

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

Ordinance No. 2023-14 Passed December 19, 2023

AN ORDINANCE AMENDING SECTIONS 194.062(A), 194.062(D), 194.062(I), 194.091(A)(1), 194.094, AND 194.10(C)(4) OF THE CODIFIED ORDINANCES OF THE CITY OF BROOKVILLE CONCERNING REQUIRED UPDATES PASSED IN OHIO HOUSE BILL 33.

WHEREAS, pursuant to Ordinance 2015-06, passed December 15, 2015, in conjunction with the mandates of House Bill 5, the City enacted a new Chapter 194 dealing with municipal income tax which included Section 194.062 dealing with net profit tax and apportionment, Section 194.091 dealing with return and payment of tax, Section 194.094 dealing with the extension of time to file, and Section 194.10 dealing with penalties, interests, fees and charges; and

WHEREAS, the Code did not include an alternative apportionment method for remote workers under Section 194.062, contained unclear wording regarding return and payment of tax under Section 194.091(A)(1), the extended due date of individual and non-individual filers was the fifteenth day of the tenth month after the last day of the taxable year under Section 194.094, and the penalty for late filing was twenty-five dollars per month not to exceed one hundred fifty dollars under 194.10(C)(4); and

WHEREAS, the passage of Ohio House Bill 33, effective July 4, 2023 requires several changes to the income tax ordinance, including adding an alternative apportionment method supporting remote workers under Section 194.062 of the Brookville Code, mandates wording changes regarding filing requirements under Section 194.091(A)(1) of the Brookville Code, requires an extension for non-individual filers to be the fifteenth day of the eleventh month after the last day of the taxable year and penalties imposed on the city if an extended filer is contacted before the extended due date under Section 194.094 of the Brookville Code, and reduces the late filing penalty to twenty-five dollars total with required abatement for the first late infraction under Section 194.10(C)(4) of the Brookville Code;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE, MONTGOMERY COUNTY, OHIO THAT:

**SECTION I:** Chapter 194 "Municipal Income Tax" Section 194.062, Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment, sub sections (A) and (D) of the Codified Ordinances of the City of Brookville are hereby amended to read as follows:

(A) Except as otherwise provided in sections (B) and (I) of this section, net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of Municipal income taxation in the same proportion as the average ratio of the following:

(D) For tax years beginning on and after January 1, 2018, for the purposes of division (A)(3) of this section, and except as provided in division (I) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

**SECTION II:** Chapter 194 "Municipal Income Tax" Section 194.062, Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment of the Codified Ordinances of the City of Brookville is hereby amended to add a new sub section (I) to read as follows:

(I) As used in this section:

(1) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

(a) The taxpayer has assigned the individual to a qualifying reporting location.

(b) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

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2) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(3) "Reporting location" means either of the following:

(a) A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

(b) Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section 884.05 of this Ordinance, on qualifying wages paid to an employee for the performance of personal services at that location.

(4) "Qualifying reporting location" means one of the following:

(a) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

(b) If no reporting location exists in this state for an employee or owner under division (I)(4)(a) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

(c) If no reporting location exists in this state for an employee or owner under division (I)(4)(a) or (b) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(5) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of divisions (A) through (H) of this section apply to such apportionment except as otherwise provided in this division (I).

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.



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After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(6) For the purpose of calculating the ratios described in division (A) of this section, all of the following apply to a taxpayer that has made the election described in division (I)(5):

(a) For the purpose of division (A)(1) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(b) For the purpose of division (A)(2) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(c) For the purpose of division (A)(3) of this section, and notwithstanding division (d) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(7) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (B) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(8) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 194.05 of this Ordinance.

**SECTION III:** All other provisions of Chapter 194 "Municipal Income Tax" Section 194.062, Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment not amended or added to hereby shall remain in full force and effect;

**SECTION IV:** Chapter 194 "Municipal Income Tax" Section 194.091, Return and Payment of Tax, sub section (A)(1) of the Codified Ordinances of the City of Brookville is hereby amended to read as follows:

(A)(1) An annual Municipal income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

**SECTION V:** All other provisions of Chapter 194 "Municipal Income Tax" Section 194.091, Return and Payment of Tax not amended hereby shall remain in full force and effect;

**SECTION VI:** Chapter 194 "Municipal Income Tax" Section 194.094, Extension of Time to File of the Codified Ordinances of the City of Brookville is hereby amended to read as follows:



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(A) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of a Municipal income tax return. The extended due date of the Municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of the Municipal income tax return for a taxpayer that is not an individual shall be the fifteenth day of the eleventh month after the last day of the taxable year to which the return relates. A copy of the federal extension request shall be included with the filing of the Municipal 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 Municipal income tax return. If the request is received by the Tax Administrator on or before the date the Municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(C) If a taxpayer receives an extension for the filing of a Municipal income tax return under division (A) or (B) of this section, the Tax Administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a Tax Administrator violates division (C) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, not to exceed one hundred fifty dollars (\$150.00).

Division (C) of this section does not apply to an extension received under division (A) of this section if the Tax Administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (A) of this section or failed to file for an extension under division (B) of this section.

(D) An extension of time to file under this section is not an extension of time to pay any tax due unless the Tax Administrator grants an extension of that date.

(E) If the State Tax Commissioner extends for all taxpayers the date for filing State income tax returns under division (G) of Ohio R.C. 5747.08, a taxpayer shall automatically receive an extension for the filing of a Municipal income tax return. The extended due date of the Municipal income tax return shall be the same as the extended due date of the State income tax return.

**SECTION VII:** Chapter 194 "Municipal Income Tax" Section 194.10, Penalty, Interest, Fees, and Charges, sub section (C)(4) of the Codified Ordinances of the City of Brookville is hereby amended to read as follows:

(4) (a) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars (\$150.00) in assessed penalty for each failure to timely file a return.

(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the Municipality shall impose a penalty not exceeding twenty-five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon, except that the Municipality shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

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SECTION VIII: All other provisions of Chapter 194 "Municipal Income Tax" Section 194.10, Penalty, Interest, Fees, and Charges not amended hereby shall remain in full force and effect.

SECTION IX: Nothing herein shall be deemed an acquiesce to any other provision relating to Ohio Revised Code Chapter 718.

SECTION X: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION XI: This Ordinance shall take effect at the earliest date allowed by law.

Passed this 19th day of December, 2023.

ATTEST:

Kimberly Duncan, Clerk

Charles Letner, Mayor

CERTIFICATE

The undersigned, Clerk of the City of Brookville, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2023-14, passed by the Council of the City of Brookville, Ohio, on the 19th day of December, 2023.

Kimberly Duncan, Clerk

CERTIFICATE OF POSTING

The undersigned, Clerk of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2023-14 was posted at the City Building, US Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the 20th day of December, 2023, to the 18th day of January, 2024, both days inclusive.

Kimberly Duncan, Clerk