the same meaning as in Section 753.05(b) of this chapter.
- (B) A person may notify the Tax Administrator that the person does not expect to be a taxpayer with respect to the City for a taxable year if both of the following conditions apply:
- (i) The person was required to file a tax return with the City for the immediately preceding taxable year because the person performed services at a worksite location within the City and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The Tax Administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.
 - (ii) The person no longer provides services in the City and does not expect to be subject to the City's income tax for the taxable year.
- (C) The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the City. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the City, make any sales in the City, or otherwise become subject to the tax levied by the City during the taxable year. If the affiant does become subject to the tax levied by the City for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the City, if such a registration is required by the City's resolutions, ordinances, or rules." The person shall sign the affidavit under penalty of perjury.
- (D) If a person submits an affidavit described in division (a)(14)B. of this section, the Tax Administrator shall not require the person to file any tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made or other activity that results in municipal taxable income reportable to the City in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the Tax Administrator for the taxable year. Nothing in division (a)(14) of this section prohibits the Tax Administrator from performing an audit of the person.

(b) Return and Payment of Tax; Individuals Serving in Combat Zone.

- (1) Each member of the National Guard of any state and each member of a reserve component of the Armed Forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces, may apply to the Tax Administrator of the City for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City in accordance with this chapter during the period of the member's or civilian's duty service and for one hundred eighty (180) days thereafter. The application shall be filed on or before the one hundred eightieth (180th) day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.
- (2)
 - (A) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first (181st) day after the applicant's active duty or service terminates. Except as provided in division (b)(2)C. of this section, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.
 - (B) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the City before the one hundred eighty-first (181st) day after the applicant's active duty or service terminates.
 - (C) Taxes paid pursuant to a contract entered into under division (b)(2)A. of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (3)
 - (A) Nothing in this division denies to any person described in this division the application of divisions (b)(1) and (2) of this section.
 - (B)
 - (i) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the City in accordance with this chapter. The length of any extension granted under division (b)(3)B.(i) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this section, "qualifying taxpayer" means a member of the National Guard or a member of a reserve component of the Armed Forces of the United States called to active duty pursuant to either an

executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces.

- (ii) Taxes the payment of which is extended in accordance with division (b)(3)B.(i) of this section are not delinquent during the extension period. Such taxes become delinquent on the first (1st) day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (b)(3)B.(i) of this section in calculating the penalty or interest due on any unpaid tax.
- (4) For each taxable year to which division (b)(1), (2), or (3) of this section applies to a taxpayer, the provisions of divisions (b)(2)B. and C. or (b)(3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.
- (c) Use of Ohio Business Gateway; Types of Filings Authorized.
- (1) Any taxpayer subject to City income tax with respect to the taxpayer's net profit from a business or profession may file a 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.
 - (2) Any employer, agent of an employer or other payer may report the amount of City income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
 - (3) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.
 - (4) The use of the Ohio Business Gateway by the City, taxpayers or other persons does not affect the legal rights of the City 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.
 - (5) Nothing in this section shall be construed as limiting or removing the authority of the City to administer, audit, and enforce the provisions of this chapter.
- (d) Extension of Time to File.
- (1) Any taxpayer that has duly requested an automatic six- (6) month extension for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of a City income tax return. The extended due date of the City income tax return shall be the fifteenth (15th) day of the tenth (10th) 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 Franklin's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which

the return relates.

- (2) Any taxpayer that qualifies for an automatic Federal extension for a period other than six (6) months for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of a City 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.
- (3) A taxpayer that has not requested or received a six- (6) month extension for filing the taxpayer's Federal income tax return may request that the Tax Administrator grant the taxpayer a six- (6) month extension of the date for filing the taxpayer's City income tax return. If the request is received by the Tax Administrator on or before the date the City income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (4) 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 also grants an extension of that date.
- (5) If the State Tax Commissioner extends for all taxpayers the date for filing State income tax returns under ORC 5747.08(G), a taxpayer shall automatically receive an extension for the filing of a City income tax return. The extended due date of the City income tax return shall be the same as the extended due date of the State income tax return.
- (6) If a taxpayer receives an extension for the filing of a municipal income tax return under division (d)(1), (3), or (5) 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 (d)(6) 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 (d)(6) of this section does not apply to an extension received under division (d)(1) 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 (d)(1) of this section or failed to file for an extension under division (d)(3) of this section.

(e) Amended Returns.

- (1) (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 City income tax return to determine the tax due levied by the City in accordance with this chapter must be altered.
- (B) Within sixty (60) days after the final determination of any Federal or State tax liability affecting the taxpayer's City tax liability, the taxpayer shall make and file an amended City income tax return showing income subject to the City income tax based upon such final determination of Federal or State tax liability, and pay any additional City income tax shown due thereon or make a claim for refund of any

overpayment, unless the tax or overpayment is ten dollars (\$10.00) or less.

- (C) 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.

