

# *Ohio Business Tax Seminar*

May 25, 2021

## **Ohio Municipal Income Tax System - Major Developments Including Withholding-Related Developments and Muni Tax Judicial Decisions**

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# Agenda

- The COVID-19 Pandemic: Withholding, Refunds and Other Related Issues
- Ohio's Centralized Net Profits Filing System Update
- Other Judicial Developments

# The COVID-19 Pandemic: Withholding, Refunds and Other Related Issues



# Background

# Municipal Employer Withholding Pre-Pandemic

- Municipalities tax all income, salaries, qualifying wages, commissions and other compensation received by taxpayers for work done, services performed or rendered or activities conducted in the municipalities.
- Employers are required to withhold and remit to municipalities the tax due from employees who are doing work, performing/rendering services, or conducting activities in the municipalities.
- Employers are required to withhold income tax in a jurisdiction if the employee works in a jurisdiction more than 20 days.
- Special rules kick in when employees perform services in multiple/occasional locations – the “occasional entrant rule” or “20 day rule”

# Municipal Employer Withholding

- Municipal Tax Withholding - General Rule (R.C. 718.011)
  - Employers are required to withhold income tax in a jurisdiction if the employee works in a jurisdiction more than 20 days.
  - Withholding is required on the 21st day
  - Must withhold to PPW for the first 20 days
- Section 29 of H.B. 197 addresses how a business should withhold for employees who are temporarily working from home during COVID-19
  - During the period of the emergency declared on March 9, 2020 and for 30 days after the conclusion of the emergency, all days working at remote locations are treated as being performed at the employee's principal place of work
  - Specifically addressed the “20-day” rule in R.C. 718.011

# Municipal Employer Withholding

- An employee must perform services in an occasional entrant municipality for 20 days *before the employer is required to withhold* tax for that municipality for that employee.
- Even if the 20 day threshold is exceeded, the employer is not responsible for withholding for the “occasional entrant” municipality for the first 20 days for that employee
- Important for understanding and administering this rule (and COVID-19 withholding) is identifying an employee’s “principal place of work” (“PPW”).



# What Is A Principal Place of Work?

- The fixed location in Ohio to which the employee is required to report for duty on a regular and ordinary basis.
  - A ‘fixed location’ means a permanent place of doing business in this state such as an office, warehouse, storefront, or similar **location owned or controlled by an employer**.
  - **Note** – a fixed location cannot be an employee’s home, as it is not “owned or controlled by the employer”.

# What Is A Principal Place of Work?

*(Continued)*

- If there is no “fixed location in Ohio,” then the PPW is the Ohio “worksite location” to which the employee is required to report for duty on a regular and ordinary basis.
- *The “worksite location” is “a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. **‘Worksite location does not include the home of an employee’**”.*

**Note** – *A worksite location cannot be an employee’s home because the definition says so.*

# What Is A Principal Place of Work?

(Continued)

- If there is no “fixed location in Ohio” and if there is no “worksite location” in Ohio, then the PPW is the location in Ohio at which the employee spends the greatest number of days in a calendar year performing services for the employer. <sup>11</sup>
- **Note** – An employee’s home can be the principal place of work. We will talk more about this later.

# The Occasional Entrant Rule

- If the employee is not a resident of a municipality for which the employer did not withhold because the employer correctly applied the Occasional Entrant Rule, that income is “exempt income” at the employee level as far as the nonresident, “occasional entrant” municipality is concerned.
- *The exemption goes away* if the employee claims a refund from the PPW municipality to which the tax withheld on those wages was remitted.

# The Occasional Entrant Rule- Example

- John is a Bexley resident.
- John's Principal Place of Work is in Grove City.
- John works 18 days in Columbus, and his employer correctly withholds Grove City tax on his wages earned in Columbus.
- John's wages earned in Columbus are exempt income as far as Columbus is concerned, unless John receives a refund of the tax paid to Grove City on the 18 days he worked in Columbus.
  - If John receives this refund, he owes the tax to Columbus.

# Pre-Pandemic Taxability

- Resident individuals are taxable on all their wages, regardless of where the wages were earned. R.C. 718.01(B)(1)(a).
- Nonresident individuals are taxable on wages earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation. R.C. 718.01(B)(2).
- Taxpayers often request and obtain refunds of tax withheld to municipalities in which the wages were not actually earned.
  - Example: When wages are withheld to the PPW city under the 20 Day Occasional Entrant Rule.

# Enter COVID-19

Withholding

By  
Employer



Taxability

To  
Employee

# *Jones v. Massillon*

- BTA Decision issued March 29, 2021
- **Facts:**
  - Taxpayer was a postal worker who did not live in Massillon
  - She spent 40% of each work day reporting to the Massillon post office (her principal place of work)
  - She spent 60% of each work day delivering mail to locations outside the city limits of Massillon
- **Issue:**
  - City of Massillon had asserted that Taxpayer owed tax to Massillon based on 100% of her wages because of the City’s view of the relevance of her “principal place of work.”



# *Jones v. Massillon*

- **Held:**
  - Municipal income tax due from a non-resident employee must be measured “for work done, services performed, or rendered, or activities conducted within Massillon.” The BTA explicitly rejected the City’s strained reading of the employer withholding de minimis safe harbor (commonly referred to as the “20-Day Safe Harbor Shield for Employers”).
  - The 20-Day Occasional Entrant withholding shield does “*not define the employee’s income tax liability and only reference(s) the employer’s duty (or lack thereof) to withhold. Massillon’s arguments conflate an employer’s withholding rules with its authority to tax a non-resident individual.*”

The decision was not appealed by Massillon.

