



# Ohio Legislative Service Commission

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## Bill Analysis

Mackenzie Damon, Sam Benham,  
and Joe McDaniels

### **H.B. 601**

129th General Assembly  
(As Introduced)

**Reps.** Grossman and Henne

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## **BILL SUMMARY**

### **Imposition of new law and rules**

- Requires municipal corporations levying an income tax as of January 1, 2014, and that intend to continue levying the tax thereafter to amend or repeal and re-enact their existing income tax ordinances in a form to comply with the bill's limitations; amended or re-enacted ordinances continuing an existing tax rate above 1% do not require voter approval.
- Expressly prohibits municipal corporations and tax administrators from adopting rules to administer a municipal income tax that conflict with statutory limitations on the tax or rules of the Municipal Tax Policy Board.
- Creates the Municipal Tax Policy Board, composed of seven Governor-appointed municipal tax administrators, to create rules, prescribe forms and other documents, provide instructional materials to taxpayers, and take other actions concerning the state-wide administration and enforcement of municipal income taxes.

### **Computation of taxable income**

- Establishes a uniform tax base applicable to all municipal corporations levying an income tax 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 the wages of individuals under the age of 18, 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, phasing in the requirement over five years; and permits existing losses to continue to be carried forward if current ordinances allow.
- Eliminates the existing deduction for unreimbursed employee business expenses.

### **Residency and exemptions**

- Permits municipal corporations to treat an individual as a resident for municipal income tax purposes only if the individual is an Ohio resident for the purposes of the state income tax.
- Modifies the "casual" or "occasional" 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.
- Eliminates an exemption for legislators, legislative staff, Supreme Court justices, and some judges from an income tax imposed by a municipal corporation where their duties or services are performed but in which they do not reside.

### **Pass-through entities**

- Prohibits municipal corporations from taxing pass-through entities (e.g., partnerships, S corporations, limited liability companies) at the entity level.
- Requires pass-through entities doing business in a municipal corporation levying an income tax to withhold and pay the tax on behalf of all owners of the entity; the owners' individual tax liabilities for their shares of the entity's net profit are credited with the payment.

### **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, including the elimination of the so-called "throwback" provision.

- Authorizes taxpayers to request an alternative method of apportioning income 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 apply separate accounting to all their rental income and must continue to use separate accounting for such income for the ensuing five taxable years.
- Requires real estate agents and brokers to apportion their commissions to a municipal corporation based on the percentage of the agent's or broker's commissions that resulted from sales of real estate located in the municipal corporation.
- Requires professional athletes to apportion their compensation to municipal corporations where they do not reside based on specified "duty days."

### **Withholding taxes at source**

- Prescribes an income tax employer withholding schedule for all municipal corporations that depends on recent withholding amounts.
- 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 return 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 \$250.
- 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.
- Adds municipal tax administrator and Municipal Tax Policy Board representatives to the Ohio Business Gateway Steering Committee.

## **Refunds and assessments**

- Provides that a municipal income taxpayer may receive a refund of overpaid taxes only if the amount overpaid is more than \$5.
- Requires tax administrators to approve or deny tax refunds, and allows taxpayers to appeal the denial of a refund to the local board of tax review within 60 days after receiving notice of the denial.
- Imposes procedures and requirements for the issuance of assessments against taxpayers who fail to pay municipal income tax or file a return, including the manner by which an assessment may be appealed, including jeopardy assessments when warranted.
- Bars assessments after three years 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 assessments to municipal boards of tax review, lengthens the appeal filing deadline, requires hearings to be completed within 120 days, requires all appeals from the boards' decisions to be taken to the Ohio Board of Tax Appeals, 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 notices to taxpayers in accordance with requirements similar to those applicable to the delivery of state income tax notices.
- Requires tax administrators of more populous municipal corporations to appoint at least one problem resolution officer to assist taxpayers with pending administrative cases.
- Prescribes municipal income tax audit procedures, limitations on the conduct of audits, and rights and remedies available to taxpayers subject to an audit.
- Requires municipal income taxpayers to retain tax-related records for up to six years and to provide to municipal tax administrators with copies of federal income tax documents in accordance with rules the Municipal Tax Policy Board may adopt, but 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 or take an individual's statement, and requires such an agent to display credentials upon request.
- Prohibits tax administrators and municipal corporations from evaluating or compensating employees based on the amount of taxes assessed as a production quota system.
- Permits municipal income taxpayers to ask municipal tax administrators or the Municipal Tax Policy Board 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.
- Requires the office of a tax administrator to be open for business during weekdays, excluding holidays.
- Provides an attorneys' fees and litigation cost "fee-shifting" mechanism by which a municipal corporation or taxpayer are responsible for the other party's fees and costs if the other party prevails.
- Imposes a uniform standard of justiciability on actions for municipal income tax-related damages brought by taxpayers against municipal corporations or tax administrators, and specifies that the proper measure of damages available to taxpayers in such actions is compensatory damages along with reasonable costs of litigation and attorneys' fees.
- Permits the court to impose a penalty of up to \$10,000 on a taxpayer who brings a frivolous action against a tax administrator or a municipal corporation.
- 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.
- Prohibits any person subject to laws governing a municipal income tax from failing to provide legally required information and documentation, subject to a fine of up to \$1,000.

### **Other provisions**

- Requires municipal tax administrators to annually report the tax revenue collected on income and net profits, prohibits tax administrators who fail to do so from imposing municipal income tax penalties, and requires the Tax Commissioner to include a summary of the reports in the Department of Taxation's annual report.
- 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.
- Expressly prohibits municipal corporations from levying a tax that is the same as or similar to the state commercial activity tax.

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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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.
- 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.

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

<sup>2</sup> 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*.

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

- 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 or enactment of conforming tax ordinances**

Beginning on January 1, 2014, every municipal income tax levied in the state must comply with the limitations specified in the bill.<sup>4</sup> Each municipal income tax ordinance must incorporate, by reference, the provisions of the municipal income tax law (Chapter 718.) as amended by the bill. The tax must be 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 may offer a credit to residents who earn income in another municipality. The income tax ordinance must specify whether, and to what extent, such a credit will be allowed.

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<sup>4</sup> R.C. 718.04 of the bill.

If a municipal corporation already levies an income tax that will be in effect on January 1, 2014, the municipal corporation must amend, or repeal and re-enact, its existing income tax ordinance to comply with the bill's limitations. An ordinance that is not so amended or re-enacted before January 1, 2014, is repealed by operation of law as of that date. 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 or re-enacts its tax before January 1, 2015, to continue to levy its tax at the voter-approved rate without an additional vote.

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

### **Municipal rulemaking authority**

The bill expressly prohibits a municipal legislative authority or tax administrator that levies an income tax from adopting any rule to administer a municipal income tax that is inconsistent with limitations contained in state law or rules adopted by the Municipal Tax Policy Board created by the bill (described below). The bill requires the legislative authority or tax administrator to publish any rules on the Internet or forfeit the ability to enforce the rules.<sup>5</sup> As under current law, municipal corporations must publish electronic versions of income tax ordinances, rules, instructions, and forms online. Under current law, these documents must be posted on a site created by the Department of Taxation or on the municipal corporation's own web site.<sup>6</sup> The bill instead requires that such documents be posted on both web sites, if the municipal corporation has established a web site for its municipal income tax. The bill also specifically requires the municipal corporation's tax administrator to post the documents.

