Bethany Boyd *Legislative Service Commission*

Sub. H.B. 477

123rd General Assembly
(As Passed by the General Assembly)

Reps. **Mottley, Thomas, Hartnett, Jolivette, Peterson, Roberts, Corbin, Mead, Terwilleger, Barrett, DePiero, Van Vyven, Aslanides, Patton, Smith, J. Beatty, R. Miller, Barnes, Allen**

Sens. **Blessing, Horn, Herington, McLin**

Effective date: *

ACT SUMMARY

- Provides that parsonage allowances are exempted from municipal income taxation beginning in 2003.
- Ensures that most nonresidents are not taxed by a municipal corporation on income earned for performing work in the municipal corporation, if the work is performed for 12 or fewer days in a year.
- Prescribes limits governing nonresident employers' responsibility for withholding municipal income taxes from employee compensation.
- Prescribes minimum guidelines governing estimated tax payments.
- Ensures that municipal income tax returns do not have to be filed before the applicable federal filing deadline.
- Requires municipal corporations to grant filing extensions to taxpayers upon request, if the taxpayer has requested a federal income tax filing extension.
- Establishes minimum procedural requirements for municipal income tax appeals.

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* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Permits affiliated groups of corporations to file consolidated municipal income tax returns if they file consolidated returns for federal income tax purposes.

- Requires that a municipal corporation declare how it will tax the income of pass-through entities and grants a credit to preclude multiple taxation of that income.

- Allows taxpayers to file "generic" municipal income tax forms.

- Requires municipal corporations to publish municipal income tax ordinances or rules on an Internet-accessible site, and to provide electronic versions of municipal income tax forms on such a site.

- Requires the Tax Commissioner to establish an Internet-accessible site, on which municipal corporations may post electronic forms and publish rules, and to which municipal corporations may link their own Internet sites.

CONTENT AND OPERATION

Municipal income taxation--generally

Municipal corporations have the authority under their home rule powers to tax incomes, but this authority is subject to limitation by the legislature. Over the years, the legislature has limited this authority to some extent by restricting the forms of income that may be taxed; prescribing how business income must be allocated among municipal corporations so as to avoid taxation by multiple municipal corporations on the same business income; imposing statutes of limitations on municipal income tax enforcement actions; requiring municipal corporations to pay interest on some overpaid taxes; and requiring taxpayer information to be kept confidential. (See Chapter 718.) Otherwise, municipal corporations' authority to tax incomes is governed by local laws and rules, subject to any applicable limitations of the Ohio and U.S. Constitutions.

The act places several new limitations and requirements on municipal corporations with respect to income taxation.

New exemptions

Parsonage allowances

(sec. 718.01(F)(7))

The act prohibits municipal corporations from taxing parsonage allowances. A parsonage allowance is an amount paid to a "minister of the gospel" in the form of a rental allowance as part of the minister's compensation, or the rental value of a home furnished to the minister as compensation. Parsonage allowances are not taxed under the federal or Ohio income tax and reportedly by only a few municipal corporations. (See I.R.C. sec. 107.)

The exemption takes effect January 1, 2003.

Occasional entrants to a municipal corporation

(secs. 718.01(F)(8) and 718.02(A)(2))

The act prohibits a municipal corporation from taxing compensation paid to nonresident individuals who are employed in the municipal corporation on an infrequent basis. Specifically, a municipal corporation may not tax compensation received by an individual for personal services performed within the municipal corporation if: (1) the services are performed on no more than 12 days in a calendar year, (2) the individual is not a resident of the municipal corporation, and (3) the principal place of business of the individual's employer is located outside the municipal corporation. Further, a business that employs such an individual in a municipal corporation would not have to count that person's compensation in the payroll factor that is used to allocate the business' income to the municipal corporation.

The exemption 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).

The exemption takes effect January 1, 2001.

$150 threshold on withholding taxes from income

(sec. 718.03)

The act limits the power of municipal corporations to require nonresident employers to withhold municipal income taxes. Currently, withholding is governed solely by municipal ordinances or regulations.

Under the act, beginning January 1, 2001, municipal corporations may not require a nonresident employer to deduct and withhold municipal income taxes from employees' incomes unless the total amount of tax to be deducted and withheld from all employees is more than $150 for a calendar year. Once the total amount to be withheld exceeds $150 for a calendar year, the employer is required

to withhold tax for that year and all ensuing years, unless the amount falls below $150 per year for three consecutive years. The same limits apply to an agent of a nonresident employer that pays the employer's employees on the employer's behalf, and to any other nonresident person that pays withholdable compensation to an individual.

