

# OHIO MUNICIPAL INCOME TAX AND REMOTE WORKFORCE

OHIO BUSINESS TAX SEMINAR  
MAY 17, 2023



# PRESENTERS



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# AGENDA

- General rule: withholding where work is performed.
- Exceptions to withholding where work is performed.
  - 20 days rule.
  - Small employer rule.
  - Temporary COVID rules, ended 12/31/2021.
- Issues and impacts of “old” rules applied in “new” hybrid/remote work environment.

# 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 Rule:  
Withhold where  
work is performed**

- Tax is due where work is performed.
- Day by day tracking of where work is performed and withholding accordingly.

# Ohio Municipal Tax For Remote and Hybrid Workers

## Old Rule: Occasional Entrant Rule/20 Day Rule

- 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.
- First 20 days, withhold for the *principal place of work* municipality.
- From *day 21 forward*, withhold tax for the occasional entrant municipality.

# Ohio Municipal Tax For Remote and Hybrid Workers

**Old Rule:  
Occasional  
Entrant Rule/20  
Day Rule**

## **Principal Place of Work**

- Fixed location to which employee reports on a regular and ordinary basis (not employee's home); OR
- Worksite location – temporary, at which employer provides 20 days or more of service (not employees' home); OR
- Location at which employees spends the greatest number of days in a calendar year (this can be employee's home).



# Ohio Municipal Tax For Remote and Hybrid Workers

## Old Rule - Small Employer Rule

- Small Employer – is a non-governmental employer that had a total revenue of less than \$500k in the preceding tax year.
- Small employers withhold only for the municipality of the employer’s fixed location – without regard to the number of days employees spend working in any municipality.

# 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

- Withhold day by day where work is performed;
- Prorate wages between office and home, based on actual or expected schedules and withhold accordingly;
- What about the 20 day rule?
- **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.

# Ohio Municipal Tax For Remote and Hybrid Workers

## Impacts – So, What Happened?

- Agency-wide, for comparable municipalities (RITA member for at least three years, no rate or credit change for at least three years) – employer withholding was up 8% in 2022 compared to 2021;
- A few exceptions; and
- A few surprises.

# Ohio Municipal Tax For Remote and Hybrid Workers

## What About Tax Year 2021 Refunds?

- Ohio General Assembly 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 did RITA see in terms of 2021 work from home refund requests?



# Ohio Municipal Tax For Remote and Hybrid Workers

## 2021 Refunds – What We Are Seeing at RITA

As of December 31, 2022:

- **7,030** TY 2021 WFH refunds issued;
- Totaling just under **\$14M**;
- Average refund **\$1,950.00**.

# Ohio Municipal Tax For Remote and Hybrid Workers

## What About Tax Year 2020 Refunds?

- General Assembly 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 (10<sup>th</sup> Dist.), *appeal not accepted* – City of Columbus.
- *Schaad v. Alder*, 2022-Ohio-340 (1<sup>st</sup> Dist.), *oral argument March 1, 2023, awaiting ruling* – 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*, CA-22-112061, Eighth District Court of Appeals, *appeal pending (stayed pending Schaad v. Alder decision)* – City of Cleveland.
- *Kresevic v. Chittock*, CV-2023-01-0031, Summit County Common Pleas Court – City of Akron.



# Pending Legislation – Net Profits

## What About Net Profits?

- Municipal net profits are allocated based on the payroll, property and sales a business has in a municipality.
- Nexus in every municipality where employees are working from home?

# Pending Legislation – Net Profits

## What About Net Profits?

### Payroll?

- It's not the payroll!

### Property?

- Computers, printers, phones, office furniture owned by the employer?

### Sales/Services ?

- What is the employee doing at home?

# Pending Legislation – Net Profits

## Ohio House Bill 121 Related to Net Profits and Remote Work

- Introduced 3.21.2023;
- Assigned to House Ways and Means Committee;
- Meant to address how businesses are to apportion their net profits for remote workers.



# Pending Legislation – Net Profits

## Ohio House Bill 121 Related to Net Profits and Remote Work

- Allows businesses to apportion payroll, sales and property to a designated “reporting location” instead of the remote location where an employee is working.
- Businesses may choose to apportion to each location where remote work is performed.

# Pending Legislation

## Ohio House Bill 33 State Budget Bill What's In It?

- Across the board under 18 exemption beginning 1/1/24;
- Change in Net Profit extension filing due date;
- Changes some information exchanged between municipalities and the ODT;
- Modifies late filing fees and prohibits certain communications.

# Pending Legislation

## Ohio House Bill 33 State Budget Bill What's the status?

- Introduced 2.15.2023.
- House approved its version of the Bill 4.26.2023.
- Senate hearings underway.
- Expect Senate action by end of May, conference committee work in June, final bill by 6.30.2023.

# Pending Legislation

## Ohio House Bill 126 Ohio Senate Bill 75

- H.B. 126 expands the military income exemption from “armed services” to “uniformed services.”
- S.B. 75 allows certain municipalities to form Joint Economic Development Zones (JEDDs) without a township as a party.

# QUESTIONS?



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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



## Practices

Government Relations  
State and Local Tax  
Tax Controversy and Litigation  
Property Tax Litigation and Appeals  
Tax

## Industries

Nonprofit and Tax-Exempt Organizations

## Education

Salmon P. Chase College of Law - Northern Kentucky University (1991)  
Wright State University (1976)  
Wright State University (1975)

## Admissions

Federal - Southern District of Ohio  
Federal - U.S. Supreme Court  
State - Ohio  
Federal - U.S. Tax Court



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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.

### **Speeches and Publications**

- Presenter, "Ohio Legislative and Regulatory Update, 2023 Ohio Business Tax Seminar, May 17, 2023.
- Co-Presenter, "Ohio Municipal Income Tax and Remote Workforce," 2023 Ohio Business Tax Seminar, May 17, 2023.

### **Professional Affiliations**

- Ohio State Bar Association
  - Past Chair and Member, Taxation Committee
  - Past Chair, Municipal Income Taxation Subcommittee
- Ohio Tax Conference
  - Keynote Speaker
  - Member, Planning Committee
- 61st Annual Cleveland Tax Institute 2018
  - Keynote Speaker

### **Community Involvement**

- Gambling Impact Review Commission
  - Past Member and Chairman
- Ohio Chamber of Commerce
  - Member, Taxation and Public Expenditure Committee
- Ohio House of Representatives
  - Past Member (1993 - 2000)
- Franklin County Republican Party Central Committee

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Member

- Leadership Worthington  
Board Member
- Worthington Citizens Police Academy Alumni Association  
Member
- Dublin-Worthington Rotary Club  
Member  
Community Service Chair

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**Amy Arrighi**

**Executive Director**  
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Amy was named Executive Director of the Regional Income Tax Agency (RITA) in July 2022. RITA serves as the municipal income tax administrator for more than 350 taxing jurisdictions in the State of Ohio.

Prior to her appointment as Executive Director, Amy served as RITA's Chief Legal Counsel for 16 years.

A respected resource, Amy is sought out by municipal officials, business organizations, elected officials and the media for her insight on municipal tax matters and is a frequent presenter at tax conferences and before municipal tax groups.

Amy received her J.D. from CSU College of Law in 1998.