

MAJOR CHANGES FOR OHIO MUNICIPAL INCOME TAX IN 2018: CENTRALIZATION AND ELIMINATION OF THROWBACK

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Am. Sub. H.B. 49 (the “Bill”), Ohio’s biennial budget bill, brought sweeping changes to Ohio’s municipal income tax system. For taxable years beginning on or after January 1, 2018, the Bill created an elective method of centralized collection and administration for net profit taxpayers, eliminated the throwback rule, and modified a due date for estimated tax payments for individuals. The Bill also required the Ohio Department of Taxation to complete a feasibility study of allowing municipal taxpayers to file individual municipal tax returns through the joint federal and state modernized e-file program and clarified the late payment penalty. We previously discussed these changes in our [Budget Bill SALT Buzz](#). This SALT Buzz focuses on centralized collection and administration of the net profit tax and the elimination of the throwback rule.

Centralized Administration and Collection of the Municipal Net Profit Tax

Effective for taxable years beginning on or after January 1, 2018, taxpayers subject to a municipal net profit tax may elect to file on a centralized basis. Individuals, electric companies, and telephone companies are not eligible to elect to file on a centralized basis under this section (Electric and telephone companies already file on a centralized basis using different rules). If a taxpayer elects to file on a centralized basis, the net profit tax will be administered and collected by the Ohio Tax Commissioner. The Tax Commissioner will administer the net profit tax under Revised Code sections 718.80 to 718.95 (which are separate provisions from the current municipal net profit tax). The Tax Commissioner will also be establishing rules and regulations that will be applicable to taxpayers who make the election.

The Election

A taxpayer may elect to file on a centralized basis by the first day of the third month after the beginning of the taxpayer's taxable year (March 1 for calendar year taxpayers). The election will be made on a form to be prescribed by the Tax Commissioner and a taxpayer must notify both the Tax Commissioner and each municipal corporation in which the taxpayer conducted business during the previous tax year. The election applies to all subsequent tax years. However, a taxpayer may terminate its election by notifying the Tax Commissioner and all municipalities in which the taxpayer conducted business during the previous taxable year by filing a termination by the first day of the third month of any taxable year. There is no fee to the taxpayer to make the election. To pay for the administration and collection of the tax, a fee of one-half percent of the tax collected by the Tax Commissioner will be imposed upon the municipality. If a taxpayer makes the election, it is applicable for all municipalities in which the taxpayer does business.

Computation of the Tax

Taxpayers making the election will be subject to similar statutory provisions for computing taxable income, apportionment, and tax liability as other taxpayers that do not make the election. However, as described above, a taxpayer will compute these amounts under Revised Code sections 718.80 to 718.95 for years in which the election is made. Thus, a taxpayer should carefully read these sections and compare these sections to the other sections of Chapter 718 of the Revised Code which will still be applicable to taxpayers that do not make an election. Additionally, since the Tax Commissioner will be the administrator of the municipal net profit tax and will establish a separate set of rules and regulations, a taxpayer should pay careful attention to interpretations of the Tax Commissioner and how those interpretations may be different (for better or worse) than interpretations made by the tax administrator employed by the municipality.

Extensions

An electing taxpayer that receives an extension for federal income tax purposes also automatically receives an extension for municipal net profit tax purposes. The extended due date is the fifteenth day of the tenth month after the last day of the taxable year (October 15 for calendar year taxpayers).

Taxpayers that do not receive a federal extension may request a six month extension from the Tax Commissioner. The extension request will be granted so long as the request is received on or before the due date of the tax return. Any extension of time to file a return is generally not an extension of time to pay the tax due.

Audits

Since the Tax Commissioner will be the administrator of an electing taxpayer's municipal net profit tax, the Tax Commissioner has the authority to audit municipal net profit taxpayers. Taxpayers must preserve records for six years following the end of the taxable year to which the records or documents relate, unless the Tax Commissioner consents in writing that records may be destroyed. If a municipality believes that it has information in its possession that would change the tax liability of an electing taxpayer, the municipality may refer the taxpayer to the Tax Commissioner for an audit. However, the Tax Commissioner is not required to audit a taxpayer merely because the taxpayer was referred by the municipality.

Assessments and Appeals

The Tax Commissioner has the authority to issue assessments against a municipal net profit taxpayer that makes the election. If a taxpayer wishes to appeal an assessment issued by the Tax Commissioner, the procedures will be similar to appeals of other taxes currently administered by the Tax Commissioner. A petition for reassessment must be filed within sixty days of a taxpayer receiving the assessment. If a request for a personal appearance hearing is made by a taxpayer on the petition, the Tax Commissioner will hold a hearing that will allow the taxpayer to present evidence and explain its position. Thereafter, the Tax Commissioner will either issue a corrected assessment or a final determination. If a final determination is issued by the Tax Commissioner, the taxpayer may appeal it to the Ohio Board of Tax Appeals.

Electronic Filing

A taxpayer making the election must file any tax return or extension through the Ohio Business Gateway ("OBG"). Payments must also be made through the OBG. By January 1, 2019, the Ohio Department of Taxation must publish a method for taxpayers to electronically submit documents to the department. If a taxpayer cannot file and pay electronically, the taxpayer may request to be excused from these requirements by applying to the Tax Commissioner and showing good cause. The Tax Commissioner is not required to grant the request.

