

ORDINANCE NO.38, 2023



ORIGINAL

ORDINANCE AMENDING TITLE NINE-CHAPTER 182 OF THE ST BERNARD CODIFIED ORDINANCE, THE ST. BERNARD MUNICIPAL INCOME TAX CODE, AND DELCARING AN EMERGENCY.

WHEREAS, the St. Bernard Village Council, at the recommendation of the Tax Administrator, intends to make certain adjustments, amendments, and clarifications to the St. Bernard Municipal Income Tax code; and

WHEREAS, the St. Bernard Village Council, at the recommendation of the Tax Administrator, to be in compliance with Ohio House Bill 33, intends to make adjustments and amendments to accomplish the following directives:

1. To be in compliance with H.B.33 mandatory changes.
2. Clarification of section §182.03(67)(B) "Taxpayer".
3. Clarification of section §182.03(T)(a)(b)(c) "Exempt income derived from disaster relief work".
4. Strike-out language under §182.03(36) "Ohio Business Gateway".
5. Adopted language of section §718.90 ORC regarding "Assessments".
6. Added language to section §182.051(H). Employers are required to submit their annual tax Reconciliation electronically or by CD for 50 or more employees.

Now therefore:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:

Section 1. Title Nine- Chapter 182 to be in compliance with State mandatory changes with the passage of H.B.33.

1a. §182.063 ALTERNATIVE APPORTIONMENT FOR BUSINESSES WITH REMOTE WORKERS.

(A) Terms used in this section have the same meanings as in section 182.062 of this Code.

(B) A taxpayer may elect to apply the provisions of this section to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of section 182.062 of this Code apply to such apportionment, except as otherwise provided in this section.

A taxpayer shall make the election allowed under this section by notifying the tax administrator 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. After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business.

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

(C) For the purpose of calculating the ratios described in division (A) of section 182.062 of this Code, all of the following apply to a taxpayer that has made the election described in division (B) of this section:

(1) For the purpose of division (A)(1) of section 182.062 of this Code, 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.

(2) For the purpose of division (A)(2) of section 182.062 of this Code, 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.

(3) For the purpose of division (A)(3) of section 182.062 of this Code, and notwithstanding division (D) of that 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.

(D) Nothing in this section prevents a taxpayer from requesting, or the tax commissioner 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 section 182.062 of this Code. However, the commissioner shall not require an alternative apportionment method in such a manner that it would cause a taxpayer to incur tax liability in a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(E) Except as otherwise provided in this section, nothing in this section is intended to affect the withholding of taxes on qualifying wages pursuant to sections 182.051 of this Code.

1b. Existing Language Correction-§182.03(32)"NET PROFIT"

(A)(1) for a person other than an individual means adjusted federal taxable income reduced by any net operation loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (A)(3) of this section.

(2) 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, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)(H) of this section.

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

(4) No person shall use the deduction allowed by division (A)(3) of this section to offset qualifying wages.

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

(ii) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (A)(3) of this section without regard to the limitation of division (A)(5)(i) of this section.

(6) Any pre-2017 net operation loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (A)(3) of this section.

1c. §182.03(17)(O) Exempt Income:

The income of individuals or a class of individuals under eighteen years of age.

1d. §182.094(F)(G) Net Profit extension; notices prohibited.

(F) 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.

(G) If a taxpayer receives an extension for the filing of a municipal income tax return under division (A) or (F) 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.

(1) If a tax administrator violates division (G) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to one hundred fifty dollars.

Division (G) of this section does not apply to an extension received under 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 this section or failed to file for an extension under division (C) of this section.

1e. §182.10(C)(4) Late filing penalty capped, and waiver required.

(C) The Municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Municipality any return required to be filed.

(1) Interest shall be imposed at the rate defined as “interest rate as described in division (A) of this section”, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.



(2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent of the amount not timely paid shall be imposed.

(3) With respect to any unpaid withholding tax, a penalty not exceeding fifty percent of the amount not timely paid shall be imposed.

(4) With respect to returns other than estimated income tax returns, a municipal corporation may impose a penalty not exceeding twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon, except that a municipal corporation shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

Section 2. Section §182.03(67)(A)&(B)

"**TAXPAYER**" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include natural persons or entities not subject to the tax imposed under Chapter 5745 ORC or, a grantor trust or, a disregarded entity, but "taxpayer" does include any person who owns the disregarded entity.

(B) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions of Ohio Revised Code §718.01(L0(2)) are met.

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

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

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

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

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

Section 3. Exempt Income:§182.03 (17)(T)(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;

(b) 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 pursuant to a qualifying solicitation received by the employee's employer;

(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 the state by the employee during a disaster response period on a critical infrastructure owned or used by the employee's employer.

Section 4. §182.03(36) Strike-out Language

36) "**OHIO BUSINESS GATEWAY**" means the online computer network system, created under section 125.30 of the Ohio Revised Code, ~~that allows persons to electronically file business reply forms with state agencies and includes~~ or any successor electronic filing and payment system.

Section 5. 182.17(A) Assessments

If any taxpayer required to file a return under section 182.09 of the this Code fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner/administrator may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The tax commissioner/administrator shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner/administrator consent in writing to the extension. Any such extension shall extend the three-year time limit in section 718.91 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by section 182.09 of the St. Bernard Tax Code or sections 718.80 to 718.95 of the Ohio Revised Code, or that files a fraudulent return. The commissioner/administrator shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Ohio Revised Code. With the notice, the commissioner/administrator shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the tax commissioner/administrator within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the city of St. Bernard. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner/administrator prior to the date shown on the final determination. If the petition has been properly filed, the commissioner/administrator shall proceed under section 182.18 of this code.

(Source: ORC 5703.60)

(C) If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Ohio Revised Code from the day the commissioner/administrator issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Ohio Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Ohio Revised

Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(1) The attorney general may assess collection costs as authorized under section 109.08, 109.081, or 131.02 of the Ohio Revised Code on amounts collected under this section, which shall be credited to the attorney general claims fund created under section 109.081 of the Ohio Revised Code.

Section 6. Added language- §182.051(H) Employers with 50 or more employees shall submit the Reconciliation Return either electronically or by CD.

Section 7. All previous sections of Chapter 182 inconsistent with these amendments are hereby repealed.

Section 8. The effective date of these amendments to the St. Bernard Codified Ordinance-Title Nine-Chapter 182, the St. Bernard Tax Code, as amended by this ordinance is January 1, 2024.

Section 9. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the emergency is the immediate need to update the Codified Ordinance of the Village of St. Bernard and to be effective January 1, 2024. Therefore, this Ordinance shall take effect immediately by and upon its passage, and the approval of two-thirds of the members of said Council. However, this Ordinance shall take effect on the earliest date provided by law if approved by no more than a majority of the members of Council and in that event the emergency provisions herein are set at naught.

Passed this 29th day of November, 2023.

President of Council Steve Asbach

ATTEST: Caroline Stegman
Clerk of Council



Approved this 29th day of November, 2023.

[Signature]
Mayor

I, CAROLINE STEGMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 38, 2023, was made by posting true copies of the same in the most public places designated by Council: City Hall, Vine Street and Washington Avenue; Safety Center Lobby; Park on Bertus St.; Park on

Heger Drive; Park on Greenlee Ave.; each for a period of fifteen (15) days or more commencing December 12th, 2023.

ATTEST: *Candice Stey* DATE Nov. 29 2023
Clerk of Council

Approved as to form *Samuel D. ...* Date 29 Nov 2023
Director of Law



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