# *Jones v. Massilon*

## Three Observations:

1. Only the jurisdiction of residence and the jurisdiction where wages are actually earned may tax an employee.
2. The 20-Day Safe Harbor Shield for Employers does not allow a City to turn the safe-harbor withholding shield into a sword for the government to impose tax on more income that was earned by a non-resident within its borders.
3. Although the *Buckeye Institute* line of cases being considered now in Ohio address a specific provision inserted into law in Am. Sub. H.B. 197 in the beginning stages of the Pandemic, *Jones* provides direct guidance that the Shield is not a taxing provision – i.e., it does not impose a tax, it merely allows non-withholding in the “fewer-than-21 day city”, if the employer withheld at the principal place of work city for those fewer than 21 days, at the election of the employer.

Enter COVID-19

# Enter COVID-19

- **March 9, 2020:** Governor DeWine issues Executive Order No. 2020-01-D Declaring a State of Emergency in Ohio due to the coronavirus threat.
  - Employers begin closing and sending employees home to work.
  - It becomes clear that employees are not going back to the workplace any time soon.
  - Ohio House Bill 197 passed in late March containing various COVID-19 relief provisions.
- Our focus is on Section 29 of HB 197 and its impact on municipal income tax revenue.
  - In the absence of Section 29, an employee working from home during the pandemic would exceed the 20-day safe harbor in their home city

# H.B. 197, Section 29

*Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01-D, issued on March 9, 2020, and for thirty days after the conclusion of that period, **any day on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of the declaration, shall be deemed to be a day performing personal services at the employee's principal place of work.***

# H.B. 197, Section 29

*Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01-D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of the declaration, shall be deemed to be a day performing personal services at the employee's principal place of work.*

# H.B. 197, Section 29

- **Why was this language important?** Acted to stabilize things for municipalities and employers
- **What did it do?** Allowed employers to continue withholding for the PPW municipality if employees were working at home because of the State of Emergency and kept municipal revenue stable.
- **Unanswered questions** as we move forward:
  - Can the PPW change or does it remain fixed at the location it was on March 9, 2020?
  - Who is still “required” to work at home due to the State of Emergency? And “required” by whom/what – Health Orders, employer, an employee’s medical providers?
  - Whether employees can get refunds from the PPW municipalities to which their withholding has continued to be paid while they’ve worked from home.

# Can Principal Place of Work Change Due to Working from Home?

- Absent Sec. 29 of HB 197, an employee's home is the employee's principal place of work if:
  1. There is no employer owned or controlled location to which the employee regularly and ordinarily reports to work, and
  2. The employee does not report to work for more than 20 days per location at one or more temporary work sites on a regular and ordinary basis, and
  3. The employee works from home on more days during the calendar year than at any other location.



# Can Principal Place of Work Change Due to Working from Home?

- Under Sec. 29, does the PPW remain “frozen” at its location prior to the state of emergency, or can it change once the employee has worked from home more days in the calendar year than were worked at the employer’s location where the employee reported prior to the state of emergency?

# Who is “Required” to Work from Home Under HB 197, Section 29?

- In order for the employer location, rather than the employee’s home, to remain the principal place of work, the employee must be working away from the employer location “because of the declaration [of emergency]”.
  - Clearly, this applies if the employee worked at home during and because of the Health Director’s “stay at home” order
  - Today, many employees are permitted to return to the employer location under the health orders, but have not yet returned to work because the employer has decided not to yet.
  - Is an employee who continues to work at home doing so “because of the declaration” if the employee is no longer required to work from home by a public health order?

# May a Nonresident Employee Working from Home Apply for a Refund from the PPW City?

- Under the 20-day rule, while the EMPLOYER may withhold for the PPW city only until the employee has worked at least 20 days from home, the EMPLOYEE still has the option of applying for a refund from the PPW city and paying tax in the home city.
- Does Sec. 29 change this, so that an employee cannot apply for a refund from a PPW city?

# Arguments that Refund is Permitted

- Sec. 29 effectively extends the 20 day rule during the declaration of emergency, so that it simplifies the employer's withholding, but still gives the employee the choice of whether to be subject to tax at the PPW or the home jurisdiction.
- Due Process Clauses of the U.S. and Ohio Constitutions prohibit cities from imposing their income taxes on nonresidents on income earned outside the city's borders.
  - A city's power to tax reaches only that portion of a nonresident's compensation that is earned by work performed in the city. See: *Hillenmeyer v. Cleveland Bd. of Rev.*, 144 Ohio St.3d 165, 2015-Ohio-1623, ¶ 39.

# Arguments that Refund is Permitted

Continued

- The General Assembly cannot require a city whose ordinance imposes its tax only on income of nonresidents for work performed in the city to impose tax on nonresidents for work not performed in the city.
  - Most city ordinances contain such language.
  - See *Gesler v. City of Worthington Income Tax Bd. of Tax Appeals*, 138 Ohio St.3d 76, 2013-Ohio-4986.

