



Ohio Legislative Service Commission

Bill Analysis

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Reps. Grossman and Henne, Amstutz, Beck

BILL SUMMARY

Imposition of new law and rules

- Requires municipal corporations levying an income tax as of January 1, 2015, and that intend to continue levying the tax thereafter to amend their existing income tax ordinances to include certain statements incorporating the bill's limitations; amended ordinances continuing an existing tax rate above 1% do not require further voter approval.
- Allows a municipal corporation to offer a credit to residents for tax paid by residents to other municipal corporations only if the credit extends to tax paid by pass-through entities owned by the resident.
- Expressly prohibits municipal corporations and tax administrators from adopting rules to administer a municipal income tax that conflict with statutory limitations on the tax.

Computation of taxable income

- Establishes a uniform tax base applicable to all municipal corporations levying an income tax (with a few exceptions) by further defining the forms of income that municipal corporations must tax and the forms that they may not tax.
- Specifically adds to the income tax base of individuals certain deferred compensation and stock option-related income unless grandfathered by local ordinance and self-employment income of religious leaders.
- Specifically excludes from the tax base, in addition to the current mandatory exclusions: alimony and child support received; compensation for personal injuries

or property damage (e.g., from insurance) except for punitive damages or lost wages; dues received by certain kinds of organizations; gains from involuntary conversions; interest on federal obligations; and nonbusiness income of a decedent's estate.

- Requires all municipal corporations to allow businesses to deduct new net operating losses and to allow a five-year carryforward of such losses, reducing the requirement for five years for certain municipal corporations; and permits pre-existing losses to continue to be carried forward if current ordinances allow.
- Modifies the existing deduction for unreimbursed employee business expenses and eliminates the existing exemption for compensation for services to a political subdivision on expedited type II-annexed property owned by the subdivision.

Residency and exemptions

- Permits municipal corporations to treat an individual as a resident for municipal income tax purposes only if the individual is domiciled there, and prescribes standards for determining an individual's domicile for municipal income tax purposes.
- Modifies the "casual" entrant exemption to increase the number of days, from 12 to 20 per year, that an individual may work in a municipal corporation without incurring income tax liability there, to define how such days are to be counted, and to further define how the exemption does not apply to professional athletes, entertainers, and public figures.
- Provides that the casual entrant exemption does not apply to employees of businesses with less than \$500,000 in annual taxable gross receipts, and instead creates a separate exemption that prohibits the taxation of income of such employees by any municipality other than the municipality where the business' fixed location is located.
- Allows an employee to receive a refund of taxes withheld under the "casual" entrant or small business employer exemption on the basis that the employee did not actually perform services in the municipality for which the taxes were withheld.

Apportionment and allocation of net profit

- Modifies and further specifies how the "sales" and "payroll" factors are to be computed in the formula used to apportion income for taxpayers that have income from both within and outside a municipal corporation.



- Authorizes taxpayers to use an alternative method of apportioning income and expressly allows tax administrators to require the use of an alternative method if the statutory formula does not fairly represent the extent of the taxpayer's business activity in a municipal corporation.
- Allows taxpayers to elect to use separate accounting to calculate their net profit from rental activity, but provides that taxpayers who make such an election must request to apply separate accounting to all their rental income, and must continue to use separate accounting for such income, where approved, for the ensuing five taxable years.

Withholding taxes at source

- Prescribes an income tax employer withholding schedule for all municipal corporations that depends on recent withholding amounts.
- Expressly permits municipal corporations to require electronic remittance of withheld taxes if electronic remittance is required for federal income tax purposes.
- Expressly permits employers to withhold income tax for a municipal corporation where an employee resides if so requested by the employee.
- Modifies and clarifies the law governing municipal income tax withholding by casinos and video lottery terminal operators.

Tax filing and payment

- Requires all municipal corporations levying an income tax to comply with a uniform annual tax return filing schedule.
- Requires all municipal corporations to grant income tax payment and filing extensions for active duty military personnel and civilian support personnel.
- Requires municipal income taxpayers to file an amended return if adjustments to the taxpayer's federal or state income tax return affect the taxpayer's municipal income tax liability.
- Prescribes more specific rules for the filing of consolidated income tax returns by affiliated groups of corporations, including a requirement that such returns be prepared in the same manner as consolidated federal income tax returns.
- Requires municipal corporations to collect estimated taxes from all taxpayers whose estimated annual tax liability, after subtracting for amounts to be withheld from the taxpayer's compensation, will be more than \$100.

- Prohibits a municipal corporation from penalizing a taxpayer for the underpayment of estimated taxes if the taxpayer has paid at least 90% of the amount due in the current year, while maintaining similar safe harbor for taxpayers who were not living in a municipality at the beginning of a year or who have made payments equal to 100% of the taxpayer's total tax liability for the previous year.
- Requires municipal corporations to allow any taxpayer subject to the tax on net profit from a business or profession to file a municipal income tax return extension by using the Ohio Business Gateway.
- Adds municipal tax administrator representatives to the Ohio Business Gateway Steering Committee selected from nominees of the Ohio Municipal League.

Refunds and formal determinations of liability

- Provides that a municipal income taxpayer may receive a refund of overpaid taxes only if the amount overpaid is more than \$10.
- Requires tax administrators to approve or deny tax refunds, and allows them to require taxpayers to substantiate refund claims.
- Imposes procedures and requirements for the issuance of formal rulings regarding municipal income tax liability against taxpayers who allegedly fail to pay municipal income tax or file a return ("written determinations"), including that rulings on liability qualify as formal written determinations only if they are issued at the request of a taxpayer.
- Specifies the manner by which written determinations may be appealed.
- Bars civil actions to collect municipal income taxes after three years or, if an appeal was made, one year and 60 days after the appeal is finally determined, except when a person fails to remit taxes held in trust or fails to file a return – in which case the time limit is ten years – and except when a taxpayer agrees to a longer period or files a fraudulent return.
- Limits the amount of penalties and interest that may be charged for failures to file returns or pay taxes on time.
- Specifically permits taxpayers to appeal municipal income tax written determinations to municipal boards of tax review, lengthens the appeal filing deadline and the deadline for the board to schedule a hearing, requires hearings to be completed within 120 days, renames the boards and prescribes their membership

and removal procedures, and requires the boards' members' names and rules to be posted.

Tax administration, collection, and enforcement

- Prescribes how and under what circumstances a municipal tax administrator may compromise a claim or agree to a pay-over-time arrangement to, for example, provide relief to an innocent spouse.
- Requires municipal corporations to deliver municipal income tax written determinations to taxpayers in accordance with requirements similar to those applicable to the delivery of state income tax notices.
- Requires municipal income taxpayers to retain tax-related records for up to six years and to provide municipal tax administrators with copies of federal and state income tax documents, and allows tax administrators to require the retention of other records.
- Prohibits a tax administrator from engaging an agent on a contingency basis to inspect a person's records, and requires agents to display credentials upon request.
- Permits municipal income taxpayers to ask municipal tax administrators for official opinions regarding prospective tax liability, and provides for the issuance and effect of such opinions.
- Requires a person to notify a municipal tax administrator of any change to the person's personal identifying information, such as a Social Security number, if a tax administrator requires a person to submit such information.
- Requires a tax administrator to take necessary steps to protect Social Security numbers and prohibits an administrator from displaying a Social Security number on the outside of a mailed envelope.
- Modifies existing protections for confidential municipal income tax information to prohibit anyone from accessing the information without a proper judicial order and outside the scope of official business, prescribes minimum penalties for anyone who unlawfully accesses or discloses such information, and authorizes information exchanges among municipal tax administrators.
- Prohibits knowing involvement with false or fraudulent tax documents submitted to a tax administrator or with records upon which such documents are based with intent to defraud a municipal corporation or a tax administrator.



Other provisions

- Revises the required contents of the annual report of municipal income tax revenues to the Tax Commissioner by including refunded amounts, requiring the report to be sorted by type of tax, and requiring the inclusion of amounts collected on behalf of contracting parties to a joint economic development district (JEDD) or joint economic development zone (JEDZ).
- Requires the Tax Commissioner to share income tax data collected with respect to the municipal income tax on electric and local exchange telephone companies with tax administrators who request such data.
- Specifies that, if a portion of the revenue from a municipal income tax levy will be shared with a school district, the levy may not take effect until the year following the year in which voters approved the levy.
- Creates an 11-member temporary committee to quantify and recommend ameliorations for the potential fiscal impact to municipal corporations of requiring each to allow net operating losses to be carried forward for five years.

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CONTENT AND OPERATION

Background

Municipal corporations' authority to levy taxes is an aspect of their home rule powers conferred by Article XVIII, Section 3, Ohio Constitution.¹ Although the General Assembly does not grant municipal corporations the authority to tax, it may limit their taxing authority or prohibit municipal taxes by express acts.² The current limits on municipal income taxes are codified under Chapter 718. The bill modifies many of the current limits and imposes new limits and procedures.

The effects of the bill's changes will vary among municipal corporations to the extent that a municipal corporation's existing ordinances are not in compliance with the bill's new or modified limitations.³ Some municipal ordinances may already comply with the bill's provisions to some degree.

Limitations in current law

The following are the most significant limitations imposed by current law; the bill retains some and modifies others as described in the remainder of the analysis:

- The tax rate must be uniform for all taxpayers and all income ranges in a municipal corporation.
- Tax rates greater than 1% must be approved by voters.

¹ See *Zielonka v. Carrel*, 99 Ohio St. 220 (1919), and *Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St.3d 599 (1998).

² Article XIII, Section 6 and Article XVIII, Section 13, Ohio Constitution; *City of Franklin v. Harrison*, 171 Ohio St. 329 (1960), and *Cincinnati Bell Tel. Co., supra*.

³ Throughout this analysis, references to ordinances include resolutions if resolutions are the form by which a municipal legislative authority adopts its laws.



- Exemptions are not allowed for net profits of any business or for employee compensation earned by anyone 18 years of age or older (with certain exceptions).
- Municipal corporations are barred from taxing S corporation shareholders' passed-through net profits unless municipal voters grandfathered taxation of that income by ballot issue.
- Intangible income (e.g., interest, dividends, capital gains) is exempted from taxation except in several municipal corporations that grandfathered the taxation of intangible income by ballot issue; gambling and lottery winnings may be taxed.
- The forms of employee compensation that are subject to taxation and employer withholding are defined by state law (generally including the forms included in the Medicare tax base – i.e., W-2, Box 5).
- Municipal corporations are not required to permit deductions for losses of sole proprietors or partnerships.
- Municipal corporations may allow deduction of net operating losses and carryforward of excess losses, but are not required to.
- Individuals working for 12 or fewer days in a year in a municipal corporation where they do not live generally are exempted from that municipal corporation's income tax, with some exceptions.
- Municipal corporations must allow taxpayers with unreimbursed employee business expenses to deduct those expenses.
- Annual return filing deadlines may not be earlier than the corresponding federal return filing dates, and payment and reporting of estimated taxes must correspond generally with the state and federal schedules, but otherwise municipal corporations may establish their own deadlines for filing returns and employer withholding.

Amendment of existing tax ordinances

Beginning on January 1, 2015, every municipal income tax levied in the state must comply with the limitations specified in the bill.⁴ On or after that date, each municipal corporation must amend its existing income tax ordinance to specify that the

⁴ R.C. 718.04 and Section 6.

municipal corporation incorporates, by reference, the provisions of the municipal income tax law (Chapter 718.) as amended by the bill. The amended ordinance must specify that the tax is levied on the municipal taxable income of every person residing or earning income in the municipal corporation. As under current law, the municipal corporation must levy the tax at a uniform rate and, similar to current law, may offer a credit to residents who earn income in another municipality. However, the credit, if offered, must apply to tax paid by the resident to other municipal corporations and, additionally, to tax paid by a pass-through entity owned by the resident, on the resident's share of the entity's income. The income tax ordinance must specify whether, and to what extent, such a credit will be allowed.

