

# Ordinance No. 1262-2022

By Council Member Griffin  
(by departmental request)

## AN EMERGENCY ORDINANCE

To amend Sections 192.07, 192.12, and 192.13 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 1412-15, passed November 23, 2015, relating to relating to taxation of proceeds of sports gambling and making certain technical corrections.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Sections 192.07, 192.12, and 192.13 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No 1412-15, passed November 23, 2015, are amended to read as follows:

Section 192.07      Determining Municipal Taxable Income for Individuals

(a) “Municipal taxable income” for a resident of the municipality is calculated as follows:

(1) “Income” reduced by “exempt income” to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in division (t)(2) of Section 192.06 of this chapter, further reduced by any “pre-2017 net operating loss carryforward” equals “municipal taxable income”.

A. “Income” is defined in division (n) of Section 192.06 of this chapter.

B “Qualifying wages” is defined in division (hh) of Section 192.06 of this chapter.

C. “Net profit” is included in “income”, and is defined in division (w) of Section 192.06 of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in RC Chapter 718. Treatment of net profits received by an individual taxpayer from rental real estate is provided in division (e) of Section 192.14.

D. Division (n) of Section 192.06 provides the following: offsetting and net operating loss carryforward treatment in (n)(1)B.1.; resident’s distributive share of net profit from pass through entity treatment in (n)(1)B.2.; treatment of S corporation distributive share of net profit in the hands of the shareholder in (n)(1)C.; restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in (n)(1)D.

E. “Pass through entity” is defined in division (aa) of Section 192.06 of this chapter.

(2) “Exempt income” is defined in division (k) of Section 192.06 of this chapter.

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(3) Allowable employee business expense deduction is described in division (t)(2) of Section 192.06 of this chapter, and is subject to the limitations provided in that section.

(4) “Pre-2017 net operating loss carryforward” is defined in division (ff) of Section 192.06 of this chapter.

(b) “Municipal taxable income” for a nonresident of the municipality is calculated as follows:

(1) “Income” reduced by “exempt income” to the extent such exempt income is otherwise included in income, as applicable, apportioned or situated to the municipality as provided in Section 192.14 of this chapter, reduced by allowable employee business expense deduction as found in (t)(2) of Section 192.06 of this chapter, further reduced by any “pre-2017 net operating loss carryforward” equals “municipal taxable income”.

A. “Income” is defined in division (n) of Section 192.06 of this chapter.

B. “Qualifying Wages” is defined in division (hh) of Section 192.06 of this chapter.

C. “Net profit” is included in “income”, and is defined in division (w) of Section 192.06 of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in RC Chapter 718. “Net profit” for a nonresident individual includes any net profit of the nonresident, but excludes the distributive share of net profit or loss of only pass through entity owned directly or indirectly by the nonresident.

D. “Pass through entity” is defined in division (aa) of Section 192.06 of this chapter.

(2) “Exempt income” is defined in division (k) of Section 192.06 of this chapter.

(3) “Apportioned or situated to the municipality as provided in Section 192.14 of this chapter” includes the apportionment of net profit income attributable to work done or services performed in the municipality. Treatment of net profits received by an individual taxpayer from rental real estate is provided in division (e) of Section 192.14.

(4) “Allowable employee business expense deduction” as described in division (t)(2) of Section 192.06 of this chapter, is subject to the limitations provided in that section. For a nonresident of the municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the municipality.

(5) “Pre-2017 net operating loss carryforward” is defined in division (ff) of Section 192.06 of this chapter.

(c) For the purposes specified in Section 192.02, on and after January 1, 1967, an annual tax of one-half of one percent (0.5%) per annum shall be imposed upon all municipal taxable income; provided that on and after July 1, 1968, the rate of tax shall be a total of one percent (1%) per annum; and that on and after March 1, 1979, the rate of such tax shall be a total of one and five-tenths percent (1.5%) per annum; and that on

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and after January 1, 1981, the rate of tax shall be two percent (2%) per annum and that on or after January 1, 2017, the rate of tax shall be two and one-half percent (2.5%) per annum. Such tax shall be imposed upon all municipal taxable income.

