

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 706

Representative Stein



A BILL

To amend sections 718.01 and 718.03 of the Revised Code to subject foreign temporary agricultural workers to municipal income taxes and to modify the withholding rules for such workers. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 718.01 and 718.03 of the Revised Code be amended to read as follows: 5
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Sec. 718.01. Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Revised Code, unless a different meaning is clearly required. Except as provided in section 718.81 of the Revised Code, if a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Revised Code. 7
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Except as otherwise provided in section 718.81 of the Revised Code, as used in this chapter:

(A) (1) "Municipal taxable income" means the following:

(a) For a person other than an individual, income apportioned or situated to the municipal corporation under section 718.02 of the Revised Code, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(b) (i) For an individual who is a resident of a municipal corporation other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (A) (2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

(ii) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Revised Code.

(c) For an individual who is a nonresident of a municipal

corporation, income reduced by exempt income to the extent 49
otherwise included in income and then, as applicable, 50
apportioned or situated to the municipal corporation under 51
section 718.02 of the Revised Code, then reduced as provided in 52
division (A) (2) of this section, and further reduced by any pre- 53
2017 net operating loss carryforward available to the individual 54
for the municipal corporation. 55

(2) In computing the municipal taxable income of a 56
taxpayer who is an individual, the taxpayer may subtract, as 57
provided in division (A) (1) (b) (i) or (c) of this section, the 58
amount of the individual's employee business expenses reported 59
on the individual's form 2106 that the individual deducted for 60
federal income tax purposes for the taxable year, subject to the 61
limitation imposed by section 67 of the Internal Revenue Code. 62
For the municipal corporation in which the taxpayer is a 63
resident, the taxpayer may deduct all such expenses allowed for 64
federal income tax purposes. For a municipal corporation in 65
which the taxpayer is not a resident, the taxpayer may deduct 66
such expenses only to the extent the expenses are related to the 67
taxpayer's performance of personal services in that nonresident 68
municipal corporation. 69

(B) "Income" means the following: 70

(1) (a) For residents, all income, salaries, qualifying 71
wages, commissions, and other compensation from whatever source 72
earned or received by the resident, including the resident's 73
distributive share of the net profit of pass-through entities 74
owned directly or indirectly by the resident and any net profit 75
of the resident, except as provided in division (D) (5) of this 76
section. 77

(b) For the purposes of division (B) (1) (a) of this 78

section:	79
(i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (B) (1) (d) of this section;	80 81 82 83 84 85 86 87 88 89
(ii) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.	90 91 92 93 94 95
(c) Division (B) (1) (b) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C) (14) (b) or (c) of this section.	96 97 98 99 100 101
(d) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.	102 103 104 105 106 107 108

(2) In the case of nonresidents, all income, salaries,	109
qualifying wages, commissions, and other compensation from	110
whatever source earned or received by the nonresident for work	111
done, services performed or rendered, or activities conducted in	112
the municipal corporation, including any net profit of the	113
nonresident, but excluding the nonresident's distributive share	114
of the net profit or loss of only pass-through entities owned	115
directly or indirectly by the nonresident.	116
(3) For taxpayers that are not individuals, net profit of	117
the taxpayer;	118
(4) Lottery, sweepstakes, gambling and sports winnings,	119
winnings from games of chance, and prizes and awards. If the	120
taxpayer is a professional gambler for federal income tax	121
purposes, the taxpayer may deduct related wagering losses and	122
expenses to the extent authorized under the Internal Revenue	123
Code and claimed against such winnings.	124
(C) "Exempt income" means all of the following:	125
(1) The military pay or allowances of members of the armed	126
forces of the United States or members of their reserve	127
components, including the national guard of any state;	128
(2) (a) Except as provided in division (C) (2) (b) of this	129
section, intangible income;	130
(b) A municipal corporation that taxed any type of	131
intangible income on March 29, 1988, pursuant to Section 3 of	132
S.B. 238 of the 116th general assembly, may continue to tax that	133
type of income if a majority of the electors of the municipal	134
corporation voting on the question of whether to permit the	135
taxation of that type of intangible income after 1988 voted in	136
favor thereof at an election held on November 8, 1988.	137

(3) Social security benefits, railroad retirement	138
benefits, unemployment compensation, pensions, retirement	139
benefit payments, payments from annuities, and similar payments	140
made to an employee or to the beneficiary of an employee under a	141
retirement program or plan, disability payments received from	142
private industry or local, state, or federal governments or from	143
charitable, religious or educational organizations, and the	144
proceeds of sickness, accident, or liability insurance policies.	145
As used in division (C) (3) of this section, "unemployment	146
compensation" does not include supplemental unemployment	147
compensation described in section 3402(o) (2) of the Internal	148
Revenue Code.	149
(4) The income of religious, fraternal, charitable,	150
scientific, literary, or educational institutions to the extent	151
such income is derived from tax-exempt real estate, tax-exempt	152
tangible or intangible property, or tax-exempt activities.	153
(5) Compensation paid under section 3501.28 or 3501.36 of	154
the Revised Code to a person serving as a precinct election	155
official to the extent that such compensation does not exceed	156
one thousand dollars for the taxable year. Such compensation in	157
excess of one thousand dollars for the taxable year may be	158
subject to taxation by a municipal corporation. A municipal	159
corporation shall not require the payer of such compensation to	160
withhold any tax from that compensation.	161
(6) Dues, contributions, and similar payments received by	162
charitable, religious, educational, or literary organizations or	163
labor unions, lodges, and similar organizations;	164
(7) Alimony and child support received;	165
(8) Compensation for personal injuries or for damages to	166

