

AN ORDINANCE AMENDING SECTIONS 891.02, 891.05, 891.07 AND 891.18 OF THE CITY'S EARNED INCOME TAX REGULATIONS IN THE TAXATION CODE OF THE CODIFIED ORDINANCES OF THE CITY OF HUDSON; AND DECLARING AN EMERGENCY.

WHEREAS, through Ordinance No. 15-179, the City enacted new Chapter 891 "Earned Income Tax Regulations" in accordance with amendments to Chapter 718 "Municipal Income Tax" of the Revised Code pursuant to Ohio House Bill 5 enacted by the 130<sup>th</sup> General Assembly in December 2014; and

WHEREAS, updates have been made to Chapter 718 of the Revised Code pursuant to Ohio House Bill 49 enacted by the 132<sup>nd</sup> General Assembly in June 2017; and

WHEREAS, Ohio House Bill 49 changes certain requirements in Chapter 718 of the Revised Code, necessitating this Council to amend the City of Hudson's Taxation Code to comply with those changes.

NOW, THEREFORE, BE IT ORDAINED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1. Section 891.02, "Definitions," of the City of Hudson's Taxation Code is hereby amended as follows:

**"891.02 DEFINITIONS.**

\* \* \*

- (c) (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 (c)(24)~~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:

\* \* \*

- H. ~~1.— Except as limited by divisions (c)(1)H.2., 3. and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.~~

~~The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce Municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5)~~

~~consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.~~

- ~~2. No person shall use the deduction allowed by division (c)(1)H. of this section to offset qualifying wages.~~
- ~~3. a. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (c)(1)H.1. of this section.~~  
~~b. For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (c)(1)H.1. of this section.~~
- ~~4. Any pre 2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (c)(1)H. of this section.~~
- ~~5. Nothing in division (c)(1)H.3.a. of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (c)(1)H.3.a. of this section. To the extent that an amount of net operating loss that was not fully utilized in one (1) or more taxable years by operation of division (c)(1)H.3.a. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (c)(1)H.3.a. of this section shall apply to the amount carried forward. Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.~~

\* \* \*

- J. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that loss in the group's Federal taxable income in accordance with Section 891.05(v)(3)B.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (c)(48)B. of this section, is not a publicly traded partnership that has made the election described in division (c)(24)~~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 (c)(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.

\* \* \*

(16) "Income" means the following:

- A. 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (c)(24)~~D~~ E. of this section.

\* \* \*

(21) A. "Municipal taxable income" means the following:

1. 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 891.03, ~~and further as applicable,~~ reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

\* \* \*

~~(24) A. "Net profit" for a person other than an individual means adjusted Federal taxable income.~~

~~B. A.~~ "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (c)(24)~~BA~~, of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (c)(~~124~~)~~HC~~. of this section.

B. "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a

taxable year beginning on or after January 1, 2017, subject to the limitations of division (C)(24)(c) of this section.

- C. (1) The amount of such operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
- (2) No person shall use the deduction allowed by division (C)(24)(c) of this section to offset qualifying wages.
- (3) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.
- (b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(24)(c) of this section without regard to the limitation of division (C)(24)(C)(3)(a) of this section.
- (4) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to (C)(24)(C) of this section.
- (5) Nothing in division (C)(24)(C)(3)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(C)(3)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(24)(C)(3)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(C)(3)(a) of this section shall apply to the amount carried forward.
- € D. For the purposes of this chapter, and notwithstanding division (c)(24)AB. 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.
- Ð E. A publicly traded partnership that is treated as a partnership for Federal income tax purposes, and that is subject to tax on its net profits by the Municipality, may elect to be treated as a C corporation for the Municipality. The election shall be made on the annual return for the

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

\* \* \*

(45) (a) "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by the Municipality in accordance with this chapter. Tax Administrator does not include the state tax commissioner.

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

\* \* \*

Section 2. Subsection 891.05, "Annual return; filing", of the City of Hudson's Taxation Code is hereby amended as follows:

**"891.05 ANNUAL RETURN; FILING.**

\* \* \*

(f) (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.

\* \* \*

(g) (2) 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 Municipal income tax return. If the request is received by the Tax Administrator on or before the date the Municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

\* \* \*

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

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

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

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

(b) The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the Municipality. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the Municipality, make any sales in the Municipality, or otherwise become subject to the tax levied by the Municipality during the taxable year. If the affiant does become subject to the tax levied by the Municipality for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the Municipality income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (H)(3)(b) the Tax Administrator shall not require the person to file and tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.

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

\* \* \*

Section 3. Subsection 891.07, "Estimated taxes", of the City of Hudson's Taxation Code is hereby amended as follows:

**"891.07 ESTIMATED TAXES.**

\* \* \*

- (c) (1) D. ~~On~~ For an individual, on or before the fifteenth (15<sup>th</sup>) day of the first month of the following taxable year, ninety percent (90%) of the tax liability for the taxable year. For a person other than an individual, on or before the fifteenth day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.

\* \* \*

Section 4. Subsection 891.18, "Interest and penalties," of the City of Hudson's Taxation Code is hereby amended as follows:

"891.18 INTEREST AND PENALTIES.

\* \* \*

- (c) (2) B. With respect to any unpaid withholding tax, the Municipality may impose a penalty ~~equal to~~ not exceeding fifty percent (50%) of the amount not timely paid.

\* \* \*

Section 5. Those provisions of Sections 891.02, 891.05, 891.07 and 891.18 of the Codified Ordinances of the City that were in effect prior to the effective date of this Ordinance and that are in conflict with Sections 1, 2, 3, and 4 above are hereby repealed and shall no longer have any effect to the extent that they are inconsistent with the amendments adopted in Sections 1, 2, 3, and 4 of this Ordinance.

Section 6. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 7. This Ordinance is an emergency measure necessary for the immediate preservation of the general welfare of the City of Hudson and the fair, stable, and efficient system of taxation in said City, and due to the need to comport with recent amendments to State law; and, therefore, this Ordinance shall take effect and be in force immediately upon its passage, provided it receives five (5) affirmative votes of members of Council, except that six (6) affirmative votes are required if all members are present; otherwise it shall be in full force and effect from and after the earliest period allowed by law.

PASSED:

\_\_\_\_\_  
David A. Basil, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

I hereby certify that the foregoing Ordinance No. 18-3 was duly passed by the Council of said Municipality on \_\_\_\_\_, 2018.

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council