



## CITY OF PATASKALA

### ORDINANCE 2018-4319

Passed April 16, 2018

#### **AN ORDINANCE TO AMEND CHAPTER 171 OF THE CODIFIED ORDINANCES OF THE CITY OF PATASKALA REGARDING MUNICIPAL INCOME TAX TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE AND DECLARING AN EMERGENCY**

***WHEREAS***, House Bill (H.B.) 49 of the 132<sup>nd</sup> General Assembly, the State's general appropriations bill for the biennium, includes uncodified Section 803.100 purporting to require that municipalities, on or before January 31, 2018, adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

***WHEREAS***, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

***WHEREAS***, under the Home Rule provisions of the State constitution, several Ohio municipalities recently challenged the mandatory adoption of H.B. 49 provisions regarding collection and administration of municipal net profits taxes in a lawsuit designated collectively by Franklin County Common Pleas Case Number 17CV10258; and

***WHEREAS***, on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 17CV10258 staying the effect and enforcement of the municipal net profits taxes provisions and extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and

***WHEREAS***, on February 12 and 13, 2018, Judge Cain held a hearing on the motion for preliminary injunction made by the coalition of municipalities challenging H.B. 49's municipal income tax provisions, and the Judge stated his intention to issue a decision prior to February 24, 2018; and

***WHEREAS***, on February 21, 2018, Judge Cain issued a final appealable order in Franklin County Common Pleas Case Number 17CV10258 which found all provisions of H.B. 49 to be constitutional, denied the municipalities' request for an injunction, and dismissed all claims made by the municipalities challenging H.B. 49; and

***WHEREAS***, on February 27, 2018, the municipalities challenging H.B. 49 requested a stay of this final appealable order, which request was thereafter denied on March 5, 2018; and

***WHEREAS***, an appeal has been filed to the 10<sup>th</sup> District Court of Appeals by the municipalities challenging H.B. 49, and litigation remains ongoing to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

***WHEREAS***, the City of Pataskala nevertheless is compelled to adopt H.B. 49's municipal income tax provisions immediately to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

***WHEREAS***, in light of the Franklin County Common Pleas Court denying the municipalities' request for an injunction and dismissing the challenges to the H.B. 49 provisions, the Regional Income Tax Agency ("RITA"), servicer of the City of Pataskala's municipal income tax, has recommended that the City adopt certain provisions with respect to net profit tax collection under H.B. 49 in order to be compliant with current and enforceable law; and

***WHEREAS***, by passing this ordinance, the City does not waive any rights, including, but not limited to, the City reserving the right under its home rule powers to challenge H.B. 49, including the amendments to Chapter 718 of the Ohio Revised Code; and

***WHEREAS***, Council for the City of Pataskala now wants to amend its current municipal income tax ordinances for the purpose of reflecting the changes with respect to net profit tax collection now in effect under H.B. 49.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF ALL MEMBERS ELECTED OR APPOINTED THERETO CONCURRING, THAT:**

**Section 1:** Chapter 171 of the Codified Ordinances (Income Tax) shall be amended as set forth in the document entitled "Amendments to Income Tax Ordinance – Chapter 171" attached hereto as Exhibit A, and incorporated herein by reference.

**Section 2:** All other sections contained in Chapter 171 of the Codified Ordinances, not specifically addressed in Exhibit A, will remain unchanged and in full force and effect.

**Section 3:** Council hereby expressly finds and determines that the passage of this Ordinance does not waive any rights of the City, including, but not limited to, the City reserving the right under its home rule powers to challenge H.B. 49, or join in current and pending litigation challenging H.B. 49, including the amendments to Chapter 718 of the Ohio Revised Code.

**Section 4:** If any provision of the H.B. 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined as a result of the litigation referenced in Section 3 herein, that the corresponding amendment adopted in Section 1 of this Ordinance shall likewise be stayed.

