

# VILLAGE OF BENTLEYVILLE, OHIO

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**ORDINANCE NO 2024-11**  
**INTRODUCED BY: RUBIN**

## **AN ORDINANCE TO AMEND CERTAIN PROVISIONS OF THE MUNICIPAL INCOME TAX CODE OF THE VILLAGE OF BENTLEYVILLE PURSUANT TO HOUSE BILL 33 AND DECLARING AN EMERGENCY**

**WHEREAS**, the Home Rule Amendment of the Ohio Constitution, Article XVII, 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 municipality's 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 June 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 a detailed review of H.B. 33 and the Codified Ordinances of the Village of Bentleyville, 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 the provisions and limitations specified in Chapter 718 of the Revised Code; and

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE VILLAGE OF BENTLEYVILLE, CUYAHOGA COUNTY, OHIO, THAT:**

**Section 1.** Chapter 890 of the Codified Ordinances of the Village of Bentleyville be hereby amended to read as set forth in Exhibit A which is attached to this Ordinance and incorporated herein by reference.

**Section 2.** That this Ordinance shall be declared an emergency and effective immediately upon passage as it is necessary to protect and preserve the public's health, safety, and welfare, to wit: the amended and added provisions of the tax code must be in effect by January 1, 2024 by order of state law; and, therefore, this Ordinance shall take effect and be in full force immediately from and after the date of its passage.

3-20-24

Date Passed

Kathy McElroy

Mayor

I, the undersigned Fiscal Officer of the Village of Bentleyville, Ohio, hereby certifies that I published the foregoing Ordinance in the Chagrin Valley Times as required by Section 731.21 of the R.C., for a period of fifteen (15) days, beginning the date following the passage and signature of the mayor.

M. Mont

Fiscal Officer

I, the undersigned Fiscal Officer of the Village of Bentleyville, Ohio, hereby certify that the foregoing is a true copy of Ordinance 2024-11 duly enacted by the Council of said Village on this 20<sup>th</sup> day of March 2024.

M. Mont

Fiscal Officer

**890.27 – Effective date.**

(a) Ordinance 2019-29, effective January 1, 2016, and corresponding changes to R.C. § 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this chapter 890 apply to taxable years beginning 2016 and succeeding taxable years.

(b) Ordinance 2019-29 repealed Chapter 880.

(c) Ordinance 2024-11 does not repeal the existing sections of Ordinance 2019-29 for any taxable year prior to 2024. For municipal taxable years beginning before January 1, 2024, the municipality shall continue to administer, audit, and enforce the income tax of the municipality under R.C. 718 and ordinances and resolutions of the municipality as that chapter and ordinances and resolutions existed before January 1, 2024.

(Ord. 2019-29, passed 7/17/2019)

**890-28 – Income subject to net profit tax; 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 R.C. Ch. 5745.

(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 d of this Ordinance, 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 (F) 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 (i)(2) of this section, all of the following apply to a taxpayer that has made the election described in division (G)(2):

(A) For the purpose of division (a)(1)(A) 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 sit used 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 (d) of this Ordinance.

#### **890.05 – Annual return; filing**

(g)(2) The first paragraph of Section 890.05 (g)(2) is hereby repealed and amended as follows:

(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 shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of the municipal income tax return for 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.

(c) If a taxpayer receives an extension for the filing of a municipal income tax return under division (a), (b), (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 this division, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (c) of this section does not apply to an extension received under division (2) 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.

#### **880.29 – Violations: Penalties**

(e) The municipality shall impose on a taxpayer, employer, any agent of the employer and any other payer, and will attempt to collect the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer or any other payer for any reason fails, in whole or in part, to make to the municipality timely and full payment or remittance of income tax, estimated income tax or withholding tax or to file timely with the municipality any return required to be filed.

(i) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the municipality may impose a monthly penalty of \$25.00 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 \$150.00 in assessed penalty for each failure to timely file a return.

(ii) For tax years ending on or after January 1, 2023, 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.

#### **890.29 – Election to be subject to R.C. 718.80 to 718.95**

(A) The municipality hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the ORC for tax years beginning on or after January 1, 2018.

(B) A taxpayer, as defined in division (C) of this section, may elect to be subject to Sections 718.80 to 718.95 of the ORC in lieu of the provisions of this Ordinance.

(C) "Taxpayer" has the same meaning as in section 718.01 of the ORC, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter

5745 of the ORC. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.