

ORDINANCE NO. 207-2023(AS), *First
Reading*

By Mayor Seren

An Ordinance amending Chapter 158 of Title Nine of the Administrative Code of the Codified Ordinances of the City of Cleveland Heights regarding municipal income tax to adopt updates to conform to House Bill 33; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, provides that "Municipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict a municipality's power of taxation to the extent necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes;" and

WHEREAS, Amended Substitute House Bill 33, the State of Ohio's biennial operating budget bill for 2024-2024, which was passed by the General Assembly on June 30, 2023 and signed into law by Governor Mike DeWine on July 3, 2023, contains several changes to the Ohio municipal income tax which need to be adopted by municipalities as amendments to their existing income tax ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

Section 1. Chapter 158 of Title Nine of the Administrative Code of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended only as to the provisions set forth below to hereafter provide as follows:

158.03 IMPOSITION OF TAX.

The income tax levied by the City at a rate of two and one quarter percent (2.25%) is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City.

Businesses.

(f) This Subsection 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 individual who resides in the City or the taxpayer is an electric company, combined

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company, or telephone company that is subject to and required to file reports under Chapter 5745 of the O.R.C.

(1) Except as otherwise provided in Subsection (f)(2) **and (g)** herein, 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 municipal 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 the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(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 158.04(c);

(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 Subsection (f)(1) herein do not fairly represent the extent of a taxpayer's business activity in the City the taxpayer may request, or the Tax Administrator of the City may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(i) Separate accounting;

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

(iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;

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

(B) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely

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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 158.12(a).

(C) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in Subsection (f)(2)(A) herein, but only by issuing an assessment to the taxpayer within the period prescribed by Section 158.12(a).

(D) Nothing in Subsection (f)(2) herein 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 Subsection (f)(1)(B) herein, "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 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 Subsection (f)(3)(A)(ii) herein, 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 Subsections (f)(3)(A) or (B) herein 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 the purposes of Subsection (f)(1)(C) herein, and except as provided in division (g) of this section, receipts from sales and rentals made and services performed shall be sitused to a municipal corporation as follows:

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(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 Section, 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 of Cleveland Heights.

(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.

(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 sitused 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 sitused 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 sitused to the City.

(E) Gross receipts from rents and royalties from tangible personal property shall be sitused to the City based upon the extent to which the tangible personal property is used in the City.

(5) 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 the City tax only if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit is a resident of the City. The City shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit sitused under this Section to the municipal corporation in which the property is located.

(6) (A) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be sitused to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City, if applicable, 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 for the City. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City income tax chapter.

(7) When calculating the ratios described in Subsection (f)(1) herein for the purposes of that subsection, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(8) Left intentionally blank.

(9) Intentionally left blank.

(g)(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 Section 158.04 of 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 (g)(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 (g)(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 (F) 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 (f)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (g)(2):

(A) For the purpose of division (f)(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 sitused to that individual's qualifying reporting location.

(B) For the purpose of division (f)(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 sitused to that individual's qualifying reporting location.

(C) For the purpose of division (f)(1)(C) of this section, and notwithstanding division (f)(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 sitused 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 (f)(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) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 158.04 of this Chapter.

158.05 ANNUAL RETURN; FILING.

(a) An annual City income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon. An annual City income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(g) (1) (A) 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 individual income tax returns under division (G) of Section 5747.08 of the O.R.C. 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. No remittance is required if the net amount due is ten dollars (\$10) or less.

(B) Except as otherwise provided in this chapter, each annual net profit 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 (15th) day of the fourth month following the end of the taxpayer's taxable year. 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. No remittance is required if the net amount due is ten dollars or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City income tax return. The extended due date of the City's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of the City'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. An extension of time to file under this Section is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(A) A copy of the federal extension request shall be included with the filing of the City income tax return.

(B) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's 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.

(3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the O.R.C., a taxpayer shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the same as the extended due date of the state income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City, the Tax Administrator may require taxpayers to file returns

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and make payments otherwise than as provided in this Section, including taxpayers not otherwise required to file annual returns.

(5) If a taxpayer receives an extension for the filing of a municipal income tax return under division (g)(2), (3), or (4) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a tax administrator violates division (g)(5) of this section, the City shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (g)(5) of this section does not apply to an extension received under division (g)(2) 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 (g)(2) of this section or failed to file for an extension under division (g)(2)(B) of this section.

(56) To the extent that any provision in Subsection (g) herein conflicts with any provision in Subsections (n), (o), (p), or (q) herein, the provisions in Subsections (n), (o), (p), or (q) prevail.

158.18 INTEREST AND PENALTIES.

(c) Should any taxpayer, employer, agent of the employer, or other payer for any reason fails, in whole or in part, to make 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, the following penalties and interest shall apply:

(1) Interest shall be imposed at the rate described in Subsection (a) herein, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

(2) (A) With respect to unpaid income tax and unpaid estimated income tax, the City may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.

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

(3) **(A) For tax years ending on or before December 31, 2022, w**With respect to returns other than estimated income tax returns, the City may impose a penalty of \$25 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 \$150 for each failure.

(B) 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.

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SECTION 2. Chapter 158 of Title Nine of the Administrative Code of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended by adding new Section 158.27 "Election to be Subject to R.C. 718.80 to 718.95" to read as follows:

158.27 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95.

(a) The City hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the ORC for tax years beginning on or after January 1, 2018.

(b) A taxpayer, as defined in division (c) of this section, may elect to be subject to Sections 718.80 to 718.95 of the ORC in lieu of the provisions of this Chapter.

(c) "Taxpayer" has the same meaning as in section 718.01 of the ORC, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745 of the ORC. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the City's income tax Ordinances to be consistent with State law by January 1, 2024 in order to continue to be enforced. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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MELODY JOY HART
President of Council



ADDIE BALESTER
Clerk of Council

PASSED: 12/21/2023

Presented to Mayor: 12/22/2023

Approved: 12/27/2023



KAHLIL SEREN
Mayor