

EMERGENCY

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-2023

MODIFYING Chapter 311 of the Cincinnati Municipal Code, “City of Cincinnati Income Tax,” by **AMENDING** Sections 311-15, “Exception to the Tax; Exempt Income,” 311-17, “Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment,” 311-21, “Net Operating Loss (NOL),” 311-55, “Extension of Time for Filing,” and 311-75, “Interest, Fees, Charges and Civil Penalties for Tax Years Beginning on or After January 1, 2016,” to make changes required by changes to Ohio law and to simplify language in various provisions of the Cincinnati Municipal Code.

WHEREAS, the State of Ohio recently adopted H.B. 33, the Operating Appropriations for Fiscal Years 2024-2025, modifying Ohio Revised Code Chapter 718, “Municipal Income Tax”; and

WHEREAS, amendments to the Cincinnati Municipal Code are required so the Cincinnati Municipal Code is consistent with the Ohio Revised Code;

WHEREAS, certain other minor modifications to the language in CMC Chapter 311 are necessary to ensure clarity to taxpayers and tax professionals; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Sections 311-15, “Exception to the Tax; Exempt Income,” 311-17, “Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment,” 311-21, “Net Operating Loss (NOL),” 311-55, “Extension of Time for Filing,” and 311-75, “Interest, Fees, Charges and Civil Penalties for Tax Years Beginning on or After January 1, 2016,” of the Cincinnati Municipal Code are hereby amended as follows:

Sec. 311-15. Exception to the Tax; Exempt Income.

The tax provided for herein shall not be levied upon the following “exempt income”:

- (a) Proceeds from welfare benefits, unemployment compensation, pensions, social security benefits, railroad retirement benefits, and retirement benefit payments as defined by the Internal Revenue Service, except to the extent that such amounts are included in the definition of qualifying wages provided in this chapter. As used herein, “unemployment compensation” does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code;

- (b) Proceeds of sickness, accident, or liability insurance policies, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations; compensation for personal injury and like reimbursements, excluding compensation paid for loss of profits and salaries or wages or awards for punitive damages;
- (c) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations, or labor unions, trade or professional associations, lodges, and similar organizations;
- (d) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income derived from the operation of a trade or business;
- (e) Alimony and child support received;
- (f) Compensation for damage to property from insurance proceeds or otherwise;
- (g) Intangible income;
- (h) The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state;
- (i) The income of any religious, charitable, scientific, literary, educational, fraternal, or other institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities, but income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall be taxable. In the event taxable income is generated from real or personal property ownership or an income producing business located both within and without the corporate limits of the Municipality, income shall be apportioned to the Municipality under the method provided in Section 311-17;
- (j) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax;
- (k) The rental value of a home furnished to a minister of the gospel as part of his or her compensation, or the rental allowance paid to a minister of the gospel as part of his or her compensation, to the extent used to rent or provide a home pursuant to section 107 of the Internal Revenue Code;

- (l) Compensation paid under sections 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed ~~one thousand dollars (\$1,000)~~ for the taxable year. Such compensation in excess of ~~one thousand dollars (\$1,000)~~ for the taxable year may be subject to municipal taxation, but the payer of such compensation is not required to withhold any municipal income tax from that compensation;
- (m) For tax years prior to January 1, 2016, compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to municipal income tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality;
- (n) Compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve ~~(12)~~ or fewer days in a calendar year for years prior to January 1, 2016 and twenty ~~(20)~~ or fewer days in a calendar year for years beginning on or after January 1, 2016, except as permitted by Section 311-27 of this chapter. For purposes of this subsection (n), “compensation” means any form of remuneration paid to an employee for personal services;
- (o) Income of a public utility when that public utility is subject to the tax levied under sections 5727.24 or 5727.30 of the Ohio Revised Code. This provision does not apply for purposes of Chapter 5745 of the Ohio Revised Code;
- (p) Employee compensation that is not qualifying wages as defined in Section 311-9-Q of this chapter;
- (q) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is a resident of the Municipality;
- (r) An S corporation shareholder’s distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code;
- (s) Any compensation arising from the grant, 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;
- (t)(i) For tax years beginning on or after January 1, 2016, except as provided in divisions (ii), (iii), and (iv) of this subsection, qualifying wages described in subsection (b)(i)

or (e) of Section 311-27 of this chapter to the extent the qualifying wages are not subject to withholding for municipal income tax under either of those divisions;

- (ii) The exemption provided in division (i) of this subsection does not apply to employees who resided in the Municipality at the time the employee earned the qualifying wages;
- (iii) The exemption provided in division (i) of this subsection does not apply to qualifying wages that an employer elects to withhold under subsection (d)(ii) of Section 311-27 of this chapter;
- (iv) The exemption provided in division (i) of this subsection does not apply to qualifying wages if both of the following conditions apply:
 - (1) For qualifying wages described in subsection (b)(i) of Section 311-27 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in subsection (e) of Section 311-27 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located; and
 - (2) The employee receives a refund of the tax described in subsection (t)(iv)(1) of this section on the basis of the employee not performing services in that municipal corporation;
- (u) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio Revised Code section 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence; and
- (v) Income the taxation of which is prohibited by the constitution or laws of the United States.
- (w) For tax years beginning on or after January 1, 2024, the income of individuals under 18 years of age.

