

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2018 – 043

By: Mayor Perciak and All Members of Council

AN ORDINANCE AMENDING SECTION 881.03(6) IMPOSITION OF TAX, AND SECTION 881.05(19) REGARDING ANNUAL RETURNS AND FILING; ENACTING A NEW SECTION 881.29 CONCERNING ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95, OF CHAPTER 881, OF TITLE FOUR OF PART EIGHT OF THE CITY'S CODIFIED ORDINANCES IN ORDER TO FURTHER PROVIDE FOR IMPOSITION AND REGULATION OF THE MUNICIPAL INCOME TAX, AND DECLARING AN EMERGENCY.

WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVIII, 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 citizens of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict municipalities' 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, last year, the General Assembly enacted House Bill 49 (HB 49), which mandated that certain sections of the municipal income tax codes were to be amended by January 1, 2018; and

WHEREAS, therefore, by and through Ordinance No. 2017-213, City Council amended certain sections of the municipal income tax code, as mandated by said HB 49; and

WHEREAS, upon a detailed further review of HB 49 and the Codified Ordinances of the City of Strongsville, and because of recent litigation between the City of Strongsville, along with other municipalities, against the Ohio Department of Taxation, further amendments are required to the City's Codified Ordinances, in order to be in accord with the new provisions and limitations specified in the Ohio Revised Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That Section 881.03(6) Imposition of Tax (Businesses), of Chapter 881 of Title Four of Part Eight-Business Regulation and Taxation Code of the Codified Ordinances of the City of Strongsville, be and is hereby amended in order that Section 881.03(6) shall read in its entirety as follows:

**CHAPTER 881
Income Tax Effective January 1, 2016**

881.01 Purpose of income tax; authority to levy tax.

881.02 Definitions.

881.03 Imposition of tax.

- 881.04 Collection at source.
- 881.05 Annual return; filing.
- 881.06 Credit for tax paid to other municipalities.
- 881.07 Estimated taxes.
- 881.08 Rounding of amounts.
- 881.09 Requests for refunds.
- 881.10 Second municipality imposing tax after time period allowed for refund.
- 881.11 Amended returns.
- 881.12 Limitations.
- 881.13 Audits.
- 881.14 Service of assessment.
- 881.15 Administration of claims.
- 881.16 Tax information confidential.
- 881.17 Fraud.
- 881.18 Interest and penalties.
- 881.19 Authority of Tax Administrator; verification of information.
- 881.20 Request for opinion of the Tax Administrator.
- 881.21 Board of Tax Review.
- 881.22 Authority to create rules and regulations.
- 881.23 Rental and leased property.
- 881.24 Savings clause.
- 881.25 Collection of tax after termination of chapter.
- 881.26 Adoption of RITA Rules and Regulations.
- 881.27 Registration.
- 881.28 Authorization to provide notice.
- 881.29 Election to be subject to R.C. 718.80 to 718.95
- 881.99 Violations; penalties.

* * *

881.03 IMPOSITION OF TAX.

* * *

Businesses.

6. This division applies to any taxpayer engaged in a business or profession in the City of Strongsville, unless the taxpayer is an individual who resides in Strongsville 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 ORC.

(a) Except as otherwise provided in division 6(b) of this section, net profit from a business or profession conducted both within and without the boundaries of the City of Strongsville shall be considered as having a taxable situs in Strongsville 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 Strongsville 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;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in Strongsville 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 881.04 division 3;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in Strongsville 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 6(a) of this section do not fairly represent the extent of a taxpayer's business activity in Strongsville, the taxpayer may request, or the Tax Administrator of the City of Strongsville 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 municipal corporation;
- (iv) 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 use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 881.12/1.

(3) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division 6(b)(1) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 881.12/1.

(4) Nothing in division 6(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 6(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:

- (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 6(c)(1)ii) 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 6(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 the purposes of division 6(a)(3) 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 ~~in which the sale originated. For the purposes of this division, a sale of property originates in City of Strongsville~~ only if, regardless of where title passes, the property meets ~~any~~either of the following criteria:

(i) The property is shipped to or delivered within Strongsville from a stock of goods located within the City of Strongsville.

