

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____

ORDINANCE 34-23

AN ORDINANCE AMENDING THE VILLAGE OF HEBRON CODIFIED ORDINANCES SECTION 182.062, HEADED "NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT"

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF HEBRON, OHIO, AND THE MAJORITY OF THE MEMBERS ELECTED THERETO CONCURRING, THAT:

Section I: That section 182.062 of the Codified Ordinances is hereby amended to read in its entirety as follows:

182.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.

This section applies to any taxpayer engaged in a business or profession in the municipal corporation unless the taxpayer is an individual who resides in the municipal corporation 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 divisions (B), (D), (J), (K), (L), and (M) of this section, net profit from a business or profession conducted both within and without the boundaries of the municipal corporation shall be considered as having a taxable situs in the municipal corporation 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 municipal corporation during the taxable period to the average original cost of all 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 municipal corporation 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 182.052 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 municipal corporation to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the municipal corporation, the taxpayer may request, or the Tax Administrator 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 of more of the following:

- (a) Separate accounting;

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- (b) The exclusion of one or more of the factors;
 - (c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation
 - (d) A modification of one or more of the factors.
- (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may also use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 182.19 of this Chapter.
- (3) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in (B)(1) of this section only by using an assessment to the taxpayer within the period prescribed by division (A) of Section 182.19 of this Chapter.
- (4) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(C) As used in division (A)(2) of this section, “wages, salaries, and other compensation” includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

- (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - (a) The employer;
 - (b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.
- (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee’s presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer’s municipal income tax liability. If the 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.

(D) For purposes of division (A)(3) of this section, and except as otherwise provided in divisions (B), (I), (J), (K), (L), and (M) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

- (1) 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:
 - (a) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
 - (b) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

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(2) 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.

(3) 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.

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

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

(E) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual 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 may 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.

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

(2) 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 the 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 182.081 of this Chapter.

(G) If, in computing a taxpayer's adjusted federal 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 divisions (11)(L) and (34)(A)(iv) of Section 182.03 of this Chapter, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to the municipal corporation any amount other than the amount upon which the employee would be required to pay tax where the amount related to the stock option not exempted from taxation. This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the municipal corporation under this section.

(H) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(I) 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

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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 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 182.05 of this Chapter, 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 section at any time.

(J) For tax years ending on or after December 31, 2023, 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 182.062 of this Chapter 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 qualifying work location is located, unless the taxpayer is otherwise required to file a net employee's or owner's activity at the qualifying 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 a municipal corporation.

Nothing in this section prohibits a taxpayer from making a new election under this section after properly revoking a prior election.

(K) For the purpose of calculating the ratios described in section 182.062(A), 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 section 182.062(A)(1) of this chapter the average original cost of any tangible personal property used by a qualifying remote employee or owner at that

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individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(2) For the purpose of section 182.062(A)(2) of this chapter, 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 section 182.062(A)(3) of this chapter, and notwithstanding section 182.062(D) of this chapter 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.

(L) 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 section 182.062(B) of this chapter. 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.


(M) Except as otherwise provided in this section, nothing in this section is intended to affect the withholding of taxes on qualifying wages pursuant to section 182.05 of this chapter.

Section II: That existing section 182.094 of the Codified Ordinances of the Village of Hebron, Ohio, is hereby repealed.

Section III: That this ordinance shall take effect and be in force at the earliest time allowed by law.

Passed this 10th day of January, 2024.


Deborah Morgan, Fiscal Officer


DR. VALERIE MOCKUS, MAYOR

APPROVED AS TO FORM: Wesley K. Untied, Village Solicitor