**Section 5:** 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 Council and that all deliberations of the Council and any of the decision making bodies of the City of Pataskala which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

**Section 6:** All prior legislation, or any parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereto.


**Section 7:** Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that these amendments to Chapter 171 must take effect immediately, given the recent dismissal of the challenges by several municipalities to the H.B. 49 municipal income tax provisions, and the need for the City to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

ATTEST:

  
Kathy M. Hoskinson, Clerk of Council

  
Michael W. Compton, Mayor

Approved as to form:

  
Brian M. Zets, Law Director



**CITY OF PATASKALA  
AMENDMENTS TO INCOME TAX ORDINANCE  
CHAPTER 171**

**171.03 IMPOSITION OF TAX.**

The income tax levied by the City of Pataskala at a rate of one percent (1.0%) is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City of Pataskala.

**Individuals**

(A) For residents of the City of Pataskala, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 171.02 (C)(16)).

(B) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(C) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Section 171.02 (C)(21). Exemptions which may apply are specified in Section 171.02 (C)(12).

**Refundable credit for Nonqualified Deferred Compensation Plan**

- (D) (1) As used in this division:
- (a) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
  - (b) "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.
  - (c) (i) "Qualifying tax rate" means the applicable tax rate for the taxable year for which the taxpayer paid income tax to the City of Pataskala with respect to any portion of the total amount of

compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(ii) If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City of Pataskala each year with respect to the nonqualified deferred compensation plan.

- (d) "Refundable credit" means the amount of the City of Pataskala income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.
- (2) If, in addition to the City of Pataskala, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.
- (3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the City of Pataskala for all taxable years with respect to the nonqualified deferred compensation plan.
- (4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:
- (a) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or
- (b) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

#### **Domicile**

- (E) (1) (a) An individual is presumed to be domiciled in the City of Pataskala for all or part of a taxable year if the individual was domiciled in the City of Pataskala on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the City of Pataskala for all or part of the taxable year.
- (b) An individual may rebut the presumption of domicile described in division (E)(1)(a) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the City of Pataskala for all or part of the taxable year.
- (2) For the purpose of determining whether an individual is domiciled in the City of Pataskala for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:
- (a) The individual's domicile in other taxable years;
- (b) The location at which the individual is registered to vote;
- (c) The address on the individual's driver's license;

- (d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
  - (e) The location and value of abodes owned or leased by the individual;
  - (f) Declarations, written or oral, made by the individual regarding the individual's residency;
  - (g) The primary location at which the individual is employed.
  - (h) The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;
  - (i) The number of contact periods the individual has with the City of Pataskala. For the purposes of this division, an individual has one "contact period" with the City of Pataskala if the individual is away overnight from the individual's abode located outside of the City of Pataskala and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the City of Pataskala.
- (3) All additional applicable factors are provided in the Rules and Regulations.

### Businesses

(F) This division applies to any taxpayer engaged in a business or profession in the City of Pataskala, unless the taxpayer is an individual who resides in the City of Pataskala or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the ORC.

- (1) Except as otherwise provided in division (F)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the City of Pataskala shall be considered as having a taxable situs in the City of Pataskala for purposes of municipal income taxation in the same proportion as the average ratio of the following:
  - (a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City of Pataskala during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;
  - (b) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City of Pataskala 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 171.04 (C);
- (c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City of Pataskala to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (2) (a) If the apportionment factors described in division (F)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City of Pataskala, the taxpayer may request, or the Tax Administrator of the City of Pataskala may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
- (i) Separate accounting;
  - (ii) The exclusion of one or more of the factors;
  - (iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
  - (iv) A modification of one or more of the factors.
- (b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 171.12 (A).
- (c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 171.12 (A).
- (d) Nothing in division (F)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (3) As used in division (F)(1)(b) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (a) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
    - (i) The employer;
    - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;