property from insurance proceeds or otherwise, excluding	167
compensation paid for lost salaries or wages or compensation	168
from punitive damages;	169
(9) Income of a public utility when that public utility is	170
subject to the tax levied under section 5727.24 or 5727.30 of	171
the Revised Code. Division (C) (9) of this section does not apply	172
for purposes of Chapter 5745. of the Revised Code.	173
(10) Gains from involuntary conversions, interest on	174
federal obligations, items of income subject to a tax levied by	175
the state and that a municipal corporation is specifically	176
prohibited by law from taxing, and income of a decedent's estate	177
during the period of administration except such income from the	178
operation of a trade or business;	179
(11) Compensation or allowances excluded from federal	180
gross income under section 107 of the Internal Revenue Code;	181
(12) Employee compensation that is not qualifying wages as	182
defined in division (R) of this section;	183
(13) Compensation paid to a person employed within the	184
boundaries of a United States air force base under the	185
jurisdiction of the United States air force that is used for the	186
housing of members of the United States air force and is a	187
center for air force operations, unless the person is subject to	188
taxation because of residence or domicile. If the compensation	189
is subject to taxation because of residence or domicile, tax on	190
such income shall be payable only to the municipal corporation	191
of residence or domicile.	192
(14) (a) Except as provided in division (C) (14) (b) or (c)	193
of this section, an S corporation shareholder's distributive	194
share of net profits of the S corporation, other than any part	195

of the distributive share of net profits that represents wages 196
as defined in section 3121(a) of the Internal Revenue Code or 197
net earnings from self-employment as defined in section 1402(a) 198
of the Internal Revenue Code. 199

(b) If, pursuant to division (H) of former section 718.01 200
of the Revised Code as it existed before March 11, 2004, a 201
majority of the electors of a municipal corporation voted in 202
favor of the question at an election held on November 4, 2003, 203
the municipal corporation may continue after 2002 to tax an S 204
corporation shareholder's distributive share of net profits of 205
an S corporation. 206

(c) If, on December 6, 2002, a municipal corporation was 207
imposing, assessing, and collecting a tax on an S corporation 208
shareholder's distributive share of net profits of the S 209
corporation to the extent the distributive share would be 210
allocated or apportioned to this state under divisions (B) (1) 211
and (2) of section 5733.05 of the Revised Code if the S 212
corporation were a corporation subject to taxes imposed under 213
Chapter 5733. of the Revised Code, the municipal corporation may 214
continue to impose the tax on such distributive shares to the 215
extent such shares would be so allocated or apportioned to this 216
state only until December 31, 2004, unless a majority of the 217
electors of the municipal corporation voting on the question of 218
continuing to tax such shares after that date voted in favor of 219
that question at an election held November 2, 2004. If a 220
majority of those electors voted in favor of the question, the 221
municipal corporation may continue after December 31, 2004, to 222
impose the tax on such distributive shares only to the extent 223
such shares would be so allocated or apportioned to this state. 224

(d) A municipal corporation shall be deemed to have 225

elected to tax S corporation shareholders' distributive shares 226
of net profits of the S corporation in the hands of the 227
shareholders if a majority of the electors of a municipal 228
corporation voted in favor of a question at an election held 229
under division (C) (14) (b) or (c) of this section. The municipal 230
corporation shall specify by resolution or ordinance that the 231
tax applies to the distributive share of a shareholder of an S 232
corporation in the hands of the shareholder of the S 233
corporation. 234

(15) To the extent authorized under a resolution or 235
ordinance adopted by a municipal corporation before January 1, 236
2016, all or a portion of the income of individuals or a class 237
of individuals under eighteen years of age. 238

(16) (a) Except as provided in divisions (C) (16) (b), (c), 239
and (d) of this section, qualifying wages described in division 240
(B) (1) or (E) of section 718.011 of the Revised Code to the 241
extent the qualifying wages are not subject to withholding for 242
the municipal corporation under either of those divisions. 243

(b) The exemption provided in division (C) (16) (a) of this 244
section does not apply with respect to the municipal corporation 245
in which the employee resided at the time the employee earned 246
the qualifying wages. 247

(c) The exemption provided in division (C) (16) (a) of this 248
section does not apply to qualifying wages that an employer 249
elects to withhold under division (D) (2) of section 718.011 of 250
the Revised Code. 251

(d) The exemption provided in division (C) (16) (a) of this 252
section does not apply to qualifying wages if both of the 253
following conditions apply: 254

(i) For qualifying wages described in division (B) (1) of 255
section 718.011 of the Revised Code, the employee's employer 256
withholds and remits tax on the qualifying wages to the 257
municipal corporation in which the employee's principal place of 258
work is situated, or, for qualifying wages described in division 259
(E) of section 718.011 of the Revised Code, the employee's 260
employer withholds and remits tax on the qualifying wages to the 261
municipal corporation in which the employer's fixed location is 262
located; 263

(ii) The employee receives a refund of the tax described 264
in division (C) (16) (d) (i) of this section on the basis of the 265
employee not performing services in that municipal corporation. 266

(17) (a) Except as provided in division (C) (17) (b) or (c) 267
of this section, compensation that is not qualifying wages paid 268
to a nonresident individual for personal services performed in 269
the municipal corporation on not more than twenty days in a 270
taxable year. 271

(b) The exemption provided in division (C) (17) (a) of this 272
section does not apply under either of the following 273
circumstances: 274

(i) The individual's base of operation is located in the 275
municipal corporation. 276