## Section 192.12      Collection at Source; Casino, Sports Gaming Facility, Sports Gaming, and VLT

(a) A casino facility or a casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and RC 3772.01, respectively, or a sports gaming facility or type B sports gaming proprietor, as defined by RC 3775.01, or a lottery sales agent conducting video lottery terminal sales on behalf of the state is required to withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in this section.

(b) If a person's winnings at a casino facility are an amount for which reporting to the internal revenue service of the amount is required by Section 6041 of the Internal Revenue Code, as amended, the casino operator shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the casino facility is located.

(c) Amounts deducted and withheld by a casino operator are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the municipality, providing the name, address, and social security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of casino gaming that resulted in such winnings, and any other information required by the Tax Administrator. With this return, the casino operator shall remit electronically to the municipality all amounts deducted and withheld during the preceding month.

(2) Annually, on or before the thirty-first (31st) day of January, a casino operator shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the casino facility is located, indicating the total amount deducted and withheld during the preceding calendar year. The casino operator shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(3) Annually, on or before the thirty-first (31st) day of January, a casino operator shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The casino operator shall provide to the Tax Administrator a copy of each information return issued under this division. The administrator may require that such copies be transmitted electronically.

(4) A casino operator that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not

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remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(5) If a casino operator sells the casino facility or otherwise quits the casino business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor casino operator produces either of the following:

A. A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

B. A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(6) The failure of a casino operator to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.

(d) If a person's prize award from a video lottery terminal is an amount for which reporting to the internal revenue service is required by Section 6041 of the Internal Revenue Code, as amended, the video lottery sales agent shall deduct and withhold municipal income tax from the person's prize award at the rate of the tax imposed by the municipal corporation in which the video lottery terminal facility is located.

(e) Amounts deducted and withheld by a video lottery sales agent are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) The video lottery sales agent shall issue to a person from whose prize award an amount has been deducted and withheld a receipt for the amount deducted and withheld, and shall obtain from the person receiving a prize award the person's name, address, and social security number in order to facilitate the preparation of returns required by this section.

(2) On or before the tenth (10th) day of each month, the video lottery sales agent shall file a return electronically with the Tax Administrator of the municipality providing the names, addresses, and social security numbers of the persons from whose prize awards amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the prize award from which each such amount was withheld, and any other information required by the Tax Administrator. With the return, the video lottery sales agent shall remit electronically to the Tax Administrator all amounts deducted and withheld during the preceding month.

(3) A video lottery sales agent shall maintain a record of all receipts issued under division (e) of this section and shall make those records available to the Tax Administrator upon request. Such records shall be maintained under RC 5747.17 and any rules adopted under that section.

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(4) Annually, on or before the thirty-first (31st) day of January, each video lottery terminal sales agent shall file an annual return electronically with the Tax Administrator indicating the total amount deducted and withheld during the preceding calendar year. The video lottery sales agent shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(5) Annually, on or before the thirty-first (31st) day of January, a video lottery sales agent shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted and withheld from the person's prize award by the video lottery sales agent during the preceding year. A video lottery sales agent shall provide to the Tax Administrator a copy of each information return issued under this division. The Tax Administrator may require that such copies be transmitted electronically.

(6) A video lottery sales agent who fails to file a return and remit the amounts deducted and withheld is personally liable for the amount deducted and withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(f) If a video lottery sales agent ceases to operate video lottery terminals, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor of the video lottery sales agent that purchases the video lottery terminals from the agent shall withhold an amount from the purchase money that is sufficient to cover the amounts deducted and withheld and any penalties and interest thereon until the predecessor video lottery sales agent operator produces either of the following:

(1) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid; or

(2) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(g) The failure of a video lottery sales agent to deduct and withhold the required amount from a person's prize award does not relieve that person from liability for the municipal income tax with respect to that prize award.

