Occasional Entrant Rules of Substitute House Bill 5

130th General Assembly

From All Sides

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What we are not covering

- The majority of employees that work at the same office, retail store, warehouse, or factory 99%+ of the time

- Over truck drivers regularly scheduled to perform services in two or more states

Both of these groups are unaffected by the occasional entrant rules

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The Various Side

- Employer
- Resident Employee
- Nonresident Employee
- Resident Sole Proprietor
- Nonresident Sole Proprietor
- Preparer

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The Employer's Side

- The employer rules went into effect January 1, 2016
- It's a little late to be learning them now
- None the less, we'll cover them briefly from the vantage points of the other sides (and in greater detail if we have time)

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Resident Employees

- Qualifying Wages are never exempt from taxation by the taxpayer's resident municipality

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Resident Employees

- Municipal Taxable Income

ORC 718.01(A)(1)(b)(i)

For an individual who is a resident of a municipal corporation… income reduced by exempt income to the extent otherwise included in income, then reduced… [by employee business expenses deducted on the employee's federal return], and further reduced by an pre-2017 net operating loss carryforward available to the individual for the municipal corporation

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Resident Employees

- Income

ORC 718.01(B)(1)(a)

For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in (D)(4) of this section (i.e. publicly traded partnerships)

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Resident Employees

Exempt Income as defined in 718.01(C) includes

- (16)(a) Except as provided in divisions (C)(16)(b), (c), and (d) of this section, qualifying wages described in division (B)(1) or (E) of section 718.11 of the Revised Code <u>to the extent the qualifying wages are not subject to withholding</u> under either of those divisions

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Resident Employees

Exempt Income as defined in 718.01(C) includes

- Qualifying wages…to the extend the qualifying wages are not subject to withholding under either…
- 718.11(B)(1) – wages earned on the first 20 days a "field" employee works in a municipality
- 718.11(E) – wages paid by a small employer that are only subject to withholding by the municipality in which the small employer has its fixed location

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Resident Employees

Exempt Income as defined in 718.01(C) includes

- (16)(a) <u>Except as provided in divisions (C)(16)(b), (c), and (d)</u> of this section…
  - <u>The employee is a resident</u>
  - The employer elected to withhold on the first 20 days
  - The employee gets a refund of the tax withheld (but not owed) to the employee's principal place of work

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Resident Employees

- Qualifying Wages are never exempt from taxation by the taxpayer's resident municipality
- HB-5 did not add any uniform credit rules in ORC Chapter 718… full credit, reduced credit, and limitations on credits either by amount or circumstance are permitted

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Resident Employees

- ORC 718.01(D)

  A municipal corporation may, by ordinance or resolution, grant a credit to residents of the municipal corporation for all or a portion of the taxes paid to any municipal corporation, by the resident or by a pass-through entity owned, directly or indirectly, by a resident…

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Nonresident Employees

- Municipal Taxable Income

ORC 718.01(A)(1)(c)

For an individual who is a nonresident of a municipal corporation, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the municipal corporation under section 718.02 of the Revised Code, then reduced as provided in division (A)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation

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Nonresident Employees

- Income

ORC 718.01(B)(2)

In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident <u>for work done, services performed or rendered, or activities conducted in the municipal corporation</u>, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident

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Nonresident Employees

- It is important to note that HB-5 broke the link between
  - Taxable wages for withholding purposes for employees covered by the occasional entrant rules
  - Taxable wages for those employee

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Broken Links

- A small employer is an employer whose gross receipts from all sources for the previous year totaled less than $500,000
- A small employer with a fixed location in Ohio withholds as if all of the wages of all employees were earned for work performed at that fixed location -- even if that fixed location is in an Ohio jurisdiction not imposing municipal income tax

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Broken Links

- John, a Powell (0.75% tax) resident, works for a small employer whose fixed location is in Columbus (2.5% tax)
- John is a telecommuter who builds websites at home, and never goes into the Columbus office
- John's employer withholds Columbus tax under the small employer rules of ORC 718.011(E)
- John does not owe Columbus tax

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Broken Links

- John's 2015 qualifying wages were $70,000. His small employer withheld $525 in Powell tax. John owed Powell $525 on those wages and got full credit for the $525 withheld.
- John's 2016 qualifying wages were $70,000. His small employer withheld $1,750 in Columbus withholding. John owes Columbus $0, and if he doesn't claim a Columbus refund, he will have to cough up another $350 for Powell tax because of Powell's reduced credit.