ZHF Observation: In its current form, taxpayers using OBG must manually input information as there is no link from commercial tax software to the OBG. Further, taxpayers are not able to submit any attachments to a filing (such as copies of federal returns) and must mail that information to the municipality. However, it is expected that the Tax Commissioner will make numerous upgrades to OBG that will allow taxpayers to link commercial tax software to the OBG and have the ability to submit attachments electronically.

If a taxpayer has not been excused from these requirements and fails to file or pay electronically, the Tax Commissioner is authorized to impose a penalty against a taxpayer for each failure.

ZHF Observation: In the current language, it is unclear for the basis of the amount of the penalty (whether it is the amount of income or tax due required to be reported on the tax return). A technical correction to this language may be necessary.

Information Sharing

Upon receiving an election from a taxpayer, a municipality must submit the following information about the taxpayer to the Tax Commissioner:

- The amount of any net operating loss that the taxpayer is entitled to carry forward to a future tax year;
- The amount of any net operating loss carryforward utilized by the taxpayer in prior years;
- Any credits granted by the municipality to the taxpayer including the amount of credits, if the credits may be carried forward to future tax years, and if the credits may be carried forward, the duration of the carryforward period;
- The amount of any overpayments that the taxpayer has elected to carry forward to future tax years; and,
- Any other information the municipality deems relevant in order to assist the Tax Commissioner's efficient administration of the tax on the municipal corporation's behalf.

If a municipality does not provide this information to the Tax Commissioner within ninety days of receiving the election from a taxpayer, a municipality will have fifty percent of its tax funds withheld until the municipality complies with the request.

For every taxpayer that made an election and had apportionable income in a municipality for any prior year, the Tax Commissioner must provide the following to a municipality in May and November of each year:

- The taxpayer's name address, and federal employer identification number;
- The taxpayer's apportionment ratio for the municipality;
- The taxpayer's amount of municipal taxable income apportionable to the municipality;
- The amount of any pre-2017 net operating loss utilized by the taxpayer;
- If the taxpayer has requested any overpayment be carried forward to a future taxable year; and,
- The amount of any tax credit claimed by the taxpayer.

Throughout the year, the Tax Commissioner must also provide a taxpayer's name, federal identification number, and tax amounts collected by the Tax Commissioner to municipalities. Thus, the Tax Commissioner and municipalities will be sharing information about taxpayers to efficiently administer the municipal net profit tax. However, if a municipality believes that the Tax Commissioner has failed in performing his or her fiduciary duty as the administrator of the tax levied by the municipality, the statute authorizes a municipality to file a writ of mandamus to compel the Tax Commissioner to perform an act.

Similar to other taxes administered by the Tax Commissioner, the Tax Commissioner has the authority to publish statistics of taxpayers that make the election so long as the statistics do not disclose information on particular taxpayers.

Summary

Overall, the ability for taxpayers to file on a centralized basis is a great step towards simplifying the filing of municipal net profit tax returns. Calendar year end taxpayers have until March 1, 2018 to determine if an election to file on a centralized basis is appropriate. It is our understanding that numerous tests of the new OBG will be completed before the first filing deadline and our expectation is that the new OBG will be able to handle even the most complex municipal net profit returns.

Elimination of the Throwback Rule

The Bill eliminated the outdated municipal net profit throwback rule for situsing sales of tangible personal property for the apportionment ratio used to situs income within and without each municipality. Under certain circumstances, the law establishes an ultimate destination test for situsing sales. We previously discussed the throwback rule in a prior [SALT Buzz](#). Effective for taxable years beginning on or after January 1, 2018, sales of tangible personal property are sitused to a municipality only if:

- 1) Tangible personal property is shipped to or delivered within a municipal corporation from a stock of goods located within the municipal corporation, or
- 2) The property is delivered within a municipal corporation from a location outside the municipal corporation, if the taxpayer is regularly engaged in the solicitation or promotion of sales through its own employees within the municipal corporation and the sales result from the solicitation or promotion.

Taxpayers that ship tangible personal property to a municipality different from the municipality in which its inventory is located should pay close attention to the activities of its sales employees. Under this scenario, if the sale of tangible personal property

in the destination municipality did not result from the solicitation or promotion by a sales employee in the destination municipality, the sale would not be situated to the destination municipality for apportionment purposes and, therefore, be treated as no-where sales.

Conclusion & Next Steps

Changes made to the municipal income tax law by the Bill were major step towards simplifying Ohio municipal net profit tax filings. Additionally, the elimination of the throwback rule will allow the state and municipalities to compete for additional businesses that want to be located in Ohio, which is within 600 miles of sixty percent of the United States population.

Each municipal taxpayer should evaluate the benefits of making the election to participate in the centralized net profits tax system—the election must be made by calendar year taxpayers by March 1, 2018.

If you wish to discuss the benefits of making the centralized administration election or any of these changes, please contact [Adam Garn](#) or any other [ZHF professional](#).

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