Although continuing law requires that voters approve any new income tax levied at a rate above 1%, the bill allows a municipal corporation that already levies a tax above that rate, and that amends its tax ordinance before January 1, 2016, to continue to levy its tax at the voter-approved rate without an additional vote.⁵

The bill's changes apply to joint economic development districts (JEDDs) and zones (JEDZs) in which a municipal income tax is levied.⁶

Municipal rule-making authority

The bill expressly prohibits a municipal legislative authority or tax administrator from adopting any rule to administer its municipal income tax that is inconsistent with limitations contained in state law.⁷ As under current law, municipal corporations must publish electronic versions of income tax ordinances, rules, instructions, and forms online. In addition to such documents, municipal corporations also must publish online a summary of taxpayer's rights and responsibilities (which the bill identifies – see R.C. 718.01(QQ)). Under current law, documents must be posted on a site created by the Department of Taxation or on the municipal corporation's own website.⁸ The bill instead requires that the required documents be posted on both websites, if the municipal corporation has established a website for its municipal income tax. The bill also specifically requires the municipal corporation's tax administrator to post the documents.

⁵ R.C. 718.04.

⁶ R.C. 718.01(AA).

⁷ R.C. 718.30.

⁸ R.C. 718.07.

The bill's changes first apply to a taxpayer's municipal taxable year that begins on or after January 1, 2015. Until then, existing law and ordinances continue to apply.⁹

Taxable income

The bill establishes uniform definitions of taxable income that must be adopted by all municipal corporations that intend to continue levying an income tax after 2014. For individuals, the tax base includes compensation, net profit from business activities minus net operating loss carryforward, and prizes and winnings from lotteries, gambling, and similar activities.¹⁰ A nonresident individual's compensation is included in the base only if earned for work in the taxing municipal corporation, and a nonresident's net profit is included only to the extent it is assignable to the taxing municipal corporation under the bill's apportionment and allocation provisions (described below).

For corporations, pass-through entities such as partnerships, S corporations, and limited liability companies (LLCs), and other business entities, the tax base is net profits, which equals federal taxable income after several adjustments (described below) and after apportionment and allocation.¹¹ The bill's taxation of the net profits of all pass-through entities contrasts with the taxation of pass-through entities under current law. Under current law, municipal corporations may tax pass-through entity net profits at either the entity level or the owner level, but not both. However, a municipal corporation may make that choice separately for each class of entity (e.g., tax partnerships and LLCs at the partner or member level, and tax S corporations at the entity level).¹²

In the case of all taxpayers, certain forms of income must be exempted, as described below.

The following table summarizes the tax base for individuals and for business entities. The components of the base and the determination of taxable income are described after the table.

⁹ Section 6 of the bill.

¹⁰ R.C. 718.01(B).

¹¹ The bill specifically excludes trusts, estates, and grantors of grantor trusts from its definition of "pass-through entity." (Under federal income tax law's grantor trust rules, a person, usually the grantor of the trust, is treated as the direct owner of the trust's assets, and therefore must include the trust's income items in that person's own taxable income, if that person or a nonadverse party has unrestricted power to dispose of the trust's assets. See I.R.C. secs. 671 to 679.)

¹² R.C. 718.14(D) of current law, repealed by the bill.



H.B. 5 Income Tax Base	
Resident individuals	<p>--Compensation from any source unless specifically exempted by the bill</p> <p>--Net profit, including distributive shares of pass-through entity net profit (except for S corporations, unless allowed under a grandfathered ordinance) from Form 1040 Schedule C, E, or F, minus net operating loss carryforward</p> <p>--Lottery, gambling, prizes, and similar winnings (minus wagering losses for professional gamblers)</p> <p>--Alternatively, certain municipal corporations may use Ohio adjusted gross income minus amounts exempted by the municipal corporation and plus deductions excluded, if the municipal corporation adopted that tax base before 2013. The "qualified" municipal corporation may exempt income earned by nonresident individuals and the net profits of persons not wholly located within the qualified municipal corporation from the tax and corresponding withholding obligations</p>
Nonresident individuals	<p>--Compensation for work in the taxing municipal corporation unless specifically exempted</p> <p>--Net profit (as defined for resident individuals) after apportionment and allocation (not including the nonresident's distributive shares of any pass-through entity)</p> <p>--Lottery, gambling, prizes, and similar winnings (minus wagering losses for professional gamblers)</p>
Corporations, pass-through entities, and other business organizations	<p>--Net profit (adjusted federal taxable income as defined by the bill) after apportionment and allocation</p>

Compensation

Compensation, although not defined by the bill, includes "qualifying wages" and salaries, commissions, and "other" compensation. In effect, if compensation is received by an employee, it is taxable only if it is included in "qualifying wages" because any employee compensation not included in qualifying wages is tax-exempt under both the bill and current law.

Qualifying wages

Qualifying wages closely approximates the Medicare ("FICA") tax withholding base (i.e., IRS Form W-2, Box 5) with several adjustments. In comparison to the compensation subject to the state and federal income taxes, it is broader, including such items as employee contributions to 401(k) plans and other qualified retirement or



deferred compensation plans, salary-reduction contributions to some other retirement plans, and severance pay.¹³

The bill makes several changes to the qualifying wage base.¹⁴ Under both the bill and current law, nonqualified deferred compensation or employee stock option-related compensation is subtracted from the Medicare wage base if the municipal ordinance permits. But, under the bill, the deduction of such nonqualified deferred compensation and stock option-related compensation will be permissible after 2014 only if allowed by ordinance adopted before 2015. If a municipal corporation does not exempt employee stock option income by ordinance before 2015, taxpayers must add the ordinary income component of that income (i.e., noncapital gain) to the Medicare wage base in computing qualifying wages. This addition is required by current law, but there is no time limit on the adoption of an ordinance exempting such income.¹⁵

The bill also requires religious leaders to add amounts they receive for religious duties that are considered net earnings from self-employment for federal income tax purposes (under I.R.C. sec. 1402). Current law does not require such an addition, but a municipal corporation may require the addition by ordinance.

Currently, payments on account of sickness or accident disability are subtracted from the Medicare wage base to compute qualifying wages. The bill retains this deduction but modifies it to cover "payments on account of a disability related to sickness or an accident" and only if the payment is made by someone unrelated to the employer.

Currently, employee contributions and deferrals to 401(k) retirement and 457 deferred compensation plan accounts are added to the extent not included in the Medicare wage base. The bill additionally requires employee contributions to a 403(b) plan to be added, which is a retirement plan available for public education organizations, some nonprofit employers, cooperative hospital service organizations, and self-employed ministers.¹⁶ The bill requires a taxpayer to add any employee compensation not otherwise included in the Medicare wage base that is nevertheless included in the taxpayer's gross income for federal income tax purposes, that did not or will not constitute Medicare wages for any previous or succeeding taxable year, and that has not otherwise been added to qualifying wages.

¹³ Internal Revenue Code sec. 3121(a).

¹⁴ R.C. 718.01(R) of the bill; R.C. 718.03 of current law.

¹⁵ R.C. 718.01(R).

¹⁶ Internal Revenue Code 403(b).



Otherwise, the bill retains current law's adjustments to the Medicare wage base. Cash or noncash compensation under a cafeteria plan will continue to be subtracted. Supplemental unemployment benefits and compensation received by pre-April 1986 hires will continue to be added to the extent not included in the Medicare wage base. (Many state and local government employees hired before April 1986 are not subject to the Medicare hospital insurance tax, so their pay is excluded from the Medicare wage base for federal Medicare tax purposes.)

Net profit

Net profit is the basis for taxing business income, and the bill defines net profit for business organizations and for individuals. For business organizations, the bill's definition of net profit is the same as under current law except that municipal corporations are required to permit taxpayers to deduct and carry forward net operating losses (NOLs) for five years, as described below, and deduct or add the net profit or loss, respectively, of any pass-through entity included in the taxpayer's adjusted gross income unless the taxpayer includes the pass-through entity as part of the taxpayer's affiliated group filing a consolidated corporate return (see below).¹⁷ The definition applies to "C" corporations (i.e., corporations not making the federal "S" election for pass-through tax treatment) and to partnerships, S corporations, limited liability companies, and other pass-through entities other than single member limited liability companies. In the case of pass-through entities, they must compute net profit as if they were a C corporation, except they are not allowed to deduct guaranteed payments and similar amounts paid or accrued to an owner or former owner or to deduct payments or accruals to a qualified self-employed retirement plan, health insurance plan, or life insurance plan for owners or owner-employees (however, this exception does not prohibit a partnership from deducting guaranteed payments to partners for the use of capital treated as the payment of interest under federal law).

For individuals who have net profit from a trade, profession, or business, net profit is defined as the profit required to be reported for federal income tax purposes on the Form 1040 Schedule C (sole proprietor profit and loss), Schedule E (supplemental income from pass-through entities, rental, royalties, etc.), and Schedule F (farming profit and loss) as under current law.¹⁸ But unlike current law, the bill requires NOL deductions and carryforwards (as described below), allows professional gamblers who report winnings as business income to deduct the gambler's wagering losses, and eliminates existing exemptions for S corporation profits passed through to shareholders and existing local option deductions for health savings account contributions and for

¹⁷ R.C. 718.01(D)(1) and (E) of the bill; R.C. 718.01(A)(7) and (D)(2) of current law.

¹⁸ R.C. 718.01(D)(2) of the bill; R.C. 718.01(A)(7), (E)(2) and (3), and (H)(9) of current law.



sole proprietors' family health insurance premiums. For resident individuals, the bill authorizes any losses shown on a taxpayer's federal tax return from an investment as a partner in a pass-through entity to be deducted against any other of the resident's net profit reported on Schedule C, E, or F in the same taxable year. Similarly, any losses incurred by the resident may be deducted from any profits earned by a pass-through entity in which the resident is a partner in the same taxable year. This offset is not available to nonresident individuals, whose net profit from a distributive share in a pass-through entity is taxed only at the entity level. The offset is not allowed with respect to a resident's share of the profit or loss of an S corporation if the municipal corporation is not authorized to tax the resident's shares thereof.¹⁹

Net operating losses

Generally, the bill requires all municipal corporations to permit taxpayers to deduct net operating losses (NOLs) and to carry excess NOLs forward for deduction for five subsequent years.²⁰ Under current law, municipal corporations may allow NOL deductions and carryforwards but are not required to; if they allow carryforwards, the maximum carryforward period is set by ordinance.²¹

For municipal corporations levying a tax before 2015, the bill's new five-year carryforward rule applies only to NOLs incurred in taxable years beginning after 2015. For NOLs incurred earlier, an NOL deduction and carryforward is allowed only if an ordinance adopted before 2015 permits the deduction and carryforward. The carryforward may continue for as many years as allowed by the pre-existing ordinance. If a taxpayer is allowed to deduct carryforwards under such an ordinance, the deduction must be taken before deductions for NOLs incurred in taxable years beginning after 2015. For municipal corporations that levy a tax for the first time after 2015, the bill's five-year carryforward rule applies to NOLs incurred in taxable years beginning on or after the effective date of the municipal income tax.

The bill explicitly prohibits an owner of a pass-through entity from deducting any NOL or NOL carryforward of the pass-through entity from the net profits or wages of the owner. NOL does not include loss resulting from basis, at-risk, or passive activity loss limitations, which are generally losses that cannot be deducted from adjusted gross income in a given taxable year because of certain limitations imposed by federal law.²²

¹⁹ R.C. 718.01(B)(1)(a), (b), and (c).

²⁰ R.C. 718.01(E)(8).

²¹ R.C. 718.01(K) of current law.

²² R.C. 718.01(E)(8) and (GG).

