

# Chapter

# 4

## Income Tax for Municipal Corporations and School Districts

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2013 Ohio Ballot Questions and Issues Handbook

### **AUTHORITY TO LEVY**

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General authority to levy an income tax is found in [Article XII, Section 3\(B\) of the Ohio Constitution](#), which states:

Laws may be passed providing for . . . [t]he taxation of incomes, and the rates of such taxation may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law.

[Article XII, Section 5 of the Ohio Constitution](#) requires that every law imposing a tax must “distinctly” state the purpose of the tax and provides that the proceeds of the tax may only be used for that stated purpose.

The Ohio Constitution grants the authority to the General Assembly to pass laws providing for income taxes. Consequently, the provisions of the Ohio Constitution and those sections of the Ohio Revised Code relating to municipal income taxes, [sections 718.01](#) to [718.10](#), apply to charter and noncharter municipal corporations.

## MUNICIPAL CORPORATIONS

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### A. Election procedure<sup>1</sup>

An election is required in all cases where a municipal corporation seeks to tax income at a rate in excess of 1 percent.<sup>2</sup>

The general procedure for submitting the question of a municipal income tax to the voters is as follows:

1. *Ordinance and resolution*

The legislative authority of the municipal corporation wishing to impose an income tax greater than 1 percent must pass an **ordinance** authorizing the income tax.

Additionally, the legislative authority must pass a **resolution** stating the rate of the income tax (as a percentage), the purpose of the income tax, the date of the election at which the question is to be put before the voters, and directing the board of elections to conduct the election.

2. *Filing with board of elections*

The legislative authority of a municipal corporation established under the statutory form of government must file a copy of the ordinance and the resolution with the board of elections no later than 90 days before the day of the election. A municipal corporation operating under a charter must check the provisions of the charter for the filing deadline, which may differ from that in the Revised Code. The question may be submitted at a general, primary or special election.

3. *Uniform rate of taxation*

[Article XII, Section 3\(B\) of the Ohio Constitution](#) provides that income taxes may be either uniform or graduated. [R.C. 718.01\(B\)](#), however, provides that municipal corporations may tax income only at a uniform rate.

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<sup>1</sup> [R.C. 718.01](#).

<sup>2</sup> [R.C. 718.01\(C\)](#).

#### 4. *Ballot language*

The ballot language for the question of a municipal income tax is statutorily prescribed<sup>3</sup> as follows:

Shall the Ordinance providing for a \_\_\_\_\_ per cent levy on income for  
(Brief description of the purpose of the proposed levy) be passed?

FOR THE INCOME TAX

AGAINST THE INCOME TAX

The approval of a majority of those voting on the issue is required for passage.<sup>4</sup>

**Note:** If a municipal corporation wants to continue to collect an income tax that was previously approved for a specified number of years, the board of elections may insert after, "Shall the ordinance providing," the words "for the continuation of an existing \_\_\_ per cent levy... ."

### **B. Proposed municipal income tax for school districts**

In general, [R.C. 718.09](#) and [718.10](#) apply to an income tax that is proposed by one or more municipal corporations and shared with a school district in which the municipal corporation(s) and school district are at least 95 percent conterminous.<sup>5</sup>

The following procedure must be used to enact a municipal income tax for a school district:

1. Before proposing the tax, the municipal legislative authority shall negotiate and enter into a written agreement with the board of

<sup>3</sup> [R.C. 718.01\(C\)](#).

<sup>4</sup> [See Appendix B for suggested ballot language.](#)

<sup>5</sup> [R.C. 718.10\(A\)](#) states: "This section applies to a group of two or more municipal corporations that, taken together, share the same territory as a single city, local, or exempted village school district, to the extent that not more than five per cent of the territory of the municipal corporations as a group is located outside the school district and not more than five per cent of the territory of the school district is located outside the municipal corporations as a group."

education of the school district, specifying the tax rate, the percentage of revenue to be paid to the school district, the purpose for which the school district will use the money, the first year the tax is to be levied, the date of the election and the method and schedule for payments to the school district by the municipal corporation.

