

Village of Mantua, Ohio
ORDINANCE 2017-53

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 173 OF THE
CODIFIED ORDINANCES OF THE VILLAGE OF MANTUA REGARDING
MUNICIPAL INCOME TAX, AND DECLARING AN EMERGENCY.**

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, the General Assembly has determined that it is necessary and appropriate to comprehensively review and amend Chapter 718 of the Ohio Revised Code, setting forth statutory requirements for municipal income tax codes in Ohio; and

WHEREAS, the 131st General Assembly enacted Senate Bill 172, requiring additional minor amendments to the municipal income tax code; and

WHEREAS, the 132nd General Assembly enacted H. B. 49 in June 2017, mandating that municipal income tax codes be amended by January 1, 2018 to permit Ohio businesses the option to file their net profits returns on one form and make one payment to municipalities through the Ohio Business Gateway, and have their net profits filings administered by the Ohio Department of Taxation (ODT) rather than by each individual municipality; and

WHEREAS, upon a detailed review of S.B. 172 and H. B. 49 and the Codified Ordinances of the Village of Mantua, this Ordinance is found and determined by this Council to enact the amendments required prior to the January 1, 2018 deadline to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, this Council also finds and determines that certain provisions of the state-mandated code may be a violation of this municipality’s home-rule powers as provided under the Ohio Constitution, but these provisions must be included if the municipal income tax code is to be “levied in accordance with the provisions and limitations specified in [Chapter 718]” and thus reluctantly are adopted by this Council but are disclaimed to the extent they are unlawful or unconstitutional.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Mantua, Ohio, two-thirds or more of the members elected thereto concurring, that:

SECTION 1. Various amendments to Chapter 173 of the Codified Ordinances of the Village of Mantua are hereby adopted as set forth in “Exhibit A”, attached hereto and incorporated herein by reference.

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SECTION 2: All remaining provisions of Chapter 173 of the Codified Ordinances of the Village of Mantua shall remain in full force and effect.

SECTION 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared an emergency measure, in order that the state-mandated amendments to this municipality's Income Tax Code be effective by January 1, 2018 in order to permit the Village to continue to collect municipal income taxes, and shall become immediately effective upon its passage by Council and approval by the Mayor, and to further ensure the health, safety, and morals of the Village of Mantua.

PASSED AS EMERGENCY this 19th day of December, 2017.

ATTEST:

Linda Clark, Mayor

Jenny August, Clerk-Treasurer

APPROVED AS TO FORM:

Michele Stuck, Solicitor

I hereby certify that a copy of the foregoing Ordinance was duly published by public posting at the five pre-designated posting places within the Village on this the ____ day of December, 2017.

Jenny August, Clerk-Treasurer

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"Exhibit A"

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AMEND 173.03(a) [introductory paragraph only] and (a)(1)

173.03 DEFINITIONS

(a) 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. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

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

As Except as otherwise provided in section 718.81 of the Revised Code, as used in this chapter:

- (1) **"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 division (23)~~(D)~~(E) of this section, 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 per cent of intangible income deducted under division (1)(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)
 - (i) Except as provided in division (1)(D)(ii) 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;
 - (ii) Division (1)(D)(i) 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.

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- (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 section 4313.02 of the Ohio Revised Code;
- (H)
 - ~~(i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017. The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.~~
 - ~~(ii) No person shall use the deduction allowed by division (1)(H) of this section to offset qualifying wages.~~
 - ~~(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (1)(H)(i) of this section.~~
 - ~~(b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(H)(i) of this section.~~
 - ~~(iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.~~
 - ~~(v) Nothing in division (1)(H)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(H)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(H)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(H)(iii)(a) of this section shall apply to the amount carried forward. *Deduct*~~

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

- (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 division (e)(3)(B) of Section 173.063 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 division (e)(3)(B) of Section 173.063 of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(~~D~~)(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 division (1) 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.

.....

AMEND 173.03(a)(20)(A)(i)

- (20) (A) **"Municipal taxable income"** means the following:
 - (i) For a person other than an individual, income ~~reduced by exempt income to the extent otherwise included in income and then, as applicable,~~ apportioned or situated to the Municipality under Section 173.062 of this Chapter, and further as applicable, reduced by any

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pre-2017 net operating loss carryforward available to the person for the Municipality.

