

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11077-2019

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE
AMENDING CHAPTERS 1803, AND 1806,
OF THE BROOK PARK CODIFIED ORDINANCES
AND DECLARING AN EMERGENCY

WHEREAS, through Ohio H.B. 49, updates have been made to the Municipal Income Tax by the Ohio General Assembly since Ohio H.B. 5 was passed; and

WHEREAS, upon a detailed review of Ohio H.B. 49, this Ordinance is found and determined by this Council to enact the amendments required to be in accord with the provisions and limitations specified in Chapter 718 of the Ohio Revised Code;

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: Section 1803.035 of the Codified Ordinances of the City of Brook Park is hereby amended to read as follows:

1803.35 QUALIFYING WAGES.

"Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(a) Deduct the following amounts:

(1) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.

(2) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

(b) Add the following amounts:

(1) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(2) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has not exempted the amount from withholding and tax adopted before January 1, 2016. Division

(b)(2) of this section applies only to those amounts constituting ordinary income.

(3) Any amount not included in wages if the amount is an amount described in Section 401(k), 403(b), or 457 or other similar plans of the Internal Revenue Code. Division (b)(3) of this section applies only to employee contributions and employee deferrals.

(4) Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(5) Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.

(6) Any amount not included in wages if all of the following apply:

A. For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;

B. For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

C. For no succeeding taxable year will the amount constitute wages; and

D. For any taxable year the amount has not otherwise been added to wages pursuant to either division (b) of this section or R.C. § 718.03, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

SECTION 2. Existing Section 1803.35 of the City's Codified Ordinances and all other Ordinances inconsistent herewith are hereby repealed.

SECTION 3: Section 1806.02 of the Codified Ordinances of the City of Brook Park is hereby amended to read as follows:

**1806.02 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX;
ALTERNATIVE APPORTIONMENT.**

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under R.C. Chapter 5745.

(a) 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:

(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 Municipality 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 this 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 Municipality or 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 1805.02;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality 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 the Municipality, the taxpayer may request, or the Tax Director of the Municipality 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:

- 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 Municipality;
- 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 Director denies the request in an assessment issued within the period prescribed by Section 1819.01(a).

(3) The Tax Director 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 Section 1819.01(a).

(4) Nothing in division (b) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Director or otherwise agreed upon by both the Tax Director and taxpayer before January 1, 2016.

(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 chapter, 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 Director 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 (c)(2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Director makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Director'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 sitused to the municipality as follows:

(1) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any 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.~~

(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 situated to the municipal corporation.

(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(e) 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 is subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides. A municipal corporation will allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated in this Division to the municipal corporation in which the property is located.

(f) (1) Except as provided in division (f) (2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate are 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 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.

(2) An individual who is a resident of a municipal corporation shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. Such an individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 1808.01.

(g) 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, 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 the Municipality 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 the Municipality under this section.

(h) 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.

SECTION 4. Existing Section 1806.02 of the City's Codified Ordinances and all other Ordinances inconsistent herewith are hereby repealed.

SECTION 5. Section 1806.06 of the Codified Ordinances of the City of Brook Park is hereby enacted to read as follows:

1806.06 ELECTION BY A NET PROFIT TAXPAYER TO BE SUBJECT TO THE PROVISIONS OF OHIO REVISED CODE CHAPTER 718

This section applies to any taxpayer, not an individual, engaged in a business or profession in the Municipality and electing to be subject to Sections 718.80 through 718.95 of the Ohio Revised Code, applicable for tax years beginning on or after January 1, 2018, pursuant to the language enacted by the Ohio Legislature during the 132nd General Assembly in the form of Am. Sub House Bill 49, which required municipal corporations to conform to and adopt the provisions of Ohio Revised Code Chapter 718 in order to retain the authority to impose, enforce, administer and collect a municipal income tax.

(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 Ohio Revised Code Chapter 718.

Notwithstanding any other provision of Chapter 718, upon the taxpayer's election, both of the following shall apply:

(1) The tax commissioner shall serve as the sole administrator of the 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, the municipal corporation 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 the 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) The 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 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 the 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 Chapter 718, 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.

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 of any of its committees that resulted in such formal action were in meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 7: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to amend chapter 1803, and 1806, of our codified ordinances; therefore, provided this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: April 16, 2019

M. P. Vecchio
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak
Clerk of Council

APPROVED: [Signature]
MAYOR

4/16/19
DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

[Signature]
DIRECTOR OF LAW

CERTIFICATE

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 11097-2019 passed on the 16th day of April 2019 by said council.
Michelle Blazak
Clerk of Council

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days, commencing April 18, 2019
Michelle Blazak
MICHELLE BLAZAK
Clerk of Council

	Yea	Nay
Stemm	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orcutt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Burglo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>