# Argument that Refund is Not Permitted

- Section 29 provides that it applies “for purposes of 718” and does not limit itself to 718.011 20 Day Occasional Entrant Rule.
- LSC document provides: *“For municipal income tax purposes, treats income earned by an employee required to work at a **temporary worksite** because of the emergency as being earned at the employee’s principal place of work, **potentially** affecting the municipal income tax withholding **and** liability of the employee and the employer.”*

# Argument that Refund is Not Permitted

- Section 29 effectively adopts a “Convenience of the Employer” Test
  - Looks to whether the employee is working from home (or somewhere other than the employer’s facility) as a matter of convenience or a matter of necessity.
  - Several states have used this test, even pre-Pandemic
  - However, neither Section 29 nor the municipalities have actually adopted this test in Ohio.
- *New Hampshire v. Massachusetts*
  - Massachusetts adopted a regulation similar to the city interpretation of Section 29.
  - In October 2020, New Hampshire filed an original complaint against Massachusetts in the U.S. Supreme Court challenging the Massachusetts’ regulation on several grounds, including claims that the regulation violated the Commerce and Due Process Clauses of the U.S. Constitution.
  - See also *New Hampshire v. New York*

# Current Realities

- Despite these uncertainties, Ohio is coming out of the pandemic.
- Employers are making plans for returning to work and some things may change.
  - Office only model
  - WFH only model
  - Hybrid
- Some employers are ready to collect tax wherever employee works.
  - Others are not ready.
- Query: How can Ohio address these uncertainties and changing workforce models?



# Litigation

# Section 29 Litigation May Answer Many of These Questions

*The Buckeye Institute, et al v. Megan Kilgore, et al,*  
Franklin County Common Pleas Court Case No. 20-CV-004301

- The Buckeye Institute and three of its employees filed suit on July 2, 2020 against the City of Columbus City Auditor and the State of Ohio.
- The Buckeye Institute is a Columbus employer with an office in the City of Columbus.
- Buckeye Institute sent all employees to work from home beginning on March 18, 2020. The three plaintiff employees all live outside of the City of Columbus.
- Pursuant to Section 29 of H.B. 197, Buckeye Institute continued to withhold Columbus income tax from the wages of the three employees while they worked from home.

# Section 29 Litigation

*(Continued)*

*The Buckeye Institute, et al v. Megan Kilgore, et al,*  
Franklin County Common Pleas Court Case No. 20-CV-004301

## **The Plaintiffs' Position:**

- Maintain that Section 29 of H.B. 197 is an unconstitutional violation of their Due Process rights under the United States and Ohio Constitutions because the income taxed by Columbus under Section 29 of H.B. 197 was not earned in Columbus.
- Have asked the Court to stop the collection of what they characterize as an “illegal tax”.

The employee plaintiffs seek for themselves a refund from Columbus of the tax paid to Columbus on wages they earned outside of Columbus while working from home.

# Section 29 Litigation

(Continued)

*The Buckeye Institute, et al v. Megan Kilgore, et al,*  
Franklin County Common Pleas Court Case No. 20-CV-004301

## **The Defendants:**

- Have asked the Court to dismiss the case.
- Argue that Section 29 is not unconstitutional because the General Assembly has the authority to provide for the allocation of municipal income tax amongst Ohio municipalities.
- Further argue that the plaintiffs' constitutional Due Process claims have no merit as the matter at hand is an *intrastate* matter, not an *interstate* matter and the state is permitted to provide for a tax on its residents.
- Also point to tax structures in other states, including the State of New York's "convenience of the employer" rule, which has been found to be constitutional.

# Section 29 Litigation

*(Continued)*

*The Buckeye Institute, et al v. Megan Kilgore, et al,*  
Franklin County Common Pleas Court Case No. 20-CV-004301

Decided April 27, 2021.

**HELD:** The Ohio General Assembly to have acted within its authority by enacting Section 29 of HB 197, thereby legislatively limiting, coordinating and regulating municipal taxing authorities in their respective treatment of employees working remotely under the exigent circumstance of the COVID-19 pandemic.

The Plaintiffs have no due process claim for the myriad reasons set forth above. The Plaintiffs' claim is one of tax policy, and the remedy for that lies at the Ohio State House, not this Court.

Dismissed with prejudice.

# Section 29 Litigation

*(Continued)*

*The Buckeye Institute, et al v. Megan Kilgore, et al,*  
Franklin County Common Pleas Court Case No. 20-CV-  
004301

- Common Pleas Court's dismissal was appealed to the Tenth District Court of Appeals by the Buckeye Institute following the day the decision was issued.
- Some other cases sponsored by the Buckeye Institute were resolved/settled in the taxpayer's favor.
  - Presumably because the facts were bad for the municipalities.

# Legislative Impacts & Options

# S.B. 22

- Bill has been enacted.
  - General Assembly overrode Governor DeWine’s veto.
- Provides that 30 days after its effective date, the Emergency Declaration and related health orders will end unless the General Assembly, by concurrent resolution, extends those provisions for 60 days.
- Section 29’s withholding protection for employers will likely end beginning on or about August 23, 2021.
  - June 23 – S.B. 22 is effective.
  - July 23 – Emergency Declaration ends (unless extended by joint resolution)
  - August 22 – Section 29 ends 30 days after Emergency Declaration ends.



# Efforts to Repeal and/or Extend Section 29

- Two bills have been introduced in the new Ohio General Assembly that would have repealed the Section 29 outright.
  - H.B. 157 & S.B. 97
- Problems:
  - Employers – not ready to begin withholding muni tax at WFH location.
    - Want withholding to PPW to be extended through to 2022.
  - Municipalities – want PPW withholding (and taxability) to remain in place.
    - Continue through 2023 or longer.
  - Taxpayers – want refunds of taxes withheld to location they did not actually work.
    - Want clarity, which repeal does not provide.
  - Legislators – want to support everyone, but also protect taxpayers.
- Overall Issue: How will workplace location change post-pandemic?

# Substitute H.B. 157

- Substitute version of H.B. 157 passed out of House Ways & Means Committee last week (5/18/2021).
- Amends Section 29 to extend withholding treatment through end of 2021, as well as:
  - Clarifies that employers could change an employee's PPW location during the period from March 9 2020 through December 31, 2021.
  - Clarifies that employers are permitted to withhold to actual work location (rather than just the PPW).
  - Clarifies that, for the period from Jan 1, 2021 through Dec 31, 2021, Section 29 only applies to withholding and net profit tax.
    - Does not determine the location a taxpayer actually worked for purposes of determining employee's taxability (i.e., employees may request and be granted refunds for 2021 taxes withheld to PPW).