- (iii) A vendor, customer, client, or patient of a person described in (F)(3)(a)(ii) of this section, or a related member of such a vendor, customer, client, or patient.
  - (b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
  - (c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (F) (3)(a) or (b) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (4) For the purposes of division (F)(1)(c) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
  - (a) Gross receipts from the sale of tangible personal property shall be situated to the City of Pataskala only if, regardless of where title passes, the property meets either of the following criteria:
    - (i) The property is shipped to or delivered within the City of Pataskala from a stock of goods located within the City of Pataskala.
    - (ii) The property is delivered within the City of Pataskala from a location outside the City of Pataskala, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Pataskala and the sales result from such solicitation or promotion.
  - (b) Gross receipts from the sale of services shall be situated to the City of Pataskala to the extent that such services are performed in the City of Pataskala.
  - (c) To the extent included in income, gross receipts from the sale of real property located in the City of Pataskala shall be situated to the City of Pataskala.
  - (d) To the extent included in income, gross receipts from rents and royalties from real property located in the City of Pataskala shall be situated to the City of Pataskala.
  - (e) Gross receipts from rents and royalties from tangible personal property shall be situated to the City of Pataskala based upon the extent to which the tangible personal property is used in the City of Pataskala.

- (5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City of Pataskala's tax only if the property generating the net profit is located in the City of Pataskala or if the individual taxpayer that receives the net profit is a resident of the City of Pataskala. The City of Pataskala shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.
- (6)
  - (a) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City of Pataskala, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City of Pataskala to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
  - (b) An individual who is a resident of the City of Pataskala shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City of Pataskala. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City of Pataskala's income tax ordinance.
- (7) When calculating the ratios described in division (F)(1) of this section for the purposes of that division or division (F)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
- (8) Intentionally left blank
- (9) Intentionally left blank.

#### **171.05 ANNUAL RETURN; FILING.**

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

- (1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 171.05 of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City of Pataskala.
- (2) Retirees having no Municipal Taxable Income for the City of Pataskala income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax

Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City of Pataskala, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the City of Pataskala, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(E) The City of Pataskala shall permit spouses to file a joint return.

(F) (1) Each return required to be filed under this division 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. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other

documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

- (4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by The City of Pataskala to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

- (G) (1) (a) Except as otherwise provided in this Chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Pataskala. No remittance is required if the net amount due is ten dollars or less.
- (b) Except as otherwise provided in this Chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Pataskala. No remittance is required if the net amount due is ten dollars or less.
- (2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City of Pataskala's income tax return. The extended due date of the City of Pataskala's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (a) A copy of the federal extension request shall be included with the filing of the City of Pataskala's income tax return.
- (b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may submit a written request that the Tax Administrator grant the

taxpayer a six-month extension of the date for filing the taxpayer's City of Pataskala income tax return. If the request is received by the Tax Administrator on or before the date the City of Pataskala income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

- (3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of a City of Pataskala's income tax return. The extended due date of the City of Pataskala's income tax return shall be the same as the extended due date of the state income tax return.
- (4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City of Pataskala, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.
- (5) To the extent that any provision in this division (G) of this section conflicts with any provision in divisions (N), (O), (P), or (Q) of this section, the provisions in divisions (N), (O), (P), or (Q) prevail.
- (H) (1) For taxable years beginning after 2015, the City of Pataskala shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.
  - (2) Any taxpayer not required to remit tax to the City of Pataskala for a taxable year pursuant to division (H)(1) of this section shall file with the City of Pataskala an annual net profit return under division (F)(3) of this section, unless the provisions of division (H)(3) apply.
  - (3) (a) A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to the City of Pataskala income tax ordinance for a taxable year if both the following apply:
    - (i) The person was required to file a return with the City of Pataskala for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 4(C)(1)(g) within the City of Pataskala.
    - (ii) The person no longer provides services in the City of Pataskala and does not expect to be subject to the City of Pataskala income tax for the taxable year.
  - (b) The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the City of Pataskala. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the City of Pataskala, make any sales in the City of Pataskala, or otherwise become subject to the tax levied by the City of Pataskala during the

taxable year. If the affiant does become subject to the tax levied by the City of Pataskala for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the City of Pataskala income tax ordinance and rules and regulations.” The person shall sign the affidavit under penalty of perjury.