.....

AMEND 173.03(a)(23)

- (23) (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 this division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (4)(H) (23)(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 (23)(C) of this section.*
- (C) (i) The amount of such net operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.*
- (ii) No person shall use the deduction allowed by division (23)(C) of this section to offset qualifying wages.*
- (iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (23)(C) of this section.*
- (b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (23)(C) of this section without regard to the limitation of division (23)(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 division (23)(C) of this section.*
- (v) Nothing in division (23)(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 (23)(C)(iii)(a).*

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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 (23)(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 (23)(C)(iii)(a) of this section shall apply to the amount carried forward.

- ~~(G)~~(D) For the purposes of this chapter, and notwithstanding division (23)
~~(A)~~(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.
- ~~(D)~~(E) (i) For purposes of this chapter, “publicly traded partnership” means any partnership, an interest in which is regularly traded on an established securities market. A “publicly traded partnership” may have any number of partners.
- (ii) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)~~(D)~~(E) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.
- (iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division ~~(D)~~(23)(E)(iv) of this section.
- (iv) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division ~~(D)~~(23)(E)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as

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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-year election period.

- (v) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division ~~(D)~~**(23)**~~(E)~~ of this section applies to all municipal corporations in which an individual owner of the partnership resides.
- (vi) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

AMEND 173.03(a)(44)

(44) **"TAX ADMINISTRATOR"** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

- (A) A municipal corporation acting as the agent of another municipal corporation;
- (B) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;
- (C) The 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.

"Tax Administrator" does not include the tax commissioner.

ENACT 173.03(a)(51)

(51) *"TAX COMMISSIONER" means the tax commissioner appointed under section 121.03 of the Revised Code.*

AMEND 173.051(b) only

- (b) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:
 - (A) Any employer, agent of an employer, or other payer not required to make payments under division (b)(1)(B) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth *last*

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day of the month following the end of each calendar quarter.

- (B) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars. Payments under division (b)(1)(B) of this section shall be made ~~so that the payment is received by~~ to the Tax Administrator not later than fifteen days after the last day of each month. *(Source: RC 718.03, 131st GA, SB 172)*

AMEND 173.062(d)(1) only

173.062

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

- (d) For the purposes of division (a)(3) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- (1) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation ~~in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation~~ only if, regardless of where title passes, the property meets any either of the following criteria:
- (A) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
- (B) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
- ~~(C) The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.~~

ENACT 173.063(b)(4) and (b)(5)

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

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

AMEND 173.091(i) only

- (i) ~~This division shall not apply to payments required to be made under division (b) (1)(B) of Section 173.051 of this Chapter.~~
- (1) 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 or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which 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 date on the cover, the earliest date imprinted on the cover by the postal service.
- (2) If a payment under this chapter is required to be made by electronic funds transfer, the payment is shall be considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer. on the date of the timestamp assigned by the first electronic system receiving that payment. (Source: RC 718.05, 131st GA, SB 172)

AMEND 173.10(c)(3)

- (3) With respect to any unpaid withholding tax, a penalty equal to not exceeding fifty percent of the amount not timely paid shall be imposed.

ENACT 173.80 through 173.95:

173.80 Filing net profit taxes; election to be subject to provisions of chapter.

- (a) 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 the remainder of this chapter.

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Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:

- (1) The tax commissioner shall serve as the sole administrator of each municipal income tax for which the taxpayer is liable for the term of the election;
 - (2) The 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.
- (b)
- (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 each municipal corporation in which the taxpayer conducted business during the previous taxable year, 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 each municipal corporation in which the taxpayer conducted business during the previous taxable year of its termination of the 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.
- (c)
- (1)
 - (A) On or before the thirty-first day of January each year, each municipal corporation imposing a tax on income shall certify to the tax commissioner the rate of the tax in effect on the first day of January of that year.
 - (B) If, after the thirty-first day of January of any year, the electors of a municipal corporation approve an increase in the rate of the municipal corporation's tax on income that takes effect within that year, the municipal corporation shall certify to the tax commissioner the new rate of tax not less than sixty days before the effective date of the increase, after which effective date the commissioner shall apply the increased rate.
 - (2) A municipal corporation, within ninety days of receiving a taxpayer's notification of election under division (b) of this section, shall submit to the tax commissioner, on a form prescribed by the tax commissioner, the following information regarding the taxpayer:
 - (A) The amount of any net operating loss that the taxpayer is entitled to carry forward to a future tax year;
 - (B) The amount of any net operating loss carryforward utilized by the taxpayer in prior years;
 - (C) Any credits granted by the municipal corporation to which the taxpayer is entitled, the amount of such credits, whether the credits