(ii) The individual is a professional athlete, 277
professional entertainer, or public figure, and the compensation 278
is paid for the performance of services in the individual's 279
capacity as a professional athlete, professional entertainer, or 280
public figure. For purposes of division (C) (17) (b) (ii) of this 281
section, "professional athlete," "professional entertainer," and 282
"public figure" have the same meanings as in section 718.011 of 283

the Revised Code.	284
(c) Compensation to which division (C) (17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.	285 286 287 288 289
(d) For purposes of division (C) (17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.	290 291 292 293 294
(18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.	295 296 297 298 299 300 301 302 303 304 305 306
(19) In the case of a tax administered, collected, and enforced by a municipal corporation pursuant to an agreement with the board of directors of a joint economic development district under section 715.72 of the Revised Code, the net profits of a business, and the income of the employees of that business, exempted from the tax under division (Q) of that section.	307 308 309 310 311 312 313

(20) All of the following:	314
(a) Income derived from disaster work conducted in this state by an out-of-state disaster business during a disaster response period pursuant to a qualifying solicitation received by the business;	315 316 317 318
(b) Income of a qualifying employee described in division (A) (14) (a) of section 5703.94 of the Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;	319 320 321 322 323 324
(c) Income of a qualifying employee described in division (A) (14) (b) of section 5703.94 of the Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period on critical infrastructure owned or used by the employee's employer.	325 326 327 328 329 330
(21) Income the taxation of which is prohibited by the constitution or laws of the United States.	331 332
Any item of income that is exempt income of a pass-through entity under division (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.	333 334 335 336 337
(D) (1) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (D) (1) of this section, the net operating loss carried forward	338 339 340 341 342

shall be calculated and deducted in the same manner as provided 343
in division (D) (3) of this section. 344

(2) "Net profit" for a person other than an individual 345
means adjusted federal taxable income reduced by any net 346
operating loss incurred by the person in a taxable year 347
beginning on or after January 1, 2017, subject to the 348
limitations of division (D) (3) of this section. 349

(3) (a) The amount of such net operating loss shall be 350
deducted from net profit to the extent necessary to reduce 351
municipal taxable income to zero, with any remaining unused 352
portion of the net operating loss carried forward to not more 353
than five consecutive taxable years following the taxable year 354
in which the loss was incurred, but in no case for more years 355
than necessary for the deduction to be fully utilized. 356

(b) No person shall use the deduction allowed by division 357
(D) (3) of this section to offset qualifying wages. 358

(c) (i) For taxable years beginning in 2018, 2019, 2020, 359
2021, or 2022, a person may not deduct, for purposes of an 360
income tax levied by a municipal corporation that levies an 361
income tax before January 1, 2016, more than fifty per cent of 362
the amount of the deduction otherwise allowed by division (D) (3) 363
of this section. 364

(ii) For taxable years beginning in 2023 or thereafter, a 365
person may deduct, for purposes of an income tax levied by a 366
municipal corporation that levies an income tax before January 367
1, 2016, the full amount allowed by division (D) (3) of this 368
section without regard to the limitation of division (D) (3) (b) 369
(i) of this section. 370

(d) Any pre-2017 net operating loss carryforward deduction 371

that is available may be utilized before a taxpayer may deduct 372
any amount pursuant to division (D) (3) of this section. 373

(e) Nothing in division (D) (3) (c) (i) of this section 374
precludes a person from carrying forward, for use with respect 375
to any return filed for a taxable year beginning after 2018, any 376
amount of net operating loss that was not fully utilized by 377
operation of division (D) (3) (c) (i) of this section. To the 378
extent that an amount of net operating loss that was not fully 379
utilized in one or more taxable years by operation of division 380
(D) (3) (c) (i) of this section is carried forward for use with 381
respect to a return filed for a taxable year beginning in 2019, 382
2020, 2021, or 2022, the limitation described in division (D) (3) 383
(c) (i) of this section shall apply to the amount carried 384
forward. 385

(4) For the purposes of this chapter, and notwithstanding 386
division (D) (2) of this section, net profit of a disregarded 387
entity shall not be taxable as against that disregarded entity, 388
but shall instead be included in the net profit of the owner of 389
the disregarded entity. 390

(5) For the purposes of this chapter, and notwithstanding 391
any other provision of this chapter, the net profit of a 392
publicly traded partnership that makes the election described in 393
division (D) (5) of this section shall be taxed as if the 394
partnership were a C corporation, and shall not be treated as 395
the net profit or income of any owner of the partnership. 396

A publicly traded partnership that is treated as a 397
partnership for federal income tax purposes and that is subject 398
to tax on its net profits in one or more municipal corporations 399
in this state may elect to be treated as a C corporation for 400
municipal income tax purposes. The publicly traded partnership 401

shall make the election in every municipal corporation in which 402
the partnership is subject to taxation on its net profits. The 403
election shall be made on the annual tax return filed in each 404
such municipal corporation. The publicly traded partnership 405
shall not be required to file the election with any municipal 406
corporation in which the partnership is not subject to taxation 407
on its net profits, but division (D)(5) of this section applies 408
to all municipal corporations in which an individual owner of 409
the partnership resides. 410

(E) "Adjusted federal taxable income," for a person 411
required to file as a C corporation, or for a person that has 412
elected to be taxed as a C corporation under division (D)(5) of 413
this section, means a C corporation's federal taxable income 414
before net operating losses and special deductions as determined 415
under the Internal Revenue Code, adjusted as follows: 416

(1) Deduct intangible income to the extent included in 417
federal taxable income. The deduction shall be allowed 418
regardless of whether the intangible income relates to assets 419
used in a trade or business or assets held for the production of 420
income. 421

(2) Add an amount equal to five per cent of intangible 422
income deducted under division (E)(1) of this section, but 423
excluding that portion of intangible income directly related to 424
the sale, exchange, or other disposition of property described 425
in section 1221 of the Internal Revenue Code; 426

(3) Add any losses allowed as a deduction in the 427
computation of federal taxable income if the losses directly 428
relate to the sale, exchange, or other disposition of an asset 429
described in section 1221 or 1231 of the Internal Revenue Code; 430

(4) (a) Except as provided in division (E) (4) (b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(b) Division (E) (4) (a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code;

(8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E) (3) (b) of section 718.06 of the Revised Code.