Reduced NOL for first five years

For municipal corporations levying a tax before 2015, the amount of NOLs incurred in taxable years beginning after 2015 that may be deducted and carried forward is reduced for taxable years beginning in 2017 to 2021 – the first five years to which the five-year carryforward applies. The NOL deduction (including carryforwards) for taxable years beginning in each of those years cannot exceed 50% of the full amount otherwise allowed. For taxable years beginning after 2022, the full deduction is allowed. The phase-in does not apply to NOLs incurred in taxable years beginning before 2016 and deductible under a pre-2016 ordinance. A taxpayer may carry forward NOL the taxpayer was precluded from deducting or carrying forward during those five reduction years for taxable years beginning after 2022, but for no more than five years.²³

Exempt income

The bill adds certain forms of income to those that currently must be exempted from all municipal income taxes and employer withholding.²⁴ The bill eliminates two specific current exemptions, one for transit employees' occasional passage through a municipal corporation and one for compensation for personal services performed for a political subdivision on property owned by the subdivision that was added to the territory of a municipal corporation through an "expedited type II" annexation (the latter was enacted by H.B. 50 of the 129th General Assembly).

The following table shows the forms of income that must be exempted from all municipal corporations' income taxes under current law and under the bill. In addition to being exempt from municipal income tax, exempt income is subtracted from qualifying wages.²⁵ Exempt income in the hands of an individual is exempt income in the hands of a pass-through entity.²⁶

²³ R.C. 718.01(E)(8)(c).

²⁴ R.C. 718.01(C) of the bill.

²⁵ R.C. 718.01(R).

²⁶ R.C. 718.01(C).

Forms of Tax-exempt Income		
Form of income	Current law	H.B. 5
Employee compensation that is not "qualifying wages"	Exempt	Exempt
Intangible income	Exempt except in a few grandfathered municipal corporations	Exempt except in those grandfathered municipal corporations
Military pay	Exempt	Exempt
Social Security benefits, retirement benefits, pensions disability benefits, unemployment compensation, sickness, accident, or liability insurance proceeds	Not specifically exempt, but may be exempted under local ordinance	Exempt
Alimony and child support	Not specifically exempt, but may be exempted under local ordinance	Exempt
Nonwage income of minors	Not specifically exempt, but may be exempted under local ordinance	Exempt
Parsonage allowance	Exempt	Exempt
Precinct election officials' pay	Exempt up to \$1,000 annually	Exempt up to \$1,000 annually
Transit employees' pay for occasional passage	Exempt	Not specifically exempt, but potentially exempted under new casual entrant exemption
Personal injury or property damage compensation	Not specifically exempt, but may be exempted under local ordinance	Exempt unless compensating for lost wages or punitive damages
Wages of nonresidents employed at Air Force base (Wright-Patterson)	Exempt	Exempt
S corporation shareholders' net profits	Exempt unless grandfathered by local election	Exempt except in those grandfathered municipal corporations
Public utilities' income	For-profit electricity and telephone companies may be taxed, other utilities are exempt	Same as current law
Religious, educational, charitable, scientific, fraternal, and literary institutions' income	Exempt if derived from tax-exempt property or tax-exempt activities	Same as current law



Forms of Tax-exempt Income		
Form of income	Current law	H.B. 5
Dues and contributions received by labor unions, lodges, or religious, educational, charitable, fraternal, or literary institutions	Not specifically exempt, but may be exempted under local ordinance	Exempt
Estate income	Not specifically exempt, but may be exempted under local ordinance	Exempt unless trade or business income
Gains from involuntary conversions, interest on federal bonds, and state-taxable income exempted by law from municipal taxes	Not specifically exempt, but may be exempted under local ordinance	Exempt
Compensation for working at site owned by political subdivision added to municipal corporation by expedited type II annexation	Exempt	Not exempted
Income of individuals under age 18	Not specifically exempt, but may be exempted under local ordinance	Exempted to the extent, if any, allowed under a local ordinance adopted before 2015
Nonwage compensation earned in a nonresident municipality for services on the board of directors of a corporation	Exempt if services are performed for 12 or fewer days in a calendar year (see, " Casual entrant exemption ," below)	Exempt if services are performed for 20 or fewer days in a taxable year
Compensation paid to (1) a member or employee of the General Assembly for services as such a member or employee or (2) a judge sitting by assignment of the Chief Justice or an appeals court justice serving in multiple locations for their judicial services	Exempt from taxes imposed by any municipal corporation other than the one, if any, where the member, employee, or judge resides	Same as current law
Compensation paid to Supreme Court justices for their judicial services	Exempt from taxes imposed by any municipal corporation other than Columbus and the one, if any, where the justice resides	Same as current law



Employee business expense deduction

The bill modifies the current requirement that municipal corporations permit individuals to deduct unreimbursed employee business expenses that the individual deducted for federal income tax purposes (e.g., for business vehicle use, travel, meals, and entertainment). Currently, all municipal corporations must allow individuals to deduct such expenses at least to the extent reported on IRS Form 2106 and deducted for federal income tax purposes.²⁷

The bill requires all municipal corporations to allow individuals to deduct the amount of the individual's Form 2106 expenses that the individual deducted for federal income tax purposes, subject to the limitation imposed by the Internal Revenue Code that limits a taxpayer's ability to deduct miscellaneous itemized deductions for any taxable year, including Form 2106 expenses, to the extent that the aggregate of those deductions exceeds 2% of the individual's adjusted gross income. A taxpayer may deduct all such expenses for the individual's municipal corporation of residence but may deduct those expenses for a nonresident municipal corporation only to the extent the expenses are related to the taxpayer's performance of personal services in that municipal corporation.²⁸

Residency

The bill permits municipal corporations to treat an individual as a resident for municipal income tax purposes only if the individual is domiciled in the municipal corporation under standards outlined in the bill. As defined in the bill, an individual's domicile is the principal residence that the individual intends to use for an indefinite period and to which, whenever absent, the individual intends to return. An individual is presumed to be domiciled in a municipal corporation if a tax administrator reasonably concludes that the individual is domiciled in that municipality. The individual may rebut this presumption by showing by a preponderance of the evidence that he or she was not domiciled in the municipality.

The bill sets forth 11 factors that may be used in determining, or rebutting the presumption of, an individual's domicile. In addition to these factors, a tax administrator or taxpayer may use other "relevant" factors. The bill's 11 factors consider the location of (1) the attorneys, accountants, doctors, and similar professionals used by the individual or individual's spouse, (2) businesses in which the individual or spouse is a partner or shareholder or for which the individual or spouse serves on the board of

²⁷ R.C. 718.01(A)(4) and (F) of current law.

²⁸ R.C. 718.01(A)(2).



directors, (3) charitable organizations to which the individual or spouse donates or for which the individual or spouse serves on the board of directors, (4) the individual's friends, dependents, and family members, (5) educational institutions attended by the individual's dependents or from which the individual, spouse, or dependents claim the benefit of in-state tuition rates, (6) where the individual or spouse shops, (7) where the individual is registered to vote, (8) the location of property owned or leased by the individual or spouse, (9) the location at which the individual obtained a driver's license or the address listed on the individual's driver's license, (10) where the individual or spouse is employed, and (11) the address on the individual's or spouse's tax returns, bills, credit card statements, or other mail.²⁹

Under the bill, municipal residency determines the extent to which income is included in an individual's taxable income base (described above in the "**Taxable income**" section), whether an individual qualifies for any credit given for income taxes paid to another municipal corporation on the same income, and, in certain cases, whether an individual is subject to taxation by a municipal corporation.

Current state law does not address qualifications for municipal income tax residency. Residency is determined under municipal ordinances, many of which employ common law determinations of domicile depending on various indications of where a person intends to stay (e.g., maintaining a home, voting records, motor vehicle registration), similar to or the same as those prescribed by the bill.

Casual entrant exemption

Current law

Under current law, the "casual entrant rule" prohibits a municipal corporation from taxing the compensation paid to a nonresident individual who worked in the municipal corporation for 12 days or fewer in a year, or from requiring employers to withhold taxes against such individuals' wages.³⁰ This exclusion does not apply if (1) the individual's employer has its principal place of business in another municipal corporation that imposes an income tax and (2) that other municipal corporation will not tax the compensation earned on those 12 or fewer days. The exclusion also does not apply to professional entertainers, professional athletes, or promoters of professional entertainment or sports events and their employees (as reasonably defined by a municipal corporation).

²⁹ R.C. 718.01(J) and 718.012.

³⁰ R.C. 718.01(C)(15) and 718.011.



Changes to the casual entrant rule

The bill makes several changes to the casual entrant rule.³¹ First, for employees of larger businesses, the bill expands the current exemption by increasing the number of days a nonresident may work in a municipal corporation without incurring liability for the municipal corporation's income tax, from 12 to 20 in a calendar year. Second, for nonresident employees of smaller businesses, the bill creates a new rule that prohibits the taxation of the employee's income by any municipality other than the municipality where the business' fixed location is located. Third, the bill creates an exception to both of these provisions that allows an employee to receive a refund of taxes on the basis that the employee did not actually perform services in the municipality for which the taxes were withheld.

Extension of casual entrant rule for certain employees

For employees of businesses with annual taxable gross receipts of \$500,000 or more, the bill increases the casual entrant exemption period from 12 to 20 days. The exemption applies only if: (1) the employee's "principal place of work" is not located within the municipal corporation where the employee worked on the 20 or fewer days, (2) the employer does not withhold taxes on the compensation for the municipal corporation where the employee worked on the 20 or fewer days, but instead only for the municipal corporation where the employee's principal workplace is located, and (3) the employee does not request a refund of the taxes withheld to the municipal corporation where the employee's principal workplace is located.

In general, an employee's "principal place of work" is the location to which the employee reports for work duties on a regular and ordinary basis. The location may be a permanent location, such as an office or warehouse, or, if the employee does not regularly report to a permanent location, a temporary location that is not also the employee's home. If the employee does not report to one location on a regular and ordinary basis, the employee's "principal place of work" is the location where the employee spends the greatest number of days in a calendar year.

Under the bill, if a nonresident employee works in a municipal corporation for more than 20 days in a year, the employer may choose to withhold taxes for the first 20 days only to the municipal corporation where the employee's principal workplace is located or to both that municipality and the municipal corporation where the work was performed. In order to withhold taxes for both municipalities, the employer must make an election to do so on the employer's annual tax return. In such a case, the employee's compensation is taxable in both municipalities. However, as discussed below, the

³¹ R.C. 718.01(C)(16) and 718.011 of the bill.



employee may seek a refund of the taxes withheld for the municipality where the employee's principal workplace is located.

Small business employer rule

The bill requires employers with under \$500,000 in annual taxable gross receipts to withhold and remit taxes on all nonresident employee compensation only to the municipal corporation in which the employer has its sole fixed location. This rule applies regardless of the number of days that an employee works in other municipalities in a year. However, as discussed below, an employee that works in other municipalities may receive a refund of taxes withheld on compensation paid for work performed in the other municipalities.

With respect to both the small business employer rule and the 20-day rule, a business' annual taxable gross receipts are determined by reference to the state commercial activity tax. A tax administrator may require a small business employer to submit its prior year federal income tax return to establish eligibility under the small business employer rule.

Employee refunds

If a nonresident individual's employer withholds taxes under the 20-day rule to the municipal corporation in which the individual's principal workplace is located, the individual may receive a refund of those taxes on the basis that the employee did not work in that municipality. Similarly, if a small business employer withholds taxes for a nonresident employee to the municipal corporation in which the employer has its fixed location, the employee may receive a refund of those taxes to the extent that the taxes were withheld on compensation earned for work performed in a different municipality. If an employee receives a refund in either case, the compensation upon which the refund is based becomes taxable in the municipality in which the work was performed.

Allocation of employee time

The bill introduces a test for determining when an employee has spent a "day" within a municipal corporation. Current law does not provide guidance for making this determination. Under the bill's test, an employee spends a day in a municipality only if, on that day, the employee spent more time working in that municipality than in any other municipality. Consequently, for purposes of the casual entrant rule, an employee may work a "day" in only one municipality.