Nothing in current law limits the authority of a municipal corporation to adopt ordinances and rules to administer a municipal income tax so long as the ordinance and rules do not conflict with limitations of state law.

The bill's changes first apply to a taxpayer's municipal taxable year that ends on or after January 1, 2014. Until then, existing law and ordinances continue to apply.<sup>7</sup>

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<sup>5</sup> R.C. 718.30.

<sup>6</sup> R.C. 718.07.

<sup>7</sup> Section 3 of the bill.

## Municipal Tax Policy Board

The bill creates a Municipal Tax Policy Board to create rules, prescribe forms and other documents, provide instructional materials to taxpayers, and take other actions concerning the state-wide administration and enforcement of municipal income taxes. The principal office of the board must be in Franklin County. The board is required to meet at least quarterly and may meet more frequently upon motion of the chair.<sup>8</sup> In order to fulfill its duties, the board is permitted to designate working committees. Working committees are required to be chaired by a member of the board, but the committee may include nonboard members including tax administrators and interested members of the public.<sup>9</sup> The board is subject to state open meetings and public records laws except with respect to records that disclose the identity of taxpayers.<sup>10</sup>

### Membership

The Municipal Tax Policy Board consists of seven members appointed by the Governor. Five members must be municipal tax administrators, one member an employee of the Regional Income Tax Authority, and one member an employee of the Central Collection Agency.<sup>11</sup> The five board members who are tax administrators must serve municipal corporations of varying population sizes. Municipal corporations of each of the following population intervals must be represented on the board: greater than 350,000, between 100,000 and 350,000, between 50,000 and 100,000, between 15,000 and 50,000, and less than 15,000.<sup>12</sup> The bill stipulates that there is no salary for board members.

The members of the Municipal Tax Policy Board serve terms commencing on April 1 and ending on March 31. The terms of the original members are staggered. Two members are appointed to serve terms ending in 2013, two members are appointed to terms ending in 2014, and three members are appointed to terms ending in 2015. The initial appointments must be made within 15 days after the bill's effective date.<sup>13</sup> The term of office for all subsequent board members, except those appointed to fill vacancies in unexpired terms, is three years. Board members appointed to fill vacancies

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<sup>8</sup> R.C. 718.42(M).

<sup>9</sup> R.C. 718.42(F).

<sup>10</sup> R.C. 718.42(M).

<sup>11</sup> These two organizations administer municipal income taxes on behalf of many of the municipal corporations that levy an income tax under agreement with those municipal corporations.

<sup>12</sup> R.C. 718.42(A).

<sup>13</sup> Section 5 of the bill.

in unexpired terms hold office for the remainder of the term to which the member was appointed.<sup>14</sup> At the expiration of a board member's term, the board member continues in office until a successor is appointed or until 60 days have elapsed, whichever comes first.<sup>15</sup>

If a member of the Municipal Tax Policy Board ceases to meet the qualifications for the position to which the member was appointed, the member resigns immediately by operation of law. Further, the bill grants the Governor authority to remove any board member for malfeasance, misfeasance, or nonfeasance in office. Board members are afforded a certain level of due process if the Governor seeks removal. The Governor must give the board member a copy of the charges, allow the member an opportunity to present a defense either in person or through counsel, and give the member at least ten days' notice of the opportunity to present a defense. A decision by the Governor to remove a board member is final. The bill requires a complete statement of all charges made against the member, the Governor's finding on those charges, and a complete record of the proceedings be filed with the Secretary of State.<sup>16</sup>

In the event of a vacant seat on the board, the remaining members retain full power and authority to exercise all powers of the board. The bill stipulates that vacancies in unexpired terms of board members be filled in the same manner as the original appointment. The individual appointed to fill a vacancy on the board must meet all the qualifications designated for that position such that the composition of the board remains the same. A board member appointed to fill a vacancy in an unexpired term holds office for the remainder of that unexpired term.<sup>17</sup>

## **Rulemaking**

The bill authorizes the Municipal Tax Policy Board to create rules governing the administration and enforcement of municipal income taxes. The rule-making process may be initiated by the board itself to satisfy state law requirements or otherwise upon application of one or more tax administrators. The board is permitted, but not required, to seek comments from municipal corporations, tax practitioners, and taxpayers before adopting a rule. Rules promulgated by the board apply to every municipal corporation

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<sup>14</sup> R.C. 718.42(D).

<sup>15</sup> R.C. 718.42(B).

<sup>16</sup> R.C. 718.42(C).

<sup>17</sup> R.C. 718.42(D).

in the state. The bill permits municipal corporations to apply to the board to review any rule previously adopted.<sup>18</sup>

### **Forms and publications**

The bill charges the Municipal Tax Policy Board with several duties related to the forms, reports, schedules, and attachments associated with municipal income taxes. First, the board is required to prescribe and create the forms, reports, schedules, and attachments required under Chapter 718. Before fulfilling this duty, the bill mandates that the board seek the comments of municipal tax administrators that act as agents of other municipal corporations, the Central Collection Agency, the Regional Income Tax Agency, and other similar organizations, as well as any other persons deemed appropriate by the board.<sup>19</sup> Municipal corporations and tax administrators are required to accept forms other than those prescribed by the board so long as the substitute forms contain all the information required in the forms prescribed by the board.<sup>20</sup> If the board does not create the forms and other documents and furnish them by January 1, 2014, tax administrators must create and furnish their own for use until the board creates and furnishes its forms and documents.<sup>21</sup>

The Municipal Tax Policy Board also must prescribe which documents require a signature and declaration by the taxpayer as well as which documents necessitate a signature by return preparers. The board does not have the authority to require any taxpayer to swear to any document required to be filed with the tax administrator or otherwise mandated with respect to municipal income taxes. Instead, the board is permitted to designate documents to include the following declaration: "I declare under penalties of perjury that this return or claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return and report."<sup>22</sup> Tax administrators are required to accept facsimile transmissions of income tax returns, reports, and other documents requiring the signature of the return preparer.<sup>23</sup>

The bill requires the Municipal Tax Policy Board provide taxpayers an instructional booklet dealing with tax returns, forms, and schedules required by state

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<sup>18</sup> R.C. 718.42(E).

<sup>19</sup> R.C. 718.42(G).

<sup>20</sup> R.C. 718.42(J).

<sup>21</sup> Section 4 of the bill.

<sup>22</sup> R.C. 718.42(H).

<sup>23</sup> R.C. 718.42(K).

municipal income tax law. The booklet must include a description of the method by which municipal income taxes are assessed and collected as well as a statement of the rights and responsibilities of the taxpayer in that process. The board is required to make the book available in both printed and electronic formats.<sup>24</sup>

## 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 2013. 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.<sup>25</sup> 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 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. 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.

<b>H.B. 601 Income Tax Base</b>	
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 (from Form 1040 Schedule C, E, or F), minus net operating loss carryforward</p> <p>--Lottery, gambling, prizes, and similar winnings</p> <p>--Alternatively, a municipal corporation may use federal adjusted gross income if adopted before 2012</p>

<sup>24</sup> R.C. 718.42(L).

<sup>25</sup> R.C. 718.01(B) of the bill.

