

ORDINANCE NO. 15 , 2023

AN ORDINANCE AMENDING CHAPTER 44.1, *INCOME TAX*, TO COMPLY WITH MANDATES REQUIRED BY THE OHIO GENERAL ASSEMBLY

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution authorizes local municipal corporations to levy a tax on income of persons and businesses residing within, sited within, or working within City limits; and

WHEREAS, the Ohio General Assembly has mandated that each municipal corporation desiring to tax such income must enact certain provisions as mandated by the Ohio General Assembly or lose their taxing authority; and

WHEREAS, the 135th General Assembly has passed H.B. 33, which has been signed by Governor DeWine, mandating changes in the local Income Tax Codes providing exemption of certain income and limiting the enforcement ability of local jurisdictions; and

WHEREAS, administration of the local Tax Code has been sourced to the Regional Income Tax Authority (“RITA”) which has recommended specific changes in the Montgomery Income Tax Code to meet the mandates of H.B. 33.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. Section 44.1.03(11), ***Exempt Income***, is hereby amended to add the following exemption:

(O) For tax years 2024 and hereafter the income of individuals under Eighteen (18) years of age.

SECTION 2. Section 44.1.062, *Net Profit*, shall be amended under subsection (A) to read as follows:

Except as provided in divisions (B)(1) and (I) of this section, Net Profit from a business or profession conducted both within or 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:

The remainder of subsection (A) is hereby ratified and reaffirmed.

SECTION 3. Section 44.1.062(D), the following language shall be added:

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

All other provisions of section (D) are hereby ratified and reaffirmed.

SECTION 4. There is hereby added a new section (I) to Section 44.1.062 reading as follows:

(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) 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;

(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 44.1.05 of this Chapter, 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 provisions 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)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (1)(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, and notwithstanding division (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.

(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 44.1.05 of this Chapter.

SECTION 5. Section 44.1.091, *Return and Payment of Taxes*, (A)(3) shall read as follows:

(3) An annual municipal income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax whether or not a tax is due thereon.

SECTION 6. Section 44.1.094 shall be amended to add the following sentence to subsection (A):

For tax years ending on or after January 1, 2023, the extended due date in the municipality's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates.

In addition, Section 44.1.094 shall be amended to add the following subsections (F) and (G):

(F) If a taxpayer receives an extension for the filing of a municipal income tax return under Section 44.1.091(G)(2) or Section 44.1.094(A), (C), (D) 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 (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 \$150.

Subsection (F) 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 subsection (A) of this section or failed to file for an extension under subsection (C) of this section.

(G) To the extent that any provision of subsections (A), (B), (C), (D), (E) of this section conflicts with any provision in Section 44.1.092, the provisions of Section 44.1.092 shall prevail.

SECTION 7. Section 44.1.10, *Penalty, Interest, Fees and Charges*, shall be amended at Paragraph (C)(4) to read as follows:

(a) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the City may impose a penalty of \$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 \$150 for each failure.

(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the City may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the City shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

SECTION 8. Section 44.1.013, *Allocation of Funds*, is hereby amended to read as follows:

The funds collected under the provision of this Chapter shall be disbursed for the following purposes:

(a) **Twenty percent (20%) to the Capital Improvement Fund.**

(b) **Seventy Five percent (75%) to the General Fund for purposes of general municipal operations.**

(c) **Five percent (5%) to the General Bond Retirement Fund.**

SECTION 9. To the extent amended herein, Council does ratify and reaffirm the terms and provisions of Chapter 44.1 of the Code of Ordinances.

SECTION 10. All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

SECTION 11. This Ordinance is hereby declared to be an emergency measure necessary to preserve the public health, safety and welfare and shall take effect January 1, 2024 to continue the administration of the municipal income tax levied by the City of Montgomery.

PASSED: December 6, 2023

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Ronald G. Messer
Ronald G. Messer, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director