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Broken Links

- In 2015, John's tax preparer only had to prepare one #$!@ municipal return
- In 2016, John's tax preparer is going to have to file two #$!@ municipal returns (RITA & Columbus)

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Broken Links

- Jane, a Powell (0.75% tax) resident, works for a small employer whose fixed location is in Columbus (2.5% tax)
- Jane provides physical therapy at nursing homes in Grove City, Dublin, Hilliard and Franklin Township
- Jane's employer withholds Columbus tax under the small employer rules of ORC 718.011(E)
- Jane does a little work in Columbus

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Broken Links

- Jane's 2015 qualifying wages were $70,000. Her small employer issued Jane a 2015 W2 showing:
  - Grove City $14,000 $280 w/h'd to Grove City
  - Dublin $18,000 $360 w/h'd to Dublin
  - Hilliard $15,000 $300 w/h'd to Hilliard
  - Columbus $10,000 $250 w/h'd to Columbus
  - Township $13,000 no withholding
- Jane owed Powell $382.50 on those wages after the reduced credit, for a total tax bill of $1,572.50

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Broken Links

- Jane's 2016 qualifying wages were $70,000. Her small employer issued Jane a 2016 W2 showing:
  - Columbus $70,000 $1,750 w/h'd to Columbus
- Assuming the same income spread as 2015, Jane only owes Columbus $250, but if she files for a Columbus refund, she will need to file with Grove City, Dublin and Hilliard. Her total tax liability will go down to $1,572.50 for a next refund of $177.50 in her pocket.

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Broken Links

- In 2015, Jane's tax preparer only had to prepare one #$!@ municipal return
- In 2016, Jane's tax preparer is going to have to file three #$!@ municipal returns (RITA, Columbus & Dublin)
  - Or pretend not to notice
  - Or walk Jane through the cost benefit analysis

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Nonresident Employees

A Basic Occasional Entrant Rule Example:

- John's principal place of work is in Grove City. In 2016, he works 7 days in Hilliard, and his employer correctly withholds Grove City tax on his wages earned in Hilliard
- John is a Bexley resident
- John's wages earned in Hilliard are exempt income as far as Hilliard is concerned unless John requests a refund of the Grove City tax withheld on those wages earned in Hilliard

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Nonresident Employees

A Basic Occasional Entrant Rule Example (cont.):

- Because John is a Bexley resident, John owes Bexley tax on all of his qualifying wages, including those qualifying wages earned in Hilliard that were exempt income as far as Hilliard is concerned
- Bexley's rules for granting residents credit for taxes paid to another municipality would apply

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Nonresident Employees

Another Basic Occasional Entrant Rule Example:

- Jane's principal place of work is in Prairie Township. In 2016 she works 7 days in Hilliard, and her employer correctly withholds no tax on her wages earned in Hilliard
- Jane is a Bexley resident
- Jane's wages earned in Hilliard are exempt income as far as Hilliard is concerned even though no tax was withheld on those wages

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Nonresident Employees

Another Basic Occasional Entrant Rule Example:

- Because Jane is a Bexley resident, she owes Bexley tax on all of her qualifying wages, even those wages that were exempt from Hilliard withholding under the Occasional Entrant Rule

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Nonresident Employees

Occasional Entrant (20-Day) Rule Basic Refresher

- Professional Athletes have no protection under the Occasional Entrant Rule (owe from day one)
- Professional Entertainers paid on a per-event basis have no protection under the Occasional Entrant Rule (owe from day one)
- Public Figures paid to give speeches or paid to make public appearances have no protection under the Occasional Entrant Rule (owe from day one)

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Nonresident Employees

Occasional Entrant (20-Day) Rule Basic Refresher

- Employees working at a "Presumed Worksite Location" have no protection under the 20-Day rule (withhold from day one… even on those wages earned by employees who the employer knows will work less than 20 days in the municipality)
- A "presumed worksite location" is a construction site or other temporary worksite at which the employer reasonably expects provides services for more than 20 days in a calendar year