<b>H.B. 601 Income Tax Base</b>	
Nonresident individuals	--Compensation for work in the taxing municipal corporation unless specifically exempted  --Net profit (as defined for resident individuals) after apportionment and allocation  --Lottery, gambling, prizes, and similar winnings
Corporations, pass-through entities, and other business organizations	--Net profit (adjusted federal taxable income as defined by the bill) after apportionment and allocation

### **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.<sup>26</sup>

The bill makes several changes to the qualifying wage base.<sup>27</sup> 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 2013 only if allowed by ordinance adopted before 2014. If a municipal corporation does not exempt employee stock option income by ordinance before 2014, taxpayers must add the ordinary income component of that income (i.e., non-capital gain) to the Medicare wage base in

<sup>26</sup> Internal Revenue Code sec. 3121(a).

<sup>27</sup> R.C. 718.01(R) of the bill; R.C. 718.03 of current law.

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.<sup>28</sup>

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.

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. Employee contributions and deferrals to 401(k) and 457 retirement and deferred compensation plan accounts will continue to be added to the extent not included in the Medicare wage base, as will supplemental unemployment benefits and compensation received by pre-April 1986 hires. (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.<sup>29</sup> 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. (The bill prohibits the direct taxation of

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<sup>28</sup> R.C. 718.01(R).

<sup>29</sup> R.C. 718.01(D)(1) of the bill; R.C. 718.01(A)(7) and (D)(2) of current law.

pass-through entities' net profits, as described below; the net profits definition serves to determine the net profits base for passed through distributive shares of net profits taxable in the hands of the entities direct or indirect owners that are individuals or C corporations.)

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.<sup>30</sup> But unlike current law, the bill requires NOL deductions and carryforwards (as described below), and eliminates existing exemptions for S corporation profits passed through to shareholders and existing local option deductions for health savings account contributions and for sole proprietors' family health insurance premiums.

### **Net operating losses**

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.<sup>31</sup> 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.<sup>32</sup>

The bill's new five-year carryforward rule applies only to NOLs incurred in taxable years ending after 2013. For NOLs incurred earlier, an NOL deduction and carryforward is allowed only if an ordinance adopted before 2013 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 ending after 2013.

### **NOL phase-in**

The amount of the deduction for NOLs incurred in taxable years ending after 2013 is phased in over five years. The NOL deduction (including carryforwards) for taxable years ending in 2015 cannot exceed 20% of the full amount otherwise allowed; for taxable years ending in 2016, not more than 40%; in 2017, 60%; and in 2018, 80%. For

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<sup>30</sup> 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.

<sup>31</sup> R.C. 718.01(E)(8) and (9).

<sup>32</sup> R.C. 718.01(K) of current law.

taxable years ending in 2019 and later, the full deduction is allowed. The phase-in does not apply to NOLs incurred in taxable years ending before 2014 and deductible under a pre-2013 ordinance.

### Exempt income

The bill adds certain forms of income to those that currently must be exempted from all municipal income taxes.<sup>33</sup> The bill eliminates two specific current exemptions, one for S corporation shareholders' net profits and one for transit employees' occasional passage through a municipal corporation.

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.

<b>Forms of Tax-exempt Income</b>		
<b>Form of income</b>	<b>Current law</b>	<b>H.B. 601</b>
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, pension and retirement benefits, disability benefits, unemployment compensation, sickness accident, or liability insurance proceeds, unless part of qualifying wages	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

<sup>33</sup> R.C. 718.01(C) of the bill.

<b>Forms of Tax-exempt Income</b>		
<b>Form of income</b>	<b>Current law</b>	<b>H.B. 601</b>
Transit employees' pay for occasional passage	Exempt	Not specifically exempt, but potentially exempted under new 20-day rule
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	Not exempted
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
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

### **Employee business expense deduction**

The bill eliminates 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 to the extent deducted on IRS Form 2106.<sup>34</sup>

## Residency

The bill permits municipal corporations to treat an individual as a resident for municipal income tax purposes only if the individual is an Ohio resident for the purposes of the state income tax as determined under the state's "bright line" residency test. If an individual is an Ohio resident under this test, municipal corporations may apply their own criteria to determine whether the individual is a resident of the municipal corporation. Otherwise, no municipal corporation may treat an individual as a resident for municipal income tax purposes.

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).

### State residency test

The state income tax residency test is based primarily on two factors: the number of times during a taxable year an individual is present in Ohio for all or part of two consecutive days ("contact periods") and whether the individual maintains a home outside Ohio for the entire taxable year.<sup>35</sup> If an individual maintains a home outside Ohio throughout his or her taxable year and has 182 or fewer contact periods during the year, he or she is presumed not to be an Ohio resident for state income tax purposes. To ensure this presumption of nonresidency, an individual must file a statement verifying his or her status; if the statement is filed, the presumption may not be rebutted by the state unless the statement contains a falsity. Anyone else who has 182 or fewer contact periods is presumed to be an Ohio resident, but the individual may rebut the presumption for all or part of the year by a preponderance of evidence against the

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<sup>34</sup> R.C. 718.01(A)(4) and (F) of current law.

<sup>35</sup> R.C. 5747.24.

presumption.<sup>36</sup> Finally, a person with more than 182 contact periods is presumed to be a resident, and the presumption may be rebutted only with clear and convincing evidence to the contrary.

## **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.<sup>37</sup> 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).

### **Extension of casual entrant rule**

The bill makes several changes to the casual entrant rule. First, the bill increases the number of days that a nonresident may work in a municipal corporation without incurring liability for the municipal corporation's income tax and without the individual's employer having to withhold tax for that municipal corporation, from 12 to 20 in a calendar year. The bill also specifies that the exclusion applies to the individual's "qualifying wages" (the amount subject to withholding by the individual's employer), rather than to the individual's "compensation," to make the terms consistent with the employer tax withholding requirement if the 20-day threshold is exceeded.

Under the bill, the exclusion will only apply if the individual's "principal place of work" is not located within the municipal corporation where the individual worked on the 20 or fewer days, and the employer withheld taxes on the compensation for the municipal corporation where the individual's principal workplace is located. The bill defines an employee's "principal place of work" as the location where the employee spends the greatest number of days in a calendar year or where the employee most often reports for employment duties during that year.

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<sup>36</sup> A Department of Taxation administrative rule specifies factors that may and may not be considered in upholding or rebutting the presumption. Ohio Adm. Code sec. 5703-7-16.

<sup>37</sup> R.C. 718.01(C)(15) and 718.011.

## **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 the majority of the time the employee spent working on that day was spent in the municipality. Consequently, for purposes of the casual entrant rule, an employee may work a "day" in only one municipality. Similarly, an employee does not work a "day" in any municipality if the employee does not spend at least half of the employee's work time for the day in any single 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 governing how the employer will comply with its withholding obligations under the casual entrant rule.

## **Legislative and judicial nonresident exemptions**

The bill repeals an existing provision exempting members and employees of the General Assembly from municipal income taxes imposed by any municipal corporation other than the one, if any, where the member or employee resides.<sup>38</sup> The exemption applies only to the compensation the member or employee receives for their services as such a member or employee.

The bill repeals a provision exempting Ohio Supreme Court justices from municipal income taxes imposed by any municipal corporation other than Columbus and the one, if any, where the justice resides. Also repealed is an exemption for judges sitting by assignment of the Chief Justice and appeals court judges serving in multiple locations from any municipal income tax other than one imposed by the municipal corporation where the judge resides. The repealed exemptions apply only to the compensation received for judicial duties.

## **Taxation of pass-through entities and their owners**

The bill prohibits municipal corporations from directly taxing the net profits of partnerships, S corporations, limited liability companies (except for single member LLCs – see below), and other pass-through entities.<sup>39</sup> Instead of imposing the tax directly on such entities, municipal corporations would tax the net profits as passed through to the individuals or C corporations that own the entity as a partner, shareholder, or member.

