

ORDINANCE NO. 18- 3

TO AMEND THE VILLAGE OF NEW LEXINGTON INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE AND DECLARING AN EMERGENCY

- WHEREAS** in House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, includes uncodified Section 803.100 purporting to require that municipalities, on or before January 31, 2018, adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and
- WHEREAS** Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and
- WHEREAS** on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 17CV 10258 extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and
- WHEREAS** on February 12 and 13, 2018, Judge Cain held a hearing on the motion for preliminary injunction made by the coalition of municipalities challenging H.B. 49's municipal income tax provisions, and the Judge stated his intention to issue a decision prior to February 24, 2018; and
- WHEREAS** although the municipal income tax provisions of H.B. 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the Village of New Lexington nevertheless is compelled to adopt H.B. 49's municipal income tax provisions, on or before February 24, 2018, to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and
- WHEREAS** the Village of New Lexington is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and
- WHEREAS** the Village of New Lexington, by enacting this Ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the Village New Lexington is participating, and reserves its right to continue prosecution of that lawsuit;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of New Lexington:

Section 1. That sections 718.80 through 718.95 inclusive of Chapter 182 of the Codified Ordinances of the Village of New Lexington shall hereby be enacted to read as set forth in “Exhibit A” of this Ordinance, attached hereto and incorporated by reference herein, for tax years starting on or after January 1, 2018.

Section 2. That the Village of New Lexington Council hereby expressly finds and determines that it does not concede the legality of H.B. 49’s municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, and that the Village of New Lexington reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the State’s authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the Village of New Lexington therein.

Section 3. That this Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, and safety, which shall be effective February 24, 2018, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the Village of New Lexington to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.


Section 4. That the Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

Section 5. That if any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, that the provisions adopted in Section 1 of this Ordinance shall likewise be stayed.

Passed: 2-20-18


Mayor

Attest: Lisa Spohn


Council President