



Legislation Text

File #: O-081-18, **Version:** 1

Dept. of Law

Repealing various sections of Chapter 1905 of the Toledo Municipal Code, "Income Tax"; enacting new sections of Chapter 1905 of the Toledo Municipal Code, "Income Tax"; and declaring an emergency.

SUMMARY & BACKGROUND:

On December 12, 2015, Council approved Ord. 576-15 commonly known as the "Tax Ordinance," due to significant changes enacted by the Ohio General Assembly in 2014 through H.B. 5. Subsequently, on September 27, 2016, Council approved Ord. 354-16 due to changes caused by S.B. 172 enacted by the General Assembly on June 14, 2016. Once again, the General Assembly purports to affect the City's Tax Code with the enactment of H.B. 49 (biennial budget bill) on June 30, 2017.

Therefore, on February 5, 2018, the City of Toledo filed suit against the State of Ohio challenging the constitutionality of H.B. 49 and H.B. 5 on 'home rule' grounds. Hundreds of other cities in Ohio, in a similar case also sued the State in Franklin Common Pleas Court. Recently, the Franklin County Court ruled for the State on February 21, 2018, which most likely will be appealed by those cities.

Nevertheless, in the event the Toledo and cities ultimately lose this challenge, this Ordinance makes various amendments necessitated by changes to state law, but contingent on their constitutionality, which Toledo does not concede.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Section 1905.02(C)(1)(h) of the Toledo Municipal Code, which reads as follows:

(h) (i) Except as limited by divisions (C)(1)(h)(ii), (iii), and (iv) of this Section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017. The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(ii) No person shall use the deduction allowed by division (C)(1)(h) of this Section to offset qualifying wages.

(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(1)(h)(i) of this Section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount

allowed by (C)(1)(h)(i) of this Section.

(iv) Any pre-2017 net operating loss carry forward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to (C)(1)(h) of this Section.

(v) Nothing in division (C)(1)(h)(iii)(a) of this Section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(1)(h)(iii)(a) of this Section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this Section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(1)(h)(iii)(a) of this Section shall apply to the amount carried forward.

is hereby repealed.

SECTION 2. That a new Section 1905.02(C)(1)(h) of the Toledo Municipal Code, which reads as follows:

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

is hereby enacted.

SECTION 3. That Section 1905.02(C)(21)(a)(i) of the Toledo Municipal Code, which reads as follows:

(i) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section 1905.03, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

is hereby repealed.

SECTION 4. That a new Section 1905.02(C)(21)(a)(i) of the Toledo Municipal Code, which reads as follows:

(i) For a person other than an individual, income apportioned or situated to the Municipality under Section 1905.03, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

is hereby enacted.

SECTION 5. That Section 1905.02(C)(24) of the Toledo Municipal Code, which reads as follows:

(a) **"Net profit"** for a person other than an individual means adjusted federal taxable income.

(b) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(24)(b) of this Section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(1)(h) of this Section.

(c) For the purposes of this Chapter, and notwithstanding division (C)(24)(a) of this Section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(d) 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 by the Municipality, may elect to be treated as a C corporation for purposes of the income tax levied by the Municipality. The election shall be made on the annual return for the

Municipality. The Municipality will treat the publicly traded partnership as a C corporation if the election is so made.

is hereby repealed.

SECTION 6. That a new Section 1905.02(C)(24) of the Toledo Municipal Code, which reads as follows:

(a) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(24)(a) of this Section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(24)(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)(24)(c) of this section.

(c)(i) The amount of such 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.

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

(iii)(a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(24)(c) of this section without regard to the limitation of division (C)(24)(c)(iii)(a) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to (C)(24)(c) of this section.

(v) Nothing in division (C)(24)(c)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(c)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(24)(c)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(c)(iii)(a) of this section shall apply to the amount carried forward.

(d) For the purposes of this Chapter, and notwithstanding division (C)(24)(b) 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) 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 by the Municipality, may elect to be treated as a C corporation for purposes of the income tax levied by the Municipality. The election shall be made on the annual return for the Municipality. The Municipality will treat the publicly traded partnership as a C corporation if the election is so

made.

is hereby enacted.

SECTION 7. That Section 1905.02(C)(45) of the Toledo Municipal Code, which reads as follows:

(45) "Tax Administrator" means the Commissioner of Taxation, which is the person so designated and appointed by the Mayor and approved by Council, or the person executing the duties of the "Tax Administrator" for administration of the income tax levied by the Municipality in accordance with this Chapter.

is hereby repealed.

SECTION 8. That a new Section 1905.02(C)(45) of the Toledo Municipal Code, which reads as follows:

(45a) "Tax Administrator" means the Commissioner of Taxation, which is the person so designated and appointed by the Mayor and approved by Council, or the person executing the duties of the "Tax Administrator" for administration of the income tax levied by the Municipality in accordance with this Chapter.

(45b) "Tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code.

is hereby enacted.

SECTION 9. That Section 1905.03(F)(4)(a) of the Toledo Municipal Code which reads as follows:

(a) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the Municipality if, regardless of where title passes, the property meets any of the following criteria:

(i) The property is shipped to or delivered within the Municipality from a stock of goods located within the Municipality.

(ii) The property is delivered within the Municipality from a location outside the Municipality, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.

(iii) The property is shipped from a place within the Municipality to purchasers outside the Municipality, 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.

is hereby repealed.

SECTION 10. That a new Section 1905.03(F)(4)(a) of the Toledo Municipal Code which reads as follows:

(a) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the Municipality if, regardless of where title passes, the property meets any of the following criteria; however, for tax years beginning on or after January 1, 2018, gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation only if, regardless of where title passes, the property meets either the provisions of (F)(4)(a)(i) or (F)(4)(a)(ii):

(i) The property is shipped to or delivered within the Municipality from a stock of goods located within the Municipality.