(h) If a person's winnings at a sports gaming facility or sports gaming proprietorship are an amount for which reporting to the internal revenue service of the amount is required by Section 6041 of the Internal Revenue Code, as amended, the sports gaming facility operator or proprietor shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the sports gaming facility or sports gaming proprietorship is located.

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(i) Amounts deducted and withheld by a sports gaming facility operator or proprietor are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) On or before the tenth day of each month, the sports gaming facility operator or proprietor shall file a return electronically with the Tax Administrator of the municipality, providing the name, address, and social security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of sports gaming that resulted in such winnings, and any other information required by the Tax Administrator. With this return, the sports gaming facility operator or proprietor shall remit electronically to the municipality all amounts deducted and withheld during the preceding month.

(2) Annually, on or before the thirty-first (31st) day of January, a sports gaming facility operator or proprietor shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the sports gaming facility or sports gaming proprietorship is located, indicating the total amount deducted and withheld during the preceding calendar year. The sports gaming facility operator or proprietor shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(3) Annually, on or before the thirty-first (31st) day of January, a sports gaming facility operator or proprietor shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The sports gaming facility operator or proprietor shall provide to the Tax Administrator a copy of each information return issued under this division. The administrator may require that such copies be transmitted electronically.

(4) A sports gaming facility operator or proprietor that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(5) If a sports gaming facility operator or proprietor sells the sports gaming facility or sports gaming proprietorship or otherwise quits the sports gaming business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor sports gaming facility operator or proprietor produces either of the following:

A. A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

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B. A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(6) The failure of a sports gaming facility operator or proprietor to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.

~~(h)~~ (j) If a casino operator, sports gaming or lottery sales agent files a return late, fails to file a return, remits amounts deducted and withheld late, or fails to remit amounts deducted and withheld as required under this section, the Tax Administrator of a municipal corporation may impose the following applicable penalty:

(1) For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to fifty percent (50%) of the tax deducted and withheld;

(2) For the failure to file, or the late filing of, a monthly or annual return, a penalty of five hundred dollars (\$500.00) for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in RC 5703.47.

~~(i)~~ (k) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of Section 192.18 of this chapter. This division applies only to the person for whom the amount is deducted and withheld.

~~(j)~~ (l) The Tax Administrator shall prescribe the forms of the receipts and returns required under this section.

## Section 192.13 Determining Municipal Taxable Income for Taxpayers Who Are Not Individuals

“Municipal taxable income” for a taxpayer who is not an individual is calculated as follows:

(a) “Income” reduced by “exempt income” to the extent otherwise included in income, multiplied by apportionment, further reduced by any “pre-2017 net operating loss carryforward” equals “municipal taxable income”.

(1) “Income” for a taxpayer that is not an individual means the “net profit” of the taxpayer.

A. “Net profit” for a person other than an individual is defined in division (w) of Section 192.06 of this chapter.

B. “Adjusted federal taxable income” is defined in division (a) of Section 192.06 of this chapter.

(2) “Exempt income” is defined in division (k) of Section 192.06 of this chapter.

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(3) “Apportionment” means the apportionment as determined by Section 192.14 of this chapter.

(4) “Pre-2017 net operating loss carryforward” is defined in division (ff) of Section 192.06 of this chapter.

(b) For the purposes specified in Section 192.02, on and after January 1, 1967, an annual tax of one-half of one percent (0.5%) per annum shall be imposed upon all municipal taxable income; provided that on an after July 1, 1968, the rate of tax shall be a total of one percent (1%) per annum; and that on and after March 1, 1979, the rate of such tax shall be a total of one and five-tenths percent (1.5%) per annum; and that on and after January 1, 1981, the rate of tax shall be two percent (2%) per annum and that on or after January 1, 2017, the rate of tax shall be two and one-half percent (2.5%) per annum. Such tax shall be imposed upon all municipal taxable income.

Section 2. That existing Sections 192.07, 192.12, and 192.13 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No 1412-15, passed November 23, 2015, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

DDR:nl  
11-28-2022  
FOR: Director Abonamah