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

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<sup>38</sup> R.C. 718.04 and 718.041 of current law.

<sup>39</sup> R.C. 718.01(L) and (N) of the bill. 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.)

entity level).<sup>40</sup> Current law also requires municipal corporations to credit residents who own a pass-through entity for any tax the entity paid to another municipal corporation where the entity does business.<sup>41</sup> The credit amount is proportionate to the resident's ownership share in the entity, and is the lesser of the resident's share of the tax paid by the entity in the other municipal corporation or the tax the entity would have owed if it did business in the municipal corporation where the resident resides.

### **Single member LLCs**

The bill specifies that 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 most direct owner of the LLC that is not another single member LLC.<sup>42</sup>

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.<sup>43</sup>

### **Withholding tax**

The bill requires each pass-through entity that has net profit assigned to a municipal corporation under the bill's apportionment and allocation provisions (see below) to withhold an amount approximating each owner's tax liability to the municipal corporation and to remit that amount to the municipal corporation.<sup>44</sup> The requirement applies to any taxable year in which an entity has net profit assigned to a municipal corporation, and applies regardless of whether the owners' distributive shares of the net profit have been distributed to the owners.

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<sup>40</sup> R.C. 718.14(D) of current law, repealed by the bill.

<sup>41</sup> R.C. 718.14(B) of current law, repealed by the bill.

<sup>42</sup> R.C. 718.01(D)(3) of the bill.

<sup>43</sup> R.C. 718.01(L) of the bill and current law. Under federal income tax law, a single member LLC is treated as the same taxpayer as its owner (i.e., the LLC is disregarded as a separate taxpayer) unless the LLC elects to be treated as a corporation for income tax purposes. The disregarded entity treatment generally means the owner reports the income items of the LLC as the owner's own items (for individuals, this would be on Schedules C, E, and F).

<sup>44</sup> R.C. 718.43. A somewhat analogous requirement applies to pass-through entities doing business in Ohio with respect to the Ohio income tax liability of nonresident owners to ensure that those owners' liability is satisfied. R.C. 5747.40 to 5747.43.

The amount withheld on behalf of an owner is to be treated as a tax payment by the owner and is to be credited to the owner's liability in a manner prescribed by the Municipal Tax Policy Board. If an owner's distributive share is the owner's only income that is taxable by a municipal corporation, the owner need not file a return with that municipal corporation as otherwise required under the bill.

Entities must withhold and remit the amount and file a report by the fifteenth day of the fourth month after the end of the entity's taxable year. If an entity receives an extension of time for it to file its federal partnership or S corporation return, the filing deadline for the municipal withholding report is extended automatically until the last day of the month in which the federal extension falls, but the deadline for paying the withholding is not extended. The entity need not notify the municipal corporation of the federal extension.

### **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.<sup>45</sup>

#### **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.<sup>46</sup> 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

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<sup>45</sup> R.C. 718.02.

<sup>46</sup> R.C. 718.02(C).

employer at the location or if the employee's presence at the location benefits the employer;

(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) 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.

As under current law, compensation that is exempt from taxation 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 the business regularly solicits sales within the municipal corporation;
- (3) Shipped from the municipal corporation, but delivered elsewhere, if employees of the business do not regularly solicit sales at the location where the goods are delivered. (This final criterion is known as a "throw-back provision.")

The bill instead provides that goods are considered to have been sold in a municipal corporation only when the purchaser received the goods in the municipality.<sup>47</sup> When goods are delivered by a common carrier, the sale location is the place where the purchaser received title to the goods. Income from the sale of services is assigned to a municipal corporation based on the extent to which the purchaser benefited from the services 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.

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<sup>47</sup> R.C. 718.02(D).

## **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.<sup>48</sup>

## **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 provides that a municipal corporation may allow or require a taxpayer to use an alternative formula if the three-part formula does not "fairly represent the extent of the taxpayer's business activity" in the municipal corporation.<sup>49</sup> The alternative formula may involve separate accounting, the exclusion or modification of one of the three factors, or the inclusion of a different factor.

The bill also provides specific guidelines for the approval of an alternative formula. Under the bill, a taxpayer must submit a written request to use an alternative formula when the taxpayer files a tax return, petition for reassessment, or amended tax return. The municipal corporation's tax administrator may approve the alternative formula or deny the taxpayer's request by issuing an assessment. If approved, the alternative formula applies only to the taxable years specified in the request, unless the tax administrator provides otherwise.

## **Professional athlete income**

The bill requires professional athletes to apportion their income to municipal corporations where they do not reside based on a formula specific to such athletes.<sup>50</sup> (With the exception of the 12-day "casual entrant rule," current law does not impose specific requirements on the apportionment of such income.) The formula compares the number of "duty days" that the athlete spent working for the professional sports team within the municipal corporation to the total number of duty days the athlete worked during the year. A "duty day" includes time spent competing in games, practicing, training, attending team meetings or promotional events, and similar activities.

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<sup>48</sup> R.C. 718.01(A)(1).

<sup>49</sup> R.C. 718.02(B).

<sup>50</sup> R.C. 718.02(F).

## **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 allows such a person to elect to use separate accounting to calculate the person's net profit from such activity.<sup>51</sup> If the person makes the election, he or she must apply separate accounting to all of their rental income. The person must also continue to use separate accounting to calculate their net profit from rental activity for the five ensuing taxable years.

## **Real estate commissions**

The bill prescribes specific rules for the apportionment of real estate agent and broker commissions.<sup>52</sup> Under the formula, a municipal corporation may tax such commissions based upon the proportion of the commissions that the real estate agent or broker earned from the sale of property located in the municipal corporation as compared to the agent's or broker's total commissions in that year.

## **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.<sup>53</sup> 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

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<sup>51</sup> R.C. 718.02(E).

<sup>52</sup> R.C. 718.02(G).

<sup>53</sup> 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).

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).<sup>54</sup>

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 withholding during the preceding year or a minimum withholding amount during any single month in the preceding quarter, as follows:

<b>H.B. 601 Employer Withholding Schedule</b>	
<b>Preceding period's withholding</b>	<b>Withholding frequency</b>
Annual amount of \$2,399 or less, and no month in preceding quarter of \$200 or more	Quarterly, due at end of following month
Annual amount between \$2,399 and \$11,999, or any month in preceding quarter between \$200 and \$1,000	Monthly, due by the 15th day of following month
Annual amount of more than \$11,999, or any month in preceding quarter more than \$1,000	Semimonthly, due within three banking days after the 15th and last days of month

**Reporting and remittance**

Tax withholding reports and remittances must be paid to the municipal tax administrator according to the schedule shown in the table above and in the form to be prescribed by the Municipal Tax Policy Board. Failure to report and remit taxes on time and in the amount required can be penalized by up to 50% of the amount of the deficiency at the tax administrator's discretion, and interest may accrue on unpaid amounts at a rate not exceeding the interest rate that applies to unpaid state taxes.<sup>55</sup>

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, and any other information the Municipal Tax Policy Board requires. The report is due by February 28.

<sup>54</sup> R.C. 718.011(B).

<sup>55</sup> R.C. 718.27(C) and (D)(2). 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.