(10) Add any loss incurred by a pass-through entity owned

directly or indirectly by the taxpayer and included in the 460
taxpayer's federal taxable income unless an affiliated group of 461
corporations includes that loss in the group's federal taxable 462
income in accordance with division (E) (3) (b) of section 718.06 463
of the Revised Code. 464

If the taxpayer is not a C corporation, is not a 465
disregarded entity that has made the election described in 466
division (L) (2) of this section, is not a publicly traded 467
partnership that has made the election described in division (D) 468
(5) of this section, and is not an individual, the taxpayer 469
shall compute adjusted federal taxable income under this section 470
as if the taxpayer were a C corporation, except guaranteed 471
payments and other similar amounts paid or accrued to a partner, 472
former partner, shareholder, former shareholder, member, or 473
former member shall not be allowed as a deductible expense 474
unless such payments are a pension or retirement benefit payment 475
paid to a retired partner, retired shareholder, or retired 476
member or are in consideration for the use of capital and 477
treated as payment of interest under section 469 of the Internal 478
Revenue Code or United States treasury regulations. Amounts paid 479
or accrued to a qualified self-employed retirement plan with 480
respect to a partner, former partner, shareholder, former 481
shareholder, member, or former member of the taxpayer, amounts 482
paid or accrued to or for health insurance for a partner, former 483
partner, shareholder, former shareholder, member, or former 484
member, and amounts paid or accrued to or for life insurance for 485
a partner, former partner, shareholder, former shareholder, 486
member, or former member shall not be allowed as a deduction. 487

Nothing in division (E) of this section shall be construed 488
as allowing the taxpayer to add or deduct any amount more than 489
once or shall be construed as allowing any taxpayer to deduct 490

any amount paid to or accrued for purposes of federal self-	491
employment tax.	492
(F) "Schedule C" means internal revenue service schedule C	493
(form 1040) filed by a taxpayer pursuant to the Internal Revenue	494
Code.	495
(G) "Schedule E" means internal revenue service schedule E	496
(form 1040) filed by a taxpayer pursuant to the Internal Revenue	497
Code.	498
(H) "Schedule F" means internal revenue service schedule F	499
(form 1040) filed by a taxpayer pursuant to the Internal Revenue	500
Code.	501
(I) "Internal Revenue Code" has the same meaning as in	502
section 5747.01 of the Revised Code.	503
(J) "Resident" means an individual who is domiciled in the	504
municipal corporation as determined under section 718.012 of the	505
Revised Code.	506
(K) "Nonresident" means an individual that is not a	507
resident.	508
(L) (1) "Taxpayer" means a person subject to a tax levied	509
on income by a municipal corporation in accordance with this	510
chapter. "Taxpayer" does not include a grantor trust or, except	511
as provided in division (L) (2) (a) of this section, a disregarded	512
entity.	513
(2) (a) A single member limited liability company that is a	514
disregarded entity for federal tax purposes may be a separate	515
taxpayer from its single member in all Ohio municipal	516
corporations in which it either filed as a separate taxpayer or	517
did not file for its taxable year ending in 2003, if all of the	518

following conditions are met: 519

(i) The limited liability company's single member is also 520
a limited liability company. 521

(ii) The limited liability company and its single member 522
were formed and doing business in one or more Ohio municipal 523
corporations for at least five years before January 1, 2004. 524

(iii) Not later than December 31, 2004, the limited 525
liability company and its single member each made an election to 526
be treated as a separate taxpayer under division (L) of this 527
section as this section existed on December 31, 2004. 528

(iv) The limited liability company was not formed for the 529
purpose of evading or reducing Ohio municipal corporation income 530
tax liability of the limited liability company or its single 531
member. 532

(v) The Ohio municipal corporation that was the primary 533
place of business of the sole member of the limited liability 534
company consented to the election. 535

(b) For purposes of division (L) (2) (a) (v) of this section, 536
a municipal corporation was the primary place of business of a 537
limited liability company if, for the limited liability 538
company's taxable year ending in 2003, its income tax liability 539
was greater in that municipal corporation than in any other 540
municipal corporation in Ohio, and that tax liability to that 541
municipal corporation for its taxable year ending in 2003 was at 542
least four hundred thousand dollars. 543

(M) "Person" includes individuals, firms, companies, joint 544
stock companies, business trusts, estates, trusts, partnerships, 545
limited liability partnerships, limited liability companies, 546
associations, C corporations, S corporations, governmental 547

entities, and any other entity. 548

(N) "Pass-through entity" means a partnership not treated 549
as an association taxable as a C corporation for federal income 550
tax purposes, a limited liability company not treated as an 551
association taxable as a C corporation for federal income tax 552
purposes, an S corporation, or any other class of entity from 553
which the income or profits of the entity are given pass-through 554
treatment for federal income tax purposes. "Pass-through entity" 555
does not include a trust, estate, grantor of a grantor trust, or 556
disregarded entity. 557

(O) "S corporation" means a person that has made an 558
election under subchapter S of Chapter 1 of Subtitle A of the 559
Internal Revenue Code for its taxable year. 560

