

Ohio Municipal Income Tax and Remote Workforce

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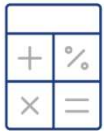
Agenda



Long-term remote work - U.S. multistate tax implications



Employment tax



Policy and technology considerations



Major developments in Ohio's municipal income tax system (focusing on remote and hybrid worker withholding)

Remote Work Implications



Talent & HR Operations

- Safety and security
- Rewards
- Workforce strategy and policy
- Operating model and org design



Physical & Virtual Workplace

- Workspace strategy and analytics
- Workspace technology
- Virtual workplace provisioning



Technology & Operations

- Cyber and data security
- Operations
- Technology
- Third party



Finance & Regulatory Compliance

- Employment law/HR Compliance
- Finance
- Immigration
- Payroll and Employee Corporate Tax

What is your post-COVID ambition for the future of **work, workforce, and workplace**?
What **tax risks** might be associated with that ambition?

Tax Implications of Remote Work

Organizations are considering (or have already made) remote work permanent for all, or parts of their workforce. What are the tax considerations of such a transition? And how can organizations address them?

Generally, any COVID-19 tax compliance relief for remote workers has been temporary in nature.

Companies will need to continue to evaluate longer term remote working arrangements against existing regulatory rulesets, and assess and manage the impact of:

1

Additional filing requirements for new locations

2

Additional withholding requirements for remote employees

3

Shifting tax costs; Potential change in effective tax rates

4

Tax risk management; compliance policies and regulatory tracking

Tax and other departments will have a critical role to play in shaping corporate remote work policies. There may be a new stream of unforeseen work that require significant time and resources including managing ongoing compliance and retroactive corrections.

Multistate Tax Implications

Corporate Income/Net Worth Tax

Nexus
Increased filings
Apportionment changes

Local Taxes

Increased filings

Credits and Incentives

Impact

Sales & Use Tax

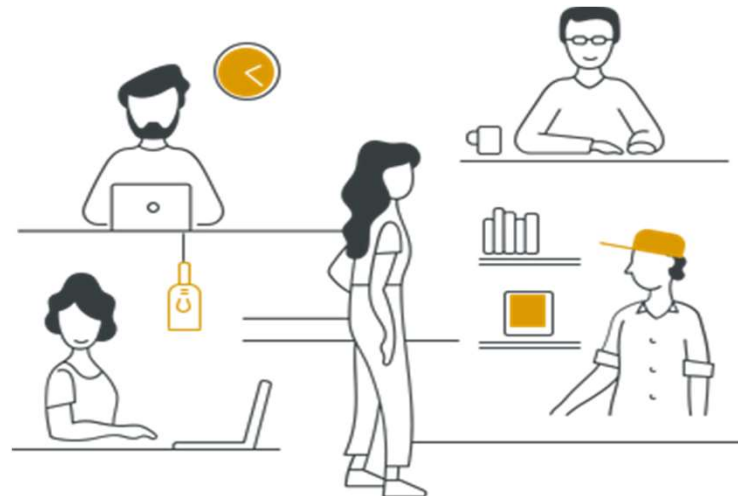
Nexus
Increased filings
Other Impacts

Property Tax

Increased filings

Employment Tax

Payroll reporting and withholding
State registrations
Sourcing of employment compensation
Tracking business travel and expenses
State unemployment insurance



Multistate Tax Implications

Corporate Income & Net Worth Tax

- Nexus
 - Public Law 86-272
 - In-state agents soliciting sales of *tangible personal property* do not create *net income tax* nexus for principal (employer)
 - Does not apply to sales of services or digital products; gross receipts taxes such as the Ohio commercial activity tax
 - Bright-line standards
- Apportionment
 - Payroll factor
 - Sales factor – market vs. cost of performance sourcing

Sales and Use Tax

- Nexus
 - Post- *Wayfair* environment
 - Physical presence no longer required to establish nexus
 - Economic nexus and marketplace facilitator laws
 - Will sales tax nexus rules bleed into income tax?
 - Ways to trigger nexus:
 - Sales
 - Employees
 - Physical assets
 - Marketplace facilitator
 - Storage of products
 - Miscellaneous affiliates; internet activity including marketing; “click-through” nexus; warranty repair

