Tax Practitioner Seminar

January 27, 2017

Employer Withholding & the Occasional Entrant Rule

Withholding Due Dates and Thresholds

- Employer withholding > $2,399 in the previous calendar year or >$200 per month in any month of the preceding calendar quarter -- **remit monthly**, due the **15th day** of the following month.
- All others, **remit quarterly** by the **30th day** of the month following the end of the quarter.
- **BUT**, municipalities **may require** withholding on a semi-monthly basis if withholding > $11,999 in the preceding calendar year or >$1,000 in any month of the preceding calendar quarter.
  - Those RITA members that require semi-monthly are indicated on RITA'a website in Special Notes.

Occasional Entrant Rule

- **Extends** from 12 to 20 the number of days an employee must be working in a municipality before tax must be withheld. If threshold is not exceeded, employer withholds for "principal place of work" if that place is within a municipality.
- **Requires withholding** from the 21st day forward, not back to the first day.
- **Defines a "day"** for purposes of determining when an employee has reached 20 days working in a municipality.
- **Shifts** much of the tracking burden to the employee.
- **Exceptions** for "small employers," certain "worksite locations" and "presume worksite locations."
- Applies to **Schedule C** Filers.

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Withholding – 20 Day Rule

- **The basic Occasional Entrant Rule (example 1):**
  - So if John's "principal place of work" is in Cleveland, and he works 7 days in Berea, and his employer correctly withholds Cleveland tax on his wages earned in Berea, and
  - John is a Shaker Heights resident, then
  - John's wages earned in Berea are exempt income as far as Berea is concerned, unless John requests a refund of the Cleveland tax withheld on those wages earned in Berea.

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Withholding – 20 Day Rule

- **The basic Occasional Entrant Rule (example 1):**

  - Because John is a Shaker Heights resident, John will owe Shaker Heights tax on all of his qualifying wages, including those qualifying wages earned in Berea that were exempt income as far as Berea is concerned.

  - Shaker Heights' normal rules for granting residents credit for taxes paid to another municipality would apply.

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Occasional Entrant Rule – Schedule C

- The 20 day rule applies to Schedule C filers.
- Compensation (that is not wages) paid to a nonresident individual for services performed on 20 or fewer days is taxed at the individual's "base of operation" or the individual's domicile if the individual does not have a base of operation.
- The "base of operation" is the location of an office, storefront, or similar facility to which the individual reports regularly and at which the individual regularly performs services.

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Withholding – Small Employers

- **The small employer withholding rules:**
  - ❖A small employer is an employer whose gross receipts the previous year totaled less than $500,000.
  - ❖Gross receipts are from all sources, including intangible income, grants and expense reimbursements (so payments made to a common paymaster to cover the related party's payroll are included in gross receipts).
    - Governments (including government hospitals & universities) cannot be a small employer.
  - ❖To qualify for the small employer withholding rules, the employer must have a fixed location in Ohio.

Withholding – Small Employers

- **The rule:**
  - ❖A small employer with a fixed location in Ohio withholds municipal income tax as **if all of the wages of all employees were earned for work performed in that fixed location**.

Withholding – Small Employers

- **The small employer withholding rules (example 1):**
  - ❖Joe's Plumbing's only location in Ohio is in Cleveland.
  - ❖Joe's Plumbing's gross revenue from all sources last year was $325,000.
  - ❖Joe's Plumbing employs seven full-time employees who unclog drains in Cleveland, Cleveland Heights, Beachwood, Parma and Rocky River.
  - ❖Each employee worked 40 days in each of the above municipalities.

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Withholding – Small Employers

- **The small employer withholding rules (example 1):**
  - ❖Joe's Plumbing withholds <u>Cleveland</u> tax on all qualifying wages of all employees.
  - ❖Because the wages of Joe's employees are not subject to withholding in Cleveland Heights, Beachwood, Parma and Rocky River those wages are *exempt from tax in these communities* UNLESS an employee receives a refund from Cleveland.
  - ❖If an employee obtains a "days out" refund from Cleveland, tax is due to the other communities *on all wages earned there*.

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Withholding – Small Employers

- **The small employer withholding rules (example 2):**
  - ❖Joe's Plumbing's only location in Ohio is in Richfield Township.
  - ❖Joe's Plumbing's gross revenue from all sources last year was $325,000.
  - ❖Joe's Plumbing employs six full-time employees who unclog drains in Brecksville, Broadview Heights, North Royalton, Peninsula and Macedonia (each imposing a 2% tax).
  - ❖Each of the six employees worked 30 days in each of the above municipalities.

Withholding – Small Employers

- **The small employer withholding rules (example 2):**
  - ❖Joe's Plumbing withholds municipal tax as if all work performed by all employees was in Richfield Township (thus, Joe's Plumbing does not withhold workplace tax).

Withholding – Small Employers

- **The small employer withholding rules (example 3):**
  - ❖Joe's employee Matt is a resident of Garfield Heights. Garfield Heights imposes a 2% income tax on residents and allows a 100% credit for tax paid to other municipalities, up to 2%.
  - ❖Matt's wages earned performing work in Brecksville, Broadview Heights, North Royalton, Peninsula and Macedonia are exempt from tax in those communities but are subject to tax in his residence community.
  - ❖Matt now has no workplace withholding beginning in 2016 due to the small employer withholding rules.

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Withholding – Small Employers

- **The small employer withholding rules (example 3):**
  - ❖If Matt earns $38,000 as a plumber he will owe Garfield Hts. $760 when he files his TY 2016 return.
  - ❖Failure to pay this when due could subject Matt to a penalty of $114 (15% of the tax due).
- **Possible solutions:**
  - ❖Matt may ask Joe's Plumbing to withhold residence tax for him. Joe's Plumbing can say "no".
  - ❖Matt should establish and pay an estimate to Garfield Heights to avoid this situation.

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Withholding and the Occasional Entrant Rule

- Municipalities and employers may enter into agreements to simplify withholding.
- Nothing in HB 5 will “undo” existing agreements between municipalities and employers to simplify withholding.
- Employers can elect to withhold where the work is actually being performed for all days that it is being performed.

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Withholding and the Occasional Entrant Rule

- **Takeaways (Employees & Their Tax Preparers):**
  - When preparing for Tax Year 2016 filing season, you may want to compare the municipal withholding patterns to TY 2015 information.
  - Has anything changed? Does the client still have municipal income tax withholding? Has the municipality of withholding changed?
  - How will any change in withholding impact the client’s TY 2016 tax situation at the municipal level? Should an estimate be declared for future TYs for the resident community?
  - It is up to your clients as employees to track their work locations if “days out” refunds will be sought.
  - Understand that a days out refund from one community may result in tax due to another.

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Withholding and the Occasional Entrant Rule

- **Takeaways (Employers):** Wages that are not required to be withheld are excluded from the payroll factor in calculating net profit allocations. R.C. 718.02(A)(2). RITA Schedule Y.

- 20-Day Occasional Entrant Flowchart provided as handout in packet.

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