# Substitute H.B. 157

- Other important provisions:
  - An employer may not be assessed tax, penalty or interest by an actual work municipality if it withheld to the PPW of the employee. (Section 3)
  - The changes are remedial in nature and apply to all of 2021. (Section 4)
  - The amendments to Section 29 shall not be construed to affect the interpretation and applicability of that section to qualifying wages withheld in 2020. (Section 4)
  - Municipality may only request that employer verify how many days employee worked at the employee's PPW location and that it has not refunded any of the withheld tax to the employee. (Section 5)
    - Arguably applies to 2020 and 2021.
- May be passed by House of Representatives this week.

# S.B. 97

- Senate Ways & Means Committee held “sponsor testimony” on the bill two weeks ago.
  - 5/12/2021
- Simultaneously held proponent testimony.
- Focus of testimony was on a “substitute version” that was not yet officially adopted by the Committee.
- The Ohio Society of CPAs and Ohio Chamber of Commerce provided oral testimony in support of the substitute version.

# S.B. 97

- Bill provides similar, but not same items in Sub. H.B. 157.
- Municipalities may not request a statement from the employer as a condition for processing an employee's refund request. (Section 1 – R.C. 718.19(B)(1))
- Amends Section 29 to extend the “withholding” and “net profit” treatment through end of 2021, as well as:
  - Clarifies that employers could change an employee's PPW location during the period from March 9 2020 through December 31, 2021.
  - Clarifies that employers are permitted to withhold to actual work location (rather than just the PPW).

# S.B. 97

- Expresses General Assembly's intent was that original Section 29 was only to be applied for withholding and net profit tax purposes. (Section 5)
  - Did not apply to determine ultimate taxability to the employee.
- An employer may not be assessed tax, penalty or interest by an actual work municipality if it withheld to the PPW of the employee. (Section 6)
- Deems the bill's changes as remedial in nature back to March 9, 2020.

# S.B. 97 & Biennial Budget Bill

- Bill continues to pend before the Senate W&M Committee.
- Senate also has the Biennial Budget Bill pending.
  - Possible could amend the budget bill to include these same or similar provisions.
  - Budget bill needs completed by June 30, 2021.

# Interaction with S.B. 22 – Gap Period?

- Most bills take effect 90 days after being signed by the Governor, unless passed with an emergency provision.
- Section 29 ends at least on or about August 22, 2021.
  - 90 Days before is May 24<sup>th</sup>.
- A gap will likely exist in the withholding protection law for employers.
  - Addressed by disabling ability of WFH municipalities from imposing tax, penalty and interest on employers who withhold to PPW during all of 2021.



# What Does this Mean?

- Currently, employers must be ready to begin withholding to WFH location beginning on or about August 23, 2021.
- Withholding protection of Section 29 for employers will possibly be extended through to 12/31/2021.
  - But, no guarantee.
- Taxability issue may be addressed by General Assembly.
  - For both 2020 and 2021 or just 2021?

What May  
Happen If  
Refunds Granted?

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# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

Potential exists for **significant shifts** in municipal income tax revenue should:

*The trend of employees working at home continue beyond the State of Emergency related to COVID-19; and*

*The associated municipal income tax revenue follow employees to their home communities, as opposed to being paid in the former workplace communities.*

# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

### What Did We Do?

*Estimated the **annual loss** of revenue that a municipality may experience if 10%, 20% or 30% of non-resident employees (“commuters”) in a municipality work from home permanently, and tax is paid only to the employees’ place of residence (if a tax is in place).*

*Estimated the potential **annual revenue gain** a municipality may experience if 10%, 20% or 30% of its residents work from home permanently, and the municipality receives all income tax dollars from the residents.*

# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

### What Data Did We Use?

Tax Year 2018

*For each of our member municipalities we looked at total collections from employer withholding for non-residents; and*

*In what jurisdiction did the residents of the municipality work in 2018 (including those who worked in the residence community), the wages earned by residents in those jurisdictions, and the amount of tax that was paid by residents to those workplace jurisdictions, if any.*

# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

### How Did We Do It?

*Annual loss of revenue from **non-resident** employees working from home permanently –*

- *Identified total collections from employer withholding.*
- *Reduced total collections from employer withholding by withholding from residents who worked in the municipality (more on this later).*
- *Reduced this amount by 10%, 20% or 30%*

# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

### How Did We Do It?

*Annual potential gain from residents working from home permanently -*

- *What, if any, **residence tax credit** is offered by the municipality;*
- *What a municipality potentially gains is the **difference** between what the residents pay currently **with the credit**, and what they would pay **without the credit**.*
- *We calculated the credit that would be foregone by 10%, 20% or 30% of residents in **each workplace jurisdiction** where a municipality's residents work.*

# Projecting the Potential Impact From Commuter Tax Changes

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## RITA – Work From Home Revenue Shift Projection

### ***Some Takeaways***

- *Communities that have no residence tax credit will see no revenue gain from residents working at home.*
- *No community will see a revenue gain from residents working at home who previously worked in townships or other non-taxing jurisdiction.*
- *No community will see a revenue gain from residents working at home who previously worked at another location in the residence community.*



# Projecting the Potential Impact From Commuter Tax Changes

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<b>2018 Taxing Jurisdictions</b>	<b>10% Net Shift</b>	<b>20% Net Shift</b>	<b>30% Net Shift</b>
Agency-wide (344)	(\$35.1 million)	(\$70.1 million)	(\$105.2 million)

# Other considerations

- Nexus considerations
- Apportionment factor for businesses
  - Performance of services/sales apportionment
  - Payroll allocation

# **HANDLING REFUNDS**

# 2020 Issues – Employer Certifications

- Employees have already begun filing 2020 refunds from PPW cities because they worked at home.
- Most cities require employers to certify information being presented on an employee's request for refund.
- Employers must have a system in place to handle a volume of requests like never-before, all the while still working remotely.