(P) "Single member limited liability company" means a 561
limited liability company that has one direct member. 562

(Q) "Limited liability company" means a limited liability 563
company formed under Chapter 1705. or 1706. of the Revised Code 564
or under the laws of another state. 565

(R) "Qualifying wages" means wages, as defined in section 566
3121(a) of the Internal Revenue Code, without regard to any wage 567
limitations, adjusted as follows: 568

(1) Deduct the following amounts: 569

(a) Any amount included in wages if the amount constitutes 570
compensation attributable to a plan or program described in 571
section 125 of the Internal Revenue Code. 572

(b) Any amount included in wages if the amount constitutes 573
payment on account of a disability related to sickness or an 574
accident paid by a party unrelated to the employer, agent of an 575

employer, or other payer.	576
(c) Any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v) (2) (C) of the Internal Revenue Code if the compensation is included in wages and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.	577 578 579 580 581 582
(d) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.	583 584 585 586 587 588 589
(e) Any amount included in wages that is exempt income.	590
(2) Add the following amounts:	591
(a) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.	592 593
(b) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has not, by resolution or ordinance, exempted the amount from withholding and tax adopted before January 1, 2016. Division (R) (2) (b) of this section applies only to those amounts constituting ordinary income.	594 595 596 597 598 599 600 601
(c) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (R) (2) (c) of this section	602 603 604

applies only to employee contributions and employee deferrals.	605
(d) Any amount that is supplemental unemployment	606
compensation benefits described in section 3402(o) (2) of the	607
Internal Revenue Code and not included in wages.	608
(e) Any amount received that is treated as self-employment	609
income for federal tax purposes in accordance with section	610
1402(a) (8) of the Internal Revenue Code.	611
(f) Any amount not included in wages if all of the	612
following apply:	613
(i) For the taxable year the amount is employee	614
compensation that is earned outside of the United States and	615
that either is included in the taxpayer's gross income for	616
federal income tax purposes or would have been included in the	617
taxpayer's gross income for such purposes if the taxpayer did	618
not elect to exclude the income under section 911 of the	619
Internal Revenue Code;	620
(ii) For no preceding taxable year did the amount	621
constitute wages as defined in section 3121(a) of the Internal	622
Revenue Code;	623
(iii) For no succeeding taxable year will the amount	624
constitute wages; and	625
(iv) For any taxable year the amount has not otherwise	626
been added to wages pursuant to either division (R) (2) of this	627
section or section 718.03 of the Revised Code, as that section	628
existed before the effective date of H.B. 5 of the 130th general	629
assembly, March 23, 2015.	630
<u>(g) Any compensation paid to an employee who is a foreign</u>	631
<u>agricultural worker lawfully admitted to the United States on a</u>	632

temporary basis to perform agricultural labor, as defined in 633
section 3121 of the Internal Revenue Code. 634

(S) "Intangible income" means income of any of the 635
following types: income yield, interest, capital gains, 636
dividends, or other income arising from the ownership, sale, 637
exchange, or other disposition of intangible property including, 638
but not limited to, investments, deposits, money, or credits as 639
those terms are defined in Chapter 5701. of the Revised Code, 640
and patents, copyrights, trademarks, tradenames, investments in 641
real estate investment trusts, investments in regulated 642
investment companies, and appreciation on deferred compensation. 643
"Intangible income" does not include prizes, awards, or other 644
income associated with any lottery winnings, gambling winnings, 645
or other similar games of chance. 646

(T) "Taxable year" means the corresponding tax reporting 647
period as prescribed for the taxpayer under the Internal Revenue 648
Code. 649

(U) (1) "Tax administrator" means, subject to division (U) 650
(2) of this section, the individual charged with direct 651
responsibility for administration of an income tax levied by a 652
municipal corporation in accordance with this chapter, and also 653
includes the following: 654

(a) A municipal corporation acting as the agent of another 655
municipal corporation; 656

(b) A person retained by a municipal corporation to 657
administer a tax levied by the municipal corporation, but only 658
if the municipal corporation does not compensate the person in 659
whole or in part on a contingency basis; 660

(c) The central collection agency or the regional income 661

tax agency or their successors in interest, or another entity 662
organized to perform functions similar to those performed by the 663
central collection agency and the regional income tax agency. 664

(2) "Tax administrator" does not include the tax 665
commissioner. 666

(3) A private individual or entity serving in any position 667
described in division (U) (1) (b) or (c) of this section shall 668
have no access to criminal history record information. 669

(V) "Employer" means a person that is an employer for 670
federal income tax purposes. 671

(W) "Employee" means an individual who is an employee for 672
federal income tax purposes. 673

(X) "Other payer" means any person, other than an 674
individual's employer or the employer's agent, that pays an 675
individual any amount included in the federal gross income of 676
the individual. "Other payer" includes casino operators and 677
video lottery terminal sales agents. 678

(Y) "Calendar quarter" means the three-month period ending 679
on the last day of March, June, September, or December. 680

(Z) "Form 2106" means internal revenue service form 2106 681
filed by a taxpayer pursuant to the Internal Revenue Code. 682

(AA) "Municipal corporation" includes a joint economic 683
development district or joint economic development zone that 684
levies an income tax under section 715.691, 715.70, 715.71, or 685
715.72 of the Revised Code. 686