This test is also applied to determine when an employee has worked, or reported to, a particular location for purposes of assigning the employee's "principal place of work" (which may or may not be within a municipal corporation). The bill further



specifies that time spent performing certain activities is considered time spent at an employee's principal place of work. Those activities include time spent doing any of the following: traveling to work at the beginning of a day, traveling from work at the end of a day, traveling to pick up or load the employer's products, transporting or delivering those products (unless the product is then affixed to real estate owned, used, or controlled by a person other than the employer), and traveling from an employee's final delivery drop-off or pick-up location at the end of a day.

Application of rule to athletes, entertainers, and public figures

Continuing law provides that the casual entrant exclusion does not apply to professional athletes and entertainers. However, whereas current law allows municipal corporations to define who fits within these categories, the bill provides more specific definitions for both. A professional athlete is a person who is paid to perform services in a professional athletic event. A professional entertainer is a person who is paid on a per-event basis to perform services in the professional performing arts.

The bill adds "public figures" as a category of people whose compensation cannot be exempt from taxation under the casual entrant rule. Under the bill, a "public figure" is a person of prominence who is paid on a per-event basis to perform services such as making speeches or public appearances.

The bill applies the casual entrant rule to promoters of professional sports and entertainment events and their employees, whereas under current law such promoters and their employees are, like professional athletes and entertainers, not covered by the rule.

Employer agreements

The bill expressly allows a tax administrator and an employer to enter an agreement authorizing the employer to withhold taxes for "casual entrant" employee compensation in a manner other than that required by the bill.

Taxation of disregarded entities

The bill specifies that entities that are disregarded for federal income tax purposes ("disregarded entities"), including limited liability companies (LLCs) that have a single member (i.e., only one direct owner), may not be taxed at the entity level on their net profits. The net profits are taxable only to the direct owner of the entity.³² Under federal income tax law, a disregarded entity is treated as the same taxpayer as its owner (i.e., the entity is disregarded as a separate taxpayer) unless the entity elects to be

³² R.C. 718.01(D)(3) of the bill.

treated as a corporation for income tax purposes. The disregarded entity treatment generally means the owner reports the income items of the entity as the owner's own items (for individuals, this would be on Schedules C, E, and F).

The bill continues current law's provision that permitted single member LLCs that are "disregarded entities" for federal tax purposes to be treated as separate from their single members for municipal income tax purposes if they satisfied certain conditions and made an election before 2005.³³

Apportionment and allocation of net profit

A business whose operations are not confined to one municipal corporation must apportion or allocate its net profit for income tax purposes. A three-part formula based on a business' payroll, sales, and property is used to determine the portion of the business' net profit attributable to a municipality. The bill makes several changes to this formula and to other rules governing the apportionment and allocation of net profits.³⁴

Modification of three-part formula

Payroll factor

The "payroll factor" compares the compensation a business pays to its employees for services performed within a municipal corporation to the total compensation paid to its employees everywhere. The bill limits the scope of this comparison by providing that only compensation paid for work at specific locations is included in the calculation of the factor.³⁵ The specific locations are:

(1) A location that is owned, controlled, possessed, used, or rented by (a) the employer, (b) a vendor, customer, client, or patient of the employer, or a related member of such a person, or (c) a vendor, customer, client, or patient of a person described in (b), or a related member of such a person;

(2) A location where a trial, hearing, investigation, or similar administrative, judicial, or legislative proceeding is held, if the employee performs services for the employer at the location or if the employee's presence at the location benefits the employer;

³³ R.C. 718.01(L) of the bill and current law.

³⁴ R.C. 718.02.

³⁵ R.C. 718.02(C).



(3) Any other location if the tax administrator finds that the employer directed an employee to work at that location in lieu of a location described in (1) or (2) solely in order to avoid income taxation. If the tax administrator makes such a determination, the employer may dispute the finding by establishing, by a preponderance of the evidence, that the finding was unreasonable.

Similar to current law, compensation that is not subject to tax withholding under the "casual entrant rule" (see "**Casual entrant exemption**") is not included in the calculation of a business' payroll factor.

Sales factor

Under current law, the "sales factor" compares a business' receipts from goods and services sold in a municipal corporation to the business' total receipts from all sales and services. A sale of goods is made in a municipal corporation when the goods are any of the following:

(1) Shipped and delivered within the municipal corporation;

(2) Delivered within the municipal corporation, but shipped from elsewhere, if employees of the business regularly solicit sales within the municipal corporation;

(3) Shipped from the municipal corporation, but delivered elsewhere, if the business, through its own employees, does not regularly solicit sales at the location where the goods are delivered. (This final criterion is known as a "throw-back provision.")

The bill modifies the throw-back provision to provide that goods shipped from one municipal corporation and delivered in another will be considered to have been sold in the municipal corporation from which the goods were shipped if the business does not regularly solicit sales in the other municipal corporation in general (i.e., neither through its employees or otherwise, such as mailings or agents). As a consequence of this change, if goods are shipped from Municipal Corporation A and delivered in Municipal Corporation B, and the business that sells the goods is regularly engaged in soliciting sales in Municipal Corporation B, but does not do so through its own employees, income from the sale of those goods is not apportionable to either municipal corporation.³⁶

The bill also provides that, when goods are delivered by a common carrier, the sale location is the place where the purchaser received title to the goods. Income from

³⁶ R.C. 718.02(D).

the sale of services is assigned to a municipal corporation based on the extent to which the services were performed within the municipality.

In addition, the bill expands the scope of the "sales factor" to include a business' income from the rental of property. Income from the sale or rental of real property is assigned to the municipal corporation where the property is located. Income from the rental of tangible personal property is assigned to a municipal corporation based on the extent to which the property is used in the municipality.

Property factor

Under continuing law, the "property factor" compares the value of all real and tangible personal property owned or used by a business within a municipal corporation to the total value of all of the business' property. Current law specifies that this calculation includes the value of real property that the business rents or leases. The bill adds that the calculation must also include the value of rented or leased tangible personal property.³⁷

Treatment of disregarded entities

Under the bill, if a taxpayer is the owner of a single member LLC that is treated as a "disregarded entity" for federal tax purposes, the calculation of the taxpayer's payroll, sales, and property factors must include the payroll, sales, and property of the disregarded entity.³⁸

Approval of an alternative formula

Under current law, municipal corporations may allow taxpayers to use an alternative apportionment formula if the three-part formula does not "produce an equitable result." The bill instead allows a taxpayer to use an alternative apportionment method at the taxpayer's discretion, and provides that a municipal corporation may require a taxpayer to use an alternative formula if the tax administrator determines, by a preponderance of the evidence, that the three-part formula does not "fairly represent the extent of the taxpayer's business activity" in the municipal corporation.³⁹ An alternative formula may involve separate accounting, the exclusion or modification of one of the three factors, or the inclusion of a different factor.

³⁷ R.C. 718.01(A)(1).

³⁸ R.C. 718.02(H). See also Footnote 43.

³⁹ R.C. 718.02(B).

The bill also provides specific guidelines for the use of an alternative formula. Under the bill, a taxpayer must notify the tax administrator before using an alternative formula on a tax return. A taxpayer must also notify the administrator before using an alternative apportionment formula, method of accounting, or method of filing with respect to an amended return. An alternative formula applies only to the taxable years specified in the taxpayer's notification to the tax administrator.

Rental income

Continuing law provides that, if a person receives income from rental activity but is not in the business of renting property, the person's net profit is subject to taxation where the property is located. The bill applies this apportionment rule to all income from rental activity regardless of whether the person receiving the income is or is not in the business of renting property. The bill also allows a person with income from rental activity to elect to use separate accounting to calculate the person's net profit from such activity, but only if the person requests to make the same election in every municipal corporation in which the person has rental income.⁴⁰ After making the election, the person must continue to use separate accounting to calculate their net profit from rental activity in all municipal corporations that approved its use for the five ensuing taxable years.

Real estate commissions

The bill prescribes specific rules for the apportionment of real estate agent and broker income.⁴¹ Under the formula, the net profit of an agent or broker is apportioned to a municipal corporation based upon the proportion of the commissions that the agent or broker earned from the sale, purchase, or lease of property located in the municipal corporation as compared to the agent's or broker's total commissions in that year. Commissions from the sale, purchase, or lease of real estate are assigned to the municipal corporation in which the real estate is located.

Under the bill, a real estate agent or broker must file a return reporting all of the individual's net profit from real estate activity with the individual's municipal corporation of residence, if that municipal corporation levies an income tax. However, that municipal corporation may offer a credit to the individual for the amount of taxes the individual paid on such net profit to other municipal corporations.

⁴⁰ R.C. 718.02(E).

⁴¹ R.C. 718.02(G).

Tax withholding at source

The bill prescribes uniform municipal income tax employer wage withholding requirements and schedules and modifies the withholding of taxes from gambling winnings to the extent gambling winnings are taxable.

Employer withholding

Under the bill, employers must withhold municipal income taxes from employees according to a fixed schedule whereby the frequency of the withholding depends on the withholding amount for the municipal corporation in the preceding year.⁴² The bill also specifies that the amount that must be withheld equals each employee's "qualifying wages" (described above) for the withholding period multiplied by the applicable municipal income tax rate. Withholding must be done when an employee is directly, indirectly, or constructively paid or when wages are credited to the benefit of an employee. The amount an employer is required to withhold and remit to a tax administrator is deemed to be held in trust for the state whether or not the employer actually withholds and remits the amount. Withholding is not required for employees whose compensation is not taxable under the 20-day casual entrant provision (described above).⁴³

Under current law, no schedule or amount of wage withholding is prescribed for municipal corporations, thus leaving it to each municipal corporation to devise its own schedule and withholding amounts.

Schedule and due dates

The bill's schedule depends on either the total amount the employer was required to withhold during the preceding year or the amounts the employer was required to withhold during any single month in the preceding quarter, as follows:

⁴² R.C. 718.03. The withholding requirement applies not only to employers but to an employer's agent (e.g., a payroll processing company) and to "other payers," which include anyone other than an employer or employer's agent that pays an individual an amount that is included in federal gross income (as under current law).

⁴³ R.C. 718.011(B).

H.B. 5 Employer Mandatory Withholding Schedule	
Preceding period's withholding	Remittance frequency
Annual amount of \$2,399 or less, and no month in preceding quarter of \$200 or more	Quarterly, due by the 15th day after the quarter's end
Annual amount more than \$2,399 and \$11,999, or any month in preceding quarter more than \$200	Monthly, due by the 15th day of following month

In addition to the foregoing schedule, the bill expressly authorizes a municipal corporation to require semimonthly remittance if an employer's preceding year withholding requirement exceeded \$11,999 or if in any month in the preceding year the requirement exceeded \$1,000. If such withholding and remittance is required, taxes withheld during the first 15 days of a month must be remitted within three banking days after the 15th day of the month, and taxes withheld after the 15th day of the month must be remitted within three banking days after the last day of that month.

The bill also authorizes a municipal corporation to require any employer that accumulates more than \$100,000 in unremitted taxes to remit those taxes on the next business day.

Reporting and remittance

Failure to report and remit taxes on time and in the amount required subjects a person to a penalty equal to 50% of the amount of the deficiency, and interest may accrue on unpaid amounts at the federal short-term interest rate plus 5%.⁴⁴

The bill requires each employer subject to the withholding requirements to file an annual report with the appropriate tax administrators. The report must list the names, addresses, and Social Security numbers of employees for whom tax withholding was made for the preceding year, the amount withheld, the amount of qualifying wages paid, and any other information the tax administrator requires. The annual report also must include such information for employees for whom withholding is not required because the employee qualifies for the bill's casual entrant exemption. A municipal corporation may require an employer (or agent or other payer) to remit withheld taxes electronically if the employer is required to remit its employees' federal income tax withholdings electronically. The report is due by the last day of February.

⁴⁴ R.C. 718.27(C). The computation of the interest rate is described in the "**Penalties and interest**" section of this analysis.

The bill continues current law's provisions specifying that failure by an employer to properly withhold taxes does not relieve the employee of liability for the tax, and that failure by an employer to remit withheld taxes does relieve the employee of liability unless the employee and employer colluded. The bill specifies that these provisions apply not only to employers but to their agents and any other payer as well.