### **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.)

### **Information returns for Form 1099-MISC filers**

In addition to the employer wage withholding requirements, the bill requires any person that engages an independent contractor or anyone on a fee or commission basis to perform a service in a municipal corporation to file a report to that municipal corporation. The report must consist of either a copy of each IRS Form 1099-MISC (Miscellaneous Income) reflecting payments for those services or a list of names, addresses, social security numbers or taxpayer identification numbers, and the amount of the payments.<sup>56</sup>

Current law does not prescribe such a reporting requirement, but municipal corporations currently are not prohibited from requiring such reports.

### **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

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<sup>56</sup> R.C. 718.03(J).

dissolves. The same personal liability applies to employers' agents and "other payers."<sup>57</sup> These provisions are substantially similar to provisions incorporated in the law 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.<sup>58</sup> 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.<sup>59</sup> 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 both the state and the municipal corporations where the facilities are located, and file annual reports and reconciliation remittances. 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 to address apparent inconsistencies in current law. First, municipal income taxes withheld and remitted by a casino or VLT operator are credited against the taxpayer's municipal income tax liability for, not the taxpayer's state income tax liability as provided in current law.<sup>60</sup> Second, the bill clarifies that the law governing municipal tax assessments, not the law governing state income tax

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<sup>57</sup> R.C. 718.03(K).

<sup>58</sup> Such winnings are not considered to be intangible income. *Fisher v. Neusser*, 74 Ohio St.3d 506 (1996).

<sup>59</sup> R.C. 5747.063 and 5747.064.

<sup>60</sup> 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.

assessments, applies when a casino or VLT operator fails to 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.) Third, the maximum penalty for failure to report and remit withheld tax is 10% of the deficiency and \$25 per month the failure continues (up to a total of \$150) instead of \$1,000, as provided in current law.<sup>61</sup>

The bill also requires the Municipal Tax Policy Board to prescribe forms for the withholding requirements for municipal income taxes.

## **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.<sup>62</sup> Minimum filing and payment thresholds are not prescribed, but municipal corporations may establish their own.

### **Form of return**

The bill requires the Municipal Tax Policy Board to prescribe the form of annual returns, and taxpayers must use either that form or a generic form that contains all the information the Board requires by rule.<sup>63</sup>

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<sup>61</sup> R.C. 718.27.

<sup>62</sup> R.C. 718.05(B) of current law.

<sup>63</sup> R.C. 718.05(F)(1), (J), and (K) and 718.42(G) to (L) of the bill.

Filed returns must contain the taxpayer's signature or the signature of the taxpayer's authorized representative and of any tax preparer. It must also contain the taxpayer's social security or taxpayer identification number.

### **Filing deadlines**

Under the bill, the deadline for filing annual returns for all municipal corporations is established as the same filing deadline for the state income tax returns – i.e., April 15.<sup>64</sup>

### **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.<sup>65</sup> 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.<sup>66</sup> 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.

### **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 60 days after termination of active duty.<sup>67</sup> 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. If the amount

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<sup>64</sup> R.C. 718.05(F)(1) of the bill; R.C. 5747.08(G).

<sup>65</sup> R.C. 718.05(F)(3) of the bill.

<sup>66</sup> R.C. 718.05(F)(2) of the bill.

<sup>67</sup> R.C. 718.052 of the bill.

due is \$2,400 or less, the taxes must be paid over a period of one year or less; if more than \$2,400, over a period of no more than two years. 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.

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.<sup>68</sup>

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 \$5 or less to a municipal corporation with the annual return, the taxpayer is not required to pay the tax, but is not relieved of filing the return.<sup>69</sup>

The bill establishes a minimum filing and payment threshold for taxpayers with net profits apportioned or allocated to a municipal corporation. No return or tax payment is required for net profits if a taxpayer satisfies both of the first two of the following thresholds and, if the taxpayer is an individual, the third:

- (1) The tax due to the municipal corporation is less than \$50;
- (2) The average ratio of total net profits apportioned or allocated to the municipal corporation to the net profits everywhere is less than 1%;
- (3) The individual's qualifying wages in the municipal corporation are less than \$50,000.

A taxpayer that qualifies for the filing and payment exemption must file an affidavit exemption form, which the bill requires the Municipal Tax Policy Board to prescribe. Such affidavits are not required until the board prescribes the form.

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<sup>68</sup> See R.C. 5747.026.

<sup>69</sup> R.C. 718.05(F)(1) of the bill.

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.<sup>70</sup>

### **Joint returns**

The bill specifies that municipal corporations may not deny spouses the ability to file joint returns.<sup>71</sup> 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 or state income tax return. The deadline for filing an amended return is 60 days after the adjustment to the taxpayer's federal or state income tax return is agreed to or finalized or the abatement or credit resulting from the adjustment is assessed or paid, whichever occurs first.

The bill requires amended returns to be accompanied by payment of any additional tax due plus accrued interest unless the tax due is \$5 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 \$5 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 or state 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

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<sup>70</sup> R.C. 718.05.

<sup>71</sup> R.C. 718.05(D) of the bill.

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.<sup>72</sup>

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

### **Consolidated corporation returns**

Under current law, a municipal corporation must allow an affiliated group of corporations to file a consolidated tax return if the group filed a consolidated federal income tax return for the taxable year.<sup>73</sup> The bill continues this requirement, and specifically allows such filing when just one member of the affiliated group is subject to the municipal corporation's income tax. The bill also imposes more specific requirements for the filing of consolidated returns.

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. Similarly, if the group does business both within and outside the municipal corporation, its income must be apportioned according to the same rules that apply to single corporations (as revised under the bill).

If an affiliated group elects, or is required, to file a consolidated return for a taxable year, the group must continue to file consolidated returns in each ensuing year until the tax administrator of a municipal corporation permits a group member to file a separate return. Similarly, if an affiliated group filed consolidated returns in accordance with the bill's requirements before January 1, 2014, the group must continue to file such returns until a tax administrator allows the group to discontinue such filing.

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

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<sup>72</sup> R.C. 718.41.

<sup>73</sup> R.C. 718.06. Under continuing law, an "affiliated group of corporations" is a group of two or more corporations that are related through common ownership and that are treated as one corporation for federal income tax purposes.

## **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.<sup>74</sup> 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.)

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 \$250. 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, and ninth month of a taxable year and the fifteenth day of the first month of the following taxable year. (For calendar year taxpayers, those dates are April 15, June 15, September 15, and January 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.

### **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.

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<sup>74</sup> R.C. 718.08, repealed and re-enacted by the bill.

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 requires the Municipal Tax Policy Board to adopt a uniform estimated tax declaration form and to prescribe rules for amending such declarations. The bill also 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 also adds the chair of the Municipal Tax Policy Board or the chair's designee as an ex officio member.<sup>75</sup>

## **Tax refunds**

Under current law, a municipal income taxpayer is entitled to a refund of any overpaid taxes.<sup>76</sup> 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 \$5 (similarly, taxes of \$5 or less do not have to be paid).<sup>77</sup> As under current law, interest accrues on the refund at the same interest rate allowed for state income tax refunds. However, similar to state income tax law, the bill prescribes distinct rules for when that interest accrues, depending on the type of overpayment. If the overpayment is made with a tax return or report, interest begins to accrue 90 days after the due date of the taxpayer's annual return and ends on the day the refund is made. If the overpayment results from an incorrect assessment against the taxpayer, interest accrues from the date of the overpayment to the date the refund is made. Interest accrues on all other overpayments according to the current law rule described above.

Refund applications must be filed with the municipal corporation's tax administrator within three years after the date of the overpayment.<sup>78</sup> If the administrator does not approve a refund for the full amount claimed by the taxpayer, the taxpayer may appeal that decision to the local board of tax review. The appeal must be filed within 60 days after the taxpayer received written notice of the administrator's decision.