The question may be submitted at a general, primary or special election. Additionally, the election may be held on the day of a primary election authorized under the municipal corporation's charter, if the municipal corporation is to have a primary election on that day. In the case of two or more municipal corporations submitting the issue to the voters, the election may be held on a day on which all of the municipal corporations are to have a primary election.<sup>6</sup>

2. After the agreement between the two subdivisions is made, the municipal legislative authority shall adopt an ordinance with provisions as stated in its agreement with the board of education. The ordinance will be filed with the board of elections no later than 90 days prior to the election.<sup>7</sup>
3. The board of elections will arrange for the election on the question and conduct the election in the same manner as any other municipal income tax election. In addition, a notice of election must be published in a newspaper of general circulation in the municipal corporation once a week for four consecutive weeks, or as provided in [R.C. 7.16](#), prior to the election.<sup>8</sup>
4. *Ballot Language*  
The ballot form and language for the question of the levy of a municipal income tax to be shared by a single municipal corporation with a school district is prescribed in [R.C. 718.09\(C\)](#) as follows:

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<sup>6</sup> [R.C. 718.09\(B\)](#).

<sup>7</sup> [R.C. 718.09\(B\)](#).

<sup>8</sup> [R.C. 718.09\(C\)](#).

Shall the ordinance providing for a \_\_\_ per cent levy on income for (brief description of the municipal corporation and school district purposes of the levy, including a statement of the percentage of tax revenue that will be paid to the school district) be passed? The income tax, if approved, will not be levied on the incomes of individuals who do not reside in (the name of the municipal corporation).

FOR THE INCOME TAX  
AGAINST THE INCOME TAX

The ballot form and language for the question of the levy of a municipal income tax to be shared by a multiple municipal corporations with a school district is prescribed in [R.C. 718.10\(C\)](#) as follows:

Shall the ordinance providing for a \_\_\_ per cent levy on income for (brief description of the municipal corporation and school district purposes of the levy, including a statement of the percentage of tax revenue that will be paid to the school district) be passed? The income tax, if approved, will not be levied on the incomes of individuals who do not reside in (the name of the municipal corporation). In order for the income tax to be levied, the voters of (the other municipal corporations in the group), which are also in the (name of the school district) school district, must approve an identical income tax and agree to pay the same percentage of the tax revenue to the school district.

FOR THE INCOME TAX  
AGAINST THE INCOME TAX

The approval of a majority of those voting on the issue is required for passage.<sup>9</sup>

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<sup>9</sup> [See Appendix B for suggested ballot language.](#)

## SCHOOL DISTRICTS

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### A. Election procedure<sup>10</sup>

The general procedure for a board of education to submit the question of a school district income tax question is as follows:

1. The board of education of any school district, except a joint vocational school district, must pass a resolution declaring the necessity to raise annually a specified amount of money for school district purposes. The resolution shall specify whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in [R.C. 5748.01\(E\)\(1\)\(a\) and \(E\)\(2\)](#), or taxable income of individuals as defined in [R.C. 5748.01\(E\)\(1\)\(b\)](#).
2. The board of education must then certify a copy of the resolution to the tax commissioner not later than 100 days prior to the election.
3. The tax commissioner, upon receipt of the resolution shall:
  - a. Estimate the property tax rate that would have to be imposed in the current year to produce the equivalent of the amount of money specified in the resolution.
  - b. Estimate the income tax rate that would have had to have been in effect for the current year to produce an equivalent amount of money.
  - c. Certify these estimates to the board of education within 10 days of receipt of the board's resolution.
4. Upon receipt of the certified estimates from the tax commissioner, a majority of the members of the board of education may adopt a resolution proposing an income tax. The resolution shall state:

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<sup>10</sup> [R.C. 5748.02 - 5748.03](#).