(BB) "Disregarded entity" means a single member limited 687
liability company, a qualifying subchapter S subsidiary, or 688
another entity if the company, subsidiary, or entity is a 689

disregarded entity for federal income tax purposes.	690
(CC) "Generic form" means an electronic or paper form that	691
is not prescribed by a particular municipal corporation and that	692
is designed for reporting taxes withheld by an employer, agent	693
of an employer, or other payer, estimated municipal income	694
taxes, or annual municipal income tax liability or for filing a	695
refund claim.	696
(DD) "Tax return preparer" means any individual described	697
in section 7701(a) (36) of the Internal Revenue Code and 26	698
C.F.R. 301.7701-15.	699
(EE) "Ohio business gateway" means the online computer	700
network system, created under section 125.30 of the Revised	701
Code, that allows persons to electronically file business reply	702
forms with state agencies and includes any successor electronic	703
filing and payment system.	704
(FF) "Local board of tax review" and "board of tax review"	705
mean the entity created under section 718.11 of the Revised	706
Code.	707
(GG) "Net operating loss" means a loss incurred by a	708
person in the operation of a trade or business. "Net operating	709
loss" does not include unutilized losses resulting from basis	710
limitations, at-risk limitations, or passive activity loss	711
limitations.	712
(HH) "Casino operator" and "casino facility" have the same	713
meanings as in section 3772.01 of the Revised Code.	714
(II) "Video lottery terminal" has the same meaning as in	715
section 3770.21 of the Revised Code.	716
(JJ) "Video lottery terminal sales agent" means a lottery	717

sales agent licensed under Chapter 3770. of the Revised Code to 718
conduct video lottery terminals on behalf of the state pursuant 719
to section 3770.21 of the Revised Code. 720

(KK) "Postal service" means the United States postal 721
service. 722

(LL) "Certified mail," "express mail," "United States 723
mail," "postal service," and similar terms include any delivery 724
service authorized pursuant to section 5703.056 of the Revised 725
Code. 726

(MM) "Postmark date," "date of postmark," and similar 727
terms include the date recorded and marked in the manner 728
described in division (B) (3) of section 5703.056 of the Revised 729
Code. 730

(NN) "Related member" means a person that, with respect to 731
the taxpayer during all or any portion of the taxable year, is 732
either a related entity, a component member as defined in 733
section 1563(b) of the Internal Revenue Code, or a person to or 734
from whom there is attribution of stock ownership in accordance 735
with section 1563(e) of the Internal Revenue Code except, for 736
purposes of determining whether a person is a related member 737
under this division, "twenty per cent" shall be substituted for 738
"5 percent" wherever "5 percent" appears in section 1563(e) of 739
the Internal Revenue Code. 740

(OO) "Related entity" means any of the following: 741

(1) An individual stockholder, or a member of the 742
stockholder's family enumerated in section 318 of the Internal 743
Revenue Code, if the stockholder and the members of the 744
stockholder's family own directly, indirectly, beneficially, or 745
constructively, in the aggregate, at least fifty per cent of the 746

value of the taxpayer's outstanding stock; 747

(2) A stockholder, or a stockholder's partnership, estate, 748
trust, or corporation, if the stockholder and the stockholder's 749
partnerships, estates, trusts, or corporations own directly, 750
indirectly, beneficially, or constructively, in the aggregate, 751
at least fifty per cent of the value of the taxpayer's 752
outstanding stock; 753

(3) A corporation, or a party related to the corporation 754
in a manner that would require an attribution of stock from the 755
corporation to the party or from the party to the corporation 756
under division (00) (4) of this section, provided the taxpayer 757
owns directly, indirectly, beneficially, or constructively, at 758
least fifty per cent of the value of the corporation's 759
outstanding stock; 760

(4) The attribution rules described in section 318 of the 761
Internal Revenue Code apply for the purpose of determining 762
whether the ownership requirements in divisions (00) (1) to (3) 763
of this section have been met. 764

(PP) (1) "Assessment" means a written finding by the tax 765
administrator that a person has underpaid municipal income tax, 766
or owes penalty and interest, or any combination of tax, 767
penalty, or interest, to the municipal corporation that 768
commences the person's time limitation for making an appeal to 769
the local board of tax review pursuant to section 718.11 of the 770
Revised Code, and has "ASSESSMENT" written in all capital 771
letters at the top of such finding. 772

(2) "Assessment" does not include an informal notice 773
denying a request for refund issued under division (B) (3) of 774
section 718.19 of the Revised Code, a billing statement 775

notifying a taxpayer of current or past-due balances owed to the 776
municipal corporation, a tax administrator's request for 777
additional information, a notification to the taxpayer of 778
mathematical errors, or a tax administrator's other written 779
correspondence to a person or taxpayer that does not meet the 780
criteria prescribed by division (PP)(1) of this section. 781

(QQ) "Taxpayers' rights and responsibilities" means the 782
rights provided to taxpayers in sections 718.11, 718.12, 718.19, 783
718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the 784
Revised Code and the responsibilities of taxpayers to file, 785
report, withhold, remit, and pay municipal income tax and 786
otherwise comply with Chapter 718. of the Revised Code and 787
resolutions, ordinances, and rules adopted by a municipal 788
corporation for the imposition and administration of a municipal 789
income tax. 790

(RR) "Qualified municipal corporation" means a municipal 791
corporation that, by resolution or ordinance adopted on or 792
before December 31, 2011, adopted Ohio adjusted gross income, as 793
defined by section 5747.01 of the Revised Code, as the income 794
subject to tax for the purposes of imposing a municipal income 795
tax. 796

(SS) (1) "Pre-2017 net operating loss carryforward" means 797
any net operating loss incurred in a taxable year beginning 798
before January 1, 2017, to the extent such loss was permitted, 799
by a resolution or ordinance of the municipal corporation that 800
was adopted by the municipal corporation before January 1, 2016, 801
to be carried forward and utilized to offset income or net 802
profit generated in such municipal corporation in future taxable 803
years. 804