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<sup>75</sup> R.C. 5703.57.

<sup>76</sup> R.C. 718.12(C) and (D).

<sup>77</sup> R.C. 718.19.

<sup>78</sup> The three-year statute of limitations may be extended with the consent of the tax administrator under R.C. 718.12 or if the taxpayer files an amended return after the end of the three-year period under R.C. 718.41.

## Assessments

The bill imposes requirements for the issuance of assessments against taxpayers who fail to pay municipal income tax or to file a municipal income tax return.<sup>79</sup> The requirements are similar to those imposed under state income tax law.<sup>80</sup>

The bill expressly authorizes tax administrators to issue an assessment against any person, including an employer or other payer required to withhold income taxes, if the person does not file a return or pay any tax due. A taxpayer and a person required to withhold taxes from compensation paid to the taxpayer are both liable for the tax, and the administrator may issue an assessment against either. The issuance of an assessment against one of the parties does not bar the administrator from later assessing the other party, unless the first party pays the assessment.

### Notice requirements

When notifying a person of an assessment, a tax administrator must provide instructions on how the person may petition for a reassessment, a description of the basis for the assessment, and a description of the collection remedies available to the tax administrator if the taxpayer does not pay the assessment. If the administrator does not provide this information, the person may request that the administrator waive any penalties and interest related to the assessment, but not any tax due.

### Petition for reassessment

The assessed person must file a petition for reassessment within 60 days after receiving an assessment notice. If the petition is properly filed, the local board of tax review must schedule a hearing on the petition. If the person does not file a petition for reassessment within the 60-day period, the assessment becomes final. The tax administrator may then file an entry making the assessment final with the court of common pleas, and the clerk of court may enter a judgment against the assessed person for the amount shown on the entry.

When filing a petition for reassessment, a petitioner must pay the assessment amount within the 60-day filing period if the person (1) filed a return that incorrectly reported a tax liability of less than one cent, (2) filed an incomplete, false, fraudulent, or frivolous return, or (3) did not file a return, unless the person owed less than \$1.01 with the return or the person asserts a lack of taxable nexus with the municipal corporation.

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<sup>79</sup> R.C. 718.12.

<sup>80</sup> See, e.g., R.C. 5747.13.

If, after consideration of a petition for reassessment, an assessment is corrected in favor of the petitioner, the petitioner may receive a refund of any amount that was overpaid. The petitioner may pay all or part of the assessment while a petition is pending; such a payment does not prejudice the person's claim for a refund of the assessment.

### **Statute of limitations**

In general, a tax administrator may not issue an assessment more than three years after a person filed the return subject to the assessment or after the due date of that return, whichever is later. This time limit may be extended if the assessed person and the administrator agree to an extension in writing. However, if a person does not file a return, or an employer or other payer fails to remit taxes that the employer or other payer withheld, the administrator may issue an assessment against that person up to ten years after the due date of the return subject to the assessment. In addition, there is no time limit for issuing an assessment against a person who fraudulently attempts to avoid a tax.

### **Jeopardy assessments**

The bill provides the manner and circumstances whereby municipal tax administrators may issue jeopardy assessments, similar to jeopardy assessments authorized for the collection and enforcement of several state taxes.<sup>81</sup> A tax administrator may issue a jeopardy assessment against a taxpayer if the administrator finds that the taxpayer is about to leave the state or take other actions that would jeopardize the collection of any income or withholding tax. After making such a finding, the administrator may file a jeopardy assessment with the court of common pleas, and the taxpayer must immediately pay any tax due. If, within five days after receiving notice of the administrator's finding, the taxpayer demonstrates an ability to pay the tax or to post a bond securing payment, or shows that the taxpayer is not in default in filing returns or paying the tax, the administrator may not require the taxpayer to pay the tax before it was otherwise due.

### **Penalties and interest**

The bill limits the amount of penalties and interest that municipal corporations may impose for failure to file returns or pay taxes on time.<sup>82</sup> 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

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<sup>81</sup> R.C. 718.20. Cf. R.C. 5747.14.

<sup>82</sup> R.C. 718.27.

remittances and estimated payments) due under the new law as enacted by the bill and to returns and payments due before the bill's effective date but not yet filed or paid within 180 days after the effective date.

The limits are as follows:

- The maximum rate of interest that may be charged is the same rate the state charges for unpaid state taxes – i.e., the average yield on marketable securities issued by the United States government that mature within three years, as determined by the Tax Commissioner, plus three percentage points.<sup>83</sup>
- For unpaid taxes and estimated taxes, a penalty of 10% 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.

The bill states that municipal tax administrators may fully or partly abate (i.e., forgive) such penalties at the discretion of the administrator or for good cause. Tax administrators also may charge the costs of collecting taxes, interest, and penalties.

### **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.<sup>84</sup> 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 assessments issued by the tax administrator.

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<sup>83</sup> See R.C. 5703.47.

<sup>84</sup> R.C. 718.11.

## **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 and are not permitted to serve more than three consecutive terms. The board member appointed by the top administrative official must 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.

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. After removing a board member under this procedure, the legislative authority must file a statement and finding on all charges against the member along with a complete report of the proceedings in the Office of the Secretary of State. 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 maintains this notice requirement and extends it to assessments issued by a tax administrator. Furthermore, the bill requires the tax administrator to

post the rules of the local board of tax review, the names of the board members, and the address to which appeals and other correspondence may be sent on the web sites of the tax administrator and the tax commissioner. A tax administrator who fails to post the required information on both web sites is prohibited from imposing penalties or interest on municipal income tax obligations until the information is posted.

### **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 assessment or decision. 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. Current law requires the board to schedule hearings within 45 days after receiving a request unless the taxpayer waives a hearing. 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.

### **Appellate procedure**

Under current law, a taxpayer or tax administrator may appeal the decision of a board of appeal to the board of tax review to the Ohio Board of Tax Appeals or to the appropriate Court of Common Pleas. The bill permits appeals of local boards of tax review decisions only to the board of tax appeals.<sup>85</sup>

### **Compromise of claims and payment plan agreements**

After a tax administrator certifies a municipal income tax assessment for collection with the clerk of courts, 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.<sup>86</sup> A tax administrator may consider any reasonable standard when deciding whether to compromise a claim or enter into a pay-over-time plan, including, but not limited to, the practical difficulty of collecting the assessed amount, the likelihood of a refund to the payer after the amount is paid, that economic hardship is preventing the amount from being paid, or, if the claim is a joint assessment between two spouses, that compromising the claim would protect the

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<sup>85</sup> R.C. 5717.011.

<sup>86</sup> R.C. 718.28.

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.

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.

### **Service of tax notices and orders**

The bill imposes new limits on the manner in which municipal corporations may deliver income tax notices to taxpayers.<sup>87</sup> The limitations are similar to the delivery requirements for state income tax notices.<sup>88</sup>

Under the bill, tax notices may be delivered in person, by certified mail, or through a delivery service approved by the state Tax Commissioner. The person receiving the notice may also consent to receiving a notice by other means, including through secure e-mail.

If a notice sent by certified mail is returned because of an undeliverable address, the tax administrator must attempt to find the recipient's last known address. If that attempt is unsuccessful, and if the notice relates to an assessment, the assessment becomes final 60 days after the certified mail was returned. A taxpayer may later contest the assessment if the taxpayer files a petition for reassessment within 60 days after the administrator contacts the taxpayer about the assessment.