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- may be carried forward to future tax years, and, if the credits may be carried forward, the duration of any such carryforward;
- (D) Any overpayments of tax that the taxpayer has elected to carry forward to a subsequent tax year;
 - (E) Any other information the municipal corporation deems relevant in order to effectuate the tax commissioner's efficient administration of the tax on the municipal corporation's behalf.
- (3) If any municipal corporation fails to timely comply with divisions (c)(1) and (2) of this section, the tax commissioner shall notify the director of budget and management, who, upon receiving such notification, shall withhold from each payment made to the municipal corporation under section 718.83 of the Revised Code fifty per cent of the amount of the payment otherwise due to the municipal corporation under that section. The director shall compute the withholding on the basis of the tax rate most recently certified to the tax commissioner until the municipal corporation complies with divisions (c)(1) and (2) of this section.
- (d) The tax commissioner shall enforce and administer sections 718.80 to 718.95 of the Revised Code. In addition to any other powers conferred upon the tax commissioner by law, the tax commissioner may:
- (1) Prescribe all forms necessary to administer those sections;
 - (2) Adopt such rules as the tax commissioner finds necessary to carry out those sections;
 - (3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the tax commissioner by those sections.
- (e) No tax administrator shall utilize sections 718.81 to 718.95 of the Revised Code in the administrator's administration of a municipal income tax, and those sections shall not be applied to any taxpayer that has not made the election under this section.
- (f) Nothing in this chapter shall be construed to make any section of this chapter, other than sections 718.01 and 718.80 to 718.95 of the Revised Code, applicable to the tax commissioner's administration of a municipal income tax or to any taxpayer that has made the election under this section.
- (g) The tax commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code.

(Source: R.C. § 718.80)

173.81 Definitions.

If a term used in sections 718.80 to 718.95 of the Revised Code that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall have control over the use of the term in Title LVII of the Revised Code, unless the term is defined in Chapter 5703. of the Revised Code, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and section 718.01 of the Revised

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Code, the definition in this section shall control for all uses of that term in sections 718.80 through 718.95 of the Revised Code.

As used in sections 718.80 to 718.95 of the Revised Code only:

- (a) "Municipal taxable income" means income apportioned or situated to the municipal corporation under section 718.82 of the Revised Code, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.
- (b) "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 as described in division (D)(5) of section 718.01 of the Revised Code, 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:
 - (1) 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.
 - (2) Add an amount equal to five per cent of intangible income deducted under division (b)(1) 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.
 - (3) 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.
 - (4) (A) Except as provided in division (b)(4)(B) 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.
(B) Division (b)(4)(A) 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.
 - (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
 - (6) 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.
 - (7) 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 section 4313.02 of the Revised Code.
 - (8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

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- (9) 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 division (E)(3)(b) of section 718.86 of the Revised Code.
- (10) 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 division (E)(3)(b) of section 718.86 of the Revised Code.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (L)(2) of section 718.01 of the Revised Code, and is not a publicly traded partnership that has made the election described in division (D)(5) of section 718.01 of the Revised Code, 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 division (b) 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.

- (c) "Taxpayer" has the same meaning as in section 718.01 of the Revised Code, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745. of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.
- (d) "Tax return" or "return" means the notifications and reports required to be filed pursuant to sections 718.80 to 718.95 of the Revised Code for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.
- (e) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of sections 718.80 to 718.95 of the Revised Code is

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changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The tax commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.

- (f) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 718.90 of the Revised Code.

(Source: R.C. § 718.81)

173.82 Applicability; taxable situs; apportionment.

This section applies to any taxpayer that is engaged in a business or profession in a municipal corporation and that has made the election under section 718.80 of the Revised Code.