The bill expressly permits employers (or their agents or other payers) to withhold municipal income tax if an employee requests even if withholding is not required by law. But any such voluntary withholding must comply with all the bill's requirements for mandatory withholding and remittance.

Wage withholding base

As under current law, "qualifying wages" is the basis on which the amount withheld and the frequency of withholding is determined. The bill continues two of current law's exemptions from withholding. First, taxes need not be withheld against "disqualifying dispositions" of an employee incentive stock option if at the time of the disposition the recipient is not an employee of the employer-corporation. The bill adds that the disposition must not have occurred while the recipient was employed by a successor to that employer. (A disqualifying disposition occurs – and favorable federal tax treatment is lost – when the recipient sells the stock acquired through the option within the minimum holding periods prescribed by federal law.) Second, taxes need not be withheld against any compensation deferred before June 26, 2003, that does not satisfy the definition of qualifying wages when the deferred compensation is paid or distributed. (June 26, 2003, is the effective date of H.B. 95 of the 125th General Assembly, which enacted the withholding exemption for such deferred compensation.)

Employee tips

The bill adds a specific rule for the withholding of tax from employee tips. Under the rule, taxes need not be withheld from employees' tips unless the customer paid the tip by credit card, debit card, or other electronic means, or if the customer paid the tip directly to the employer for subsequent remittance to the employee.

Responsible party personal liability

The bill imposes personal liability on any individual employee or officer of an employer who has control or direct supervision over withholding, reporting, and remitting taxes from employees' wages and who fails to do so, even if the employer dissolves. The same personal liability applies to employers' agents and "other payers."⁴⁵ These provisions are substantially similar to provisions incorporated in the law

⁴⁵ R.C. 718.03(K).

governing state income tax and other state taxes that are collected by one party from another and held in trust for the state until remitted. Current law does not address such personal liability for municipal income taxes, but municipal corporations currently may adopt such a policy.

Gambling and video lottery withholding

Municipal corporations are not prohibited by current law from applying their income taxes to gambling and lottery winnings.⁴⁶ Taxes may be imposed by a municipal corporation on its residents' winnings or by a municipal corporation where a casino or video lottery terminal (VLT) operator is located on patrons, whether a resident or nonresident.

The bill modifies and clarifies current law governing municipal income tax withholding requirements placed on casinos and VLT operators. Current law requires casinos and VLT operators to withhold municipal income taxes from casino gambling and VLT winnings if they are in such an amount that federal income tax reporting is required.⁴⁷ The withholding is done for the municipal corporation where the casino or VLT facility is located. The tax is deducted from the winnings at the municipal income tax rate and reported and remitted to the appropriate municipal tax administrator. Casino and VLT operators must file monthly electronic withholding reports and make monthly remittances to the municipal corporations where the facilities are located, and file annual reports and reconciliation remittances. Tax administrators prescribe the required forms. A penalty of up to \$1,000 may be charged for failure to report and remit such taxes.

The bill modifies the current casino and VLT withholding requirements for municipal income taxes. Some of the modifications address apparent inconsistencies in current law.⁴⁸ First, the bill requires municipal income taxes withheld and remitted by a casino or VLT operator to be credited against the taxpayer's municipal income tax liability, not the taxpayer's state income tax liability as provided in current law.⁴⁹ Second, the bill clarifies that the law governing municipal tax assessments, not the law governing state income tax assessments, applies when a casino or VLT operator fails to

⁴⁶ Such winnings are not considered to be intangible income. *Fisher v. Neusser*, 74 Ohio St.3d 506 (1996).

⁴⁷ R.C. 5747.063 and 5747.064 of current law.

⁴⁸ R.C. 718.031.

⁴⁹ R.C. 5747.063(D) and 5747.064(E) of current law. A recent enactment (H.B. 386) appears to have erroneously stated that withheld municipal income taxes are to be credited against state income tax liability and that state income tax assessment procedures were to be applied to municipal income tax withholding.



withhold and remit taxes as the bill requires. (An assessment is a formal notification of an alleged outstanding tax liability. Once it is issued, certain collection and appeals procedures and taxpayer rights are invoked.)

The bill also removes a provision that requires casinos to issue receipts to patrons showing the amount of municipal income tax withheld from the patron's winnings. Under current law, casinos must make these receipts available to tax administrators upon request. The bill does not remove a similar provision imposing these requirements on VLT operators.

Return filing

The bill prescribes procedures and deadlines for filing municipal income tax returns, including the annual return, filing extensions, amended returns, and consolidated corporation returns.

Annual returns

The bill requires all taxpayers subject to a municipal income tax to file annual municipal income tax returns unless their liability is less than certain thresholds, prescribes specific deadlines and forms and procedures for filing annual returns, and prescribes maximum penalties for failure to file returns properly or on time.

Current law does not require tax returns of all taxpayers. Whether a return is required depends on each municipal corporation's ordinances or rules. No specific filing deadline is prescribed, but current law prohibits filing deadlines that fall before the federal return filing deadline for the corresponding federal tax reporting period.⁵⁰ Minimum filing and payment thresholds are not prescribed, but municipal corporations may establish their own.

Form of return

The bill requires each taxpayer that is liable for municipal income tax to complete and file an annual return on a form prescribed by the tax administrator or on a generic form that contains all the information required by ordinance, resolution, or rules adopted by the municipal corporation or tax administrator.⁵¹ Filed returns must contain the taxpayer's signature or the signature of the taxpayer's authorized representative and

⁵⁰ R.C. 718.05(B) of current law.

⁵¹ R.C. 715.05(A) and (K) of the bill.

of any tax preparer. The return must also include the taxpayer's Social Security number or taxpayer identification number.⁵²

Under the bill, a tax administrator may require a taxpayer to submit additional information along with the taxpayer's annual return, amended return, or application for refund. The required additional information may vary depending on the taxpayer filing the return or application, as described below.

Individual taxpayers

All W-2 "Wage and Tax Statement" forms, 1099-MISC forms, K-1 forms, form 2106, schedules C, E, and F, and pages 1 and 2 of federal return 1040.⁵³

Nonindividual taxpayers filing net profit returns

Federal forms 1041, 1065, 1120, 1120-REIT, 1120F, 1120S, 1125-A, 4562, 8825, 8903, and 8949; schedules A, D, E, and M-3; any supporting statements for "other income," "taxes and licenses," "other deductions," and "other costs" reported on the foregoing forms and schedules; the method of accounting and allocation used to determine the income allocable to the municipal corporation; and, if the taxpayer is a pass-through entity, any K-1 schedules issued to or received by the taxpayer (or a schedule summarizing the information contained on such K-1 schedules), form 1096, the taxpayer's federal consolidated schedules (if filing a consolidated return), the taxpayer's NOL carry forward schedule providing for each year in which the NOL was sustained, the method of accounting and allocation used to determine the portion of NOL used as a deduction in prior years, and the amount of NOL claimed as a deduction in the current year.

The bill requires the Department of Taxation to prescribe a method by which nonindividual taxpayers filing net profit returns may submit the supplemental information along with the return through the Ohio Business Gateway. The method must be developed and made available to taxpayers by January 1, 2015.⁵⁴

⁵² R.C. 715.05(E)(1) of the bill.

⁵³ R.C. 715.05(E)(2) of the bill.

⁵⁴ R.C. 715.05(E)(3) of the bill.



Employers filing withholding reconciliation returns

For employers, an information return for each employee from whom municipal income tax has been withheld specifying the municipality for which the tax is withheld and all other information required for federal income tax reporting purposes.⁵⁵

Filing deadlines

Under the bill, the deadline for filing annual returns for all municipal corporations is established as the same filing deadline for federal income tax returns – i.e., April 15.⁵⁶

Extensions

The bill permits taxpayers to request a filing extension for annual returns, and states that municipal tax administrators may grant an extension for good cause.⁵⁷ Extension requests may be filed directly with the tax administrator or through the Ohio Business Gateway. The state Tax Commissioner and the Ohio Business Gateway Steering Committee must "take all steps necessary" to provide taxpayers with the ability to file extension requests through the Gateway and to notify municipal tax administrators of extension requests filed through the Gateway.

Taxpayers that receive an extension for filing the federal income tax return automatically may extend for a like period the filing of the municipal return for the corresponding tax reporting period.⁵⁸ Taxpayers are not required to pre-notify the municipal corporation of the extension, but must submit a copy of the federal extension request with the municipal return. The deadline for payment of taxes due is not extended.

The bill specifically authorizes taxpayers who have not requested an extension for filing a federal income tax return to request an extension for filing a municipal income tax return.⁵⁹ Current law only addresses filing extensions when a taxpayer has requested an extension for filing a federal income tax return by requiring such taxpayers to request an extension for filing a municipal income tax return by sending a

⁵⁵ R.C. 715.05(E)(4) of the bill.

⁵⁶ R.C. 718.05(F)(1) of the bill; R.C. 5747.08(G).

⁵⁷ R.C. 718.05(F)(3) of the bill.

⁵⁸ R.C. 718.05(F)(2) of the bill.

⁵⁹ R.C. 718.05(F).



copy of the federal filing extension request to the tax administrator or notifying the municipal corporation through the Ohio Business Gateway.⁶⁰

As under current law for taxpayers filing for a federal extension, the tax administrator is required to grant the municipal extension so long as the request is filed before the last day for filing the municipal income tax return. The extension for filing a return does not extend the last date for paying the tax without penalty unless the municipal corporation grants an extension of that date.

The bill expressly authorizes a tax administrator to grant a filing extension for any notice or return upon a showing of good cause by the taxpayer. Extension requests may be filed directly with the tax administrator or through the Ohio Business Gateway.⁶¹

The bill requires the state Tax Commissioner and the Ohio Business Gateway Steering Committee to "take all steps necessary" to provide taxpayers with the ability to file extension requests through the Gateway and to notify municipal tax administrators of extension requests filed through the Gateway.⁶²

Extension for military personnel

The bill permits active-duty National Guard members and military reservists to request municipal income tax filing and payment extensions that continue for the period of active duty status and for 180 days after termination of active duty.⁶³ The active duty must result from either a Presidential executive order or Congressional act. The extension permission also applies to civilian support personnel serving in a combat zone or contingency operation. The extension must be applied for with the appropriate tax administrator, and the administrator may require supporting documentation. Once the extension ends, taxes are payable under an installment arrangement. The tax administrator may prescribe the terms of the installment arrangement as the administrator considers appropriate.

A filing and payment extension also is granted to such active-duty National Guard members and reservists who receive a federal extension. The extension is for the same length of time as the federal extension.

⁶⁰ R.C. 718.05(D) and 718.051 of current law.

⁶¹ R.C. 718.05(F)(2) and (3) of the bill.

⁶² R.C. 718.05(F)(4) of the bill.

⁶³ R.C. 718.052 of the bill.



An individual may qualify for both extensions. In either case, no interest or penalty may be applied to the tax due during the extension. If an individual and the individual's spouse file jointly, the extension applies to the spouse as well. Both kinds of extension are substantially similar to existing state income tax extensions for such individuals.⁶⁴

Under current law, a municipal corporation may grant extensions for such individuals but is not required to.

Minimum filing and payment thresholds

Under the bill, if a taxpayer owes \$10 or less to a municipal corporation with an annual return for individual income or for net profits, the taxpayer is not required to pay the tax, but is not relieved of filing the return.⁶⁵

No return needs to be filed if a municipal corporation grants its residents a credit for taxes paid to another municipal corporation and a resident's credit exceeds the liability to the municipal corporation of residence.⁶⁶

Joint returns

The bill specifies that municipal corporations may not deny spouses the ability to file joint returns.⁶⁷ Current law does not address joint returns, thereby leaving it to each municipal corporation to allow or disallow joint filing and to determine the eligibility of individuals to file jointly.

Amended returns

The bill requires taxpayers to file an amended return with the appropriate municipal tax administrator if any of the information required to compute a taxpayer's municipal income tax liability is altered as the result of an adjustment to the taxpayer's federal income tax return. The deadline for filing an amended return is 60 days after the adjustment to the taxpayer's federal income tax return is agreed to or finalized or the abatement or credit resulting from the adjustment is assessed or paid, whichever occurs first.

⁶⁴ See R.C. 5747.026.

⁶⁵ R.C. 718.05(F)(1) and (G) of the bill.

⁶⁶ R.C. 718.04(D) and 718.05 of the bill.

⁶⁷ R.C. 718.05(D) of the bill.

The bill requires amended returns to be accompanied by payment of any additional tax due plus accrued interest unless the tax due is \$10 or less. If the taxpayer fails to pay at the time of filing the amended return, the unpaid amount, along with any applicable penalty and interest, is subject to assessment by the tax administrator. Applications for a refund of overpayment due to an adjustment to the taxpayer's federal or state income tax return are subject to the same 60-day deadline that applies to filing an amended return. Applications for refund arising from an amended return are subject to the same procedural rules and requirements as other applications for a municipal income tax refund except that the three-year window for filing the application may be extended to the due date of the amended return. Municipal corporations are not required to issue refunds of \$10 or less.

The bill specifies that the filing of an amended return generally does not reopen facts, figures, computations, or attachments that are not directly or indirectly affected by the adjustment of the taxpayer's federal income tax return. Similarly, facts, figures, computations, and attachments no longer subject to assessment are not reopened by an amended return. However, the bill specifies that taxpayers cannot be required to pay additional tax exceeding the amount that would have been due had all facts, figures, computations, and attachments been reopened. And any refund arising from the amended return may not exceed the refund that would have been due if all facts, figures, computations, and attachments were reopened.⁶⁸

Currently, municipal corporations may establish their own ordinances or rules governing the filing of amended returns.

Consolidated corporation returns

The bill imposes uniform standards with respect to the filing of consolidated municipal income tax returns by affiliated groups of corporations. Under the bill, "affiliated group of corporations" has the same meaning as in the Internal Revenue Code, except that incumbent local telephone exchange companies whose primary business is providing local exchange service (other than cellular telephone service) outside Ohio are excluded. As such, incumbent local telephone exchange companies may not be required to and may not elect to file a consolidated municipal income tax return. The income or loss of such companies is excluded from the income or loss of the group for municipal income tax purposes.⁶⁹

⁶⁸ R.C. 718.41.

⁶⁹ R.C. 718.06 of the bill. An incumbent local telephone exchange company is a company that provided local exchange service when the federal Telecommunications Act of 1996 was enacted (e.g., the divested AT&T regional Bell operating companies or "Baby Bells.")



Electing consolidated filers

The bill requires municipal corporations levying an income tax to allow an affiliated group of corporations to file a consolidated tax return for any taxable year beginning on or after January 1, 2015, if the group filed a consolidated federal income tax return for the taxable year, at least one member of the group is subject to the municipal income tax, and the group shows good cause for the consolidated filing. Under current law, municipal corporations must accept a consolidated income tax return from any affiliated group of corporations that is subject to the municipal corporation's tax if that affiliated group filed a consolidated federal income tax return for that taxable year.⁷⁰

Under the bill, if an affiliated group of corporations elects to file a consolidated municipal income tax return, the election is binding for the succeeding five years and is renewed for consecutive five-year periods until the group formally elects to discontinue filing a consolidated return. The group may request permission from the tax administrator to discontinue filing a consolidated return before the end of the five-year period.

An election to discontinue filing a consolidated return is binding for five years following the first taxable year of the election. An election to file a consolidated return or to discontinue filing a consolidated return is binding on all members of the affiliated group of corporations subject to a municipal income tax.

The bill requires affiliated groups of corporations that elect to file a consolidated municipal income tax return before January 1, 2015, to continue filing consolidated returns for all taxable years beginning before January 1, 2020, unless the group obtains permission from the Tax Commissioner to discontinue filing consolidated returns.

Mandatory consolidated filers

The bill authorizes the tax administrator of a municipal corporation to require a taxpayer to file a consolidated return if the taxpayer is a member of an affiliated group that filed a federal consolidated return and the tax administrator determines, by a preponderance of the evidence, that intercompany transactions are not at arm's length and there is a distortive shifting of income or expenses with regard to the allocation of net profits to the municipality. Once the tax administrator makes such a determination, the taxpayer is required to continue filing a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer receives written permission from

⁷⁰ R.C. 718.06 of current law.

the tax administrator to file a separate return or the taxpayer has experienced a "change in circumstances."

Calculation of net profit

Under the bill, an affiliated group's consolidated municipal income tax return must be prepared in the same manner as its consolidated federal income tax return. The group's net profit within the municipal corporation is calculated in the same manner as a single corporation's net profit, with adjustments for items of income or deductions that were consolidated on the group's federal tax return.

In calculating net profit, the group may choose to include or to exclude the net profit or loss of a pass-through entity that is included in the consolidated federal taxable income of the group. If the net profit or loss of such a pass-through entity is excluded from the group's net profit, the pass-through entity is subject to municipal income tax as a separate taxpayer on that portion of the excluded net profits. If the net profit or loss of such a pass-through entity is included in the group's net profit, the pass-through entity is not subject to municipal income tax as a separate taxpayer on the portion of net profits included in the consolidated federal taxable income of the affiliated group.

Joint and several liability

The bill specifies that each member of an affiliated group is jointly and severally liable for any taxes, interest, or penalties due with a consolidated return.

Estimated tax payments

Estimated tax payment requirements and schedule

Current law does not require municipal corporations to collect estimated taxes, but it does limit the amounts and due dates for any municipal corporation that does require estimated payments.⁷¹ If a municipal corporation requires estimated tax payments, those payments must be made on a quarterly basis according to a uniform schedule. For individuals, the municipal corporation may require taxpayers to pay not more than 22.5% of the taxpayer's estimated annual tax liability (before any reduction for credits, estimated payments, or withheld taxes) by April 30, 45% by July 31, 67.5% by October 31, and 90% by January 31. For other taxpayers, the same threshold amounts apply, but the payments are generally due on the fifteenth day of the fourth, sixth, ninth, and twelfth months of the taxable year. (For calendar year taxpayers, those dates are April 15, June 15, September 15, and December 15.)

⁷¹ R.C. 718.08, repealed and re-enacted by the bill.



The bill requires municipal corporations to collect estimated taxes from every taxpayer whose estimated annual tax liability, after subtracting for amounts to be withheld from the taxpayer's compensation, will be more than \$100. The payments must be made quarterly and in the same percentages as those specified in current law (i.e., 22.5%, 45%, 67.5%, and 90%). However, for all taxpayers, the payments are due on the fifteenth day of the fourth, sixth, ninth, and twelfth months of a taxable year. (For calendar year taxpayers, those dates are April 15, June 15, September 15, and December 15.)

Under current law, amounts withheld from an individual's compensation are credited towards the payment of the individual's estimated tax in equal amounts for each of the quarterly due dates. The bill maintains this general rule, but specifies that, if a taxpayer establishes the actual date the amounts were withheld, those amounts are considered to have been paid on the date they were withheld.

The bill also specifies that tax overpayments applied as credits to a subsequent taxable year are considered to have been paid on the date the taxpayer mailed or electronically transmitted the payment. In addition, the bill provides that taxes withheld from winnings by a casino operator or by a lottery sales agent are considered to have been paid on the date the taxes are withheld.

Safe harbor provisions

Under current law, a municipal corporation may not penalize a taxpayer for the underpayment of estimated taxes (e.g., by charging a penalty or interest) if (1) the taxpayer is a resident individual but was not domiciled in the municipal corporation at the beginning of the year or (2) the taxpayer paid estimated taxes for the tax year equal to 100% of the taxpayer's total tax liability for the previous year.

The bill maintains these two "safe harbor" provisions, and additionally prohibits municipal corporations from penalizing a taxpayer for the underpayment of estimated taxes if the taxpayer has paid at least 90% of the amount due for the current year. If a taxpayer fails to make estimated payments or meet any of the safe harbor criteria, the municipal corporation must charge interest on the unpaid tax. The interest accrues from the date the estimated payment was due until the date the full amount is paid.

Declaration of estimated tax filing requirement

Taxpayers required to make estimated payments under the bill must file a declaration of estimated taxes. The declaration must be filed on or before the due date for municipal income tax returns (April 15 for individuals and other calendar year taxpayers), on or before the fifteenth day of the fourth month of a taxpayer's fiscal year (for fiscal year taxpayers), or on or before the fifteenth day of the fourth month after a



taxpayer first becomes subject to the municipal corporation's tax. Taxpayers who file joint returns must file a joint declaration of estimated taxes.

The bill allows tax administrators to waive the declaration filing requirement for any class of taxpayers if the administrator finds that the waiver is reasonable and proper in light of administrative costs and "other factors."

Ohio Business Gateway Steering Committee

The bill changes the composition of the Ohio Business Gateway Steering Committee – the body charged with overseeing and guiding the operations of the Ohio Business Gateway ("the Gateway"). The Gateway is the state-administered online computer network system that allows businesses to electronically file business and tax forms with state agencies. Currently, the Committee consists of not more than four representatives of the business community, one representative of municipal tax administrators, and two tax practitioners, all appointed by the Governor and approved by the Senate. Additionally, the Committee consists of the following ex officio members or their designees: the highest officer of each state agency that uses the Gateway for the filing of tax documents, the Secretary of State, the Treasurer of State, the Director of Budget and Management, the state Chief Information Officer, the Tax Commissioner, and the Director of Development Services.

The bill increases the number of appointed members who may represent municipal tax administrators from one to three. The bill requires that the representatives of the municipal tax administrators be selected from a list of candidates provided by the Ohio Municipal League.⁷²

Tax refunds

Under current law, a municipal income taxpayer is entitled to a refund of any overpaid taxes.⁷³ Interest accrues on the refund amount, beginning on the day the taxpayer made the overpayment or the day the taxpayer's annual return was due, whichever is later, and ending on the day the refund is made. However, no interest is paid if the taxpayer receives the refund within 90 days after the taxpayer filed the annual return or after that return was due, whichever is later.

Under the bill, a taxpayer may receive a refund only if the amount overpaid is more than \$10 (similarly, taxes of \$10 or less do not have to be paid).⁷⁴ Interest accrues

⁷² R.C. 5703.57.

⁷³ R.C. 718.12(C) and (D).

⁷⁴ R.C. 718.19.

on the refund amount in a similar fashion as under current law, except that interest may begin to accrue only from the date of the overpayment, not from the annual return due date.⁷⁵

Refund applications must be filed with the municipal corporation's tax administrator within three years after the date the tax was due or paid, whichever is later.⁷⁶ A tax administrator may require that a taxpayer provide substantiating documentation in support of a refund claim.

Under current law, if tax or withholding is paid to a municipality and the time period for seeking a refund of the amounts paid lapses, a second municipality imposing a tax on that income or wages must allow a nonrefundable credit for the amounts paid to the first municipal corporation. If the tax rate in the second municipality is less than the tax rate in the first municipality, the credit is calculated on the basis of the second municipality's tax rate.

The bill specifies that if the tax rate in the second municipal corporation is greater than the tax rate in the first municipal corporation, then the tax due in excess of the credit afforded must be paid to the second municipal corporation, along with any interest accruing during the period of nonpayment. Under continuing law, the credit based on erroneous payment to another municipality cannot be carried forward.⁷⁷

"Written determinations" of tax liability

The bill specifies procedures for how municipal corporations are to formally notify taxpayers, employers, and others allegedly owing taxes of the person's liability, and for how those persons must respond if they intend to challenge the finding. The procedures are initiated by the issuance of a "written determination" to a taxpayer, which the bill defines as a written ruling regarding the taxpayer's municipal income tax liability.⁷⁸ A ruling qualifies as a written determination only if it is in response to a taxpayer's written request. The written determination must have "WRITTEN DETERMINATION" printed at the top of its first page in a minimum font size of 18-point. (The font size of this paragraph is 12-point.) The bill specifies that the following

⁷⁵ R.C. 718.12(D).

