

ORDINANCE NO. 30-2023

AN ORDINANCE TO AMEND CHAPTER 197 OF THE CODIFIED ORDINANCES OF THE CITY OF NEW PHILADELPHIA, OHIO REGARDING MUNICIPAL INCOME TAX FOR TAX YEARS AFTER DECEMBER 31, 2022 AND AFTER DECEMBER 31, 2023 OR AS OTHERWISE PROVIDED IN HB 33.

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 municipalities 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, more specifically, the General Assembly enacted H. B. 5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is “levied in accordance with the provisions and limitations specified in Chapter 718”; and

WHEREAS, upon a detailed review of H. B. 5 and the Codified Ordinances of the City of New Philadelphia this Ordinance is found and determined by this Council to enact the amendments required prior to the January 1, 2016 deadline to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, HB 33 requires additional amendments to municipal tax ordinances effective after December 31, 2022, December 31, 2023, and for other tax years as provided in HB 33; and

WHEREAS, Council also finds and determines that the constitutionality of certain provisions of the state-mandated code may have been put in question by recent decisions of the Ohio Supreme Court regarding, among other things, taxation of professional athletes, 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 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 CITY OF NEW PHILADELPHIA, STATE OF OHIO, THAT:

SECTION 1. That Chapter 197 of the Codified Ordinances be amended as follows:

197.03 (47) to include:

(C) Notwithstanding any other definition of taxpayer herein, a taxpayer as defined in this chapter 197, after the amendments required by HB 33, may elect to be subject to the taxpayer definitions in HB 33. Taxpayer has the same meaning a R.C. 718.01, except that taxpayer does not include natural persons or entities subject to the tax imposed under R.C. chapter 5745. Taxpayer includes receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of taxpayer.

197.062 (A) Except as otherwise provided in divisions (B)(1) and (I) of this section, net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

197.062 (D) For the purposes of division (A)(3) of this section, and except as provided in division (I) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

197.063 to include:

(I) (1) As used in this division

(a) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

(i) The taxpayer has assigned the individual to a qualifying reporting location.

(ii) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

(b) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer. other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(c) "Reporting location" means either of the following:

(i) Permanent or temporary place of doing business. such as an office. warehouse. storefront, construction site, or similar location. that is owned or controlled directly or indirect} by the tax liaver:

(ii) Any location in this state owned or controlled by a customer or client of the taxpayer. provided that the taxpayer is required to withhold taxes under Section 4 of this Ordinance on qualifying wages paid to an employee for the performance of personal services at that location.

(d).” Qualifying reporting location" means one of the following:

(i) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year:

(ii) If no reporting location exists in this state for an employee or owner under division (I)(1)(d)(i) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year:

(iii) If no reporting location exists in this state for an employee or owner under division (I)(1)(d)(i) or (ii) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (A) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provision authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (A) of this section, all of the following apply to a taxpayer that has made the election described in division (I)(2):

(a) For the purpose of division (A)(1) of this section, the average original cost of any tangible personal property, used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(b) For the purpose of division (A)(2) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed

at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(c) For the purpose of division (A)(3) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (B)(1) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 4 of this Ordinance.

197.094 (B) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return. For tax years ending on or after January 1, 2023, the extended due date of the City's income tax return for a taxpayer that is not an individual shall be the 15th of the eleventh month after the last day of the taxable year to which the return relates.

197.094 (F) If a taxpayer receives an extension for the filing of a municipal income tax return under division (I)(2), (3), or (4) of this section the tax administrator shall not make any inquiry or send a notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first. If a tax administrator violates division (I)(5) of this section, the municipal corporation shall reimburse the taxpayer for a reasonable costs incurred to respond to such inquiry or notice, up to \$150. Division (I)(5) of this section does not apply to an extension received under division (G) (2) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (I)(2) of this section or failed to file for an extension under division (I)(2)(b) of this section.

197.10 (C)

(4)

(a) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars in assessed penalty for each failure to timely file a return.

(b) For tax years ending on or before January 1, 2023, with respect to returns other than estimated income tax returns, the Municipality may impose a penalty not exceeding twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon, except that the Municipality shall abate or refund the penalty assessed on a taxpayers first failure to timely file a return after the taxpayer files the return.

Add:

197.22

New Philadelphia adopts and incorporates herein by reference R.C. sections 718.80 and 718.95 for tax years beginning on or after January 1, 2018.

SECTION 2. That the amendments to this Ordinance, as adopted herein, shall take effect and be in force after December 31, 2015 and the amendments apply to income and taxation of income by the city of New Philadelphia for taxation of income after December 31, 2015. That Chapter 181 of the codified ordinances of New Philadelphia Ohio as adopted by this municipality for tax years prior to January 1, 2016 shall remain in effect and apply to New Philadelphia taxation for tax years prior to January 1, 2016. That this ordinance and the amendments contained within apply to taxable earnings and income taxed by the city of New Philadelphia after December 31, 2022, December 31, 2023, and as otherwise provided in HB 33. That the amendments adopted by ordinance 33-23 and as required by HB 33 shall be effective after December 31, 2023, but also for specific provisions as provided in HB 33 for other tax years. This ordinance is construed to comport with HB 33 and to follow the requirements of HB 33. In the event there is a difference between this ordinance and HB 33, HB 33 controls and this ordinance, chapter 718, shall be deemed to adopt the provisions on HB 33.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in conformance with all applicable open meeting laws and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in compliance with all legal requirements including open meeting requirements.

SECTION 4. This ordinance is adopted to conform New Philadelphia's municipal income tax provisions with the mandatory direction of the Ohio General Assembly in Chapter 718 of the Ohio Revised Code. If this ordinance is deemed to not conform with any of Chapter 718 mandatory provisions or Supreme Court interpretations of lawful municipal taxation under Chapter 718 or Ohio Constitution, it shall be deemed to comply and follow the mandatory provisions of Chapter 718 of the Ohio Revised Code.

SECTION 5. This ordinance is declared an emergency ordinance necessary to preserve the health, safety and welfare of the citizens of the City of New Philadelphia and shall take effect immediately upon its passage. Otherwise, it shall be effective on the earliest date allowed by law. The need for this ordinance to be effective on January 1, 2024 constitutes an emergency.

PASSED: Dec 28, 2023


DONALD C. KEMP

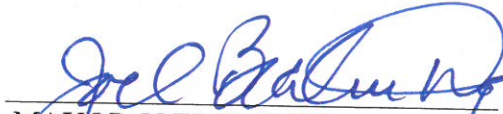
PRESIDENT OF COUNCIL

ATTEST:



JULIE COURTRIGHT
CLERK OF COUNCIL

APPROVED:



MAYOR JOEL B. DAY

SPONSORED BY: SPECIAL AND CONTACT COMMITTEE