# 2020 Issues – Employer Certifications

- RITA – Form 10A

## D. Employer Representative's Signature

The undersigned employer representative states that during the year referenced above the employer withheld municipal income tax from the above named employee in excess of the employee's liability as calculated above; that the above referenced employee was employed during the period referenced above; that the employer has examined this claim for refund in its entirety including any accompanying schedules and statements; and that the employer representative can attest that the **information reported on this claim is true and accurate.**

In addition, the undersigned employer representative verifies that no portion of the over-withheld tax has been or will be refunded directly to the employee by the employer, and that no adjustments to the employer's withholding account related to this claim have been or will be made.

\_\_\_\_\_  
Representative's Signature

\_\_\_\_\_  
Representative's Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Representative's Phone Number

\_\_\_\_\_  
Print Representative's Name

\_\_\_\_\_  
Print Representative's Title

# 2020 Issues – Employer Certifications

- CCA

## EMPLOYER'S CERTIFICATION (To be completed by employer)

I/We have reviewed the above calculations and attachments and believe them to be true and correct.

I/We verify that no portion of said tax has been or will be refunded directly to the employee and that no adjustments to my/our withholding account with the City of \_\_\_\_\_ have been or will be made for said tax.

Employer's Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Company \_\_\_\_\_ F.E.I.N. \_\_\_\_\_ - \_\_\_\_\_ Telephone(\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

# 2020 Issues – Employer Certifications

- Columbus – Form I-25

## **Certification by Employer Regarding Adjustments to Taxable Wages**

I/We certify that the employee referenced on this form was employed by the undersigned during the year referenced on this tax return; that the employee was either **not working inside the corporate limits of the city** or City tax was improperly withheld; that no portion of the tax withheld has been or will be refunded to the employee; and that no adjustment has been or will be made in remitting taxes withheld to the city.

- Cincinnati – Form L-2-C
  - Does not require employer to certify.
  - Employee provides a list of days worked outside city.