⁷⁶ R.C. 718.12(C). The three-year statute of limitations may be extended if the taxpayer files a refund application with an amended return after the end of the three-year period under R.C. 718.41.

⁷⁷ R.C. 718.121.

⁷⁸ R.C. 718.01(PP) and 718.12. Only "taxpayers" will be referred to in the remainder of this section, but the term should be read to include employers or others that might have an alleged liability for income taxes withheld from employees.

items or actions are not written determinations: billing statements notifying taxpayers of current or past-due balances, requests for additional information, notices of mathematical errors, denials of refund claims based on original annual returns, or "other written correspondence."

The issuance of a written determination in compliance with the bill's procedures initiates the time period within which a taxpayer may contest the ruling. A taxpayer contesting the ruling must file an appeal with the municipal corporation's local board of tax review within 60 days after the determination is issued.⁷⁹ When a written determination is issued, the tax administrator also must provide the taxpayer with written notice of the taxpayer's right to appeal, the manner in which it may be appealed, and the address to which the appeal request must be sent.⁸⁰

Delivery of written determinations

A written determination must be issued to a taxpayer by either personal service, certified mail, or a delivery service approved by the state Tax Commissioner.⁸¹ The taxpayer also may permit it to be delivered by an alternative means such as secure e-mail.

The bill prescribes specific procedures for instances when the initial attempt to deliver a written determination allegedly fails.⁸² If the initial attempt fails because the mailing is returned as undeliverable to the address, the tax administrator must attempt to find the taxpayer's new last known address "by reasonable means" including the Postal Service's change of address service. If the new address is not found, the determination must be sent by ordinary mail (presumably to the original address), and the bill states that it is thereby served on the taxpayer. If the ordinary mailing fails because of an undeliverable address, the postmark date of that mailing establishes the 60-day appeal period. The bill also states that "delivery" by any of the foregoing means is prima facie (i.e., rebuttable) evidence that delivery of the written determination is complete.

If delivery by certified mail fails for some reason other than being returned because of an undeliverable address, the written determination must be resent by ordinary mail. The determination must show the date of the ordinary mailing and must include a statement, specified in the bill, informing the addressee that the 60-day appeal

⁷⁹ R.C. 718.11(C).

⁸⁰ R.C. 718.11(B).

⁸¹ R.C. 718.18.

⁸² R.C. 718.18.

period for the determination begins ten days from the date of the mailing. The mailing is prima facie evidence that the delivery was completed ten days after the mailing and that the determination was served, unless the mailing is returned because of an undeliverable address. If the ordinary mailing is returned because of an undeliverable address, the tax administrator must proceed as if the original certified mailing had been returned because of an undeliverable address.

A person may dispute the presumption that delivery of a written determination was successful by showing, by a preponderance of evidence, that the person was not associated with the address where the mailing was sent when the determination was sent.

Limits on collection actions

The bill requires civil actions to collect municipal income taxes to be brought within three years after the tax due date or the date the return was actually filed (whichever is later), as under current law, but specifically provides a potentially longer period if the taxpayer contests the ruling that unpaid taxes are due by filing an appeal with the local board of tax review.⁸³ If such an appeal is filed, the time limit on civil actions begins when the appeal is filed and ends one year and 60 days after the appeal, and any subsequent appeal, is finally decided and all further opportunities for appeal are exhausted or expire. However, if this period ends before the expiration of the three-year period, the limit on actions is three years after the tax payment or return filing due date. (The bill defines the period between the appeal filing date and 60 days after the appeal is finally decided as the "qualifying deferral period." The time limit on the civil action ends one year after this period.)

By mutual consent, in writing, a taxpayer and tax administrator may extend the foregoing time limits. If such an extension is agreed to, the time limit on the taxpayer making a related refund claim is extended by the same period. (See "**Tax refunds**," above.)

The bill does not change the current law that requires criminal prosecutions regarding municipal income tax ordinances to be brought within three years after the offense, or six years in cases of fraud, failing to file returns, or omitting at least 25% of reportable income.

⁸³ R.C. 718.12(A).

Penalties and interest

The bill fixes the amount of penalties and interest that municipal corporations must impose for failure to file returns or pay taxes on time. Currently, municipal corporations may establish their own penalty and interest impositions. The bill's limits on penalty and interest apply to returns and tax payments (including tax withholding remittances and estimated payments) due after January 1, 2015, and to returns and payments due before that date but not yet filed or paid by June 30, 2015.⁸⁴

The civil penalties and interest that a municipal corporation must impose are as follows:

- The rate of interest that must be charged on unpaid taxes is the average yield on marketable securities issued by the United States government that mature within three years (which the bill defines "federal short-term rate"), plus five percentage points, which each municipal corporation is required to publish annually.⁸⁵
- For unpaid taxes and estimated taxes, a penalty of 15% of the unpaid amount.
- For unremitted tax withholdings, a penalty of 50% of the unpaid amount.
- For each late annual return of an individual, \$25.
- For each late annual return of other taxpayers, a penalty of \$25 per month, up to \$150.⁸⁶

In addition, the bill provides that any person that fails to remit withheld taxes is guilty of a first degree misdemeanor and subject to a fine of up to \$1,000 or imprisonment for up to six months, or both. This statutory penalty applies unless the violation is punishable by a municipal ordinance that imposes a greater penalty or requires dismissal from office, discharge from employment, or both, in which case the offender is penalized under the municipal ordinance.⁸⁷

⁸⁴ R.C. 718.27(B) and (D).

⁸⁵ See R.C. 5703.47.

⁸⁶ R.C. 718.27(C).

⁸⁷ R.C. 718.99(A).



The bill does not prohibit a municipal corporation from fully or partially abating (i.e., forgiving) the civil penalties at the discretion of the tax administrator.⁸⁸ The bill does not prohibit a municipal corporation from charging the post-judgment costs of collecting taxes, interest, and penalties, including attorney's fees.⁸⁹

Local boards of tax review

The bill modifies existing minimum procedural requirements regarding municipal income tax appeals. The requirements apply only to municipal corporations that impose an income tax.

Current law requires municipal corporations to create a board of appeals within 180 days after a municipal income tax takes effect.⁹⁰ Taxpayers have the right to appeal decisions of the tax administrator to the board, provided that the taxpayer filed required tax returns and documents pertaining to the municipal income tax obligation at issue. The bill renames boards of appeals as "local boards of tax review" and extends taxpayers' right of appeal to "written determinations" issued by the tax administrator.

Composition of the board

Currently, each municipal corporation imposing a tax on income has authority to determine the composition of its board of appeals. The bill rescinds that authority and requires each local board of tax review to consist of three members, two of which are appointed by the municipal legislative authority and one of which is appointed by the top municipal administrative official. The two legislatively appointed board members must not be employees, elected officials, or contractors with the municipal corporation at any time during their terms or in the five years immediately preceding the date of appointment. These board members serve a term of two years. There is no limit to the number of terms a legislatively appointed member may serve if the member is reappointed at the expiration of a term. The board member appointed by the top administrative official may be, but is not required to be, an employee of the municipal corporation who is not the tax administrator or the director of finance or equivalent officer or an employee or other similar official directly involved in municipal tax matters, or any direct subordinate of such an officer, employee, or administrator. This board member serves at the discretion of the top administrative official.

⁸⁸ R.C. 718.27(E).

⁸⁹ R.C. 718.27(G).

⁹⁰ R.C. 718.11.

The bill specifies that any member of the local board of tax review who ceases to meet the qualifications for the position resigns immediately by operation of law. Legislatively appointed board members may be removed by the legislative authority of the municipal corporation before the expiration of a term for malfeasance, misfeasance, or nonfeasance in office. The legislative authority must afford such a member due process by giving the member a copy of the charges against them and allowing the member the opportunity to be publicly heard in person or by counsel in the member's defense upon at least ten days' notice. A decision by the legislative authority to remove a member of the board of tax review is final and may not be appealed.

The bill requires any vacancy in an unexpired term to be filled within 60 days after the vacancy is created. Appointments to fill vacancies on the board must be made in the same manner as initial appointments. Board members appointed to fill a vacancy hold office for the remainder of the unexpired term.

Notice to taxpayers

Existing law requires municipal tax administrators to provide written notice to taxpayers of the right to appeal and the procedure for pursuing an appeal when a tax administrator issues a "decision regarding a municipal income tax obligation" that is appealable. The bill eliminates this general notice requirement but extends it to written determinations issued by a tax administrator and denials of refund claims.

Procedural requirements

The bill requires requests for appeals to be filed with the local board of tax review within 60 days after the taxpayer receives the written determination. Current law allows the taxpayer 30 days after the tax administrator issues an appealable decision. The bill maintains the existing requirement that the request be in writing and state the alleged errors in the decision but eliminates the current rule that the taxpayer filing the appeal must have filed all the required returns and documents pertaining to the municipal income tax obligation at issue. Current law requires the board to schedule hearings within 45 days after receiving a request unless the taxpayer waives a hearing. The bill extends the hearing deadline to 60 days after receiving a request and, in addition to waiver, the bill allows the board to delay a hearing if the taxpayer requests additional time to prepare or if the parties jointly agree to a continuance. However, the bill stipulates that the hearing must be completed within 120 days after the first day of the hearing. As under current law, the board must issue a decision within 90 days after the final hearing, and send notice of its decision to the taxpayer within 15 days after issuing the decision.

Compromise of claims and payment plan agreements

For any municipal income tax and related amounts owed to a municipal corporation, the bill specifies that nothing prevents the tax administrator from either compromising a claim or entering into an extended payment plan ("pay-over-time plan") with the person. A tax administrator may consider any reasonable standard when deciding whether to compromise a claim or enter into a pay-over-time plan, including, the practical difficulty of collecting the amount due, that economic hardship is preventing the amount from being paid, or, if the claim is a joint liability of two spouses, that compromising the claim would protect the spouse not responsible for causing the claim ("innocent spouse"). A spouse is rebuttably presumed to be an innocent spouse if the spouse was granted similar relief against a joint assessment by the Internal Revenue Service.

A compromise or pay-over-time plan does not extinguish the liability of anyone other than the tax administrator and the other party to the agreement. A tax administrator's decision to reject a person's offer to compromise a claim or enter into a pay-over-time plan may not be appealed. A compromise or pay-over-time plan is void if a taxpayer defaults under a term of the compromise or plan or if the compromise or plan was obtained by fraud or by misrepresentation of a material fact. In the event a compromise or plan becomes void, any unpaid amounts remain due and interest that would have accrued in the absence of the compromise or plan continues to accrue.⁹¹

Current law does not address the authority of municipal tax administrators to compromise income tax claims or enter into pay-over-time agreements; this authority would be governed by municipal ordinance or rule.

Record retention

The bill requires taxpayers to keep any records necessary to show the extent of the taxpayer's liability for municipal income tax. The tax administrator may adopt rules related to the maintenance of such records and of federal tax documents. If a taxpayer is required to maintain records according to those rules, the tax administrator is authorized to inspect such records for up to six years after the taxable year to which the records relate. The administrator may allow taxpayers to destroy records before the end of that six-year period or require taxpayers to maintain the records beyond that time.

⁹¹ R.C. 718.28.

The tax administrator may require any person to keep records that the tax administrator determines are necessary to show the extent of a taxpayer's municipal income tax liability.⁹²

Inspection of documents and examinations

The bill expressly allows a tax administrator to inspect the documents, including state and federal tax returns, of any person or to examine an officer, agent, or employee of a person in the course of administering and enforcing municipal income tax laws.⁹³ The bill also requires any person other than a tax administrator who makes a demand for inspection or examination to produce the person's authority or credentials. The person retained to audit or inspect the documents of a taxpayer may not be paid on a contingency basis (i.e., based on the amount of money the person may discover for recovery).

