

Ohio's biennial budget bill (H.B. 110) will have major impacts for municipalities on how and where "work from home" employees will be taxed.

Prior to the passage of budget bill, section 29 of H.B. 197 provided a temporary rule requiring that, during the COVID-19 state of emergency declared by Executive Order 2020-01D and for 30 days after the end of the state of emergency, employers withhold municipal income taxes based on their employees' principal place of work (as determined before the state of emergency), regardless of where the employees were physically present during work hours during the state of emergency. This rule also temporarily allowed municipalities to impose a nonresident income tax on individuals working from home rather than at their principal place of work due to the COVID-19 pandemic. The state of emergency ended on June 18, 2021.

The biennial budget bill, signed into law by Governor DeWine on July 1, 2021, extends through December 31, 2021 the temporary municipal income tax withholding rule for employers under section 29 of H.B. 197. However, the budget bill amends section 29 to provide that an individual employee's tax liability for wages earned from January 1, 2021 to December 31, 2021 will no longer be deemed automatically to be the employee's principal place of work, as had been provided under the temporary rule when section 29 was enacted. While employers will still be required to withhold taxes based on an employee's principal place of work, an individual employee's income tax liabilities will generally be determined and allocated between jurisdictions based, in part, on where the employee actually works each day, pursuant to provisions and limitations outlined in Chapter 718 of the Ohio Revised Code and other state laws and local ordinances.

Under the budget bill, an employee who works from home and outside of the jurisdiction of the employee's principal place of work, and who has had taxes withheld by their employer pursuant to section 29 of H.B. 197 (as amended by the budget bill) and remitted to the municipality in which their principal place of work is located, will be able to apply for municipal income tax refunds from that jurisdiction for the tax year 2021. Although the budget bill does not permit such refund claims for tax year 2020, those refund claims can be pursued if pending litigation that challenges the constitutionality of section 29 of H.B. 197 succeeds in that challenge.

In processing employee requests for refunds, municipalities may only request from employers the number of days the employee worked at the principal place of work and whether the employer has already refunded to the employee the amount the employer withheld and remitted to the municipality in which the employee's principal place of work is located.

These provisions of the budget bill will likely have major impacts on municipal income tax collections. Municipalities with large industrial and commercial centers can expect to process a significant number of tax refund requests. Further, some municipalities with many work-from-home employees will need to develop strategies to determine if their citizens have received a refund from the municipality of their principal place of work and owe additional taxes to the municipality of their residence.

Stay Tuned!

Squire Public Finance will make available any helpful information as soon as we receive it. In the meantime, please feel free to reach out to your Squire Public Finance contact or any contacts listed.

Contacts

Allison M. Binkley

Partner, Columbus
T +1 614 365 2799
E allison.binkley@squirepb.com

Ryan K. Callender

Partner, Cleveland
T +1 216 479 8395
E ryan.callender@squirepb.com

Michael Cullers

Partner, Cleveland
T +1 216 479 8477
E michael.cullers@squirepb.com