Employer Withholding Concepts

- **Employee Liability**
 - **Nonresident State**
 - Generally, tax income for services performed in-state
 - **Resident state**
 - Generally, tax 100 percent of all resident income
 - Subject to resident credit (consider reverse credits)
 - **Local Taxing Jurisdictions**
- **Employer Withholding**
 - **Nexus**
 - **Reciprocity Agreements**
 - **Convenience of the Employer Rule**
 - **Nonresident Withholding Thresholds**

Employer Withholding Outlook

- State and local safe harbors that allowed employers to continue existing withholding practices during the pandemic are expiring or have already expired
- New business practices governed under pre-pandemic legal and tax environments
 - Issues with hybrid work in this area existed pre-pandemic but now present themselves on a continuous, systemic basis
- Focus business practices on long-term
- Need for state and federal legislation in this area
 - However, employers should not expect legislation in short term

Employer Withholding Outlook

- General trend to withhold where services are performed
 - May employers withhold at the office even when employees are working from home? Many are currently operating this way.
- Legal environment
 - Reciprocity
 - Convenience of the employer
 - Nonresident withholding
- How should employers balance compliance concerns & employee interests?
- Adopt corporate policies and practices

Reciprocity Agreements

- **Withhold in state of residency**
 - May relieve employers from obligation to withhold income tax in the work state
 - Employee certifies nonresident status via required forms
- **Example: Ohio has reciprocity agreements with surrounding states Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia**
 - Ohio employers may withhold Pennsylvania rather than Ohio for a Pennsylvania resident working in Ohio (if nonresident certification provided)
- **Best practice: review whether business locations are in states that have reciprocity agreements**

Convenience of the Employer Rule

- Assign payroll to the employer's office even when employees work from home, with only limited exceptions
- States with "Convenience of the Employer" Rule:
 - Connecticut, Delaware, Nebraska, New York, and Pennsylvania
- Example: An employee assigned to a New York office is working from home in another state. Working from home is determined to be for the convenience of the employee.
 - Withholding is required in New York.

Convenience of the Employer Rule

- Issues
 - When does it apply? May an employee work-from-home for convenience of employer?
 - When and under what circumstances may an employee working remotely be re-assigned to a non-NY office?
 - Does resident state allow resident credit for work actually performed in-state?
- Rule upheld against constitutional challenges in Court of Appeals of New York
 - *Huckaby v. New York State Div. of Tax Appeals*, 829 N.E. 2 276 (NY 2005);
 - *Zelinsky v. Tax Appeals Tribunal of State*, 801 N.E. 2d 840 (NY 2003)
- Remains controversial

Nonresident Withholding

- Issue has always existed with business travel
 - More common in the hybrid or work-from-home context
- Most states will assert the right to tax the income that nonresident employees earn for services performed there
- The threshold at which employment income becomes taxable in a state varies and may be expressed in days or dollars
- Check the threshold for state and local jurisdictions where your employees travel or work-from-home

Unemployment Tax

Employers must pay unemployment taxes to states with jurisdiction over the wages paid to remote employees. States use a multi-step test for attributing unemployment taxable wages.

Step 1: Localization of Service

- If an employee works primarily in 1 jurisdiction, attribute there.
- Remote work wages may be reportable to where work is performed.

Step 2: Base of Operations

- If there is no primary jurisdiction and the employee performs work at their operations base, attribute to the base's jurisdiction.

Step 3: Directed or Controlled

- If there is no base of operations, attribute to the jurisdiction from which the employee's work is directed and controlled.