Sec. 311-17. 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 Chapter 5745 of the Ohio Revised Code.

(a) Except as otherwise provided in subsections (b) and (h), 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:

(i) 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 the preceding paragraph, real property or tangible personal 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 (8);

(ii) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality 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 311-27 of this chapter.

As used in the preceding paragraph, persons employed shall not be construed to mean any subcontractor or independent contractor;

(iii) 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)(i) If the apportionment factors described in subsection (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 commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method. For tax years beginning on or after January 1, 2016, only those alternative apportionment methods set forth in Ohio Revised Code section 718.02(B) may be used. For tax years beginning on or after January 1, 2023, additional apportionment methods set forth in subsection (h) may be used pursuant to Ohio Revised Code section 718.021.

- (ii) A taxpayer request to use an alternative apportionment method shall be in writing.
 - (1) For tax years beginning before January 1, 2016, the request must be made before the end of the tax year and must state the specific grounds on which the request for permission to use an alternative method is based. Once a taxpayer has filed under an alternative method, the taxpayer must continue to so file until given permission to change by the tax commissioner.
 - (2) For tax years beginning on or after January 1, 2016, the request shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the tax commissioner denies the request in an assessment issued within the period prescribed by subsection (a) of Section 311.99 of this chapter. Nothing in this subdivision (2) nullifies or otherwise affects any alternative apportionment arrangement approved by the tax commissioner or otherwise agreed upon by both the tax commissioner and taxpayer prior to January 1, 2016.
- (iii) For tax years beginning on or after January 1, 2016, the tax commissioner may require a taxpayer to use an alternative apportionment method as described in subsection (b)(i) of this section only by issuing an assessment to the taxpayer within the period prescribed by subsection (a) of Section 311.99 of this Chapter.
- (iv) Nothing in subsection (b) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the tax commissioner or otherwise agreed upon by both the tax commissioner and taxpayer before January 1, 2016.
- (c) For tax years beginning on or after January 1, 2016 and as used in subsection (a)(ii) 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 locations set forth in Ohio Revised Code section 718.02(C).
- (d) For the purposes of subsection (a)(iii) of this section, and except as provided in subsection (h) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
 - (i) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation only if, regardless of where title passes, the property meets either of the following criteria:
 - (1) The property is shipped to or delivered within the Municipality from a stock of goods located within the Municipality; or
 - (2) The property is delivered within the Municipality from a location outside the Municipality, provided the taxpayer is regularly engaged

through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.

- (ii) Gross receipts from the sale of services shall be situated to the Municipality to the extent that such services are performed in the Municipality.
 - (iii) To the extent included in income, gross receipts from the sale of real property located in the Municipality shall be situated to the Municipality.
 - (iv) To the extent included in income, gross receipts from rents and royalties from real property located in the Municipality shall be situated to the Municipality.
 - (v) 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 shall be 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. Taxpayers shall use separate accounting for the purpose of calculating net profit situated under this ~~division~~subsection to the Municipality for property located within the Municipality.
- (f)(i) Except as provided in subsection (f)(ii) of this section, 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 Municipality based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the Municipality to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (ii) An individual who is a resident of the Municipality shall report the individual's net profit from all real estate activity on the individual's annual tax return for that Municipality. The 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 311-47 of this chapter.
- (g) When calculating the ratios described in subsection (a) of this section for the purposes of that subsection or subsection (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.

(h) As used in this subsection:

(i) “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:

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

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

(ii) “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.

(iii) “Reporting location” means either of the following:

(1) A 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 indirectly by the taxpayer;

(2) 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 311-23 of this Chapter on qualifying wages paid to an employee for the performance of personal services at that location.

(iv) “Qualifying reporting location” means one of the following:

(1) 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;

(2) If no reporting location exists in this state for an employee or owner under division (iv)(1) of this subsection, the reporting location in this state at which the employee’s or owner’s supervisor regularly or periodically reports during the taxable year;

(3) If no reporting location exists in this state for an employee or owner under division (iv)(1) or (2) of this subsection, 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 division (iv)(3) at any time.

