

ORDINANCE NO. 2018-16
INTRODUCED BY: ADMINISTRATION

**AN ORDINANCE AMENDING CHAPTER 792 OF THE
CODIFIED ORDINANCES OF THE CITY OF
LYNDHURST REGARDING MUNICIPAL INCOME TAX
BY AMENDING SECTIONS 792.03 AND 792.05, AND
ENACTING SECTION 792.27, 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 municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict the municipal power of taxation to the extent necessary to prevent abuse of such power, and Article XIII, Section 13 of the Ohio Constitution states that “laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes;” and

WHEREAS, the City of Lyndhurst recognizes, as a home rule power of local self-government, that municipal income tax administration and collection is vital to the health, safety and welfare of the municipality; and

WHEREAS, the City of Lyndhurst relies on the revenue from effective municipal income tax administration and collection to provide the services that maintain the health, safety and welfare of the municipality; and

WHEREAS, the Ohio General Assembly has attempted to assert control over the administration and collection of municipal income taxes by claiming that a municipality has no authority to impose an income tax unless it adopts a code in strict compliance with R.C. Chapter 718; and

WHEREAS, more specifically, the State of Ohio has enacted HB 5 in 2014 comprehensively rewriting the entire municipal income tax law and HB 49 in 2017 authorizing centralized collection by the State of Ohio of municipalities’ net profits taxes; and

WHEREAS, HB 49 has been challenged by multiple municipalities, and the trial court has upheld its constitutionality; and

WHEREAS, while the case is under appeal, the City must amend Chapter 794 to comply with the provisions of HB 49. Now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNDHURST,
CUYAHOGA COUNTY, STATE OF OHIO, THAT:**

SECTION 1. Section 792.03 of the Codified Ordinances is hereby amended to read as follows (new material appears like THIS; deleted material appears like ~~this~~).

792.03 IMPOSITION OF TAX.

The income tax levied by the City of Lyndhurst at a rate of two percent (2%) is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City of Lyndhurst,

Individuals.

(A) For residents of the City of Lyndhurst, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section [792.02](#) (C)(16)).

(B) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive

share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(C) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Section 792.02(C)(21). Exemptions which may apply are specified in Section 792.02(C)(12).

Refundable credit for Nonqualified Deferred Compensation Plan.

(D) (1) As used in this division:

(a) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

(b) "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

(c) (i) "Qualifying tax rate" means the applicable tax rate for the taxable year for which the taxpayer paid income tax to the City of Lyndhurst with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(ii) If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City of Lyndhurst each year with respect to the nonqualified deferred compensation plan.

(d) "Refundable credit" means the amount of the City of Lyndhurst income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to the City of Lyndhurst, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(3) In no case shall the amount of the credit allowed under this Section exceed the cumulative income tax that a taxpayer has paid to the City of Lyndhurst for all taxable years with respect to the nonqualified deferred compensation plan.

(4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(a) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(b) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Domicile.

(E) (1) (a) An individual is presumed to be domiciled in The City of Lyndhurst for all or part of a taxable year if the individual was domiciled in the City of Lyndhurst on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the City of Lyndhurst for all or part of the taxable year.

(b) An individual may rebut the presumption of domicile described in division (E)(1)(a) of this Section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the City of Lyndhurst for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the City of Lyndhurst for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

(a) The individual's domicile in other taxable years;

(b) The location at which the individual is registered to vote;

(c) The address on the individual's driver's license;

(d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

(e) The location and value of abodes owned or leased by the individual;

(f) Declarations, written or oral, made by the individual regarding the individual's residency;

(g) The primary location at which the individual is employed.

(h) The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;

(i) The number of contact periods the individual has with the City of Lyndhurst. For the purposes of this division, an individual has one "contact period" with the City of Lyndhurst if the individual is away overnight from the individual's abode located outside of the City of Lyndhurst and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the City of Lyndhurst.

(3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

(F) This division applies to any taxpayer engaged in a business or profession in the City of Lyndhurst, unless the taxpayer is an individual who resides in the City of Lyndhurst 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.