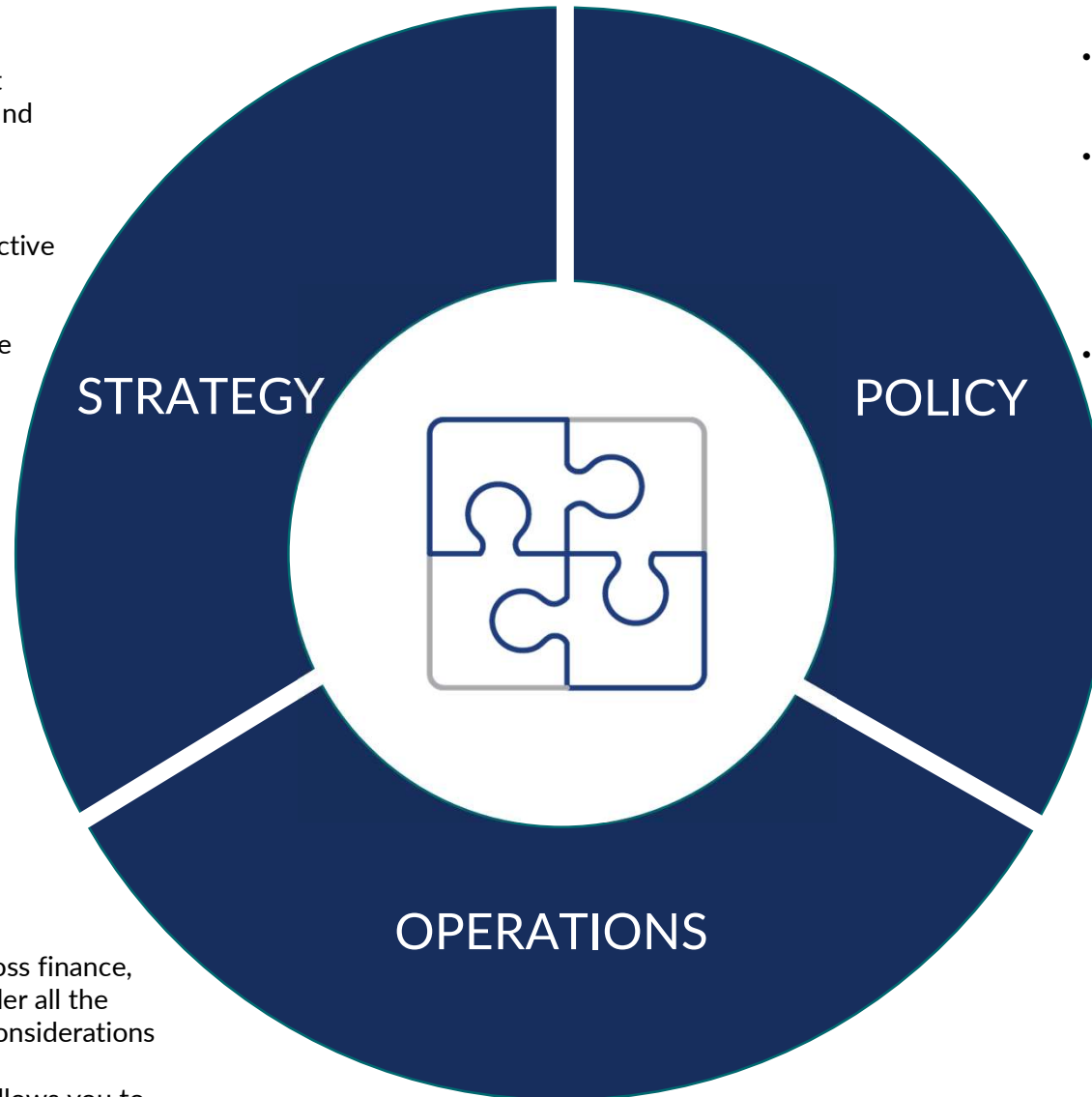
Step 4: Place of Residence

- If no jurisdiction contains a place of direction and control, attribute to the employee's residence if the employee works there.

Step 5: Employer Choice

- If no jurisdiction applies under the 4 steps, jurisdictions typically let employers choose to attribute work to 1 jurisdiction.

What Should Organizations Do Next?



- A clear, documented strategy that aligns with your overall business and talent strategy while minimizing organizational risk
- Articulate key organizational objective and implications
- Why are you establishing a remote work program?

- What the remote program should look like
- Sound policy lays out the roles, experience and performance requirements for workers to be eligible for long-term remote work
- Policies must include compliance analyses to quantify risks, continuous data tracking and reporting, and an understanding of employment tax compliance risks, income tax withholding and filing requirements, and entity and payroll registration requirements

- Need a cross-functional team across finance, legal, HR to ensure policies consider all the different facets of remote work considerations
- An organizational structure that allows you to operate in a tax compliant manner, anticipating global and local compliance requirements

Corporate Policies and Practices

- **Consider your tax policy for work-from-home employees**
 - Be prepared to explain policies to employees and the C suite
 - Employ mechanisms to track locations of employees and prepare for ongoing dispersed workforces
 - Recordkeeping
- **Policy should assist with sourcing wages and audit defense**
 - Amount to withhold when multiple jurisdictions; establish business records
- **Adopt procedures for transitioning to and operating under new legal and tax environments**
 - Employ the reciprocity agreements if applicable and comply with the required documentation
 - Registrations and compliance
 - Track legislation and tax agency announcements