# 2020 Issues – Employer Certifications

- Akron – Non-Resident Employee Refund Application

~~~~~**EMPLOYER'S VERIFICATION**~~~~~

The days outside of Akron, shown on the accompanying itinerary, reflect actual working days and **DO NOT** include vacation, sick, holiday, weekends, other paid non-working days, or days worked outside of Akron (such as from home) because employee's work location changed due to COVID-19.

Taxes were over withheld and paid to Akron - No W-2C has been or will be issued for this employee.

**Under penalties of perjury** I the undersigned state that I have examined this claim for refund, and to the best of my knowledge and belief, this refund claim is true and correct.



# Refund Requests – RITA Approach

- “Days out” refund requests related to COVID-19 remote work/work from home will be held until litigation is resolved.
- Updates have been made to the RITA Form 10A to identify and segregate these requests, and to notify taxpayers that the requests will be held in a suspended status until litigation is resolved.
- MyAccount updated to advise taxpayers checking refund status that requests related to remote work/work from home due to COVID-19 are suspended until litigation resolved.

# Refund Requests – RITA Form 10A

|                                                            |            |                                                                                                                                              |                                                              |                                                  |
|------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------------------------|
| <b>Form</b>                                                | <b>10A</b> | <b>Regional Income Tax Agency</b><br><b>Application for Municipal Income Tax Refund</b><br>PO Box 470638<br>Broadview Heights, OH 44147-0638 | <br><b>RITA</b><br><small>REGIONAL INCOME TAX AGENCY</small> | 800.860.7482<br>TDD 440.526.5332<br>ritaohio.com |
| Your first name and middle initial _____ Last name _____   |            | Your social security number _____ Tax year of claim _____                                                                                    |                                                              |                                                  |
| Current home address (number and street) _____ Apt # _____ |            | Daytime phone number _____ Evening phone number _____                                                                                        |                                                              |                                                  |
| City, state, and ZIP code _____                            |            | <input type="checkbox"/> Check here if you worked outside of your normal place of work in 2020 due to COVID-19. See Checkbox No. 2 below.    |                                                              |                                                  |

**Reason for Claim**

**Check the Box below that applies.**

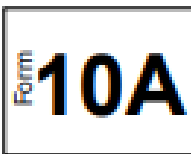
- A separate 10a is required if you have multiple W-2 forms, or for each municipality from which a refund is requested.
- No refunds will be issued without the proper documentation indicated by reason for claim.

1.  **Age Exemption.** Date of Birth \_\_\_\_\_ Attach a copy of your W-2 form and proof of birthdate (birth certificate, driver's license, etc.). If you were under 18 for only part of the year, you must either: (1) have your employer sign the completed Employer Certification on page 2; or (2) attach a copy of your pay stub for the pay period in which your birthday fell. Exceptions to the 18 years of age or older exemption exist. For more information, visit ritaohio.com, select the RITA municipality in which you worked and review the Special Notes section that relates to the appropriate tax year.
2.  **Due to COVID-19, days worked outside of municipality** for which the employer withheld tax. Attach a copy of your W-2 Form, a completed Log of Days Out Worksheet on page 3, and a completed Calculation for Days Worked Out of RITA on page 3. Your employer must complete and sign the Employer Certification Parts 1 and 2 on page 2. **The availability of a refund is dependent upon the outcome of pending litigation. Requests will be held until this litigation is resolved.**
3.  **Days worked outside of municipality** for which the employer withheld tax. Attach a copy of your W-2 Form, a completed Log of Days Out Worksheet on page 3, and a completed Calculation for Days Worked Out of RITA on page 3. In addition, your employer must complete and sign the Employer Certification Parts 1 and 2 on page 2. **Do Not Use for COVID-19.**
4.  **Employer withheld at a rate higher than the municipality's tax rate.** Attach a copy of your W-2 Form. Your employer must complete and sign the Employer Certification Parts 1 and 2 on page 2. **Do Not Use for COVID-19.**
5.  **Employer withheld too much (over-withheld) resident municipality tax.** Attach a copy of your W-2 Form. Your employer must complete and sign the Employer Certification Part 2 on page 2.
6.  **Withheld by mistake** for the municipality of \_\_\_\_\_ when I actually worked in the municipality of \_\_\_\_\_ on page 2. Indicate the address where you actually worked. **Do Not Use for COVID-19.**

|                                    |            |             |           |
|------------------------------------|------------|-------------|-----------|
| Work Location Street Address _____ | City _____ | State _____ | Zip _____ |
|------------------------------------|------------|-------------|-----------|
7.  **Over-the-road truck driver.** The wages of an interstate trucker regularly assigned to drive in more than one state are only taxable by the trucker's municipality of residence. Truck drivers assigned to drive in multiple Ohio municipalities only may be eligible to receive a 90% refund from their principal place of work. Your employer must complete and sign the Employer Certification Part 2 on page 2.
8.  **Military Spouse Residency Relief Act.** Attach copies of W-2 Form, Form DD 2058, valid military spouse ID card and service member's most recent LES.
9.  **Other** (Indicate Reason). Attach W-2 Form and other applicable documentation. Your employer must complete and sign the Employer Certification Parts 1 and/or 2 on page 2. **Do Not Use for COVID-19.**
10.  **Refund of overpayment on account** if you have already filed Form 37 or are not required to file. Employer certification is not required.

**Claim**

|                                                                                                                                                                                                |                               |                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|---------------------|
| 1 Employer Federal ID # _____                                                                                                                                                                  | 1                             | Employer Name _____ |
| 2 RITA Municipality for which tax was withheld (from W-2, Box 20). RITA cannot refund tax withheld to a Non-RITA municipality.                                                                 | 2                             | _____               |
| 3 Amount of income not taxable. For reason 2 enter your 2106 expenses less the 2% limitation. Enter -0- for reasons 4 and 5. For all other reasons enter the amount of wages you are claiming. | 3                             | _____               |
| 4 Amount of over withholding claimed (Box A-9 on page 2)                                                                                                                                       | 4                             | _____               |
