

### **39.03 DEFINITIONS.**

(11) "**EXEMPT INCOME**" means all of the following:

(A) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.

(B) Intangible income, as described paragraph (15) of this section.

(C) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (11)(C) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

(D) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(E) Compensation paid under R.C. 3501.28 or R.C. 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year shall be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.

(G) Alimony and child support received.

(H) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages.

(I) Income of a public utility when that public utility is subject to the tax levied under R.C. 5727.24 or R.C. 5727.30. Division (11)(I) of this section does not apply for purposes of R.C. Chapter 5745.

(J) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically 9

prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.

(K) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code.

(L) Employee compensation that is not qualifying wages as defined in division (33) of this section.

(M) Compensation paid to a person employed within the boundaries of a United States Air

Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(N) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(O) (i) Except as provided in divisions (11)(O)(ii), (iii), and (iv) of this section, qualifying wages described in division (B)(1) or (E) of section 39.052 of this chapter to the extent the qualifying wages are not subject to withholding for the municipality under either of those divisions.

(ii) The exemption provided in division (11)(O)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(iii) The exemption provided in division (11)(O)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of section 39.052 of this chapter.

(iv) The exemption provided in division (11)(O)(i) of this section does not apply to qualifying wages if both of the following conditions apply:

(a) For qualifying wages described in division (B)(1) of section 39.052 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of section 39.052 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located; 10

(b) The employee receives a refund of the tax described in division (11)(O)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.

(P) (i) Except as provided in division (11)(P)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipality on not more than twenty days in a taxable year.

(ii) The exemption provided in division (11)(P)(i) of this section does not apply under either of the following circumstances:

(a) The individual's base of operation is located in the municipality.

(b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (11)(P)(ii)(b) of this section, "**PROFESSIONAL ATHLETE**," "**PROFESSIONAL ENTERTAINER**," and "**PUBLIC FIGURE**" have the same meanings as in section 39.052 of this chapter.

(iii) Compensation to which division (11)(P) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

(iv) For purposes of division (11)(P) of this section, "**BASE OF OPERATION**" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(Q) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to R.C. 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(R) In the case of a tax administered, collected, and enforced by a municipal corporation pursuant to an agreement with the board of directors of a joint economic development district under R.C. 715.72, the net profits of a business, and the income of the employees of that business, exempted from tax under division (Q) of that section. 11

(S) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.