



*City of
Centerville*

Brooks A. Compton, Mayor | Wayne S. Davis, City Manager

**NOTICE OF PUBLIC HEARING
Centerville City Council**

Notice is hereby given that a Public Hearing shall be conducted during the Centerville City Council meeting scheduled for **Monday, November 20, 2023, at 7:30 p.m.** in the Council Chambers of the Centerville Municipal Building, 100 West Spring Valley Pike, Centerville, Ohio, Concerning Ordinance 16-23, An Ordinance To Amend Chapter 885, Earned Income Tax, Of The Centerville Municipal Code.

The Ordinance is attached in full to this notice.

By order of the City of Centerville, Ohio.

Teri Davis
Clerk of Council

ORDINANCE NO. 16-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER _____ ON THE ___ DAY
OF _____, 2023.

**AN ORDINANCE TO AMEND CHAPTER 885, EARNED
INCOME TAX, OF THE CENTERVILLE MUNICIPAL CODE.**

WHEREAS, the City of Centerville periodically reviews the laws relating to municipal income taxes; and

WHEREAS, the State of Ohio recently adopted HB 33, the Operating Appropriations for Fiscal Years 2024-2025, which made several changes to the Ohio Revised Code municipal taxation portions; and

WHEREAS, the City of Centerville Income Tax Division has recommended certain changes to the City's Municipal Code relating to municipal income taxes to be consistent with the changes in the Ohio Revised Code; and

WHEREAS, it is recommended to amend Chapter 885 of the Centerville Municipal Code to incorporate these changes.

NOW THEREFORE THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That the following amendment to Centerville Municipal Code Section 885.03, is hereby enacted as follows with new language to be added in *bold italics* and text to be deleted in ~~strikeout~~ as provided in section 5.02 of the Centerville Charter.

885.03 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Ohio R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

(a) “Adjusted federal taxable income,” for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (w)(4) of this section, means a C corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to five per cent of intangible income deducted under division (a)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(4) A. Except as provided in division (a)(4)B. of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

B. Division (a)(4)A. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer

agreement or from the enterprise transferred under that agreement under Ohio R.C. 4313.02;

(8) A. Except as limited by divisions (a)(8)B., C. and D. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss 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 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 person shall use the deduction allowed by division (a)(8) of this section to offset qualifying wages.

C. i. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than 50% of the amount of the deduction otherwise allowed by division (a)(8)A. of this section.

ii. 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 division ~~(a)(8)C.i.~~ (a)(8)A. of this section.

D. Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (a)(8) of this section.

E. Nothing in division (a)(8)C.i. of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (a)(8)C.i. of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (A)(8)C.i. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (A)(8)C.i. of this section shall apply to the amount carried forward.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in

the group's federal taxable income in accordance with section 885.06(c)(5)C.ii. of this chapter.

(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with section 885.06(c)(5)C.ii. of this chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (uu)(2) of this section, is not a publicly traded partnership that has made the election described in division (w)(4) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (a) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

SECTION 2. That the following amendment to Centerville Municipal Code Section 885.06, is hereby enacted as follows with new language to be added in ***bold italics*** and text to be deleted in ~~strikeout~~ as provided in section 5.02 of the Centerville Charter.

885.06 INCOME SUBJECT TO NET PROFIT TAX.

(b) 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 Ohio R.C. Ch. 5745.

(1) 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:

A. 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, 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;

B. 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 885.05(b) of this chapter;

C. 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.

(2) A. If the apportionment factors described in division (b)(1) 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 Administrator 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:

- i. Separate accounting;
- ii. The exclusion of one or more of the factors;

iii. 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;

iv. A modification of one or more of the factors.

B. 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 Administrator denies the request in an assessment issued within the period prescribed by section 885.19(a) of this chapter.

C. A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (b)(2)A. of this section only by issuing an assessment to the taxpayer within the period prescribed by section 885.19(a) of this chapter.

D. Nothing in division (b)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (b)(1)B. 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:

A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

i. The employer;

ii. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

iii. A vendor, customer, client, or patient of a person described in division (b)(3)A.ii. of this section, or a related member of such a vendor, customer, client, or patient.

B. 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;

C. i. *As used in this section:*

(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:*

(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.*

(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 the City of Centerville or 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:*

(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 885.05 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:

(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 (C)(i)(d)(1) 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;

(3). If no reporting location exists in this state for an employee or owner under division (C)(i)(d)(1) or (2) 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 designed for an employee or owner under this division at any time.

ii. 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 885.04 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 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.

iii. For the purpose of calculating the ratios described in section 885.06, all of the following apply to a taxpayer that has made the election described in division (ii) of this section:

(a) For the purpose of 885.06(b)(1)(A), the average original cost of any tangible personal property used by a qualify remote employee or owner at that individual's qualifying remote work location shall be sitused to that individual's qualifying reporting location.

(b) For the purpose of division 885.06(b)(1)(B)), 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.

(c) For the purpose of division 885.06(b)(1)(C) and notwithstanding 885.06(b)(4), any gross receipts of the business or profession from services performed during the taxable period by qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be sitused to the individual's qualifying reporting location.

iv. 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 885.06(b)(2). 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 the municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in the municipal corporation.

- v. Except as otherwise provided in this section , nothing in this section is intended to affect the withholding of taxes on qualifying wages pursuant to 885.05.*

(ORC 718.021)

D. Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (b)(3)A. or B. of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (b)(1)C. of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

A. Gross receipts from the sale of tangible personal property shall be situated 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:

i. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.

ii. 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.

iii. 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.

B. Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.

C. To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.

D. 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.

E. 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.

(5) 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.

A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) A. Except as provided in division (b)(6)B. 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 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.

B. An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. 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 885.08(a) of this chapter.

(7) 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, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under sections 885.03(k)(12) and 885.03(hh)(1)D. this chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, 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 that municipal corporation 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 a municipal corporation under this section.

(8) When calculating the ratios described in division (b)(1) of this section for the purposes of that division or division (b)(2) 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 3. That the following amendment to Centerville Municipal Code Section 885.09, is hereby enacted as follows with new language to be added in *bold italics* and text to be deleted in ~~strikeout~~ as provided in section 5.02 of the Centerville Charter.

885.09 ANNUAL RETURN

(d) Extension of time to file.

(1) 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 taxpayer shall attach a copy of said federal extension request to the municipal income tax return. *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.*

(6) If a taxpayer receives an extension for the filing of a municipal income tax return under division (d)(1), (2), or (3) 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 ever occurs first.

If a tax administrator violates division (d)(6) 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 (d)(6) of this section does not apply to an extension received under division (d)(1) 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 (d)(1) of this section or failed to file for an extension under division (d)(3) of this section.

SECTION 4. That the following amendment to Centerville Municipal Code Section 885.10, is hereby enacted as follows with new language to be added in ***bold italics*** and text to be deleted in ~~strikeout~~ as provided in section 5.02 of the Centerville Charter.

885.10 PENALTY, INTERST, FEES AND CHARGES

(c)(4) With respect to returns other than estimated income tax returns, the municipality shall impose a ***monthly*** penalty ~~of 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 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 \$150 in assessed penalty for each*** failure to timely file a return ***after the taxpayer files that return.***

SECTION 5. This ordinance shall become effective on January 1, 2024.

PASSED THIS _____ day of _____, 2023.

Mayor of the City of Centerville, Ohio

ATTEST:

Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. _____, passed by the Council of the City of Centerville, Ohio on the ____ day of _____, 2023.

Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney