



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Sam Benham

H.B. 670

132nd General Assembly
(As Introduced)

Rep. Barnes

BILL SUMMARY

- Authorizes employers doing business in multiple municipalities to enter into an agreement with a municipal tax administrator to prescribe the portion of transient employees' total wages that will be subject to the municipal corporation's income tax withholding.
 - Exempts wages from the municipal corporation's tax to the extent the wages exceed the agreed-upon amount.
-

CONTENT AND OPERATION

Municipal tax agreements

The bill authorizes employers doing business in multiple municipal corporations to enter into an agreement with any of those municipal corporations to prescribe the portion of its employees' wages that would otherwise be subject to that municipal corporation's income tax, even if that portion would be more or less of the employees' wages that would be taxable under current law.

Current law: employer withholding

Employee compensation is generally subject to the income tax of the municipal corporation in which it is earned, though an employee's resident municipal corporation may tax the employee's total compensation wherever it is earned.¹ Continuing law allows many exemptions and exceptions, however; for instance, employee wages earned in the first 20 days of working in a nonresident municipal corporation are

¹ R.C. 718.01(B).

generally exempt unless the employer's principal place of business is in that municipality.²

An employer is generally required to calculate and withhold the appropriate amount of tax from each employee's wages, computed by multiplying the wages earned in each municipal corporation by the local tax rate. The employer remits withheld tax to each taxing municipal corporation either semimonthly, monthly, or quarterly, depending on the amount of withholding and the schedule prescribed by the municipal corporation.³ (The bill refers to the employer's remission period applicable to a particular municipal corporation as the "employer's withholding period."⁴)

Withholding agreements

In contrast to current law, the bill allows certain employers and a municipal tax administrator to enter into an agreement prescribing the portion of wages of each "transient employee" that will be subject to the municipal corporation's tax and withholding.⁵ A transient employee is defined as one who earns wages both within and outside a municipal corporation during the employer's withholding period—for example, an employee of a lawn maintenance company who regularly works in multiple jurisdictions.⁶ The option to enter into an agreement is available only to an employer who would be required, in the absence of such an agreement, to withhold income tax during the employer's withholding period with respect to an employee for at least two municipal corporations in which the employee is not a resident (the bill refers to these as "qualifying employers").⁷

Under the agreement, the portion of a transient employee's taxable wages is determined according to the proportion of the employer's total net profit apportioned to the municipal corporation and any other agreed-upon factor.⁸ Under continuing law, this proportion typically equals the average of three factors—the value of the employer's property located in a municipality, employee wages earned in a municipality, and gross receipts from sales made or services performed in a

² R.C. 718.01(C) and 718.011.

³ R.C. 718.03.

⁴ R.C. 718.032(A)(3).

⁵ R.C. 718.01(C)(19), 718.011(G), 718.03(A)(1), and 718.032.

⁶ R.C. 718.032(A)(2).

⁷ R.C. 718.032(A)(1).

⁸ R.C. 718.032(B).

municipality, compared to the value of all the employer's property and total compensation and gross receipts, respectively.⁹ (An alternative proportion might apply to some businesses.)

Example

As an example of how an agreement might operate, consider a qualifying employer with a transient employee whose wages earned in a monthly withholding period equals \$1,000. The employer enters into an agreement with a municipal corporation limiting its transient employees' taxable wages and withholding to the portion of its net profits allocated to the municipal corporation under the three-factor apportionment formula. Of the transient employee's \$1,000 in wages, assume that \$500 is earned from performing services in that municipal corporation and that 10% of the employer's net profits are apportioned to that municipal corporation. Under current law, the employer would be required to withhold tax on \$500 of that employee's wages for that withholding period. In contrast, under the agreement, the employer would only be required to withhold tax on \$100 of the employee's wages (the 10% apportionment percentage X \$1,000 in total wages). The employee's other \$400 in wages earned in the municipal corporation would not be subject to its tax.

As demonstrated in the example, an agreement might result in a particular employee's tax liability being less than it would be in the absence of the agreement. However, the possibility exists for an agreement to result in an employee having more taxes withheld for the municipality than the employee would have if no agreement was in place. For example, an employee whose individual liability to the municipality is \$100 might, under an agreement, have more than \$100 withheld because the agreed-upon percentage is relatively high when applied to the wages the employee earns everywhere. Such a situation could result in the employee having to seek a refund for any tax paid above the amount required under current law, even if the excess tax is paid in accordance with the agreement (see **COMMENT** for a discussion of this implication).

Duration of agreement

An agreement may be in effect for the length of time specified in the agreement, but a tax administrator may rescind an agreement if the administrator determines that information furnished by the employer and used to calculate transient employees' taxable wages under the agreement was submitted in bad faith.¹⁰

⁹ R.C. 718.02(A), not in the bill.

¹⁰ R.C. 718.032(B).



COMMENT

Due Process protections in the 14th Amendment of the United States Constitution appear to prohibit a municipal corporation from taxing the wages of a nonresident employee not actually earned from performing work in the municipal corporation.¹¹ Thus, to the extent an agreement subjects to municipal income tax a nonresident employee's wages in excess of the amount, a nonresident employee may be able to obtain a refund of any tax remitted on this excess amount.¹²

HISTORY

ACTION	DATE
Introduced	05-22-18

H0670-I-132.docx/ar

¹¹ See *McConnell v. Columbus*, 172 Ohio St. 95, 99 (1961) (requiring a fiscal relationship between the income taxed and the municipal protections and benefits offered to a nonresident).

¹² See, e.g., *VonKaenel v. City of New Philadelphia*, No. 2000AP 04 0041, 2001 Ohio App. LEXIS 285 (5th Dist. Jan. 23, 2001); *Toliver v. City of Middletown*, No. CA99-08-147, 2000 Ohio App. LEXIS 2970 (12th Dist. June 30, 2000); *Miley v. City of Cambridge*, No. 96 CA 44, 1997 Ohio App. LEXIS 3243 (5th Dist. June 25, 1997), each of which invalidated a city's attempt to tax nonresidents on income earned outside of the city.