Estimated tax payments

(sec. 718.08)

The act prescribes a uniform schedule under which municipal corporations may require taxpayers to make estimated tax payments if estimated payments are required by the municipal corporation. Beginning January 1, 2003, estimated payments may be required only on a quarterly basis, and may be required only in the following amounts no earlier than the following dates: (1) for individuals, not more than 22-1/2% of the estimated annual tax liability (prior to applying any credits, estimated tax payments, or withheld taxes) by April 30, 45% by July 31, 67-1/2% by October 31, and 90% by January 31, (2) for calendar year taxpayers that are not individuals, 22-1/2% by the taxpayer's federal return filing date, 45% by June 15, 67-1/2% by September 15, and 90% by December 15, and (3) for fiscal year taxpayers that are not individuals, 22-1/2% by the 15th day of the fourth month of the taxpayer's taxable year, 45% by the 15th day of the sixth month, 67-1/2% by the 15th day of the ninth month, and 90% by the 15th day of the 12th month. Any amount deducted and withheld for taxes from an individual's compensation is considered as estimated taxes paid in equal amounts on the act's prescribed payment dates.

Safe harbors

(sec. 718.08(E))

The act prohibits municipal corporations from penalizing a taxpayer for the late payment or nonpayment of estimated taxes (by charging a penalty, interest, or similar charge) if the taxpayer pays estimated taxes equal to the taxpayer's reported tax liability for the preceding year (as long as the preceding year consisted of 12 months and the taxpayer actually filed a return for that year). Nor may a taxpayer be penalized for the late payment or nonpayment of estimated taxes if the taxpayer is a resident individual who was not domiciled in the municipal corporation on January 1 of the current calendar year.

Filing extensions

(sec. 718.05(D))

Beginning January 1, 2001, the act requires municipal corporations to grant tax return filing extensions to taxpayers that have requested a federal filing extension. Receiving a filing extension does not extend the payment due date, unless the municipal corporation extends that date. To receive a filing extension, a taxpayer must file a copy of the federal filing extension request with the municipal corporation not later than the normal municipal return filing deadline. The request must be granted for at least the same period as the federal extension. But the municipal corporation can deny the request if the taxpayer is late in filing the request, does not file a copy of the federal extension request, has not filed a return or other required document for a previous reporting period, or is delinquent in the payment of the municipal corporation's income tax (including any penalty, interest, assessment, or other charge).

Taxpayer appeals

(secs. 718.11 and 733.85; Section 3)

The act establishes certain minimum procedural requirements regarding municipal income tax appeals. The requirements apply only to municipal corporations that impose an income tax.

The act requires municipal corporations to create a board of appeals within 180 days of the act's effective date (if one has not already been created--most municipal corporations imposing an income tax already have an appeals board of some kind). If no municipal income tax is imposed on the act's effective date but is later imposed, a municipal corporation must establish such a board not later than 180 days after the tax takes effect. Taxpayers are given the right to appeal decisions of the municipal tax administrator to the board, provided that the taxpayer filed required tax returns and documents. Requests for appeals must be filed with the board within 30 days after the tax administrator issues an appealable decision. The request must be in writing and state the alleged errors in the decision. Appeals boards must schedule hearings within 45 days after receiving a request, unless the taxpayer waives the hearing. If a taxpayer does not waive the hearing, the taxpayer is entitled to appear before the board and be represented by an attorney at law, certified public accountant, or other representative. The board must issue a decision within 90 days after the final hearing, and send a notice of its decision to the taxpayer within 15 days after issuing the decision. The deadlines do not apply to any appeal filed before the act's effective date.

Each appeals board must adopt rules governing its procedures and keep a record of its transactions. The records are not open to public inspection under the state's public records law, and hearings before an appeals board are not subject to the state's open meetings law.

When issuing decisions that are appealable to the appeals board, tax administrators must inform taxpayers of their right to appeal and the manner in which the appeal must be filed with the board.

Consolidated corporation returns must be accepted

(sec. 718.06)

The act requires municipal corporations to accept consolidated returns from affiliated groups of corporations that file consolidated returns (for the same tax reporting period) for federal income tax purposes, beginning in 2003. This simplifies reporting for members of a corporate group and allows the group to offset operating losses of some group members against operating profits of other group members.