| 5 Amount of over withholding you want applied as a payment to your individual or joint account instead of being refunded to you. Enter -0- if you want all of your refund sent to you.         | 5                             | _____               |
| Provide the social security number of the account to which you want the amount on line 5 to be credited.                                                                                       | SSN of account to be credited | _____               |
| 6 Net amount to be refunded. Subtract line 5 from line 4. Amounts \$10 or less will not be refunded.                                                                                           | 6                             | _____               |



**Regional Income Tax Agency**  
**Application for Municipal Income Tax Refund**  
**PO Box 470638**  
**Broadview Heights, OH 44147-0638**



**800.860.7482**  
**TDD 440.526.5332**  
**ritaohio.com**

|                                          |           |
|------------------------------------------|-----------|
| Your first name and middle initial       | Last name |
| Current home address (number and street) | Apt #     |
| City, state, and ZIP code                |           |

|                             |                      |
|-----------------------------|----------------------|
| Your social security number | Tax year of claim    |
| Daytime phone number        | Evening phone number |



Check here if you worked outside of your normal place of work in 2020 due to COVID-19. See Checkbox No. 2 below.

### Reason for Claim

Check the Box below that applies.

- A separate 10a is required if you have multiple W-2 forms, or for each municipality from which a refund is requested.
- No refunds will be issued without the proper documentation indicated by reason for claim.

(MM/DD/YYYY)

- Age Exemption.** Date of Birth \_\_\_\_\_ Attach a copy of your W-2 form and proof of birthdate (birth certificate, driver's license, etc.). If you were under 18 for only part of the year, you must either: (1) have your employer sign the completed Employer Certification on page 2; or (2) attach a copy of your pay stub for the pay period in which your birthday fell. Exceptions to the 18 years of age or older exemption exist. For more information, visit ritaohio.com, select the RITA municipality in which you worked and review the Special Notes section that relates to the appropriate tax year.
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- Employer withheld at a rate higher than the municipality's tax rate.** Attach a copy of your W-2 Form. Your employer must complete and sign the Employer Certification Parts 1 and 2 on page 2. **Do Not Use for COVID-19.**
- Employer withheld too much (over-withheld) resident municipality tax.** Attach a copy of your W-2 Form. Your employer must sign the Employer Certification Part 2 on page 2.
- Withheld by mistake** for the municipality of \_\_\_\_\_ when I actually worked in the municipality of \_\_\_\_\_. Attach a copy of your W-2 Form. Your employer must sign the Employer Certification Part 2 on page 2. Indicate the address where you actually worked. **Do Not Use for COVID-19.**

|                              |      |       |     |
|------------------------------|------|-------|-----|
| Work Location Street Address | City | State | Zip |
|------------------------------|------|-------|-----|



## **Important Changes to the Tax Year 2020 Form 10A Application for Municipal Income Tax Refund Related to COVID-19**

You must check the box at the top of Form 10A if any portion of your application for refund is related to your working from home, or another location away from your regular place of work, because of COVID-19.

A refund of the tax withheld for your pre-COVID-19 work municipality, while you worked from home or another location, may not be available until litigation over this issue is completed. See *Buckeye Institute, et al., v. Columbus City Auditor, et al*, Franklin County Common Pleas Court Case No. 20-CV-004301.

RITA will hold your request for refund in a suspended status until this litigation is concluded. Should the conclusion of this litigation determine that a refund is allowed, your request for refund will be processed at that time. Should the conclusion of the litigation determine that a refund is not allowed, you will receive a notice that a refund is not available to you.

# Refund Requests – RITA Form 10A

## MyAccount Refund Status Display

### Refund Status

Refunds requested within the last 12 months are displayed.

| Requested Date | Tax Year | Status                                                                               |
|----------------|----------|--------------------------------------------------------------------------------------|
| 12/07/2020     | 2018     | Your refund in the amount of \$483.18 for Tax Year 2018 is currently being reviewed. |

If the information displayed does not agree with your records, please call Customer Service during normal business hours at 800.860.7482, Ext. 5002.

If you requested a refund because you worked from home or another location, due to COVID-19, your refund request will not be processed until pending litigation related to this issue is resolved. The refund status will appear as **SUSPENDED** until resolved.

# RITA - Refund FAQs For Individuals

## 10. COVID-19 Work From Home Refund Requests

### COVID-19 Work From Home Refund Requests

Am I able to receive a refund of the tax my employer took out for my work city/village while I worked at home due to the COVID-19 pandemic?

This question is being decided in the courts. You can fill out and file a **Form 10A** to request the refund, and RITA will hold the refund request until a final court decision is made. Make sure to complete the entire form, including checking the box at the top to indicate the request is related to COVID-19, and use Claim Reason Number 2.

How long will it be before the courts make a final decision?

It's not clear right now when a final ruling will be made. The court case was filed in July 2020 and is still in its early stages. (*The Buckeye Institute v. City of Columbus Auditor*, 20 CV 004301, Franklin County Common Pleas Court)

How will I know when a final court decision has been made?

When a final ruling is made RITA will either issue the refund (if that's the decision) or notify you that you are not eligible to receive the refund due to the court ruling. You can also check the status of the refund request yourself by setting up an account in MyAccount at [ritaohio.com](http://ritaohio.com). While we are waiting for the final court ruling the status of your refund in MyAccount will be "SUSPENDED".

A. Remember that even if you are able to receive a refund of the tax withheld for your workplace city/village, you will likely owe that tax, or some portion of it to your residence community if that community has a tax. If your residence community is also a RITA member we will transfer the refund to the residence community and only refund to you any difference.

# Employer Best Practices

- Avoid signing certifications that employer cannot verify.
- Consider a separate certification letter
  - Obtain tax administrator approval?
- Explain process to employees

# Development of Ohio's Centralized Filing System



# Background

- Am. Sub. H.B. 49 (Biennial budget bill – 2017)
  - Adopted a centralized filing option for net profit taxpayers
    - File returns with ODT
    - ODT to administer/enforce the municipal tax provisions
    - Municipalities to pay ODT a fee of up to 3%
    - Taxpayers may opt-in or out of this system
  - Municipalities were concerned whether allowing the state to administer the municipal net profits tax was constitutional and appropriate.

# *Athens v. McClain* - Municipalities' Lawsuit

- Two Ohio constitutional provisions:
  - Article XVIII §3
    - *Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.*
  - Article XVIII §13
    - *Laws may be passed to **limit the power of municipalities to levy taxes** and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.*