(2) For the purpose of calculating municipal taxable 805

income, any pre-2017 net operating loss carryforward may be 806
carried forward to any taxable year, including taxable years 807
beginning in 2017 or thereafter, for the number of taxable years 808
provided in the resolution or ordinance or until fully utilized, 809
whichever is earlier. 810

(TT) "Small employer" means any employer that had total 811
revenue of less than five hundred thousand dollars during the 812
preceding taxable year. For purposes of this division, "total 813
revenue" means receipts of any type or kind, including, but not 814
limited to, sales receipts; payments; rents; profits; gains, 815
dividends, and other investment income; compensation; 816
commissions; premiums; money; property; grants; contributions; 817
donations; gifts; program service revenue; patient service 818
revenue; premiums; fees, including premium fees and service 819
fees; tuition payments; unrelated business revenue; 820
reimbursements; any type of payment from a governmental unit, 821
including grants and other allocations; and any other similar 822
receipts reported for federal income tax purposes or under 823
generally accepted accounting principles. "Small employer" does 824
not include the federal government; any state government, 825
including any state agency or instrumentality; any political 826
subdivision; or any entity treated as a government for financial 827
accounting and reporting purposes. 828

(UU) "Audit" means the examination of a person or the 829
inspection of the books, records, memoranda, or accounts of a 830
person for the purpose of determining liability for a municipal 831
income tax. 832

(VV) "Publicly traded partnership" means any partnership, 833
an interest in which is regularly traded on an established 834
securities market. A "publicly traded partnership" may have any 835

number of partners.	836
(WW) "Tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code.	837 838
(XX) "Out-of-state disaster business," "qualifying solicitation," "qualifying employee," "disaster work," "critical infrastructure," and "disaster response period" have the same meanings as in section 5703.94 of the Revised Code.	839 840 841 842
(YY) "Pension" means a retirement benefit plan, regardless of whether the plan satisfies the qualifications described under section 401(a) of the Internal Revenue Code, including amounts that are taxable under the "Federal Insurance Contributions Act," Chapter 21 of the Internal Revenue Code, excluding employee contributions and elective deferrals, and regardless of whether such amounts are paid in the same taxable year in which the amounts are included in the employee's wages, as defined by section 3121(a) of the Internal Revenue Code.	843 844 845 846 847 848 849 850 851
(ZZ) "Retirement benefit plan" means an arrangement whereby an entity provides benefits to individuals either on or after their termination of service because of retirement or disability. "Retirement benefit plan" does not include wage continuation payments, severance payments, or payments made for accrued personal or vacation time.	852 853 854 855 856 857
Sec. 718.03. (A) (1) Each employer, agent of an employer, or other payer located or doing business in a municipal corporation that imposes a tax on income in accordance with this chapter shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the municipal corporation multiplied by the applicable rate of the municipal corporation's income tax, except for qualifying wages	858 859 860 861 862 863 864

for which withholding is not required under section 718.011 of 865
the Revised Code or division (D) or (F) of this section. An 866
employer, agent of an employer, or other payer shall deduct and 867
withhold the tax from qualifying wages on the date that the 868
employer, agent, or other payer directly, indirectly, or 869
constructively pays the qualifying wages to, or credits the 870
qualifying wages to the benefit of, the employee. 871

(2) In addition to withholding the amounts required under 872
division (A) (1) of this section, and except as provided in 873
division (A) (3) of this section, an employer, agent of an 874
employer, or other payer may also deduct and withhold, on the 875
request of an employee, taxes for the municipal corporation in 876
which the employee is a resident. 877

(3) An employer, agent of an employer, or other payer 878
shall deduct and withhold taxes from qualifying wages described 879
in division (R) (2) (g) of section 718.01 of the Revised Code for 880
the municipal corporation in which an employee is a resident, at 881
a rate that accounts for any credit granted by that municipal 882
corporation under division (D) of section 718.04 of the Revised 883
Code, as applicable to the qualifying wages. 884

(B) (1) Except as provided in division (B) (2) of this 885
section, an employer, agent of an employer, or other payer shall 886
remit to the tax administrator of a municipal corporation the 887
greater of the income taxes deducted and withheld or the income 888
taxes required to be deducted and withheld by the employer, 889
agent, or other payer according to the following schedule: 890

(a) Taxes required to be deducted and withheld shall be 891
remitted monthly to the tax administrator if the total taxes 892
deducted and withheld or required to be deducted and withheld by 893
the employer, agent, or other payer on behalf of the municipal 894

corporation in the preceding calendar year exceeded two thousand 895
three hundred ninety-nine dollars, or if the total amount of 896
taxes deducted and withheld or required to be deducted and 897
withheld on behalf of the municipal corporation in any month of 898
the preceding calendar quarter exceeded two hundred dollars. 899
Payments under division (B) (1) (a) of this section shall be made 900
to the tax administrator not later than fifteen days after the 901
last day of each month. 902

(b) Any employer, agent of an employer, or other payer not 903
required to make payments under division (B) (1) (a) of this 904
section of taxes required to be deducted and withheld shall make 905
quarterly payments to the tax administrator not later than the 906
last day of the month following the last day of each calendar 907
quarter. 908

(2) Notwithstanding division (B) (1) of this section, a 909
municipal corporation may require, by resolution, ordinance, or 910
rule, an employer, agent of an employer, or other payer to do 911
any of the following: 912