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

- (1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

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

- (2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the municipal corporation 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 718.011 of the Revised Code;
- (3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the municipal corporation to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (b) (1) If the apportionment factors described in division (a) of this section do not fairly represent the extent of a taxpayer's business activity in a municipal corporation, the taxpayer may request, or the tax commissioner may

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require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

- (A) Separate accounting;
 - (B) The exclusion of one or more of the factors;
 - (C) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
 - (D) A modification of one or more of the factors.
- (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the tax commissioner denies the request in an assessment issued within the period prescribed by division (A) of section 718.90 of the Revised Code.
- (3) The tax commissioner may require a taxpayer to use an alternative apportionment method as described in division (b)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of section 718.90 of the Revised Code.
- (c) As used in division (a)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - (A) The employer;
 - (B) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (C) A vendor, customer, client, or patient of a person described in division (c)(1)(B) of this section, or a related member of such a vendor, customer, client, or patient.
 - (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
 - (3) Any other location, if the tax commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (c)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the tax commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the tax commissioner's determination was unreasonable.
- (d) For the purposes of division (a)(3) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

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- (1) 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 of the following criteria:
 - (A) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
 - (B) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
- (2) Gross receipts from the sale of services shall be sitused to the municipal corporation to the extent that such services are performed in the municipal corporation.
- (3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be sitused to the municipal corporation.
- (4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be sitused to the municipal corporation.
- (5) Gross receipts from rents and royalties from tangible personal property shall be sitused to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (e) 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 a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (f) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (C)(12) and (R)(1)(d) of section 718.01 of the Revised Code by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

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

(Source: R.C. § 718.82)

173.83 Certification of amounts to be paid municipal corporations.

- (a) On or before the last day of each month, the tax commissioner shall certify to the director of budget and management the amount to be paid to each municipal corporation, based on amounts reported on annual returns and declarations of estimated tax under sections 718.85 and 718.88 of the Revised Code, less any amounts previously distributed and net of any audit adjustments made or refunds granted by the commissioner, for the calendar month preceding the month in which the certification is made. Not later than the fifth day of each month, the director shall provide for payment of the amount certified to each municipal corporation from the municipal income tax fund, plus a pro rata share of any investment earnings accruing to the fund since the previous payment under this section. Each municipal corporation's share of such earnings shall equal the proportion that the municipal corporation's certified tax payment is of the total taxes certified to all municipal corporations in that quarter. All investment earnings on money in the municipal income tax fund shall be credited to that fund.
- (b) If the tax commissioner determines that the amount of tax paid by a taxpayer and distributed to a municipal corporation under this section for a taxable year exceeds the amount payable to that municipal corporation under sections 718.80 to 718.95 of the Revised Code after accounting for amounts remitted with the annual return and as estimated taxes, the commissioner shall proceed according to divisions (A) and (B) of section 5703.77 of the Revised Code.

Source: R.C. § 718.83

173.84 Information provided to tax administrators; confidentiality.

- (a) 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.
- (b) In May and November of each year, the tax commissioner shall provide each tax administrator with the following information for every taxpayer that filed tax returns with the commissioner under sections 718.80 to 718.95 of the Revised Code and that had municipal taxable income apportionable to the municipal corporation under this chapter for any prior year:
- (1) The taxpayer's name, address, and federal employer identification number;