Tax treatment of pass-through entities; credits

(sec. 718.14)

The act requires each municipal corporation imposing an income tax that applies to income from a pass-through entity to declare how it taxes that income and to grant a credit to preclude multiple taxation of that income. (A pass-through entity generally is one of several forms of business organizations that, for federal income tax purposes, is not taxed on its income as an entity; instead, income is taxed only in the hands of each individual owner according to that owner's share of the entity. Partnerships, S corporations, some limited liability companies, and some trusts are forms of a pass-through entity.)

Declaration of tax treatment

Currently, municipal corporations do not have to follow the federal tax treatment of pass-through entities; some may tax the income of an entity in the hands of the entity, while others may tax it in the hands of the individual owners.

Under the act, beginning in 2003, each municipal corporation that taxes pass-through entity income must specify, by ordinance or rule, whether the municipal corporation taxes pass-through entity income in the hands of the entity or in the hands of the individual owners. The municipal corporation may specify a different ordinance or rule for each class of pass-through entities.

Credits for taxes paid to another municipal corporation

Beginning in 2003, each municipal corporation that imposes a tax on pass-through entity income must grant a credit to taxpayers domiciled in the municipal corporation for any municipal income tax paid on income from a pass-through

entity that does not conduct business in the municipal corporation. The credit applies only if the entity is taxed by another municipal corporation in Ohio. The amount of the credit equals the lesser of (1) the taxpayer's proportionate share of the tax paid by the pass-through entity to the other municipal corporation (based on ownership interest, e.g., if the taxpayer owns 20% of the entity, the taxpayer is entitled to a credit equal to 20% of the tax paid to the other municipal corporation) or (2) the amount of tax that would be imposed on the pass-through entity by the municipal corporation in which the taxpayer is domiciled if the entity conducted business in the municipal corporation, also apportioned according to ownership interest. If a municipal corporation has a policy of granting only a partial credit to individuals for income taxes paid to another municipal corporation (e.g., a credit of 80% of the taxes paid to a municipal corporation where the individual is employed), then the credit for taxes paid on pass-through entity income must be reduced to the same percentage (e.g., if the credit for taxes paid by a taxpayer to another municipality is 80%, then the credit for taxes paid on pass-through income to another municipality must be 80% of the taxes paid by the entity).

Generic tax returns and forms

(sec. 718.05)

Under the act, municipal corporations cannot require a taxpayer to file tax returns prior to the filing date for the corresponding federal tax reporting period. Municipal corporations must accept "generic" income tax returns and related documents beginning in 2001 if the returns and documents contain all of the information that the municipal corporation otherwise requires, and if the filer otherwise complies with the municipal corporation's filing requirements. Under the act, a generic form is any electronic or paper form designed for reporting estimated municipal income taxes and annual tax liability, but that is not prescribed by any particular municipal corporation.

Internet forms and publications; sites

(secs. 718.07 and 5703.49)

Beginning in 2002, any municipal corporation that imposes an income tax must make electronic versions of rules or ordinances governing the tax available to the public through the Internet, including rules and ordinances governing the tax rate; payment and withholding; filing returns or other documents and the dates for filing and paying; penalties, interest, assessment, and other collection remedies; and appeal rights and procedures. Any municipal corporation that requires taxpayers to file income tax returns or related documents is required by the act to make available over the Internet blanks of their various income tax returns, forms, and instructions.

A municipal corporation may make the foregoing information and forms available by posting them on the municipal corporation's own Internet site, or on a central site that the Tax Commissioner must create for that purpose by the end of 2001. The Tax Commissioner must provide an electronic link between the central site and the site created by any municipal corporation that establishes its own Internet site. The municipal corporation must incorporate an electronic link between the central site and its own site, and provide to the Tax Commissioner the site's uniform resource locator (i.e., the site's URL, or electronic address).

The Tax Commissioner may adopt rules governing the posting of information on the central site, and may charge municipal corporations a fee to defray the cost of establishing and maintaining the site. The Tax Commissioner is not responsible for the accuracy of the posted information and is not liable for inaccurate or outdated information provided by a municipal corporation.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	10-08-99	p.	1240
Reported, H. Ways & Means	11-10-99	pp.	1353-1354
Passed House (94-1)	01-11-00	pp.	1486-1487
Reported, S. Ways & Means	02-16-00	pp.	1389-1390
Passed Senate (33-0)	03-16-00	pp.	1466-1467
House concurred	03-21-00	p.	1487

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