Corporate Policies

Remote work policy attributes

- Clearly articulated
- Easy for employees to follow
- Establish controls

Technology tools

- Technology tools are enabling organizations to implement remote work requests and support decision-making from start to end
- Enables employees to submit remote work requests while allowing human resources and program managers to assess and monitor such requests in a streamlined and manageable way
- Define company policy and specify key identifiers, including:
 - Employee's job title or business unit
 - Employee's seniority, role, or reason for requesting to work remotely
 - Location updates and remote work start/end dates

Ohio Municipal Tax For Remote and Hybrid Workers

- In response to the COVID-19 pandemic, Ohio law permitted employers to withhold municipal income tax from employee wages as if employees are working in the office, regardless of where they have been performing their work.
- That rule ended December 31, 2021.
- January 1, 2022 we returned to the “old” municipal income tax withholding rules.

Ohio Municipal Tax For Remote and Hybrid Workers

What Are The
“Old” Rules?

Withhold Where Work is
Performed

Occasional Entrant Rule

Small Employer Rule

Ohio Municipal Tax For Remote and Hybrid Workers

Old Rules – New Schedules

Fully Remote – withhold for the employee’s residence municipality, at the full rate, as the workplace.

Fully In Office – withhold like it’s March 8, 2020.

Ohio Municipal Tax For Remote and Hybrid Workers

Old Rules – New Schedules

Hybrid schedules, what we are hearing from employers –

Withhold day by day where work is performed;

Prorate wages between office and home, based on actual or expected schedules and withhold accordingly;

For wages earned at home, the home municipality is treated like another work location, this is not courtesy residence withholding.

Ohio Municipal Tax For Remote and Hybrid Workers

Potential Impacts

Who?

Everyone – employers; employees; and municipalities

What?

New withholding obligations; employee residence tax impacts; and shifts in municipal revenues

When?

As early as 1Q 2022

Refunds in 2023

Municipal Income Tax Shifts - Example

2021

- Annual Salary: \$60,000
- Work Location: Brecksville
- Residence Location: Shaker Heights

Description	Wages	%	Tax Amount
Brecksville Workplace Tax (100%)	\$60,000	2%	\$1,200
Shaker Heights* Residence Tax (After credit)		1.75%	<u>\$1,050</u>
Total Muni Tax			<u>\$2,250</u>

**Shaker Heights Tax rate is 2.25%, however, they give ½% credit for workplace.*

2022

- Annual Salary: \$60,000
- Work Location: Brecksville (1 Day, 20%)
- Work and Residence Location: Shaker Heights (4 Days, 80%)

Description	Wages	%	Tax Amount
Brecksville Workplace Tax (20%)	\$12,000	2%	\$240
Shaker Heights* Workplace Tax (80%)	\$48,000	2.25%	\$1,080
New Amount To Be Withheld			<u>\$1,320</u>
Shaker Heights Residence Tax To Be Paid (Not Withheld)			\$210
New Muni Tax Total			<u>\$1,530</u>

Ohio Municipal Tax For Remote and Hybrid Workers

Other Considerations

Tax credit or economic development incentives based on a company's payroll

Impact on current agreements

Drafting future agreements

Ohio Municipal Tax For Remote and Hybrid Workers

What About Tax Year 2021 Refunds?

Ohio House Bill 110 made it clear that taxpayers who had tax withheld for the principal place of work municipality in 2021 while they worked from home may obtain a refund.

What is RITA seeing in terms of 2021 work from home refund requests?

Ohio Municipal Tax For Remote and Hybrid Workers

What About Tax Year 2020 Refunds?

Ohio House Bill 110 did not address tax year 2020 refunds for taxpayers who had tax withheld for the principal place of work municipality in 2020 while they worked from home.

Litigation pending throughout the State to answer this question.

Refund requests suspended.

Ohio Municipal Tax For Remote and Hybrid Workers

Pending Litigation – Tax Year 2020 Refunds:

- *Buckeye Inst. v. Kilgore*, 2021-Ohio-4196 (10th Dist.), *appeal not accepted* – City of Columbus
- *Schaad v. Alder*, 2022-Ohio-340 (1st Dist.), *jurisdiction pending* – City of Cincinnati
- *Curcio v. Hufford*, G-4801 CL-22-1009, Sixth District Court of Appeals, *appeal pending* – Cities of Oregon & Toledo
- *Morsy v. Dumas*, CV-21-946057, Cuyahoga County Common Pleas Court – City of Cleveland

Questions?