If a notice sent by certified mail is returned for other reasons, the tax administrator must resend the notice by ordinary mail. If the ordinary mail is not returned to the administrator, the taxpayer is considered to have received the notice ten days after the notice was sent. If the ordinary mail is returned, the administrator must

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<sup>87</sup> R.C. 718.18.

<sup>88</sup> See R.C. 5703.37.

proceed as if the original certified mail had been returned because of an undeliverable address. A person may dispute a presumption of delivery by proving, by a preponderance of the evidence, that the person was not associated with a particular address at the time a notice was sent to that address.

Similar to state income tax law, the Secretary of State serves as a person's agent for the purpose of accepting service of process or notice if the person is a nonresident, a resident that becomes a nonresident or otherwise conceals the person's whereabouts, or a foreign corporation that is not authorized to transact business in the state.<sup>89</sup>

### **Problem resolution officers**

The bill requires every municipal corporation that has a population greater than 30,000 to appoint problem resolution officers to assist persons with pending income tax cases with the municipal corporation.<sup>90</sup> The requirement is similar to an existing state tax law requirement that requires the Tax Commissioner to appoint problem resolution officers to assist taxpayers with issues before the Department of Taxation. Problem resolution officers have authority to review matters that have been pending for an unreasonable length of time and matters concerning which the taxpayer has been unable to obtain a satisfactory response.<sup>91</sup>

Municipal problem resolution officers must be employees of the tax administrator making the appointment. They are required to receive and review inquiries and complaints pending before the tax administrator. As with the state counterpart, municipal problem resolution officers may address only those concerns that have been pending for an unreasonable length of time or for which the taxpayer has been unable to obtain a satisfactory response after several attempts to communicate with the person assigned by the tax administrator to the case or that person's immediate supervisor. Problem resolution officers are expressly prohibited from hearing matters arising in cases on appeal from an assessment of the tax administrator or certified for collection. Actions by municipal problem resolution officers are not final orders of the tax administrator and are not appealable to the local board of tax review.

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<sup>89</sup> R.C. 718.21. Cf. R.C. 5747.16.

<sup>90</sup> R.C. 718.37. If the tax administrator is compensated on a contingency basis, the tax administrator does not appoint a problem resolution officer.

<sup>91</sup> See R.C. 5703.52.

## Audit procedures

The bill prescribes procedures and limits for auditing taxpayers for municipal income tax purposes. Current law does not govern or otherwise regulate how such audits are conducted; instead, it states that nothing in the current Chapter 718. limits or removes the ability of each municipal corporation to administer, audit, and enforce the provisions of its income tax.<sup>92</sup> The bill's audit provisions are similar to those that apply to audits for state tax liability.<sup>93</sup>

The bill defines an audit as "the examination of a taxpayer or the inspection of the books, records, memoranda, or accounts of a taxpayer for the purpose of determining liability for a tax."<sup>94</sup>

The bill requires tax administrators to provide taxpayers with certain information before beginning an audit. Specifically, the administrator must provide a written description of the roles of the tax administrator and of the taxpayer during an audit and a statement of the taxpayer's rights. This writing must include notice of any right of the taxpayer to obtain a refund of an overpayment of a tax. Furthermore, the taxpayer is entitled to be informed of the date when the audit is considered to have begun. This notification must be delivered at or before the beginning of an audit.

Unless criminal activity is suspected, the bill requires audits to be conducted during regular business hours and only after "reasonable notice" is given to the taxpayer. If a taxpayer is unable to comply with the audit time proposed by the tax administrator, that taxpayer is required to offer reasonable alternative dates.

The bill entitles taxpayers to assistance or representation by an attorney, accountant, bookkeeper, or other tax practitioner at all stages of the audit process. A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with an attorney, accountant, bookkeeper, or other tax practitioner. The bill requires tax administrators to provide a form allowing the taxpayer to designate a representative or advisor for any proceedings resulting from actions by the tax administrator. The tax administrator may accept other evidence that a person is the authorized representative of a taxpayer only if the taxpayer has not submitted such a form.

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<sup>92</sup> See R.C. 718.01(A)(1) and 718.051(I) of current law.

<sup>93</sup> See R.C. 5703.51.

<sup>94</sup> R.C. 718.01(BB) of the bill.

Under the bill, a tax administrator may not prohibit a taxpayer from recording an audit examination.

A tax administrator who fails to substantially comply with municipal income tax audit regulations prescribed by state law is required to excuse the taxpayer from penalties and interest arising from the audit if the taxpayer so applies. However, failure to comply with municipal income tax audit regulations does not cure any procedural defect in a case brought by the taxpayer or excuse a taxpayer from payment of any taxes owed.

### **Record retention**

The bill requires taxpayers to keep any records necessary to show the extent of the taxpayer's liability for municipal income or withholding tax.<sup>95</sup> The Municipal Tax Policy Board may adopt uniform rules related to the maintenance of such records and of federal tax documents. When 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.

### **Inspection of documents and examinations**

The bill expressly limits a tax administrator's authority to inspect the documents 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.<sup>96</sup> Specifically, the bill 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 books 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). In addition, the bill limits the amount of the penalty a tax administrator may impose on any person that refuses to comply with a demand for inspection or examination at least ten days after receiving written notice of the demand: the penalty must be between \$25 and \$1,000.

### **Quota systems prohibited**

The bill prohibits tax administrators and municipal corporations from evaluating or compensating employees based on the amount of taxes the employee assesses as a

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<sup>95</sup> R.C. 718.22.

<sup>96</sup> R.C. 718.31.

production quota system.<sup>97</sup> A substantially similar prohibition applies to employees of the Tax Commissioner at the state level.<sup>98</sup>

## **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.<sup>99</sup> 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.<sup>100</sup> 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 or the municipal tax policy board does not constitute an opinion of the tax administrator.

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 statutory 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, 2013, 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

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<sup>97</sup> R.C. 718.37(B).

<sup>98</sup> R.C. 5703.52(D).

<sup>99</sup> R.C. 718.38.

<sup>100</sup> See R.C. 5703.53.

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.

### **Opinions of the Municipal Tax Policy Board**

The bill authorizes persons to ask the Municipal Tax Policy Board to issue opinions under the same procedures and conditions as opinions of the tax administrator. Unlike tax administrators, the Municipal Tax Policy Board is prohibited from issuing an opinion unless the issue has relevance to taxpayers on a state-wide basis or deals with the generic application of Chapter 718. Opinions of the Municipal Tax Policy Board are binding on all tax administrators in Ohio with respect to the taxpayer for whom the opinion was prepared. An opinion of the Municipal Tax Policy Board may not be appealed.

### **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.<sup>101</sup>

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. The bill limits the amount of the penalty the tax administrator may impose to an amount between \$25 and \$1,000. Additionally, a person that provides fraudulent identifying information is guilty of a fifth-degree felony.<sup>102</sup>

### **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.<sup>103</sup>

### **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.<sup>104</sup> 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, and regardless of how the returns were received, and to furnish other related information to the Internal Revenue Service, the Tax

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<sup>101</sup> R.C. 718.26(A).

<sup>102</sup> R.C. 718.26(C). Division (C)(3) incorrectly references R.C. 718.36 and should reference R.C. 718.35.

<sup>103</sup> R.C. 718.26(B).

<sup>104</sup> R.C. 718.13(A) and (B).