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- (2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the municipal corporation pursuant to section 718.82 of the Revised Code;
 - (3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;
 - (4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year;
 - (5) The amount of any credit claimed under section 718.94 of the Revised Code.
- (c) Not later than thirty days after each distribution made to municipal corporations under section 718.83 of the Revised Code, the tax commissioner shall provide to each municipal corporation a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the municipal corporation and the amount of each such taxpayer's estimated payment.
- (d) Not later than the thirty-first day of January of each year, every municipal corporation having taxpayers that have made the election allowed under section 718.80 of the Revised Code shall provide to the tax commissioner, in a format prescribed by the commissioner, the name and mailing address of up to two persons to whom the municipal corporation requests that the commissioner send the information described in divisions (b) and (c) of this section. The commissioner shall not provide such information to any person other than a person who is designated to receive the information under this section and who is employed by the municipal corporation or by a tax administrator, as defined in section 718.01 of the Revised Code, that administers the municipal corporation's income tax, except as may otherwise be provided by law.
- (e) (1) The tax commissioner may adopt rules that further govern the terms and conditions under which tax returns filed with the commissioner under this chapter, and any other information gained in the performance of the commissioner's duties prescribed by this chapter, shall be available for inspection by properly authorized officers, employees, or agents of the municipal corporations to which the taxpayer's net profit is apportioned under section 718.82 of the Revised Code.
- (2) As used in this division, "properly authorized officer, employee, or agent" means an officer, employee, or agent of a municipal corporation who is authorized by charter or ordinance of the municipal corporation to view or possess information referred to in section 718.13 of the Revised Code.
- (f) (1) If, upon receiving the information described in division (B) of section 718.91 of the Revised Code or division (b) or (c) of this section, a municipal corporation discovers that it has additional information in its possession that could result in a change to a taxpayer's tax liability, the municipal corporation may refer the taxpayer to the tax commissioner for an audit. Such referral shall be made on a form prescribed by the commissioner and shall include any information that forms the basis for the referral.

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- (2) Upon receipt of a referral under division (f)(1) of this section, the commissioner shall review the referral and may conduct an audit of the taxpayer that is the subject of the referral based on the information in the referral and any other relevant information available to the commissioner.
- (3) Nothing in division (f) of this section shall be construed as forming the sole basis upon which the commissioner may conduct an audit of a taxpayer.
- (4) Nothing in this chapter shall prohibit a municipal corporation from filing a writ of mandamus if the municipal corporation believes that the commissioner has violated the commissioner's fiduciary duty as the administrator of the tax levied by the municipal corporation.

(Source: R.C. 718.84)

173.85 Filing of annual return; remittance; disposition of funds.

- (a)
 - (1) 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 day of the fourth month following the end of the taxpayer's taxable year.
 - (2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with sections 718.81, 718.82, and, if applicable, 718.86 of the Revised Code onto its annual return.
 - (3) The remittance shall be made payable to the treasurer of state and in the form prescribed by the tax commissioner. If the amount payable with the tax return is ten dollars or less, no remittance is required.
- (b) The tax commissioner shall immediately forward to the treasurer of state all amounts the commissioner receives pursuant to sections 718.80 to 718.95 of the Revised Code. The treasurer shall credit ninety-nine and one-half per cent of such amounts to the municipal income tax fund and the remainder to the municipal income tax administrative fund established under section 5745.03 of the Revised Code.
- (c)
 - (1) 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 identification number. Each return shall be verified by a declaration under penalty of perjury.
 - (2)
 - (A) The tax commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the commissioner under sections 718.80 to 718.95 of the Revised Code, copies of any relevant documents or other information.
 - (B) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the tax commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if

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electronic submission is not available, mail the documents to the tax commissioner. The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.

- (3) After a taxpayer files a tax return, the tax commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.
- (d) (1) (A) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.
 - (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 commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the commissioner receives the request on or before the date the municipal income tax return is due, the commissioner shall grant the taxpayer's extension request.
 - (C) An extension of time to file under division (d)(1) of this section is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date.
- (2) If the commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with section 718.04 of the Revised Code, the commissioner 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.
- (e) Each return required 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 commissioner about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the commissioner 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 commissioner with information that is missing from the return, to contact the commissioner 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 commissioner and has shown to the preparer or other person.
- (f) When income tax returns or other documents require the signature of a tax return preparer, the tax commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature.

Source: R.C. § 718.85

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173.851 Electronic filing.

- (a) All taxpayers that have made the election 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.
- (b) A taxpayer may apply to the commissioner, on a form prescribed by the commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by nonelectronic means.
- (c) The tax commissioner may adopt rules establishing the following:
 - (1) The format of documents to be used by taxpayers to file returns and make payments by electronic means;
 - (2) The information taxpayers must submit when filing tax returns by electronic means.

Source: R.C. § 718.851

173.86 Consolidated returns.

- (a) As used in this section:
 - (1) "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 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.
 - (2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
 - (3) "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 (a)(1) of this section.
 - (4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.
 - (5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.
- (b) (1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to a tax imposed in accordance with section 718.04 of the Revised Code in that taxable year and if the affiliated group of corporations filed a consolidated federal

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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 tax returns under division (b)(2) of this section or a taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown.