(v) For tax years beginning on or after January 1, 2023, a taxpayer may elect to apply the provisions of this subsection to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of subsections (a) and (b) of this section apply to such apportionment except as otherwise provided in this subsection.

A taxpayer shall make the election allowed under this subsection 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 provisions authorized in this subsection, 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 subsection prohibits a taxpayer from making a new election under this subsection after properly revoking a prior election.

(vi) For the purpose of calculating the ratios described in subsection (a) of this section, all of the following apply to a taxpayer that has made the election described in subsection (h)(v):

(1) For the purpose of subsection (a)(i) 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.

(2) For the purpose of subsection (a)(ii) 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.

(3) For the purpose of subsection (a)(iii) of this section, and notwithstanding subsection (d) 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.

(vii) Nothing in this subsection 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 subsection (b) 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.

(viii) Except as otherwise provided in this subsection, nothing in this subsection is intended to affect the withholding of taxes on qualifying wages pursuant to sections 311-23 and 311-27 of this Chapter.

Sec. 311-21. Net Operating Loss (NOL).

- (a) Except as limited by subsections (b), (h) and ~~(i)~~(j) of this Section 311-21, any net operating loss incurred by a taxpayer in a taxable year beginning on or after January 1, 2017 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.
- (b) No portion of a net operating loss shall be carried back against net profits of any prior year, and no portion of a net operating loss may offset qualifying wages.
- (c) A pre-2017 net operating loss sustained shall be apportioned to the Municipality in the same manner as provided in Section 311-17 of this chapter for apportioning net profits to the Municipality. A net operating loss sustained in any taxable year

beginning prior to January 1, 2017 that is apportioned to the Municipality may be applied against the net profit of succeeding tax years that is apportioned to the Municipality, until exhausted, but in no event for more than five (5) taxable years immediately following the year in which the loss occurred.

- (d) The distributive share of the net profit of each pass-through entity owned directly or indirectly by the taxpayer shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current year.
- (e) The tax commissioner shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.
- (f) The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.
- (g) If a taxpayer who is an individual is engaged in two (2) or more taxable business activities to be included in the same return, the net loss apportioned to the Municipality of one unincorporated business activity may offset the profits apportioned to the Municipality of another unincorporated taxable business for purposes of arriving at the overall net profits of the taxpayer that are subject to municipal income tax.
- (h) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a taxpayer may not deduct more than fifty percent (50%) of the amount of the post-2017 deduction otherwise allowed by subsection (a) of this section.
- (i) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by subsection (a) of this section without regard to the limitation of subsection (h) of this section.
- ~~(j)~~(i) Any pre-2017 net operating loss carry forward deduction must be utilized before a taxpayer may deduct any amount pursuant to subsection (a) of this ~~§~~section 311-21.
- ~~(j)~~(k) Nothing in subsection (h) of this ~~§~~section 311-21 precludes a taxpayer from carrying forward, for the period otherwise permitted under subsection (a) or subsection (c) of this ~~§~~section 311-21, any amount of net operating loss that was not fully utilized.

Sec. 311-55. Extension of Time for Filing.

- (a)(i) For tax years beginning prior to January 1, 2016, a request for extension for filing the municipal income tax return shall be filed no later than the original due date for filing such return, as set forth in Section 311-51 of this chapter. The extended due

date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The taxpayer shall make the request by filing either a copy of the taxpayer's request for a federal filing extension or a written request with the tax commissioner.

- (ii)(1) For tax years beginning on or after January 1, 2016, 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 a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth ~~(15th)~~-day of the tenth ~~(10th)~~ month after the last day of the taxable year to which the return relates. For tax years ending after December 31, 2022, the extended due date of municipal income tax return for a taxpayer that is not an individual shall be the fifteenth day of the eleventh month after the last day of the taxable year to which the return relates.
- (2) Any taxpayer that qualifies for an automatic federal extension for a period other than six ~~(6)~~-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.
- (3) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax commissioner 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 commissioner on or before the date the municipal income tax return is due, the tax commissioner shall grant the taxpayer's requested extension.
- (b) Notwithstanding subsections (a)(i) and (a)(ii) above, on and after January 1, 2005, any taxpayer that is subject to municipal income tax on the taxpayer's net profit and that has received an extension to file the federal income tax return for the same tax year shall not be required to notify the Municipality of the federal extension and shall not be required to file the municipal income tax return for such tax year until the last day of the month to which the due date for filing the federal income tax return has been extended; provided that, on or before the due date specified in Section 311-51 for filing the municipal income tax return, the taxpayer notifies the Ohio tax commissioner of the federal extension through the Ohio business gateway.
- (c) The Municipality may deny a taxpayer's request for extension if the taxpayer fails to timely file a request, including the failure to file a copy of the federal extension request, if applicable.
- (d) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date; hence, interest may apply to any unpaid tax during the period of the extension at the rate

set forth in Sections 311-73 and 311-75. No penalty shall be assessed in those cases where the return is filed and the final tax paid within the extension period, provided all other filing and payment requirements have been fulfilled. However, if upon further examination, it becomes evident that declaration, filing or payment requirements have not been fulfilled, penalty and interest may be assessed in full in the same manner as though no extension for the filing of the municipal income tax return had been granted.