(2) *Underpayment.*

- (A) 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 (\$10.00) or less, such amount need not accompany the amended return. Except as provided under division (e) (2)B. 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 and provided that the applicable statute of limitations for civil actions or prosecutions under Section 753.19 of this chapter has not expired for a previously filed return.
- (B) 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.

(3) *Overpayment.*

- (A) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (e)(1)B. of this section 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 (\$10.00) or less, no refund need be paid by the City to the taxpayer. Except as set forth in division (e)(3)B. 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 income tax return that are affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return and provided it is also filed within the time prescribed in Section 753.09(f) of this chapter. Except as set forth in division (e)(3)B. 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.
- (B) 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.

(f) Refunds.

- (1) Upon receipt of a request for a refund, the Tax Administrator, in accordance with this section, shall refund to employers, agents of employers, other payers or taxpayers with respect to any income or withholding tax levied by the City:
 - (A) Overpayments of more than ten dollars (\$10.00);
 - (B) Amounts paid erroneously if the refund requested exceeds ten dollars (\$10.00).

- (2)
 - (A) Except as otherwise provided in this chapter, City income tax returns setting forth a request for refund shall be filed with the Tax Administrator within three (3) years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the filed return. Failure to remit all documentation, including schedules, other municipal income tax returns or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return, will cause delay in processing, and/or disallowance of undocumented credits or losses.
 - (B) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the Finance Division for payment. Except as provided in division (f)(2)C. of this section, the Tax Administrator shall issue an assessment, in accordance with Section 753.17 of this chapter, to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.
 - (C) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 753.18 of this chapter.

- (3) A request for a refund that is received after the last day for filing specified in division (f)(2) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:
 - (A) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request;
 - (B) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days (7) of such last day;
 - (C) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within

seven (7) days of the last day for making the request.

- (4) Interest shall be allowed and paid on any overpayment by a taxpayer of any City income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual City income tax return or ninety days (90) after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the City income tax return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 753.10(g)(4) of this chapter.
- (5) As used in this section, "withholding tax" has the same meaning as in Section 753.10 of this chapter.

(Ord. 2015-17. Passed 11-16-15; Ord. 2016-10. Passed 8-15-16.)

Statutory reference: Amended returns, see ORC 718.41 Annual return; filing; extensions, see ORC 718.05 Filing extension for certain armed forces service, see ORC 718.052 Limitations, see ORC 718.12 Requests for refunds, see ORC 718.19 Use of Ohio Business Gateway, see ORC 718.051

SECTION 4: AMENDMENT “753.10 Penalty; Interest; Fees And Charges”
of the City of Franklin Municipal Code is hereby *amended* as follows:

AMENDMENT

753.10 Penalty; Interest; Fees And Charges

(a) Application of Section.

- (1) This section shall apply to the following:
- (A) Any City income tax return required to be filed under this chapter for taxable years beginning on or after January 1, 2016;
 - (B) Income tax, estimated income tax and withholding tax required to be paid or remitted to the City on or after January 1, 2016, for taxable years beginning on or after January 1, 2016.
- (2) This section does not apply to City income tax returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to Chapter 751 of these Codified Ordinances.

- (b) Penalties and Interest. The City shall impose on a taxpayer, employer, any agent of the employer and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer or any other payer for any reason fails, in whole or in part, to make to the City timely and full payment or remittance of income tax, estimated income tax or withholding tax or to file timely with the City any return required to be filed.
- (1) Interest shall be imposed at the Interest Rate, as defined in division (g) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.
 - (2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent (15%) of the amount not timely paid shall be imposed.
 - (3) With respect to any unpaid withholding tax, a penalty not exceeding fifty percent (50%) of the amount not timely paid shall be imposed.
 - (4) (i) For tax years ending on or before December 31, 2022, ~~W~~with respect to returns other than estimated income tax returns, the City shall impose a monthly penalty of twenty-five dollars (\$25.00) 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 (\$150.00) in assessed penalty for each failure to timely file a return. (ii) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the City may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the City shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.
- (c) Limitation. With respect to income taxes, estimated income taxes, withholding taxes, and returns, the City shall not impose, seek to collect or collect any penalty, amount of interest, charges or additional fees not described in this section.
- (d) No Refund of Properly Imposed Penalty, Interest, Charge or Fee. With respect to income taxes, estimated income taxes, withholding taxes, and returns, the City shall not refund or credit any penalty, amount of interest, charges or additional fees that were properly imposed or collected before January 1, 2016.
- (e) Authority of the Tax Administrator. The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.
- (f) Collection of Post-Judgment Collection Costs and Fees. The City may impose on the taxpayer, employer, any agent of the employer or any other payer the City's post-judgment collection costs and fees, including attorney's fees.
- (g) Definitions. As used in this section:

"Applicable Law" means this chapter, the resolutions, ordinances, codes, directives, instructions and rules adopted by the City and/or the Tax Administrator, provided such resolutions, ordinances, codes, directives, instructions and rules impose or directly or indirectly address the levy, payment, remittance or filing requirements of the City income tax.