(1) Except as otherwise provided in division (F)(2) of this Section, net profit from a business or profession conducted both within and without the boundaries of the City of Lyndhurst shall be considered as having a taxable situs in the City of Lyndhurst for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City of Lyndhurst 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;

(b) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City of Lyndhurst 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 792.04 (C);

(c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City of Lyndhurst to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) (a) If the apportionment factors described in division (F)(1) of this Section do not fairly represent the extent of a taxpayer's business activity in the City of Lyndhurst, the taxpayer may request, or the Tax Administrator of the City of Lyndhurst 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.

(b) 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 792.12 (A).

(c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this Section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 792.12 (A).

(d) Nothing in division (F)(2) of this Section nullifies or otherwise affects any alternative apportionment arrangement approved by a the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (F)(1)(b) 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:

(a) 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 (F)(3)(a)(ii) of this Section, or a related member of such a vendor, customer, client, or patient.

(b) 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;

(c) 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 (F) (3)(a) or (b) 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.

(4) For the purposes of division (F)(1)(c) of this Section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(a) 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 the City of Lyndhurst 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 the City of Lyndhurst from a stock of goods located within the City of Lyndhurst.

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

~~(iii) The property is shipped from a place within the City of Lyndhurst to purchasers outside the City of Lyndhurst, 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.~~

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

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

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

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

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

(6) (a) 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 the City of Lyndhurst, 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 the City of Lyndhurst to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(b) An individual who is a resident of the City of Lyndhurst shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City of Lyndhurst. 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 the City of Lyndhurst's income tax ordinance.

(7) When calculating the ratios described in division (F)(1) of this Section for the purposes of that division or division (F)(2) 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.

(8) Left intentionally blank.

(9) Intentionally left blank.

SECTION 2. Section 792.05 of the Codified Ordinances is hereby amended to read as follows (new material appears like THIS; deleted material appears like ~~this~~).

792.05 ANNUAL RETURN; FILING.

(A) An annual City of Lyndhurst income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 792.04 of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City of Lyndhurst.

(2) Retirees having no Municipal Taxable Income for the City of Lyndhurst income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City of Lyndhurst, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the City of Lyndhurst, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(E) The City of Lyndhurst shall permit spouses to file a joint return.

(F) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this Section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this Section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the

documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

(4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by the City of Lyndhurst to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this Section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(G) (1) (a) Except as otherwise provided in this Chapter, each individual income tax return required to be filed under this Section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Lyndhurst. No remittance is required if the net amount due is ten dollars or less.

(b) Except as otherwise provided in this Chapter, each annual net profit return required to be filed under this Section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15th) of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the the City of Lyndhurst. No remittance is required if the net amount due is ten dollars or less.

(2) 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 the City of Lyndhurst's income tax return. The extended due date of the City of Lyndhurst's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(a) A copy of the federal extension request shall be included with the filing of the City of Lyndhurst's income tax return.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's the City of Lyndhurst income tax return. If the request is received by the Tax Administrator on or before the date the City of Lyndhurst income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of the City of Lyndhurst's income tax return. The extended due date of the City of Lyndhurst's income tax return shall be the same as the extended due date of the state income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City of Lyndhurst, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) To the extent that any provision in this division (G) of this Section conflicts with any provision in divisions (N), (O), (P), or (Q) of this Section, the provisions in divisions (N), (O), (P), or (Q) prevail.

(H) (1) For taxable years beginning after 2015, the City of Lyndhurst shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars or less.

(2) Any taxpayer not required to remit tax to the City of Lyndhurst for a taxable year pursuant to division (H)(1) of this Section shall file with the City of Lyndhurst an annual net profit return under division (F)(3) of this Section.

(I) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. This division shall not apply to payments required to be made under division (B)(1)(a) of Section 792.04 or provisions for semi-monthly withholding.

(J) Taxes withheld for the City of Lyndhurst by an employer, the agent of an employer, or other payer as described in Section 792.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City of Lyndhurst, unless the amounts withheld were not remitted to the City of Lyndhurst and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the City of Lyndhurst to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(L) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City of Lyndhurst, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City of Lyndhurst or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the City of Lyndhurst's ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.

Filing via Ohio Business Gateway.