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

The bill also prescribes minimum penalties for persons who unlawfully access or disclose confidential information. The state law 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 state law 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 state law 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.<sup>105</sup>

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.

### **Tax administrator office hours**

The bill requires the office of each municipal corporation's tax administrator to be open for business during business hours prescribed by the municipal corporation on every day except for Saturday, Sunday, and legal holidays. The municipal corporation is required to publish designated office hours.<sup>106</sup>

### **Attorneys' fees and litigation costs**

The bill allows a taxpayer or municipal corporation to petition the Board of Tax Appeals for reimbursement of attorneys' fees and reasonable litigation costs incurred by the taxpayer or municipal corporation, respectively, in the course of the taxpayer appealing an assessment or denial of a refund claim.<sup>107</sup> Fees and expenses may be recovered only after all appeals are completed. If an appeal results in both the taxpayer and municipal corporation being partially successful, the Board may reasonably allocate the costs and fees between both parties.

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<sup>105</sup> R.C. 718.99(B) through (D).

<sup>106</sup> R.C. 718.29.

<sup>107</sup> R.C. 718.44. Division (B) of this section mistakenly sets the amount of reimbursement for a taxpayer's attorney fees and litigation expenses to the amount of such fees and expenses incurred by the municipal corporation.

## Action for damages by taxpayer

The bill implements a uniform standard by which taxpayers may seek damages for an action or omission of a tax administrator, an employee of a tax administrator, or an employee of a municipal corporation relating to the laws and rules governing municipal income taxes.<sup>108</sup> Current law does not prohibit such actions, but the conduct that may invoke liability on the part of a tax administrator or a municipal corporation, the availability of damages, and the penalties for frivolous lawsuits are left to the authority of the municipal corporation imposing the income tax.

Under the bill, an action for damages against a tax administrator, municipal corporation, or both is permissible in two circumstances:

(1) Where an applicable state law, a rule promulgated by the Municipal Tax Policy Board, or an instruction of the tax administrator is frivolously disregarded by the tax administrator, an employee of the tax administrator, or an employee of the municipal corporation. The bill defines "frivolous" as conduct that obviously serves merely to harass or maliciously injure the taxpayer or that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) Where the action or omission challenged by the taxpayer occurred with respect to an audit or assessment and the review and collection proceedings connected with that audit or assessment.

The bill clarifies that a taxpayer is not permitted to seek damages from the office of the tax administrator or the municipal corporation based on actions or omissions of the tax administrator, an employee of the tax administrator, or an employee of the municipal corporation that are manifestly outside the scope of employment or performed with malicious purpose, bad faith, or in a wanton or reckless manner. Presumably, a taxpayer could seek damages from the individual who perpetrated the action or omission in such a situation. Furthermore, the bill states that opinions of the tax administrator or other information functions of the tax administrator are not subject to legal challenge by taxpayers.

Under the bill, the proper forum for a taxpayer seeking damages from a tax administrator or municipal corporation is the court of common pleas of the county in which the municipal corporation is located. Upon a finding of liability on the part of the municipal corporation or the tax administrator, the court may award compensatory damages as well as reasonable costs of litigation and attorneys' fees. The bill requires

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<sup>108</sup> R.C. 718.39.

the court to consider any negligent actions or omissions on the part of the taxpayer that may have contributed to the taxpayer's damages in calculating the judgment. However, neither the municipal corporation nor the tax administrator may assert contributory fault as an affirmative defense.

The bill permits the court to impose a penalty on a taxpayer who brings an action that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. The court may also impose a penalty on the taxpayer if the action appears to be an attempt to merely harass or maliciously injure the tax administrator, the municipal corporation, or employees of the tax administrator or the municipal corporation. The penalty may not exceed \$10,000. The proceeds arising from the penalty are paid to the general revenue fund of the state.

The provision is substantially similar to one currently authorizing actions for damages against the state Tax Commissioner and employees of the Department of Taxation.<sup>109</sup>

### **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 fifth-degree felony and may not be convicted under any other state law or municipal ordinance.<sup>110</sup>

This provision is substantially identical 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.

### **Compliance with municipal income tax laws**

The bill expressly requires compliance with the tax administrator in administering laws related to municipal income taxation.<sup>111</sup> This requirement extends to all officers, agents, and employees of all persons subject to any such laws. All such

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<sup>109</sup> See R.C. 5703.54.

<sup>110</sup> R.C. 718.35 and 718.99.

<sup>111</sup> R.C. 718.40.

persons are obligated to fully complete and submit all returns required by law. Knowingly or willfully giving false information in such a return is prohibited where the fact is within the party's knowledge. Furthermore, upon request of a tax administrator, such persons must provide access to any documents in their possession or control.<sup>112</sup> Violating these provisions may result in a fine of up to \$1,000.<sup>113</sup>

Current law does not expressly require compliance with a municipal tax administrator in this manner. Instead, such demands are left to the discretion of the municipal corporation administering the income tax. However, the bill's language closely mirrors state law requirements for complying with lawful demands of the Tax Commissioner.<sup>114</sup>

## 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:<sup>115</sup>

- Issue subpoenas for the production of the books, accounts, or records 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. A daily fee of between \$50 and \$500 applies for each day that a person fails to comply with a subpoena.
- Take other investigative actions related to the tax administrator's duties, including issuing subpoenas to compel testimony, examining persons under oath, and administering oaths.
- Approve agreements to simplify a taxpayer's withholding obligations.

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<sup>112</sup> The bill erroneously refers to public utilities' documents.

<sup>113</sup> R.C. 718.27(I).

<sup>114</sup> See R.C. 5703.43.

<sup>115</sup> R.C. 718.22 and 718.23. 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.

- 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 web site.

## **Annual report of income tax revenue**

The bill imposes new annual reporting requirements on the tax administrator of each municipal corporation imposing a tax on income.<sup>116</sup> By June 15 each year, each tax administrator must report the amount of tax revenue collected by the municipal corporation on income and net profits during the preceding calendar year. The report must be issued to the Municipal Tax Policy Board and the Auditor of State. The Tax Commissioner must include a summary of the reports in the annual report of the Department of Taxation.

Tax administrators who fail to timely report annual tax revenue are prohibited from imposing municipal income tax penalties for any taxable year ending in the calendar year in which the report was due or ending any date thereafter that precedes the date the tax administrator reports the information. The bill requires the Municipal Tax Policy Board to maintain a list of every municipal corporation ineligible to impose penalties due to failure to report tax revenue and the time period to which the ineligibility applies. The list must be posted to the web site of the Department of Taxation within 30 days after the deadline for tax administrator reporting of tax revenue.<sup>117</sup>

## **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.<sup>118</sup> 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.

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<sup>116</sup> R.C. 718.13(C).

<sup>117</sup> R.C. 718.13(C).

<sup>118</sup> R.C. 718.09 and 718.10.

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

### **Prohibition against municipal commercial activity tax**

The bill expressly prohibits municipal corporations from levying a tax "the same as or similar to" the state's commercial activity tax.<sup>119</sup> The commercial activity tax is a tax on businesses doing business in Ohio and is based on or measured by a business's gross receipts from transactions attributable to Ohio. However, municipal corporations may continue to levy admissions taxes.

Current law prohibits municipal corporations from levying taxes the same as or similar to most of the state's taxes including, among others, sales and use taxes, cigarette and tobacco excise taxes, a motor fuel excise tax, or an insurance company tax.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-30-12

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<sup>119</sup> R.C. 715.013.