- a. The purpose for which the tax is to be imposed.
  - b. The specific number of years for which the tax will be imposed or that the tax will be imposed for a continuing period of time.
  - c. The amount of the proposed income tax at the rate estimated by the tax commissioner and rounded to the nearest one-fourth of 1 percent.
  - d. The effective date of the tax, which shall be the January 1st following any year in which the question is approved.
  - e. The date of the election at which the question shall be submitted to the electors.
  - f. Specify whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in [R.C. 5748.01\(E\)\(1\)\(a\) and \(2\)](#) or taxable income of individuals as defined in [R.C. 5748.01\(E\)\(1\)\(b\)](#).
5. The resolution must be filed with the board of elections no later than 90 days prior to the election. The question may be submitted at a general, primary, or special election. The question may not be submitted more than twice in any calendar year. If the question is submitted twice in one calendar year, one of the elections at which it is submitted must be the general election.

## **B. School district income tax with reduction of property tax**

Another provision for a school district income tax permits a board of education to propose, as a single ballot issue, the simultaneous imposition of a continuing school district income tax limited to the purpose of current expenses, and a reduction in the rate of one or more continuing property tax levies.<sup>11</sup> A resolution proposing this type of tax must include the elements listed above and must state for each property tax the maximum rate at which it currently may be levied and

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<sup>11</sup> [R.C. 5748.02 - 5748.03](#).

the maximum rate at which it could be levied after the proposed reduction, expressed in mills per one dollar of valuation, and that the tax is levied for a continuing period of time.<sup>12</sup>

### C. Replacement tax<sup>13</sup>

This provision permits a board of education to propose, as a single ballot issue, the replacement of an existing tax on the school district income of individuals and estates as defined in divisions [\(E\)\(1\)\(a\), \(E\)\(2\) and \(G\) of R.C. 5748.01](#) with the levy of an annual tax on the school district income of individuals as defined in divisions [\(E\)\(1\)\(b\) and \(G\)\(1\) of R.C. 5748.01](#).

The general procedure for submitting the question of a replacement tax is as follows:

1. A resolution proposing the replacement tax must be certified to the tax commissioner not later than 85 days before the election.
2. The tax commissioner, upon receipt of the resolution, shall estimate the tax rate required to produce the amount of money annually as specified in the resolution.
3. Upon receipt of the certified estimates, a majority of the members of the board of education may adopt a resolution to replace the existing tax; the resolution shall state the following:
  - a. The rate of tax.
  - b. The specific number of years for which the tax will be imposed, or that the tax will be imposed for a continuing period of time.
  - c. The date of the election.
  - d. The specified purpose, which must be the same as the existing tax.

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<sup>12</sup> [See Appendix B for suggested ballot language.](#)

<sup>13</sup> [R.C. 5748.021.](#)

- e. The existing tax will cease to be levied if the replacement tax is approved.
- f. The existing tax will remain in effect for the remainder of the previously approved term if the replacement levy is not approved.

#### **D. Repeal of a school district income tax by initiative petition<sup>14</sup>**

The question of the repeal of an income tax that was levied for more than five years is subject to the following requirements:

1. It must be initiated by a petition (Ohio Secretary of State [Form 6-S](#)) signed by qualified electors of the school district equal in number to 10 percent of those voting for governor at the most recent gubernatorial election.<sup>15</sup>
2. It may be submitted only at a general election.
3. It may not be initiated more than once in any five-year period;
4. It must follow the form of the ballot language found in [R.C. 5748.04](#).
5. Notice of the election must be made as follows:
  - a. Either on two separate days in a newspaper of general circulation in the subdivision, or as provided in [R.C. 7.16](#), before the election, and
  - b. On the board of elections' website for 30 days before the election.
6. It must receive a majority affirmative vote for passage.

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<sup>14</sup> [R.C. 5748.04](#).

<sup>15</sup> [See Filing fees in Chapter 1.](#)