(M) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file The City of Lyndhurst's income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this Section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

(N) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the City of Lyndhurst for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City of Lyndhurst during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this Section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this Section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the the City of Lyndhurst before the 181st day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under (O)(1) of this division are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) of this Section.

(2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the City of Lyndhurst in accordance with this Chapter. The length of any extension granted under division (P)(2)(a) of this Section shall be equal to the length of

the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

(b) Taxes whose payment is extended in accordance with division (P)(2)(a) of this Section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (P)(2)(a) of this Section in calculating the penalty or interest due on any unpaid tax.

(Q) For each taxable year to which division (N), (O), or (P) of this Section applies to a taxpayer, the provisions of divisions (O)(2) and (3) of this Section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

Consolidated municipal income tax return.

(R) As used in this Section:

(1) "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (R)(1) of this Section.

(4) "Incumbent local exchange carrier" has the same meaning as in Section 4927.01 of the ORC.

(5) "Local exchange telephone service" has the same meaning as in Section 5727.01 of the ORC.

(S) (1) 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 the City of Lyndhurst'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 (S)(2) of this Section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) 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 (S)(1) 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.

(3) An election made under division (S)(1) or (2) of this Section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) WHEN A TAXPAYER MAKES THE ELECTION ALLOWED UNDER SECTION 718.80 OF THE REVISED CODE, A VALID ELECTION MADE BY A TAXPAYER UNDER DIVISION (S)(1) OR (2) OF THIS SECTION IS BINDING UPON THE TAX COMMISSIONER FOR THE REMAINDER OF THE FIVE-YEAR PERIOD.

(5) WHEN AN ELECTION 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.

(T) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated the City of Lyndhurst income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the City of Lyndhurst. A taxpayer that is required to file a consolidated the City of Lyndhurst income tax return for a taxable year shall file a consolidated the City of Lyndhurst income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(U) A taxpayer shall prepare a consolidated the City of Lyndhurst income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(V) (1) Except as otherwise provided in divisions (V)(2), (3), and (4) of this Section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 792.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated the City of Lyndhurst income tax return shall make any adjustment otherwise required under Section 792.02 (C)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated the City of Lyndhurst income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 792.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Lyndhurst. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 792.05, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Lyndhurst. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of Section 792.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City of Lyndhurst;

(b) The pass-through entity shall be subject to the City of Lyndhurst income taxation as a separate taxpayer in accordance with this Chapter on the basis of the entity's

net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(W) Corporations filing a consolidated the City of Lyndhurst income tax return shall make the computations required under divisions (R) through (Y) of Section 792.05 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that Section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that Section.

(X) Each corporation filing a consolidated the City of Lyndhurst income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City of Lyndhurst in accordance with this Chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(Y) Corporations and their affiliates that made an election or entered into an agreement with the City of Lyndhurst before January 1, 2016, to file a consolidated or combined tax return with the City of Lyndhurst may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

SECTION 3. SECTION 792.27 of the Codified Ordinances is hereby enacted to read as follows:

SECTION 792.27 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95

(A) THE CITY 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.

(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 REVISED CODE IN LIEU OF THE PROVISIONS OF THIS CHAPTER.

(C) "TAXPAYER" HAS THE SAME MEANING AS IN SECTION 718.01 OF THE 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. Adoption of this Ordinance does not waive any rights of the City, including but not limited to the City reserving the right under its home rule powers to challenge HB 49, including the amendments to Chapter 718 of the Ohio Revised Code.

SECTION 5. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 6. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of the residents of the City of Lyndhurst for the reason that it is necessary to adopt this Ordinance without delay so as to make the provisions of the City's Tax Code consistent with the provisions of the Ohio Revised Code. Therefore this Ordinance shall take effect and be in force immediately, provided it receives the affirmative vote of not less than five (5) members elected to Council and signature by the Mayor, or otherwise at the earliest time allowed by law.

PASSED: March 19, 2018

MAYOR

VICE MAYOR

ATTEST: _____
Clerk of Council

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Ordinance by advertising the same by title on one day in each of two consecutive weeks in a newspaper of general circulation in said City, on March 29, 2018 and April 5, 2018.

Clerk of Council

First Reading: March 19, 2018

Second Reading: Suspended

Third Reading: Suspended

Passed 3-19-2018