"Federal Short-Term Rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three (3) years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

"Income Tax," "Estimated Income Tax," and "Withholding Tax" mean any income tax, estimated income tax and withholding tax imposed by the City pursuant to this chapter or other applicable law, including at any time before January 1, 2016.

"Interest Rate" means the Federal short-term rate, rounded to the nearest whole number percent, plus five percent (5%). The rate shall apply for the calendar year next following the July of the year in which the Federal short-term rate is determined in accordance with division (g)"Federal Short-Term Rate" of this section.

"Return" includes any tax return, report, reconciliation, schedule and other document required to be filed with the Tax Administrator or the City by a taxpayer, employer, any agent of the employer or any other payer pursuant to this chapter or other applicable law, including at any time before January 1, 2016.

"Unpaid Estimated Income Tax" means estimated income tax due but not paid by the date the tax is required to be paid under this chapter or other applicable law.

"Unpaid Income Tax" means income tax due but not paid by the date the income tax is required to be paid under this chapter or other applicable law.

"Unpaid Withholding Tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under this chapter or other applicable law.

"Withholding Tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that the employer, employer's agent or other payer is required to withhold from an employee's qualifying wages under this chapter or other applicable law.

(Ord. 2015-17. Passed 11-16-15.)

Statutory reference: Interest and penalties, see ORC 718.27

SECTION 5: AMENDMENT “753.21 Returns Filed Pursuant To Sections 718.80 To 718.95 Of The Ohio Revised Code” of the City of Franklin Municipal Code is hereby *amended* as follows:

AMENDMENT

753.21 Returns Filed Pursuant To Sections 718.80 To 718.95 Of The Ohio Revised Code

- (a) This section 753.21 is effective only for taxable years beginning on or after January 1, 2018.
- (b) Election to Opt-In. Effective with taxable years beginning on or after January 1, 2018, 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 this Chapter 753. All terms defined in section 718.81 of the Revised Code shall control in the interpretation of this section 753.21. For purposes of this section 753.21, "tax administrator" does not include the tax commissioner, and "tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code. Notwithstanding any other provision of this Chapter 753, upon the taxpayer's election, both of the following shall apply:
 - (1) The Tax Commissioner shall serve as the sole administrator of each City income tax for which the taxpayer is liable for the term of the election; and
 - (2) The Tax 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.
- (c) Economic Development Incentive Program.
 - (1) Municipal filing of net profit taxes pursuant to the provisions set forth in this Income Tax Code, instead of electing to be subject to ORC 718.80 to 718.95, is a condition precedent for a taxpayer to be eligible to receive benefits from the City of Franklin's economic development incentive program.
 - (2) Upon election pursuant to Section 753.21 of this Income Tax Code, a taxpayer immediately becomes ineligible to receive any benefit from the City of Franklin's economic development incentive program.
 - (3) Only the Economic Development Incentive Program municipal stated in this sub-section 753.21(c) are effective for taxable years beginning on or after January 1, 2020.
- (d) Election.
 - (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 the City 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 the City of its termination of 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 753 of the City of Franklin Codified Ordinances.
- (e) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by sections 718.80 to 718.95 of the Revised Code is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in section 4123.271 or 5703.21 of the Revised Code. The tax commissioner may furnish the internal revenue service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.
- (f) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under section 718.88 of the Revised Code, shall be submitted to the tax commissioner, on a form and in the manner prescribed by the commissioner, on or before the fifteenth (15th) day of the fourth (4th) month following the end of the taxpayer's taxable year.
- (g) All taxpayers that have made the election provided for under this section 753.21 and allowed under section 718.80 of the Revised Code shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio Business Gateway or in another manner as prescribed by the tax commissioner.
- (h) If a taxpayer that has made the election provided for under this section 753.21 and allowed under section 718.80 of the Revised Code fails to pay any tax as required under sections 718.80 to 718.95 of the Revised Code, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the date an assessment is issued under section 718.90 of the Revised Code, whichever occurs first.
- (i) (1) A credit, granted by resolution or ordinance of the City pursuant to section 718.15 or 718.151 of the Revised Code, shall be available to a taxpayer that has made the election provided for under this section 753.21 and allowed under section 718.80 of the Revised Code, against the City's tax on income.
- (2) (A) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the City granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.
- (B) Such documentation shall be provided in the form prescribed by the tax commissioner.
- (C) Nothing in this section shall be construed to authorize the tax

commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the City and taxpayer under section 718.15 or 718.151 of the Revised Code, or to modify the terms or conditions of any such existing agreement.

- ~~(j)~~ ~~All taxpayers that have made the election provided for under this section 753.21 and allowed under section 718.80 of the Revised Code shall file a copy of any tax return or extension for filing a tax return, with the City of Franklin Tax Department.~~
- ~~(k)~~ (i) Nothing in this Chapter 753 shall be construed to make any section of this Chapter, other than Section 753.21, applicable to the tax commissioner's administration of the City income tax or to any taxpayer that has made the election provided for under this section 753.21 and allowed under section 718.80 of the Revised Code.

(Ord. 2019-13. Passed 9-16-19.)

Statutory reference:
ORC 718.80