Opinions on prospective tax liability

Municipal tax administrators' opinions

The bill permits persons to ask a municipal tax administrator to issue an official opinion with respect to municipal income tax liability.⁹⁴ The provision is similar to one in existing state tax law permitting taxpayers to ask the state Tax Commissioner for an opinion regarding prospective tax liability.⁹⁵ Nothing in current municipal income tax law prevents a municipal corporation from implementing the same or similar rules by ordinance.

The bill requires a request for an opinion of a tax administrator be a written document that fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity, or transaction at issue. If the request concerns an activity or transaction, the taxpayer must identify all parties involved by name, location, or other pertinent facts. The request must relate to an income tax imposed by the municipal corporation. If the request does not meet any of the foregoing criteria, or if the tax administrator's response is not written, signed, and designated as an "opinion of the tax administrator," the opinion is not binding. The bill specifies that ordinary correspondence of the tax administrator does not constitute an opinion of the tax administrator.

⁹² R.C. 718.22.

⁹³ R.C. 718.31.

⁹⁴ R.C. 718.38.

⁹⁵ See R.C. 5703.53.



A tax administrator may refuse to respond to any request for an opinion with respect to municipal tax liability. If the tax administrator determines to issue an opinion, the bill requires the document to provide reference to the reasons the opinion may be subject to change and inform the taxpayer of the taxpayer's duty to be aware of any such changes. Unless the requesting taxpayer asks that the text of the opinion remain confidential, the tax administrator is obligated to remove all identifying information and make the opinion available to the public.

An opinion issued by the tax administrator on or after January 1, 2015, is binding with respect to the taxpayer who requested it and protects that person from liability for any taxes, penalty, or interest otherwise chargeable if the taxpayer reasonably relied on it. However, no taxpayer is relieved of liability if the request for the opinion contained any misrepresentation or omission of one or more material facts. An opinion of the tax administrator does not bind the tax administrator of any other municipal corporation and may not be appealed.

Under the bill, the tax administrator may revoke an opinion by sending a written revocation by certified mail, return receipt requested. The effective date of such a revocation is either the date the taxpayer received the revocation or one year from the date the opinion was issued, whichever is later. An opinion of the tax administrator ceases to provide protection to the requesting taxpayer upon the effective date of any of the following:

- (1) An amendment or enactment of a relevant section of state law or the municipal corporation's income tax ordinance that substantially changes the analysis and conclusion of the opinion;
- (2) A court-issued opinion establishing or changing relevant case law with respect to state law or the municipal corporation's income tax ordinance;
- (3) If relevant, a change in federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;
- (4) Any change in the taxpayer's material circumstances;
- (5) The expiration of the opinion, if specified.

Identifying taxpayer information

If a tax administrator requires a person filing a tax document with the administrator to provide identifying information, such as a Social Security number, the



bill requires a person to notify the administrator of any change to that information before or upon filing the next tax document requiring that information.⁹⁶

If a person does not notify the tax administrator that the person's information has changed, or if the administrator requests that a person furnish identifying information and the person does not do so within 30 days, the administrator may impose a penalty on the person. Additionally, a person that provides fraudulent identifying information is guilty of a fifth degree felony.⁹⁷

Social Security number protection

The bill requires a tax administrator, when transmitting or otherwise using a tax document that contains a person's Social Security number, to take all reasonable measures to ensure that the number is not capable of being viewed by the general public, by masking the information or by other means. The tax administrator is prohibited from placing a person's Social Security number on the outside of any material mailed to the person.⁹⁸

Confidentiality of municipal income tax information

Current law stipulates that all information gained as a result of returns, investigations, hearings, or verifications required in connection with municipal income taxes is confidential and prohibits the disclosure of such information except in accordance with a judicial order or in connection with official municipal business as authorized by state law or local ordinance or charter.⁹⁹ The prohibition does not prohibit tax administrators from providing copies of municipal income tax returns to the state Tax Commissioner or the Internal Revenue Service, or from publishing statistics if in doing so they do not disclose particular taxpayer information and if an ordinance permits.

The bill extends this prohibition to someone accessing such confidential information unless authorized under one of the existing exceptions. The bill also extends the exceptions by allowing a designee of a tax administrator to furnish copies of municipal income tax returns, regardless of how the returns were received, and to furnish other related information to the Internal Revenue Service, the Tax

⁹⁶ R.C. 718.26(A).

⁹⁷ R.C. 718.26(C).

⁹⁸ R.C. 718.26(B).

⁹⁹ R.C. 718.13 of current law.



Commissioner, or other tax administrators. In addition to being permitted to publish statistical information, municipal corporations may disclose such statistics.¹⁰⁰

The bill also prescribes minimum penalties for persons who unlawfully access or disclose confidential information. The penalty for a person who discloses confidential information received from the Internal Revenue Service is conviction of a fifth degree felony and a fine of not more than \$5,000 plus the costs of prosecution or imprisonment for up to five years, or both. The penalty for any other unlawful access or disclosure of confidential municipal income tax information is conviction of a first degree misdemeanor and a fine of \$1,000 or imprisonment for up to six months, or both. In both cases, the statutory penalty applies unless the violation is punishable by a municipal ordinance that imposes a greater penalty or requires dismissal from office, discharge from employment, or both, in which case the offender is penalized under the municipal ordinance. Each instance of unlawful access or disclosure constitutes a separate offense for penalization purposes.¹⁰¹

Current law does not prescribe minimum penalties for unlawful disclosure of confidential municipal income tax information. Instead, the penalties are left to the discretion of the municipal corporation.

False or fraudulent tax documents

The bill prohibits any person, with intent to defraud a municipal corporation or a tax administrator, from knowingly making, presenting, altering, or amending a false or fraudulent report or related records or documents. It also prohibits any person from knowingly assisting or advising someone else in such an undertaking. Violators will be guilty of a first degree misdemeanor and subject to a fine of up to \$1,000 or imprisonment for up to six months, or both, unless the applicable municipal ordinance imposes a greater penalty or requires dismissal from office, discharge from employment, or both, in which case the violator is penalized under the ordinance.¹⁰²

This provision is substantially similar to an existing statute, R.C. 5703.26, which applies to items submitted to the Department of Taxation, the Treasurer of State, a county auditor, a county treasurer, or a county clerk of courts with intent to defraud the state or any of its subdivisions.

¹⁰⁰ R.C. 718.13 of the bill.

¹⁰¹ R.C. 718.99(B) through (D).

¹⁰² R.C. 718.35 and 718.99.



Tax administrator functions

In addition to the various duties and functions of municipal tax administrators described in other sections of this analysis, the bill expressly authorizes tax administrators to perform several of the same general functions that the Tax Commissioner performs in relation to the state income tax:¹⁰³

- Issue subpoenas for the production of the books, papers, records, or state or federal income tax returns of any person. The person must produce the subpoenaed documents within the municipal corporation at the time and place designated by the administrator, even if the person maintains the documents outside of the municipal corporation. Take other investigative actions related to the tax administrator's duties, including issuing subpoenas to compel testimony, examining persons under oath, and administering oaths. A person compelled to attend a hearing or examination may be represented by an attorney or other tax professional.
- Approve agreements to simplify a taxpayer's withholding obligations.
- Perform other administrative duties, including appointing agents, cooperating with other local, state, and federal officials, destroying old tax returns and assessment certificates, issuing refunds, making and correcting assessments, and facilitating the filing of tax returns and payments through the Ohio Business Gateway or other website.

Annual report of income tax revenue

Under continuing law, municipal corporations levying an income tax are required to report to the Tax Commissioner by August 31 of each year the income tax revenue collected by the municipal corporation in the preceding calendar year. The Commissioner may withhold direct disbursements from the Local Government Fund that are otherwise available to every municipal corporation levying an income tax in 2007 from a municipal corporation that fails to report this information.

The bill adds additional information that municipal corporations must report to the Commissioner. Specifically, the municipal corporation must report income tax revenue collected and the amount of refunds awarded by a municipal corporation

¹⁰³ R.C. 718.22, 718.23, and 718.24. Cf. R.C. 5703.04, 5703.05, and 5703.20. As indicated in the "**Background**" section of this analysis, under the home rule powers granted municipalities by the Ohio Constitution tax administrators do not need statutory authorization to perform the functions described in the bill. The bill does clarify that, absent an express limitation, no provision of R.C. Chapter 718. should be construed to limit the ability of administrators to perform the described functions.

during the preceding calendar year, both arranged according to the type of income from which the tax originated (for example, income from the net profit of nonindividuals, resident income, prizes and winnings). Additionally, each municipal corporation must report the amount of income tax revenue collected and refunded on behalf of a JEDD or a JEDZ that levies an income tax administered by the municipal corporation and the amount distributed to contracting parties, during the preceding calendar year.¹⁰⁴

Electric and telephone company municipal income tax data

Under continuing law, the Tax Commissioner administers municipal income taxes insofar as they apply to electric and local exchange telephone companies. The bill allows tax administrators to request income tax data collected in relation to this tax and requires the Commissioner to provide the data within 60 days of the request. The Commissioner may not impose a fee or charge on the municipal corporation for producing the data.¹⁰⁵

Municipal-school district revenue sharing agreements

Under continuing law, if a school district substantially overlaps with one or more municipal corporations, the district and the municipal corporations may agree to share the revenue from income taxes levied by the municipal corporations.¹⁰⁶ In order to enter such an agreement, the territories of the school district and the municipal corporations must overlap such that at least 95% of the municipal corporation territory is within the school district and at least 95% of the school district territory is within the municipal corporations; or, at least 90% of the school district territory is within the municipal corporations and the remainder is within another municipal corporation that has a population of 400,000 or more.

Once a school district and municipal corporation agree to a revenue sharing agreement, the electors of the municipal corporation must approve the tax before it may be levied. The agreement must provide that at least 25% of the revenue from the income tax will go to the school district. The municipal corporation may not levy the tax on nonresidents.

The bill specifies that any ordinance or resolution proposing such an income tax must comply with the limitations specified in the bill. The bill also provides that such a tax may not take effect in the year in which voters approve the tax levy; the municipal

¹⁰⁴ R.C. 5747.50(D).

¹⁰⁵ R.C. 718.051(H).

¹⁰⁶ R.C. 718.09 and 718.10.

corporation may first levy the tax on January 1 of the following year, or of any later year.

Net operating loss review committee

The bill creates the Municipal Income Tax Net Operating Loss Review Committee, which is tasked with evaluating and quantifying the potential financial impact to municipal corporations of requiring each to allow NOL to be carried forward for five years. The 11-member committee consists of two representatives and two senators from different political parties appointed by the respective chamber's leader; three members representing municipal income taxpayers appointed by the Speaker of the House; three members representing taxing municipal corporations appointed by the Senate President; and one member appointed by the Governor who serves as the Committee's chairperson. Members are not compensated or reimbursed for their expenses, and all members must be appointed by March 1, 2014.

Before January 1, 2015, each municipal corporation that levies an income tax in 2011, 2012, and 2013 is required to report to the Committee the difference between the municipal corporation's actual or projected revenue for years 2012 to 2018 under its existing treatment of NOL carryforwards and the revenue that would have resulted in each of those years if the municipal corporation had allowed NOL to be carried forward for five years, as required by the bill. To arrive at this difference, the municipal corporation is required to use a method prescribed by the Committee by July 1, 2014.

If the Committee receives reports from at least 12 cities – Cleveland, Columbus, five cities with a higher ratio of business taxpayers than the state average, and five cities with a higher ratio of individual taxpayers than the state average – then the Committee is required to calculate the total revenue impact reported by municipal corporations. A majority of the Committee is required, by May 1, 2015, to issue a report of the Committee's findings and recommendations to address any revenue shortfalls, which may include using supplemental funds from the Local Government Fund to mitigate those shortfalls. After issuing the report, the Committee ceases to exist on May 1, 2015.¹⁰⁷

¹⁰⁷ Section 7.

HISTORY

ACTION

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