(ii) The property is delivered within the Municipality from a location outside the Municipality, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.

(iii) The property is shipped from a place within the Municipality to purchasers outside the Municipality, 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. Division (F)(4)(a)(iii) applies only to tax years prior to the taxable year beginning January 1, 2018.
is hereby enacted.

SECTION 11. That Section 1905.05(F)(2) of the Toledo Municipal Code, which reads as follows:

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of 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, any other documentation necessary to support 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.

is hereby repealed.

SECTION 12. That a new Section 1905.05(F)(2) of the Toledo Municipal Code, which reads as follows:

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of 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 or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support 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.

is hereby enacted.

SECTION 13. That Section 1905.05(H) of the Toledo Municipal Code, which reads as follows:

(1) For taxable years beginning after 2015, the Municipality shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.

(2) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to division (H) (1) of this Section shall file with the Municipality an annual net profit return under division (F)(3) of this

Section.

is hereby repealed.

SECTION 14. That a new Section 1905.05(H) of the Toledo Municipal Code, which reads as follows:

(1) For taxable years beginning after 2015, the Municipality shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.

(2) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to division (H)(1) of this Section shall file with the Municipality an annual net profit return under division (F)(3) of this Section, unless the provisions of division (H)(3) apply.

(3)(a) A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to The Municipality's income tax ordinance for a taxable year if both the following apply:

(i) The person was required to file a tax return with the Municipality for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 4(C)(1)(g)) within the Municipality.

(ii) The person no longer provides services in the Municipality and does not expect to be subject to the Municipality's income tax for the taxable year.

(b) 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 Municipality. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the Municipality, make any sales in the Municipality, or otherwise become subject to the tax levied by the Municipality during the taxable year. If the affiant does become subject to the tax levied by the Municipality for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the Municipality's income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (H)(3)(b) the Tax Administrator shall not require the person to file and 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.

(d) Nothing in division (H)(3) of this section prohibits the Tax Administrator from performing an audit of the person.

is hereby enacted.

SECTION 15. That Section 1905.05(S) of the Toledo Municipal Code, which reads as follows:

(1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the Municipality'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. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this Section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (S)(1) of this Section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (2) of this Section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

is hereby repealed.

SECTION 16. That a new Section 1905.05(S) of the Toledo Municipal Code, which reads as follows:

(1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the Municipality'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. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this Section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (S)(1) of this Section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (2) of this Section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

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

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

is hereby enacted.

SECTION 17. That Section 1905.06(B)(1)(b) of the Toledo Municipal Code, which reads as follows:

(b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this Section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the end of each calendar quarter.

is hereby repealed.

SECTION 18. That a new Section 1905.06(B)(1)(b) of the Toledo Municipal Code, which reads as follows

(b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this Section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.

is hereby enacted.

SECTION 19. That Section 1905.061(C)(1)(d) of the Toledo Municipal Code, which reads as follows:

(d) On or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.

is hereby repealed.

SECTION 20. That a new Section 1905.061(C)(1)(d) of the Toledo Municipal Code, which reads as follows:

(d) On or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year. For taxable years beginning on or after January 1, 2018, and only for an individual, on or before the fifteenth (15th) day of the first month of the following taxable year, ninety percent (90%) of the tax liability for the taxable year.

is hereby enacted.

SECTION 21. That Section 1905.061(D)(1)(d) of the Toledo Municipal Code, which reads as follows:

(d) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

is hereby repealed.

SECTION 22. That a new Section 1905.061(D)(1)(d) of the Toledo Municipal Code, which reads as follows:

(d) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment. For taxable years beginning on or after January 1, 2018, and only for an individual, on or before the fifteenth (15th) day of the first month of the following taxable year, ninety percent (90%) of the tax liability for the taxable year less the amount of taxes paid by the date prescribed for that payment.

is hereby enacted.

SECTION 23. That Section 1905.11(C)(2)(b) of the Toledo Municipal Code, which reads as follows:

(b) With respect to any unpaid withholding tax, the Municipality may impose a penalty equal to fifty

percent (50%) of the amount not timely paid.

is hereby repealed.

SECTION 24. That a new Section 1905.11(C)(2)(b) of the Toledo Municipal Code, which reads as follows:

(b) With respect to any unpaid withholding tax, the Municipality may impose a penalty not exceeding fifty percent (50%) of the amount not timely paid.

is hereby enacted.

SECTION 25. The Council finds and determines that it does not concede legality of H.B. 49s municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number CI-18-1373 in the Lucas County Court of Common Pleas, and that the City reserves its rights to continue its participation in and prosecution of said litigation, and other litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the City.

SECTION 26. That, notwithstanding Section 27 of this Ordinance, and pursuant to H.B. 49, Chapter 1905 of the Toledo Municipal Code hereby adopts by reference and incorporates Sections 718.80 to 718.95 of the Ohio Revised Code, as amended; provided that if any provision of H.B. 49s municipal income tax provisions are found unconstitutional, or the effectiveness of H.B. 49 is stayed or enjoined, that the adoption and incorporation by reference of Sections 718.80-718.95 of the Ohio Revised Code shall likewise be stayed or ineffective.

SECTION 27. The Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken, and all deliberations of this Council and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 28. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety, and property and for the further reason that this Ordinance must be immediately effective in order to avoid a cloud over municipal taxes.

Vote on emergency clause: yeas _____, nays _____.

Passed: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor