ORDINANCE 2023-55

AN ORDINANCE TO AMEND CHAPTER 33 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF ARCHBOLD, OHIO REGARDING MUNICIPAL INCOME TAX, AND DECLARING AN EMERGENCY

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. 33 in July 2023, and mandated that municipal income tax codes be amended by January 1, 2024 such that any income or withholding tax is "levied in accordance with the provisions and limitations specified in [Chapter 718];" and

WHEREAS, upon detailed review of H.B. 33 and the Codified Ordinances of the Village of Archbold, Ohio, this Ordinance is found and determined by this Council to enact the amendments required prior to the January 1, 2024 deadline to be in accord with this provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, Council also finds and determines that the constitutionality of certain provision 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 reluctantly are adopted by this Council but are disclaimed to the extent they are unlawful or unconstitutional; and

WHEREAS, Council finds that enactment of this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the Village, and for the further reason that this Ordinance must be effective no later than January 1, 2024 so as to ensure the continued collection of Village income tax revenues and the legal resolution of disputes regarding the interpretation of Chapter 33 of the Codified Ordinances, and therefore that this Ordinance must be in full force and effect immediately upon its passage and approval by the Mayor.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ARCHBOLD, STATE OF OHIO, THAT:

Section 1. That Chapter 33 of the Codified Ordinances be amended, in part, to include within the document entitled "Chapter 33, Income Tax" those provisions attached hereto as Exhibit A and incorporated herein by reference, with all other provisions thereof remaining in full force and effect, being hereby ratified and confirmed.

Section 2. That this Ordinance shall take effect and be in force from and after January 1, 2024. This Ordinance does not repeal the existing sections of Chapter 33 for any taxable year prior to 2024. For municipal tax years beginning before January 1, 2024, the Village shall continue to administer, audit, and enforce the income tax of the Village under ORC 718 and those ordinances and resolutions as they existed before January 1, 2024.

Section 3. Should any section, clause or provision of this Ordinance be declared by a Court to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 4. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 5. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the Village, and for the further reason that this Ordinance must be immediately effective so as to ensure the continued collection of Village income tax revenues and the legal resolution of disputes regarding the interpretation of Chapter 33 of the Codified Ordinances, wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: December 4, 2023

Karla Ball
Karla Ball, President of Council

Brad Grime
Brad Grime Mayor

Attest: Cassandra C. Storrer
Cassandra C. Storrer, Clerk of Council

DATE APPROVED

APPROVED AS TO FORM:

LAW DIRECTOR

Exhibit A

§ 33.045 APPLICABILITY; TAXABLE SITUS; APPORTIONMENT.

(D) For the purposes of division (A)(3) of this section, and except as provided in section 33.0621, receipts from sales and rentals made and services performed shall be sitused to a village as follows:

(1) Gross receipts from the sale of tangible personal property shall be sitused to the village only if, regardless of where title passes, the property meets either of the following criteria:

(a) The property is shipped to or delivered within the village from a stock of goods located within the village.

(b) The property is delivered within the village from a location outside the village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such village and the sales result from such solicitation or promotion.

(2) Gross receipts from the sale of services shall be sitused to village to the extent that such services are performed in the village.

(3) To the extent included in income, gross receipts from the sale of real property located in the village shall be sitused to the village.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the village shall be sitused to the village.

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

§ 33.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.

(A) Except as otherwise provided in section 33.061 and division (B) of this section, net profit from a business or profession conducted both within and without the boundaries of the village shall be considered as having a taxable situs in the village 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 village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the

village 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 33.052 of this Chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the village to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

§ 33.0621 ALTERNATIVE NET PROFITS APPORTIONMENT FOR REMOTE EMPLOYEES.

(A) As used in this section:

(1) "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:

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

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

(2) "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.

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

(a) 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;

(b) 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 33.051 on qualifying wages paid to an employee for the performance of personal services at that location.

(4) "Qualifying reporting location" means one of the following:

(a) 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;

(b) If no reporting location exists in this state for an employee or owner under division (A)(4)(a) 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;

(c) If no reporting location exists in this state for an employee or owner under division (A)(4)(a) or (b) 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.

(B) A taxpayer may elect to apply the provisions of this section to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of section 33.062 apply to such apportionment except as otherwise provided in this section.

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

(C) For the purpose of calculating the ratios described in division (A) of section 33.062, all of the following apply to a taxpayer that has made the election described in division (B) of this section:

(1) For the purpose of division (A)(1) of section 33.062, 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 sitused to that individual's qualifying reporting location.

(2) For the purpose of division (A)(2) of section 33.062, 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 sitused to that individual's qualifying reporting location.

(3) For the purpose of division (A)(3) of section 33.062, and notwithstanding division (D) of that 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 sitused to that individual's qualifying reporting location.

(D) Nothing in this section 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) of section 33.062. 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.

(E) Except as otherwise provided in this section, nothing in this section is intended to affect the withholding of taxes on qualifying wages pursuant to sections 33.051 and 33.052 herein. *(ORC 718.021)*

§ 33.094 EXTENSION OF TIME TO FILE.

(A) 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 for a taxpayer that is an individual shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. The extended due date of the 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.

(B) 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 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.

(C) An extension of time to file under this section is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(D) 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.

(E) If the tax administrator considers it necessary in order to ensure the payment of the tax imposed by the municipal corporation in accordance with this chapter, the tax administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(F) If a taxpayer receives an extension for the filing of a municipal income tax return under 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 division (F) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to one hundred fifty dollars.

Division (F) of this section does not apply to an extension received under division (A) or (B) 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 (A) of this section or failed to file for an extension under division (B) of this section.

(G) To the extent that any provision in this division conflicts with any provision in section 33.092, the provision in that section prevails.

§ 33.10 PENALTY, INTEREST, FEES, AND CHARGES.

(C)

(4) With respect to returns other than estimated income tax returns, the village 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 village shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.