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Nonresident Employees

Occasional Entrant (20-Day) Rule Basic Refresher

- For purposes of counting days for the Occasional Entrant Rule, an employee works in only one municipality each day
- The municipality in which the employee was deemed to have spent the most time working compared to other municipalities is the municipality in which the employee worked that day for purposes of counting up to 20 days

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Nonresident Employees

Occasional Entrant (20-Day) Rule Basic Refresher

- So, if Jane worked:
  - 40 minutes in Grove City,
  - 20 minutes in Columbus, and
  - 7 hours in Jackson Township,

  for purposes of counting days for the Occasional Entrant Rule, Jane worked the entire day in Grove City, and should have Grove City tax withheld on all of her wages earned that day

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Nonresident Employees

Occasional Entrant (20-Day) Rule Basic Refresher

- Under the 20-Day Rules, for withholding purposes, all time spent on the road is counted as time spent at the employee's principal place of work*

*Some exception apply, see ORC 718.11

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Nonresident Employees

- Local Delivery Driver for a National Furniture Store
  - If the driver's principal place of work is a store or warehouse located in a municipality,
  - And the driver's time spent on the road is treated as time spent at his principal place of work,
  - Then the driver is likely to be deemed to have spent each day he worked at his principal place of work for purposes of withholding under the 20 day rule

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Nonresident Employees

- Local Delivery Driver for a National Furniture Store
  - The employee still only owes tax to any nonresident municipality on wages earned for work done, services performed or rendered, in the nonresident municipal corporation
  - So, just like in our small employer examples earlier, there may be cases where filing for refunds from the principal place of work municipalities makes sense

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Nonresident Employees

- Nonresident local delivery drivers that live in townships and make lots of deliveries to outlying counties are prime candidates for refunds, but those refunds will likely trigger filing requirements with multiple workplace municipalities

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Nonresident Employees

- You should not see drastic changes in the W2s of employees in heavy construction, as the presumed worksite location rules will likely apply for most, if not all, of the year

- You should not see drastic changes in the W2s of long-term* temporary workers, as their principal places of work are the client locations (no 20 day rule)

* assignments lasting months

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Nonresident Employees

- Any dramatic change in the withholding patterns of an employee who has not changed employer is a potential red flag
- Some municipal tax returns ask for the employee's occupation, and some do not

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Nonresident Employees

- If I had an individual client whose withholding and filing obligations drastically changed, I would make sure I completed the occupation line of the return or I attached a short-and-sweet statement to the return
  - John's employer, ABC Company, is a "small employer" under ORC 718.011(E)
  - Jane is a respiratory therapist who works at various nursing homes. Her 2016 withholding was affected by the 20-day rules

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Net Profit Apportionment

- The wage factor excludes "wages from which taxes are not required to be withheld under" the 20-day and small employer rules
- It is unclear if these wages are excluded from both the numerator and denominator, or just the numerator

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Net Profit Apportionment

- Since withholding is required to the principal place of work under the 20 day rule, it is unclear if wages withheld to the principal place of work go in the numerator of the municipality in which the principal place of work is located

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Net Profit Apportionment

- Perform due diligence, and check with the various municipalities on how they are applying the 20-day rule language of ORC 718.02(A)(2)

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Resident Sole Proprietors

- The Schedule C income of residents is never exempt from the resident municipality's tax

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Nonresident Sole Proprietors

- Compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipality on not more than twenty days in a taxable year are exempt for the tax of the nonresident municipality

  ORC 718.01(C)(17)(a)
- Exceptions apply

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Nonresident Sole Proprietors

- The 20-day rule does not apply if the Sole Proprietor’s base of operations is in the municipality
  - Base of Operations
    - Office
    - Storefront
    - Any similar owned or rented facility to which the individual reports and at which the individual regularly performs personal services

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Nonresident Sole Proprietors

- The 20-day rule does not apply if the Sole Proprietor is a being paid compensation in his or her capacity as a:
  - professional athlete,
  - professional entertainer, or
  - public figure

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Nonresident Sole Proprietor

- Compensation exempt from workplace municipal tax under the 20-day rule is treated as earned or received at the individual's base of operations. If the individual does not have a base of operations, the compensation shall be treated as earned or received were the individual is domiciled

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Nonresident Sole Proprietor

- Note that only compensation for services is covered by the 20-day rule
- There is no 20-day rule for the sale of goods

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Questions

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