# Municipalities' Lawsuit – Centralized Filing and H.B. 5

- In 2017, 152 municipalities filed two civil lawsuits to challenge the constitutionality of House Bill 49 (centralized filing), as well as House Bill 5 (the uniformity bill which became effective in 2016).
- Franklin County Common Pleas Court – Held the laws were not unconstitutional (Feb 2018).
- Tenth District Court of Appeals – Held the laws were not unconstitutional (Jan. 2019).

# Ohio Supreme Court Decision

- Decision issued November 5, 2020.
- Held:
  - Centralized collection is constitutional
    - H.B. 49 and H.B. 5 were within the General Assembly's power to limit or restrict the municipalities' power of taxation.
  - The 0.5% collection fee is unconstitutional
    - Did not constitute a limitation or restriction.

# Ohio Supreme Court Decision

- Impacts of the decision:
  - ODT's centralized filing system for net profit taxes now has the go-ahead for taxpayers
    - The state will have to fund the costs of administration of that system.
  - Reinforces the General Assembly's broad authority for future changes to the municipal income tax system.

# Ohio's Centralized Filing System

Registration is open through the *Ohio Business Gateway* at [gateway.ohio.gov](http://gateway.ohio.gov) or via paper at [tax.ohio.gov](http://tax.ohio.gov)

- Deadline to Register
  - March 1, 2021 for calendar year filers
  - 1<sup>st</sup> day of 3<sup>rd</sup> month of fiscal year
- How Long is Election Binding?
  - An election to participate in the Department of Tax administration and centralized filing is binding for one year and renews automatically unless taxpayer terminates before the 1<sup>st</sup> day of the 3<sup>rd</sup> month of their fiscal year.



# Ohio's Centralized Filing System

- ODT developed the use of MeF for Municipal Net Profit Tax Opt-ins.
  - Available for returns filed for tax year 2018 and forward.
  - Available for estimated payments for 2019 and forward.



## Key Points/Observations

- Declarations and payments are required quarterly unless taxpayer has combined estimated annual tax liability less than \$200.
  - If a state CCF exists, a declaration for the next year must be filed.
  - Proactive way to prevent a letter from the Department.
  - Ensures timely and accurate allocation of money to the proper municipalities.
- Estimated Payments and Declarations:
  - All estimated payments must be made to the Department when the taxpayer opts in with the Department.
    - *Do not send estimated payments to municipalities.*



# Key Points/Observations

- Amended returns must include all municipalities.
- Supply supporting documentation when filing the return if the return includes any of following:
  - NOLs, refundable and/or nonrefundable credits
    - Credit Agreement
    - MNP CS
    - MNP NOL
  - Schedule A – Other
    - Explanation or additional documentation
  - Charitable Contributions, Capital Loss Carryovers, Unrecovered 1231 Losses, Section 179 Deductions
    - Federal Carryover Worksheet (MNP FCW)

# Key Points/Observations

- The Department often issues municipal income tax bills and delinquency notices.
  - All responses should be directed to the Department and not the municipalities for tax years in which taxpayer has opted-in to centralized filing.

# Administrative Updates

- Distributions
  - Through March of 2021 the Department had distributed \$169 million.
- Number of active taxpayers: 4,358
- Return filings
  - 2019 calendar year returns expected: 3,776
  - 2019 calendar year returns received: 2,943
  - Number of returns filed via MeF: 1,606

# ODT Administrative Updates

- Online Notice Response Service:
  - Allows you to respond to most notices received from the Department or the Department's request for additional documentation.
  - Available for the municipal net profit tax!

**Sign Up for Tax Alerts at**

**[www.tax.ohio.gov](http://www.tax.ohio.gov)**

# **OTHER JUDICIAL DEVELOPMENTS**

# *Time Warner Cable v. Cincinnati*

- **Facts:**

- For 2013 tax year, taxpayer timely filed its net profits tax return.
- In 2015, taxpayer filed an amended 2013 consolidated net profits tax return.
- City's ordinance and regulation provided that only corporations subject to tax could be included in a consolidated tax return.
- Ohio's R.C. 718.06 provided that a city must accept a consolidated return if it includes the same group as filed for federal income tax purposes.
- Cincinnati's Board of Tax Review held that the taxpayer was only required to include on its tax year 2013 consolidated return those subsidiaries *only* subject to Cincinnati's income tax?
- Taxpayer appealed this decision to the Ohio Board of Tax Appeals.

## *Time Warner Cable v. Cincinnati*

- Taxpayer appealed this decision to the Ohio Board of Tax Appeals.
- **Issue**: Whether Cincinnati's ordinance and regulation improperly conflict with Ohio R.C. 718.06, thereby requiring Cincinnati to accept a consolidated tax return that includes members with no nexus to Cincinnati.
- **Taxpayer's Argument**: R.C. 718.06 preempts the city's authority to deny use of federal consolidated return group.
- **City's Argument**: General Assembly did not expressly preempt the city's authority, and therefore the city could limit which members can be included in a consolidated group.

# *Time Warner Cable v. Cincinnati*

- **BTA Held:**

1. Cincinnati's ordinance and regulation conflict with the statute by restricting the corporations that can be included on a consolidated return.
2. R.C. 718.06 expressly preempts the City's ordinance and regulation permitting only those subsidiaries subject to the City's income tax to be included on a consolidated return.

- Appealed to the 1<sup>st</sup> District Court of Appeals (Hamilton County)

*Time Warner Cable & Subsidiaries v. City of Cincinnati*, Ohio BTA Case No. 2017-1448 (May 31, 2019).



# *Time Warner Cable v. Cincinnati*

- **Ohio Court of Appeals for Hamilton County Held:**
  - Under former R.C. 718.06, the City of Cincinnati had to accept a return by a federal affiliated group of corporations.
  - The General Assembly took clear and affirmative measures to limit the City's authority to impose the income tax in the manner it sought, which is the express preemption necessary to override a municipality's taxation authority under the Home Rule Amendment.
  - Former R.C. 718.06 did not impermissibly require the city to impose its tax on federal affiliated groups.
  - Former R.C. 718.06 was a proper limitation on the City's power of taxation.

*Time Warner Cable, Inc. & Subs v. City of Cincinnati*, Ohio 1<sup>st</sup> Dist. Hamilton No. C-190375, 2020-Ohio-4207

## *Lamar Advantage GP Company v. Cincinnati*

- **Issue:** Validity of Cincinnati's Excise Tax on Billboards
- **Court of Appeals Held:**
  - The tax is content neutral because it applies to billboards regardless of the message displayed.
  - The tax does not threaten to suppress the expression of certain viewpoints.
  - The tax does not single out a particular group of billboard operators to bear the burden of the tax.

## *Lamar Advantage GP Company v. Cincinnati*

- Regarding statutory language that prohibited the separate statement of the tax on invoices as well as any communication that would state that the tax would be absorbed by an advertiser, the court:
  - Applied the intermediate scrutiny standard used for Commercial Speech under the 1<sup>st</sup> Amendment to the U.S. Constitution.
  - Found that the prohibition on communication about the tax was overinclusive and fails the test.
- This case adds to the holding from *BellSouth* (a federal case), an Ohio decision limiting the government's ability to prohibit the separate statement of a tax from the seller to its customer.

*Lamar Advantage GP Company, LLC and Norton Outdoor Advertising, Inc. v. City of Cincinnati*, Ohio 1<sup>st</sup> Dist. Hamilton No. C-180675, 2020-Ohio-3377

# QUESTIONS

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**THANK YOU!**

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