- (2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (b)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.
 - (3) An election made under division (b)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
 - (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 section 718.06 of the Revised Code 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 this section is binding upon the tax administrator for the remainder of the five-year period.
- (c) 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 tax return for that taxable year if the tax commissioner 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 a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.
- (d) A taxpayer shall prepare a consolidated 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.
- (e) (1) Except as otherwise provided in divisions (e)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 718.81 of the Revised Code, 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.

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- (2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 718.81 of the Revised Code 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.
- (3) If the net profit or loss of a pass-through entity having at least eighty per cent 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 tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
 - (A) 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 718.82 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. 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.
 - (B) 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 718.82 of the Revised Code, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. 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.
- (4) If the net profit or loss of a pass-through entity having less than eighty per cent 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:
 - (A) The corporation filing the consolidated 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 718.82 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;
 - (B) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 718.80

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to 718.95 of the Revised Code on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

- (f) Corporations filing a consolidated tax return shall make the computations required under section 718.82 of the Revised Code 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.
- (g) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 718.80 to 718.95 or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

Source: R.C. § 718.86

173.87 Failure to pay tax.

If a taxpayer that has made the election 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.

Source: R.C. § 718.87

173.88 Declaration of estimated taxes.

- (a) As used in this section:
 - (1) "Combined tax liability" means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.
 - (2) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.
- (b)
 - (1) Except as provided in division (b)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the tax commissioner, if the amount payable as estimated taxes is at least two hundred dollars.
 - (2) Except as provided in division (b)(4) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner.
 - (3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

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- (4) The tax commissioner may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.
- (c) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the tax commissioner at the times and in the amounts prescribed in division (c)(1) of this section. Remitted taxes shall be made payable to the treasurer of state.
 - (1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:
 - (A) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the combined tax liability for the taxable year;
 - (B) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the combined tax liability for the taxable year;
 - (C) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the combined tax liability for the taxable year;
 - (D) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the combined tax liability for the taxable year.
 - (2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.
 - (3)
 - (A) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.
 - (B) Upon receiving a payment of estimated taxes under this section, the commissioner shall immediately forward the payment to the treasurer of state. The treasurer shall credit the payment in the same manner as in division (B) of section 718.85 of the Revised Code.
- (d)
 - (1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (e) of this section. The amount of the underpayment shall be determined as follows:
 - (A) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (B) For the second payment of estimated taxes each year, forty-five per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

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- (C) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;
 - (D) For the fourth payment of estimated taxes each year, ninety per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently due.
 - (3) All amounts collected under this section shall be considered as taxes collected under sections 718.80 to 718.95 of the Revised Code and shall be credited and distributed to municipal corporations in accordance with section 718.83 of the Revised Code.
- (e) An underpayment of any portion of a combined tax liability shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:
 - (1) The amount of estimated taxes that were paid equals at least ninety per cent of the combined tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
 - (2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a municipal income tax return for that year.

Source: R.C. § 718.88

173.89 Additional penalties.

- (a) In addition to any other penalty imposed by sections 718.80 to 718.95 or Chapter 5703. of the Revised Code, the following penalties shall apply:
 - (1) If a taxpayer required to file a tax return under sections 718.80 to 718.95 of the Revised Code fails to make and file the return within the time prescribed, including any extensions of time granted by the tax commissioner, the commissioner may impose a penalty not exceeding twenty-five dollars per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed one hundred fifty dollars.
 - (2) If a person required to file a tax return electronically under sections 718.80 to 718.95 of the Revised Code fails to do so, the commissioner may impose a penalty not to exceed the following:

