

FAILED

AN ORDINANCE REPEALING AND REPLACING CHAPTER 820 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF COMMERCIAL POINT TO INCREASE THE MUNICIPAL INCOME TAX RATE FROM 0.75% TO 1.00% AND TO PROVIDE FOR A CREDIT OF 0.25% TO RESIDENTS WHO PAY INCOME TAX TO ANOTHER OHIO MUNICIPAL CORPORATION AS OF JANUARY 1, 2022, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to the Ohio Revised Code and Ohio Constitution, the Village of Commercial Point is authorized to adopt local tax provisions not in conflict therewith; and

WHEREAS, Ohio Revised Code Section 718.04(A) authorizes the Village of Commercial Point to levy an income tax on nonresidents working within the Village and residents of the Village; and

WHEREAS, Ohio Revised Code Section 718.04(C)(2) authorizes the Village Council of the Village of Commercial Point to levy an income tax at a rate not in excess of one per cent; and

WHEREAS, Ohio Revised Code Section 718.04(D) authorizes the Village of Commercial Point to grant a credit to residents of the Village for all or a portion of the taxes paid to any municipal corporation, in this state or elsewhere, by the resident by a pass-through entity owned, directly or indirectly, by a resident, on the resident's distributive or proportionate share of the income of the pass-through entity; and

WHEREAS, Ohio Revised Code Section 731.19 authorizes the amendment of Chapter 820 of the Codified Ordinances of the Village of Commercial Point; and

WHEREAS, the Village Council wishes to raise the income tax rate in the Village from 0.75% to 1.00%, and to give a credit to all Village residents who pay income tax to another Ohio municipal corporation in the amount of 0.25%, as authorized by Ohio Revised Code Section 718.04.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO THAT:

SECTION 1. Repeal and Replacement of Chapter 820 of the Codified Ordinances of the Village of Commercial Point. Chapter 820 of the Codified Ordinances of the Village of Commercial Point is hereby repealed and replaced with Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 2. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. Emergency Declaration and Effective Date. Because the Village of Commercial Point must be in the best position financially to deal with rapid population growth and development, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety in the Village of Commercial Point and shall, therefore, go into immediate effect upon passage.

Vote on Suspension of the Readings:

Motion by: _____ 2nd: _____

Roll Call:

___ Jason Thompson
___ Nancy Geiger

___ Aaron Grassel
___ Tracy Joiner

___ Ryan Mitchem
___ Laura Wolfe

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Vote on Passage of the Ordinance:

Motion by: _____

2nd: _____

Roll Call:

Jason Thompson

Aaron Grassel

Ryan Mitchem

Nancy Geiger

Tracy Joiner

Laura Wolfe

Adopted this _____ day of _____, 2021.

Allan D. Goldhardt, Mayor

Wendy Hastings, Fiscal Officer

Approved as to Form:

Joshua Cartee, Village Solicitor

**EXHIBIT A
TO
ORDINANCE 2021-XX**

CHAPTER 820

Income Tax

- 820.01 Authority to levy tax; purpose of tax.
- 820.02 Definitions.
- 820.03 Imposition of tax.
- 820.04 Collection at source.
- 820.05 Annual return; filing.
- 820.06 Credit for tax paid to other Ohio municipalities.
- 820.07 Estimated taxes.
- 820.08 Rounding of amounts.
- 820.09 Requests for refunds.
- 820.10 Second municipality imposing tax after time period allowed for refund.
- 820.11 Amended returns.
- 820.12 Limitations.
- 820.13 Audits.
- 820.14 Service of assessment.
- 820.15 Administration of claims.
- 820.16 Tax information confidential.
- 820.17 Fraud.
- 820.18 Interest and penalties.
- 820.19 Authority of Tax Administrator; verification of information.
- 820.20 Request for opinion of the Tax Administrator.
- 820.21 Board of Tax Review.
- 820.22 Authority to create rules and regulations.
- 820.23 Rental and leased property.
- 820.24 Savings clause.
- 820.25 Collection of tax after termination of chapter.
- 820.26 Adoption of RITA Rules and Regulations.
- 820.99 Violations; penalties.

§ 820.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.

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(a) To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, the Village of Commercial Point (the "Village") hereby levies an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided.

(b) As of January 1, 2022, the annual tax is levied at a rate of 1.00% (one percent). Through and including December 31, 2021, the annual tax is levied at a rate of 0.75% (three quarters of one percent). The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the Village. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in § 820.03 and other sections as they may apply.

(c) The tax on income and the withholding tax established by this chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of R.C. Chapter 718.

§ 820.02 DEFINITIONS.

(a) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in R.C. Title LVII, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in R.C. Title LVII.

(b) The singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(c) As used in this chapter:

(1) **ADJUSTED FEDERAL TAXABLE INCOME**, for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (c)(24)D. of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

A. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

B. Add an amount equal to 5% of intangible income deducted under division (c)(1)A. of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.

C. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

D. 1. Except as provided in division (c)(1)D.2. of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

2. Division (c)(1)D.1. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

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E. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

F. In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

G. Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under R.C. § 4313.02.

H. 1. Except as limited by divisions (c)(l)H.2., 3., and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income 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.