(a) Remit taxes deducted and withheld semimonthly to the 913
tax administrator if the total taxes deducted and withheld or 914
required to be deducted and withheld on behalf of the municipal 915
corporation in the preceding calendar year exceeded eleven 916
thousand nine hundred ninety-nine dollars, or if the total 917
amount of taxes deducted and withheld or required to be deducted 918
and withheld on behalf of the municipal corporation in any month 919
of the preceding calendar year exceeded one thousand dollars. 920
The payment under division (B) (2) (a) of this section shall be 921
made to the tax administrator not later than one of the 922
following: 923

(i) If the taxes were deducted and withheld or required to 924

be deducted and withheld during the first fifteen days of a 925
month, the third banking day after the fifteenth day of that 926
month; 927

(ii) If the taxes were deducted and withheld or required 928
to be deducted and withheld after the fifteenth day of a month 929
and before the first day of the immediately following month, the 930
third banking day after the last day of that month. 931

(b) Make payment by electronic funds transfer to the tax 932
administrator of all taxes deducted and withheld on behalf of 933
the municipal corporation if the employer, agent of an employer, 934
or other payer is required to make payments electronically for 935
the purpose of paying federal taxes withheld on payments to 936
employees under section 6302 of the Internal Revenue Code, 26 937
C.F.R. 31.6302-1, or any other federal statute or regulation. 938
The payment of tax by electronic funds transfer under this 939
division does not affect an employer's, agent's, or other 940
payer's obligation to file any return as required under this 941
section. 942

(C) An employer, agent of an employer, or other payer 943
shall make and file a return showing the amount of tax withheld 944
by the employer, agent, or other payer from the qualifying wages 945
of each employee and remitted to the tax administrator. Unless 946
the tax administrator requires all individual taxpayers to file 947
a tax return under section 718.05 of the Revised Code, a return 948
filed by an employer, agent, or other payer under this division 949
shall be accepted by a tax administrator and municipal 950
corporation as the return required of an employee whose sole 951
income subject to the tax under this chapter is the qualifying 952
wages reported by the employee's employer, agent of an employer, 953
or other payer. 954

(D) An employer, agent of an employer, or other payer is 955
not required to withhold municipal income tax with respect to an 956
individual's disqualifying disposition of an incentive stock 957
option if, at the time of the disqualifying disposition, the 958
individual is not an employee of either the corporation with 959
respect to whose stock the option has been issued or of such 960
corporation's successor entity. 961

(E) (1) An employee is not relieved from liability for a 962
tax by the failure of the employer, agent of an employer, or 963
other payer to withhold the tax as required under this chapter 964
or by the employer's, agent's, or other payer's exemption from 965
the requirement to withhold the tax. 966

(2) The failure of an employer, agent of an employer, or 967
other payer to remit to the municipal corporation the tax 968
withheld relieves the employee from liability for that tax 969
unless the employee colluded with the employer, agent, or other 970
payer in connection with the failure to remit the tax withheld. 971

(F) Compensation deferred before June 26, 2003, is not 972
subject to any municipal corporation income tax or municipal 973
income tax withholding requirement to the extent the deferred 974
compensation does not constitute qualifying wages at the time 975
the deferred compensation is paid or distributed. 976

(G) Each employer, agent of an employer, or other payer 977
required to withhold taxes is liable for the payment of that 978
amount required to be withheld, whether or not such taxes have 979
been withheld, and such amount shall be deemed to be held in 980
trust for the municipal corporation until such time as the 981
withheld amount is remitted to the tax administrator. 982

(H) On or before the last day of February of each year, an 983

employer shall file a withholding reconciliation return with the 984
tax administrator listing the names, addresses, and social 985
security numbers of all employees from whose qualifying wages 986
tax was withheld or should have been withheld for the municipal 987
corporation during the preceding calendar year, the amount of 988
tax withheld, if any, from each such employee, the total amount 989
of qualifying wages paid to such employee during the preceding 990
calendar year, the name of every other municipal corporation for 991
which tax was withheld or should have been withheld from such 992
employee during the preceding calendar year, any other 993
information required for federal income tax reporting purposes 994
on Internal Revenue Service form W-2 or its equivalent form with 995
respect to such employee, and other information as may be 996
required by the tax administrator. 997

(I) The officer or the employee of the employer, agent of 998
an employer, or other payer with control or direct supervision 999
of or charged with the responsibility for withholding the tax or 1000
filing the reports and making payments as required by this 1001
section, shall be personally liable for a failure to file a 1002
report or pay the tax due as required by this section. The 1003
dissolution of an employer, agent of an employer, or other payer 1004
does not discharge the officer's or employee's liability for a 1005
failure of the employer, agent of an employer, or other payer to 1006
file returns or pay any tax due. 1007

(J) An employer is required to deduct and withhold 1008
municipal income tax on tips and gratuities received by the 1009
employer's employees and constituting qualifying wages only to 1010
the extent that the tips and gratuities are under the employer's 1011
control. For the purposes of this division, a tip or gratuity is 1012
under the employer's control if the tip or gratuity is paid by 1013
the customer to the employer for subsequent remittance to the 1014

employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means. 1015
1016

(K) A tax administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this chapter to be tax required to be withheld and remitted for the purposes of this section. 1017
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Section 2. That existing sections 718.01 and 718.03 of the Revised Code are hereby repealed. 1022
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Section 3. The amendment by this act of sections 718.01 and 718.03 of the Revised Code applies to taxable years ending on or after the effective date of that amendment. 1024
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Section 4. Section 718.01 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 228 and S.B. 217 of the 134th General Assembly, and both H.B. 197 and S.B. 276 of the 133rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act. 1027
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