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Biographical Information

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Don focuses his practice on state and local tax matters, tax issues involving non-profit organizations, tax controversies (federal, state, and local), and on public agency law. As a public agency lawyer, Don both represents public agency clients and represents other clients before public agencies. Don has been able to draw upon 25 years of experience as a public official and as an attorney and financial manager to the benefit of his clients. He is admitted to practice before Ohio courts as well as the Supreme Court of the United States, the U.S. District Court for the Southern District of Ohio, the U.S. Sixth Circuit Court of Appeals and the Internal Revenue Service. He is also a director of Focused Capitol Solutions LLC, a business affiliate of the law firm of Taft, which provides governmental relations and public policy services at its offices in Cincinnati and Columbus. In this role, Don represents clients before Ohio state government agencies and the Ohio General Assembly.

In 1993, Don began his eight years of service in the Ohio House of Representatives, where he represented part of Dayton and several suburban communities in Montgomery County. While in the state legislature, he chaired the House Ways and Means and Joint Agency Rule Review Committees and served on the Finance and Insurance Committees. He previously served in various positions for the Montgomery County Commissioners and County Auditor's Office. Don began his career in public service as a member of the West Carrollton Board of Education, a position he held for 12 years.

Prior to being admitted to the Ohio Bar in 1991, Don served as a financial manager with NCR Corporation for over 10 years, culminating in his appointment as Treasurer of NCR Credit Corporation (an equipment financing/leasing subsidiary).

Don holds a Bachelor of Arts degree in political science, magna cum laude, and a Master of Science degree in economics from Wright State University. He received his Juris Doctor degree from the Salmon P. Chase College of Law at Northern Kentucky University, finishing first in his graduating class. Don also received a Certificate in Employee Benefits Taxation from Capital University's graduate law program. He is an active member of the Taxation Committees of the Ohio State Bar Association (where he is the former chair of the Taxation Committee and is the former chair of the Subcommittee on Municipal Income Taxation) and of the Ohio Chamber of Commerce. He is a frequent presenter on Ohio tax issues, including sales and use tax and municipal income tax. For many years, Don has been a keynote speaker and member of the planning committee for the MEC Annual Ohio Tax Conference, the largest business tax conference in the nation.

Don works in the Columbus office and resides in Worthington, Ohio.

Biographical Information

Amy Arrighi, Chief Legal Counsel
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Amy Arrighi has served as Chief Legal Counsel for the Regional Income Tax Agency (RITA) since December 2005. RITA serves as the municipal income tax administrator for more than 300 taxing jurisdictions in the State of Ohio.

As Chief Legal Counsel, Ms. Arrighi oversees RITA's Compliance Department. The Compliance Department is responsible for operating all of the Agency's programs to address taxpayer filing and payment compliance issues, including collections, civil litigation, administrative subpoena programs and the Agency's use of Federal Tax Information pursuant to its agreement with the Internal Revenue Service. Ms. Arrighi has appeared before municipal Income Tax Boards of Review, the Ohio Board of Tax Appeals, Ohio Appellate Courts and the Ohio Supreme Court on behalf of RITA and its member municipalities. In addition to her duties related to municipal income tax administration, Ms. Arrighi advises RITA management and its governing Board of Trustees on various administrative matters including those related to personnel, Ohio Sunshine Laws, security, and contract bidding and review.

Ms. Arrighi received her J.D. from Cleveland Marshall College of Law in 1998.

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As a certified public accountant and member of Plante Moran's state and local tax team, Daniele has over 12 years of experience providing multistate tax consulting and compliance services related to income and franchise tax, sales and use tax, gross receipts tax, property and employment tax. She frequently assists clients with multistate nexus review and planning, apportionment review, unitary analysis and voluntary disclosure representation.

Daniele serves a broad range of clients in the manufacturing and distribution, real estate and constructions, and service industries. She specializes in the state taxation of flow-through entities with a focus on private equity and investment funds. Recently, she has become involved with not-for-profit and higher education clients whose alternative investments generate multistate unrelated business income

Daniele holds a B.S. in accounting from Pepperdine University and a M.S. in taxation from the University of Illinois Urbana-Champaign.