- (c) If a person submits an affidavit described in division (H)(3)(b) the Tax Administrator shall not require the person to file a tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.
- (d) Nothing in division (H)(3) of this section prohibits the Tax Administrator from performing an audit of the person.

(I) If a payment under this chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.

(J) Taxes withheld for the City of Pataskala by an employer, the agent of an employer, or other payer as described in Section 171.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City of Pataskala, unless the amounts withheld were not remitted to the City of Pataskala, and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the City of Pataskala to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(L) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City of Pataskala, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City of Pataskala or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the City of Pataskala's ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.

#### **Filing via Ohio Business Gateway.**

- (M) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the City of Pataskala's income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

- (2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns.

**Extension for service in or for the armed forces.**

(N) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the City of Pataskala for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City of Pataskala during the period of the member's or civilian's duty service, and for one hundred eighty (180) days thereafter. The application shall be filed on or before the one hundred eightieth (180th) day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

- (O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty first (181st) day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the 181st day after the applicant's active duty or service terminates.
- (3) Taxes paid pursuant to a contract entered into under (O)(1) of this division are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) of this section.
- (2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this Chapter. The length of any extension granted under

division (P)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

- (b) Taxes whose payment is extended in accordance with division (P)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (P)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.

(Q) For each taxable year to which division (N), (O), or (P) of this section applies to a taxpayer, the provisions of divisions (O)(2) and (3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

**Consolidated municipal income tax return.**

- (R) 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 (R)(1) of this section.
  - (4) "Incumbent local exchange carrier" has the same meaning as in Section 4927.01 of the ORC.
  - (5) "Local exchange telephone service" has the same meaning as in Section 5727.01 of the ORC.



- (S) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the City of Pataskala's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five (5) year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five (5) year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
- (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five (5) year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five (5) year period beginning with the first taxable year of the election.
- (3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
- (4) When a taxpayer makes the election allowed under section 718.80 of the Revised Code, a valid election made by a taxpayer under division (S)(1) or (2) of this section is binding upon the tax commissioner for the remainder of the five-year period.
- (5) When an election made under section 718.80 of the Revised Code is terminated, a valid election made under section 718.86 of the Revised Code is binding upon the tax administrator for the remainder of the five-year period.

(T) 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 the City of Pataskala income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the City of Pataskala. A taxpayer that is required to file a consolidated the City of Pataskala income tax return for a taxable year shall file a consolidated the City of Pataskala income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

**(U)** A taxpayer shall prepare a consolidated the City of Pataskala income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

- (V)**
- (1)** Except as otherwise provided in divisions (V)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 171.02, 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.
  - (2)** No corporation filing a consolidated the City of Pataskala income tax return shall make any adjustment otherwise required under Section (171.02)(C)(1) 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 percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated the City of Pataskala income 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 divisions (R) through (Y) of Section 171.05, 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 divisions (R) through (Y) of Section 171.05, 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 percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:
- (a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of Section 171.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Pataskala;
  - (b) The pass-through entity shall be subject to the City of Pataskala income taxation as a separate taxpayer in accordance with this Chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(W) Corporations filing a consolidated the City of Pataskala income tax return shall make the computations required under divisions (R) through (Y) of Section 171.05 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.

(X) Each corporation filing a consolidated the City of Pataskala income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City of Pataskala in accordance with this Chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(Y) Corporations and their affiliates that made an election or entered into an agreement with the City of Pataskala before January 1, 2016, to file a consolidated or combined tax return with the City of Pataskala may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

#### **171.26 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95**

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

(B) A taxpayer, as defined in division (C) of this section, may elect to be subject to Sections 718.80 to 718.95 of the Revised Code in lieu of the provisions of this Chapter.

(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.