- (e) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Ohio Revised Code, a taxpayer 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 the extended due date of the state income tax return.
- (f) In the event the United States of America, the State of Ohio, Hamilton County or the Municipality has declared any part of the Municipality a disaster area, the tax commissioner may extend the time for filing of the annual return for a period not to exceed six (6) months for persons who have suffered injury or loss from the disaster. The city manager or city manager's designee shall establish guidelines for determining eligibility for and implementation of such extension. In the event an extension is granted, both penalty and interest shall be waived during the time of the extension.
- (g) If a taxpayer receives an extension for the filing of a municipal income tax return under subsections (a) or (e) of this section, the tax administrator shall not make any inquiry or send any 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 subsection (g) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Subsection (g) of this section does not apply to an extension received under subsection (a) 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 subsections (a)(ii)(1) and (a)(ii)(2) of this section or failed to file for an extension under subsection (a)(ii)(3) of this section.

Sec. 311-75. Interest, Fees, Charges and Civil Penalties for Tax Years Beginning on or After January 1, 2016.

- (a) As used in this section:
 - (i) "Applicable law" means this chapter and the ordinances, codes, directives, instructions, rules, and regulations adopted by the Municipality regarding municipal income tax.

- (ii) “Federal short-term rate” means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three (3) years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.
- (iii) “Income tax” “estimated income tax,” and “withholding tax” mean any income tax, estimated income tax, and withholding tax imposed by the Municipality pursuant to applicable law, including at any time before January 1, 2016.
- (iv) “Interest rate as described in subsection (a) of this section” means the federal short-term rate, rounded to the nearest whole number percent, plus five percent (5%). The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with subsection (a)(ii) of this section.
- (v) “Return” includes any tax return, report, reconciliation, schedule, and other document required to be filed with the tax commissioner by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.
- (vi) “Unpaid estimated income tax” means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.
- (vii) “Unpaid income tax” means income tax due but not paid by the date the income tax is required to be paid under applicable law.
- (viii) “Unpaid withholding tax” means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
- (ix) “Withholding tax” includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee’s qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee’s qualifying wages.

(b)(i) This section shall apply to the following:

- (1) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016; and
- (2) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016.

- (ii) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the provisions of Section 311-73 of this chapter.
- (c) A taxpayer, employer, any agent of the employer, and any other payer who fails for any reason, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax due to the Municipality or to file timely with the Municipality any return required to be filed shall be liable for interest and penalties as set forth in this section.
 - (i) Interest shall be imposed at the rate defined as “interest rate as described in subsection (a) of this section,” per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.
 - (ii) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent (~~15%~~) of the amount not timely paid shall be imposed.
 - (iii) With respect to any unpaid withholding tax, a penalty not exceeding fifty percent (~~50%~~) of the amount not timely paid shall be imposed.
 - (iv) For tax years ending on or before December 31, 2022, Wwith respect to returns other than estimated income tax returns, the Municipality may shall impose a ~~monthly~~ penalty of ~~twenty-five dollars (\$25)~~ 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 (\$150) in assessed penalty for each failure to timely file a return.~~
 - (v) For tax years ending after December 31, 2022, with respect to returns other than estimated income tax returns, the Municipality may impose a penalty not exceeding \$25 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 taxpayer’s first failure to timely file a return after the taxpayer files that return.
- (d) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not do either of the following:
 - (i) Impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section; or

- (ii) Refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.
- (e) The tax commissioner may, in the tax commissioner’s sole discretion, abate or partially abate penalties or interest imposed under this section when the tax commissioner deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.
- (f) The Municipality’s post-judgment collection costs and fees, including attorney’s fees, are imposed on and shall be collectible from the taxpayer, employer, any agent of the employer, or any other payer.

Section 2. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to make the changes to Chapter 311 of the Cincinnati Municipal Code effective as soon as possible to ensure that the Cincinnati Municipal Code is consistent with the Ohio Revised Code.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk

New language underscored. Deleted language indicated by strikethrough.