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- (A) For each of the first two failures, five per cent of the amount required to be reported on the return;
 - (B) For the third and any subsequent failure, ten per cent of the amount required to be reported on the return.
- (3) If a taxpayer that has made the election allowed under section 718.80 of the Revised Code fails to timely pay an amount of tax required to be paid under this chapter, the commissioner may impose a penalty equal to fifteen per cent of the amount not timely paid.
 - (4) If a taxpayer files what purports to be a tax return required by sections 718.80 to 718.95 of the Revised Code that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of sections 718.80 to 718.95 of the Revised Code, a penalty of up to five hundred dollars may be imposed.
 - (5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under sections 718.80 to 718.95 of the Revised Code, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.
 - (6) If any person makes a false or fraudulent claim for a refund under section 718.91 of the Revised Code, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 718.90 of the Revised Code without regard to any time limitation for the assessment imposed by division (A) of that section.
- (b) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.
 - (c) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the tax commissioner. The commissioner may adopt rules governing the imposition and abatement of such penalties.
 - (d) All amounts collected under this section shall be considered as taxes collected under sections 718.80 to 718.95 of the Revised Code and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under section 718.83 of the Revised Code.

Source: R.C. § 718.89

173.90 Assessments against taxpayer.

- (a) If any taxpayer required to file a return under section 718.80 to 718.95 of the Revised Code fails to file the return within the time prescribed, files an incorrect

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return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 718.91 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by sections 718.80 to 718.95 of the Revised Code, or that files a fraudulent return. The commissioner shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

- (b) Unless the taxpayer assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.
- (c) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection

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under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

- (d) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.
- (e) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (c) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (b) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.
- (f) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 718.91 of the Revised Code, with interest on that amount as provided by that section.

Source: R.C. § 718.90

173.91 Refund applications.

- (a) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under sections 718.80 to 718.95 of the Revised Code, including assessments, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section

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718.90 of the Revised Code. The application shall be filed in the form prescribed by the tax commissioner.

- (b) (1) On the filing of a refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than ten dollars and not less than that claimed, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code. If the amount is greater than ten dollars but less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.
- (2) Upon issuance of a refund under this section, the commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under section 718.83 of the Revised Code.
- (c) Any portion of a refund determined under division (b) of this section that is not issued within ninety days after such determination shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

Source: R.C. § 718.91

173.92 Amended returns.

- (a) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under section 718.80 of the Revised Code and used to determine the tax due under sections 718.80 to 718.95 of the Revised Code must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under those sections, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. 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 commissioner before filing the amended return.
- (b) 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. An amended return required by this section is a return subject to

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assessment under section 718.90 of the Revised Code for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

- (c) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in section 718.91 of the Revised Code, if the application otherwise conforms to the requirements of that section. An application 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 return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 718.91 of the Revised Code. The application 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 income tax return.

Source: R.C. § 718.92

173.93 Examination of records and other documents and persons.

- (a) The tax commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to sections 718.80 to 718.95 of the Revised Code for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the commissioner, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.
- (b) The records and other documents of any taxpayer or other person that is subject to sections 718.80 to 718.95 of the Revised Code shall be open to the tax commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The commissioner may require any person, by notice served on that person, to keep such records as the commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.
- (c) The tax commissioner may examine under oath any person that the commissioner reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect

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such income. The commissioner may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

- (d) No person issued written notice by the tax commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal income tax returns under this section shall fail to comply.

Source: R.C. § 718.93

173.94 Credits.

- (a) A credit, granted by resolution or ordinance of a municipal corporation pursuant to section 718.15 or 718.151 of the Revised Code, shall be available to a taxpayer that has made the election allowed under section 718.80 of the Revised Code, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the tax commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:
- (1) A copy of the agreement entered into by the municipal corporation and taxpayer under section 718.15 or 718.151 of the Revised Code;
 - (2) A copy of the municipal ordinance or resolution authorizing the agreement entered into between the municipal corporation and the taxpayer.
- (b) (1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the municipal corporation 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.
- (2) Such documentation shall be provided in the form prescribed by the tax commissioner.
 - (3) 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 a municipal corporation 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.

Source: R.C. § 718.94

173.95 Reckless violations; penalties.

- (a) Except as provided in division (b) of this section, whoever recklessly violates division (A) of section 718.84 of the Revised Code shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both.
- (b) Any person who recklessly discloses information received from the internal revenue service in violation of division (A) of section 718.84 of the Revised Code

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shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both.

- (c) Each instance of access or disclosure in violation of division (A) of section 718.84 of the Revised Code constitutes a separate offense.

Source: R.C. § 718.95