

VILLAGE OF CRESTON

ORDINANCE NO. 2023-30

AN ORDINANCE OF THE VILLAGE OF CRESTON, WAYNE AND MEDINA COUNTY, OHIO, AMENDING THE MUNICIPAL TAX CODE SECTION 35.03, 35.062, 35.094, AND ESTABLISHING SECTION 35.96 AND DECLARING AN EMERGENCY.

WHEREAS, the Village of Creston previously determined the necessity to implement a Municipal Income Tax and adopted the Municipal Income Tax Code and its subsequent amendments and;

WHEREAS, the Village of Creston periodically reviews the laws related 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, after review and recommendations certain changes to the Village's Municipal Tax Code are necessary to be compliant and consistent with the changes in the Ohio Revised Code and the Council of the Village of Creston recommends and supports these changes.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CRESTON, WAYNE AND MEDINA COUNTY, OHIO THAT:

1. That the following amendments to the Village of Creston Municipal Tax Code Section 35.03(11)(O) is hereby enacted as follows:

To the extent authorized under a resolution or ordinance adopted by the Village of Creston before January 1, 2016 all or a portion of the income of individual or a class of individuals under 18 years of age *is* exempt from the requirements of this Chapter with regard to such employees.

2. That the following amendments to the Village of Creston Municipal Tax Code Section 35.03(34)(A)(iii) and (iv) are stricken and replaced with "Intentionally left blank."

3. That the following amendments to the Village of Creston Municipal Tax Code Section 35.062(A) is hereby enacted as follows:

Except as provided in divisions (B)(1) and (I) of this section, 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:

4. That the following amendments to the Village of Creston Municipal Tax Code Section 35.062(D) is hereby enacted as follows:

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

5. The Village hereby adds Section 35.062(I) to Chapter 35 as follows:

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 35.04 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 (G)(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 (G)(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

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 (F)(2) 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 35.04 of this Chapter.

6. That the following amendments to the Village of Creston Municipal Tax Code Section 35.094(A) is hereby enacted as follows:

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 municipality's income tax return for the 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.

7. That the following amendments to the Village of Creston Municipal Tax Code Section 35.094(F) is hereby enacted as follows:

If a taxpayer receives an extension for the filing of a municipal income tax return under division (A), (C), 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 division (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.

Division (F) of this section does not apply to an extension received under division (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 division (A) of this section or failed to file for an extension under division (C) of this section.

8. That the following amendments to the Village of Creston Municipal Tax Code Section 35.10(C) is hereby enacted as follows:

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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 (F)(1) 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 (F)(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 (F)(1)(b) 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 (F)(1)(c) of this section, and notwithstanding division (F)(4) of this section, any gross receipts of the business or profession from

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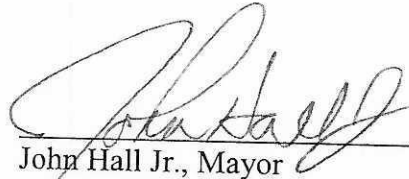
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- (4) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, [Municipality/City/Village] may impose a penalty of \$25 for each failure to timely file each return, regardless of the liability 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.
- (5) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, Municipality may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that 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.
9. The Village hereby adds Section 35.96 to Chapter 35 which shall be titled **ELCTION TO BE SUBJECT TO R.C. 718.80 TO 718.95**, which shall read as follows:
- (A) The Village of Creston 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 Chapter.
- (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.
10. Any provision or section of Chapter 35 not specifically amended herein shall remain in full force and effect.
11. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meeting requirements.
12. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the Village of Creston and its inhabitants; the specific reason for the emergency is be compliant and consistent with changes to the Ohio Revised Code. Therefore this Ordinance shall take become effective January 1, 2024.

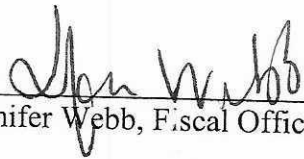
First Reading: December 4, 2023

Second Reading: December 20, 2023

Passed: December 20, 2023



John Hall Jr., Mayor



Jennifer Webb, Fiscal Officer