2. No person shall use the deduction allowed by division (c)(1)H. of this section to offset qualifying wages.

3. a. 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 50% of the amount of the deduction otherwise allowed by division (c)(l)H.1. of this section.

b. 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 (c)(l)H.1. of this section.

4. Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (c)(1)H. of this section.

5. Nothing in division (c)(l)H.3.a. of this section precludes a person from carrying forward, use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (c)(l)H.3.a. of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (c)(l)H.3.a. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (c)(l)H.3.a. of this section shall apply to the amount carried forward.

I. Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with § 820.05(v)(3)B.

J. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with § 820.05(v)(3)B.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (c)(48)B. of this section, is not a publicly traded partnership that has made the election described in division (c)(24)D. of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner,

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shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States Treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (c)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) A. **ASSESSMENT** means a written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to § 820.21, and has "ASSESSMENT" written in all capital letters at the top of such finding.

B. **ASSESSMENT** does not include a notice denying a request for refund issued under § 820.09(c)(3), a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (c)(2)A. of this section.

(3) **AUDIT** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) **BOARD OF TAX REVIEW** or **BOARD OF REVIEW** or **BOARD OF TAX APPEALS**, or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under § 820.21.

(5) **CALENDAR QUARTER** means the three-month period ending on the last day of March, June, September, or December.

(6) **CASINO OPERATOR** and **CASINO FACILITY** have the same meanings as in R.C. § 3772.01.

(7) **CERTIFIED MAIL, EXPRESS MAIL, UNITED STATES MAIL, POSTAL SERVICE**, and similar terms include any delivery service authorized pursuant to R.C. § 5703.056.

(8) **DISREGARDED ENTITY** means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(9) **DOMICILE** means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.

(10) **EMPLOYEE** means an individual who is an employee for federal income tax purposes.

(11) **EMPLOYER** means a person that is an employer for federal income tax purposes.

(12) **EXEMPT INCOME** means all of the following:

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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. However, a municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th General Assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

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 (c)(12)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 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may 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 compensation from punitive damages.

I. Income of a public utility when that public utility is subject to the tax levied under R.C. § 5727.24 or 5727.30. Division (c)(12)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 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 (c)(35) 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

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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 share of net profits of the S corporation, other than any part of the 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. To the extent authorized under a resolution or ordinance adopted by the Village before January 1, 2016, all or a portion of the income of individuals or a class of individuals under 18 years of age.

P. 1. Except as provided in divisions (c)(12)P.2., 3., and 4. of this section, qualifying wages described in § 820.04(c)(2) or (c)(5) to the extent the qualifying wages are not subject to withholding for the Village under either of those divisions.

2. The exemption provided in division (c)(12)P.1. 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.

3. The exemption provided in division (c)(12)P.1. of this section does not apply to qualifying wages that an employer elects to withhold under § 820.04(c)(4)B.

4. The exemption provided in division (c)(12)P.1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in § 820.04(c)(2), 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 § 820.04(c)(5), 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;

b. The employee receives a refund of the tax described in division (c)(12)P.4.a. of this section on the basis of the employee not performing services in that municipal corporation.

Q. 1. Except as provided in division (c)(12)Q.2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Village on not more than 20 days in a taxable year.

2. The exemption provided in division (c)(12)Q.2. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the municipal corporation.

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 (c)(12)Q.2.b. of this section, **PROFESSIONAL ATHLETE**, **PROFESSIONAL ENTERTAINER**, and **PUBLIC FIGURE** have the same meanings as in § 820.04(c).

3. Compensation to which division (c)(12)Q. 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.

4. For purposes of division (c)(12)Q. of this section, **BASE OF OPERATION** means the location where an individual owns or rents an office, storefront, or similar facility to which the

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individual regularly reports and at which the individual regularly performs personal services for compensation.

R. 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.

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 (c) 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.

(13) **FORM 2106** means Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(14) **GENERIC FORM** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.

(15) **GROSS RECEIPTS** means the total revenue derived from sales, work done, or service rendered.

(16) **INCOME** means the following:

A. 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident except as provided in division (c)(24)D. of this section.

2. For the purposes of division (c)(16)A.1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (c)(16)A.4. of this section;

b. The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

3. Division (c)(16)A.2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (c)(12)N. or (c)(16)E. of this section.

4. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with

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respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

B. In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

C. For taxpayers that are not individuals, net profit of the taxpayer.

D. Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

E. Intentionally left blank.

(17) **INTANGIBLE INCOME** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in R.C. Chapter 5701, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. **INTANGIBLE INCOME** does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(18) **INTERNAL REVENUE CODE** has the same meaning as in R.C. § 5747.01.

(19) **LIMITED LIABILITY COMPANY** means a limited liability company formed under R.C. Chapter 1705 or under the laws of another state.

(20) **MUNICIPAL CORPORATION** includes a joint economic development district or joint economic development zone that levies an income tax under R.C. § 715.691, 715.70, 715.71, or 715.74.

(21) A. **MUNICIPAL TAXABLE INCOME** means the following:

1. For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Village under § 820.03, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Village.

2. a. For an individual who is a resident of the Village, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

b. For an individual who is a nonresident of the Village, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under § 820.03, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Village.

B. In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (c)(21)A.2.a. or (c)(21)B. of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual