
CHAPTER 4

INCOME TAX FOR MUNICIPAL CORPORATIONS AND SCHOOL DISTRICTS

AUTHORITY TO LEVY

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

MUNICIPAL CORPORATIONS

A. Election procedure (R.C. 718.01)

An election is required in all cases where a municipal corporation seeks to tax income at a rate in excess of one per cent. (R.C. 718.01(C)).

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 a tax of more than one per cent must pass an ordinance authorizing the income tax.

The legislative authority of the municipal corporation must also pass a resolution which should state 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 should direct 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. Section 718.01(B) of the Revised Code, however, provides that municipal corporations may tax income only at a uniform rate.

4. Ballot language

The ballot language for the question of the levy of a municipal income tax is specified in the statute 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 complete ballot form is prescribed in R.C. 718.01(C). The approval of a majority of those voting on the issue is required for passage (See example in Appendix B).

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, Revised Code 718.09 and 718.10 apply to an income tax that is proposed by a municipal corporation (or municipal corporations) and shared with a school district in which the municipal corporation(s) and school district are at least 95 percent conterminous.

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

1. Before proposing the tax, the council shall negotiate and enter into a written agreement with the board of 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 special election may be held in August or February or on the day of a general or primary election. 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, the election may be held on a day on which all of the municipal corporations are to have a primary election (R.C. 718.09(B)).

2. After the agreement between the two subdivisions is made, the council 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 (R.C. 718.09(B)).
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, the statute provides for a notice of election to be published in a newspaper of general circulation in the municipal corporation once a week for four consecutive weeks prior to the election (R.C. 718.09(C)).

4. Ballot Language:

The ballot 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 specified in the statute 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).

FOR THE INCOME TAX
AGAINST THE INCOME TAX

The ballot 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 specified in the statute 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 complete ballot forms are prescribed in R.C. 718.09(C) and R.C. 718.10(C). The approval of a majority of those voting on the issue is required for passage (See example in Appendix B).

SCHOOL DISTRICTS

A. Election procedure (R.C. 5748.02-5748.03)

The general procedure for submitting 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.
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:
 - 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 per cent.

- 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.
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 boards of education to be able 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 (R.C. 5748.02-5748.03). 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 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 (See example of ballot form in Appendix B).

C. Repeal of a school district income tax by initiative petition (R.C. 5748.04)

The question of the repeal of an income tax that was levied for more than five years is governed by the following:

1. It must be initiated by a petition (SoS Form 6-S) signed by 10 percent of those voting for governor at the most recent gubernatorial election (See filing fees in Chapter 12).
2. It may only appear 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. It must be advertised by notice of election published for two consecutive weeks prior to the election.
6. It must receive a majority affirmative vote for passage.