(ii) The property is delivered within Strongsville from a location outside Strongsville, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Strongsville and the sales result from such solicitation or promotion.

~~(iii) The property is shipped from a place within Strongsville to purchasers outside Strongsville, 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.~~

(2) Gross receipts from the sale of services shall be situated to Strongsville to the extent that such services are performed in such City.

(3) To the extent included in income, gross receipts from the sale of real property located in the City of Strongsville shall be situated to Strongsville.

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

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

(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 Strongsville's tax only if the property generating the net profit is located in the City of Strongsville or if the individual taxpayer that receives the net profit is a resident of Strongsville. Strongsville 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.

(f) (1) 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 Strongsville, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in Strongsville 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 Strongsville shall report the individual's net profit from all real estate activity on the individual's annual tax return for Strongsville. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under Strongsville's income tax ordinance.

(g) When calculating the ratios described in division 6(a) of this section for the purposes of that division or division 6(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.

- (h) Left intentionally blank.
- (i) Intentionally left blank.

~~(Ord. 2015-208. Passed 11-2-15.)~~

* * *

Section 2. That Section 881.05(19), Annual Return; Filing, of Chapter 881 of Title Four of Part Eight-Business Regulation and Taxation Code of the Codified Ordinances of the City of Strongsville be and is hereby amended in order that Section 881.05(19) shall read in its entirety as follows:

881.05 ANNUAL RETURN; FILING.

* * *

19. (a) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to Strongsville's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division 19(b) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(b) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division 19(a) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(c) An election made under division 19(a) or (b) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(d) When a taxpayer makes the election allowed under Section 718.80 of the Revised Code, a valid election made by a taxpayer under Section 19(a) or (b) of this Section is binding upon the tax commissioner for the remainder of the five-year period.

(e) When an election is made under Section 718.80 of the Revised Code is terminated, a valid election made under Section 718.86 of the Revised Code is binding upon the tax administrator for the remainder of the five-year period.

* * *

Section 3. That Section 881.29, Election to be Subject to R.C. 718.80 to 718.95, of Chapter 881 of Title Four of Part Eight-Business Regulation and Taxation Code of the Codified

Ordinances of the City of Strongsville be and is hereby enacted in order that Section 881.29 shall read in its entirety as follows:

* * *

881.29 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95.

1. City of Strongsville hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the Ohio Revised Code for tax years beginning on or after January 1, 2018.

2. A taxpayer, as defined in division 3 of this Section, may elect to be subject to Sections 718.80 to 718.95 of the Ohio Revised Code in lieu of the provisions of this Chapter.

3. "Taxpayer" has the same meaning as in Section 718.01 of the Ohio Revised Code, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745 of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

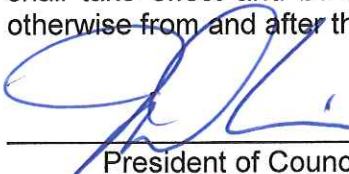
* * *

Section 4. That any ordinances or resolutions, or parts thereof, in conflict with these amendments to Chapter 881, except for current Chapter 880 where it remains applicable, are hereby superseded and repealed.

Section 5. That the provisions of this Ordinance shall take effect and be in force from and after January 1, 2018, presuming it is approved in accordance with law.

Section 6. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 7. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is necessary to further update the City's municipal Code in order to provide for consistency in law due to the passage of House Bill 49. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.



President of Council

Approved: 

Mayor

Date Passed: April 2, 2018

Date Approved: April 2, 2018

CITY OF STRONGSVILLE, OHIO
ORDINANCE NO. 2018 - 043
Page 7

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Daymut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DeMio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kosek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roff	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schonhut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Short	<u>Absent</u>	<input type="checkbox"/>

Attest: *Alma Pientka*
Clerk of Council

ORD. No. 2018-043 Amended: _____

1st Rdg. 04-02-18 Ref: _____

2nd Rdg. Suspended Ref: _____

3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____

Adopted: 04-02-18 Defeated: _____