

VILLAGE OF TONTOGANY, WOOD COUNTY, OHIO

ORDINANCE NO. 886-18

**TO AMEND CERTAIN SECTIONS OF THE VILLAGE INCOME TAX CODE, AND
DECLARING AN EMERGENCY**

WHEREAS, in House Bill (H.B.) 49 of the 132rd 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 February 21, 2018, Jude David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case number 17CV10258 upholding the relevant portions of H.B. 49; and

WHEREAS, the Plaintiff municipalities have filed a notice of appeal of that decision; and

WHEREAS, the Village of Tontogany, 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 aforementioned lawsuit, and reserves its right to participate in that lawsuit.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Tontogany, Ohio:

1. That Tontogany income tax ordinances, as adopted and/or amended by Ordinance 861-15, 865-15, 883-17 and 885-18, section 5(I)(4)(a), which reads as follows:
 - (a) *Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in Tontogany if, regardless of where title passes, if the property meets any of the following criteria:*
 - (i) *The property is shipped to or delivered within Tontogany from a stock of goods located within Tontogany*
 - (ii) *The property is delivered within Tontogany from a location outside of Tontogany, provided that the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within Tontogany and the sales result from such solicitation or promotion.*

(iii) The property is shipped from a place within Tontogany to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales within Tontogany and the sales result from such solicitation or promotion.

shall be amended to read as follows:

(a) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation only if, regardless of where title passes, the property meets either of the following criteria:

(i) The property is shipped to or delivered within Tontogany from a stock of goods located within Tontogany.

(ii) The property is delivered within Tontogany from a location outside of Tontogany, provided that the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within Tontogany and the sales result from such solicitation or promotion.

2. That Tontogany income tax ordinances, as adopted or amended by 861-15, 865-15, 883-17, and 885-18, section 7(S), which currently reads as follows:

(S)(1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to Tontogany's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five (5) year period, beginning with the first taxable year of the initial election, unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five (5) year period, unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section, or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five (5) year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five (5) year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

shall be amended to read as follows:

(S)(1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to Tontogany's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five (5) year period, beginning with the first taxable year of the initial election, unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five (5) year period, unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section, or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five (5) year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five (5) year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) When a taxpayer makes the election allowed under section 718.80 of the Revised Code, a valid election made by a taxpayer under division (S)(1) or (2) of this section is binding upon the tax commissioner for the remainder of the five-year period.

(5) When an election is made under section 718.80 of the Revised Code is terminated, a valid election made under section 718.86 of the Revised Code is binding upon the tax administration for the remainder of the five-year term.

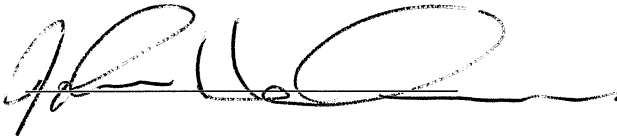
3. That this Ordinance is declared to be an emergency legislation, necessary for the immediate preservation of the public peace, health and safety, which shall be effective upon passage, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the Village of Tontogany 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.
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.

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 herein relevant to such unconstitutional, stayed or enjoined provisions shall likewise be stayed.

Date:

Vote on Emergency: 6 Y 0 N 0 Abstain

Vote on Passage: 6 Y 0 N 0 Abstain

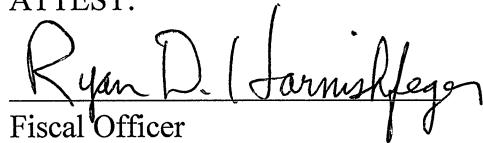


President of Council



Mayor

ATTEST:



Fiscal Officer