

REGISTRATION FOR THE STATEWIDE MUNICIPAL NET PROFIT TAX BEGINS: ARE YOU IN OR OUT?

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- **Required Communication of the Initial Election to Municipalities:** Taxpayers electing into the statewide municipal net profit tax (“initial election”) must file the initial election with the Ohio Department of Taxation (“Department”) and notify all the municipalities in which it is conducting business of the initial election. However, it is unclear what type of notice of the initial election will be required. For example, working groups are hoping for a streamlined approach, such as sending copies of the initial election to each of the municipalities through the Ohio Business Gateway. A taxpayer is not required to provide notice of the election to municipalities where it starts conducting business in later years. For example, if a taxpayer makes the initial election in 2018 and starts to do business in municipal Y in 2019, the taxpayer does not have to provide notice of the initial election to municipal Y.
- **Proposed Consolidated Rule Does Not Advance:** According to the Joint Committee on Agency Rule Report (“JCARR”) Weekly Report issued on October 30, 2017, the Department submitted three proposed rules for consideration. The proposed rule addressing taxpayers that elected to file a consolidated return or to deconsolidate in a municipality in the last five years was not submitted to JCARR. A proposed rule must be approved by JCARR before being finalized.

On October 19, 2017, the Ohio Department of Taxation (“Department”) opened registration for businesses electing to participate in the new state administered municipal net profit tax system for the 2018 tax year (to be filed in the 2019 tax year). The state administered municipal net profit tax (“state administered net profit tax”) was enacted as part of Amended Substitute House Bill 49, the Ohio Biennial Budget we previously discussed in this [SALT Buzz](#), dated July 12, 2017. The state administered net profit tax was enacted because many businesses complained about the burden of trying to comply with over 540 separate municipal net profit tax regimes. Currently, the state administered net profit tax system is not available for any other taxes administered by a municipality, such as employee withholding or individual income tax returns.

As part of the state administered net profit tax, corporations and pass-through entities that are subject to the municipal net profit tax can elect to file electronically on the Ohio Business Gateway (“OBG”). The Department will handle the collection of the municipal net profit tax and remit the monies to the municipalities (less a .5% administration fee). The Department will also be responsible for the administration of the state administered net profit tax, including any refunds or appeals. Some taxpayers may find the state administered net profit tax appealing because the OBG allows for a uniform tax return and the use of one online reporting system.

The Election and Termination

The election to participate in the state administered net profit tax system must be made by the first day of the third month after the beginning of the taxpayer’s tax year by filing Form MNP R with the Department. For a calendar year end taxpayer, the election to participate for tax year 2018 (return to be filed in tax year 2019) will need to be filed by March 1, 2018. A taxpayer is also required to separately notify the municipalities in which it currently files but the Department and practitioners are working on the appropriate form for that notice. Once the election is made, the election is binding unless the taxpayer terminates the election. In order to terminate the election, the taxpayer will have to file a form terminating the election by the first day of the third month of any tax year.

Municipal Net Profit Tax Considerations

Taxpayers considering making an election into the state administered net profit tax should carefully weigh several considerations. The new election also provides an ideal time for taxpayers to review their municipal net profit tax footprint and consider

whether changes are necessary. A few of the considerations companies should evaluate:

- **Is there a difference in law?** Taxpayers that make the election to file under the state administered net profit tax system will be governed by newly enacted Ohio Revised Code (“R.C.”) 718.80 through 718.95. Taxpayers that continue to file with their local municipality will continue to be governed by the other provisions in R.C. 718 and any provisions in the local ordinance, including any rules of an administering agency, such as the Regional Income Tax Authority. Taxpayers should carefully review their tax attributes and consider whether a difference in law exists.
- **Is there an existing agreement with a municipality?** In some instances, taxpayers may have an informal or formal agreement to follow a methodology in a particular municipality. For example, a real estate company may use separate accounting for purposes of reporting its Columbus rental activities. Such a methodology will not be automatically incorporated into the new state administered net profit tax system (which may provide a favorable or unfavorable result). R.C. 718.82(B)(2) allows a taxpayer to request alternative apportionment provisions but such a request is made with the filing of the net profit tax return. The Department may deny a taxpayer’s request. It is also unclear whether a request for alternative apportionment can be filed before the company elects into the state administered net profit tax system. As well, some existing agreements may not involve apportionment and so it may be unclear how to discuss the methodology with the Department.
- **Has the company (ies) elected a consolidated return or to deconsolidate in the last five years?** The Department had previously issued proposed Ohio Administrative Code (“O.A.C.”) 5703-41-04 that addressed consolidated returns and elections to deconsolidate. According to the Joint Committee on Agency Rule Report (“JCARR”) Weekly Report issued on October 30, 2017, the Department submitted three proposed rules. Proposed O.A.C. 5703-41-04 was not submitted to JCARR. A proposed rule must be approved by JCARR before being finalized. Taxpayers that elected to file on a consolidated basis or to deconsolidate in the last five years should watch for additional updates from the Department.
- **Will the system accommodate the company’s tax return preparation system?** One of the issues raised by many taxpayers has been the inability to easily import information from their existing compliance software and the OBG. The

Department is working diligently on ensuring that a bridge is available to align companies' tax return software and the OBG. However, companies should evaluate whether the system changes will allow an efficient and accurate transition of their reporting obligations.

- **Is the company filing in the appropriate municipalities?** The new election provides an excellent opportunity to review a company's operations to ensure that the company (or companies) is filing in all the municipalities where the company has filing obligations. For example, a company may review its nexus creating activities, such as employee activities, the location of property, etc. Many townships have established Joint Economic Development Districts ("JEDDs") or Joint Economic Development Zones ("JEDZs") that created new net profit tax jurisdictions. Companies should evaluate if they are located within a JEDD or JEDZ and if they filed the correct tax returns. Finally, companies should consider whether they are filing in the correct municipality. For example, in the central Ohio area, many land parcels have been annexed into the City of Columbus, such that it may be unclear whether an address is in the City of Columbus or a surrounding municipality. Companies may consider whether a Voluntary Disclosure Agreement is appropriate.
- **If the company filing appropriately?** Chapter 718 of the Revised Code underwent significant changes over the last four years creating some confusion for practitioners and taxpayers. For example, there have been significant changes in the net operating loss provisions. There may also be differences between the statutory provisions and the local ordinance and the rules governing a particular issue. Companies should review their significant municipal tax obligations and consider whether they have been filing appropriately.

Companies considering electing into the state administered net profit tax system or just evaluating their Ohio municipal tax burden should carefully review their existing process and methodologies. If you have a question or are interested in a municipal net profit tax review, please contact [Debora \(Dardinger\) McGraw](#) at (614) 349-4813 or [any other professional](#) at Zaino Hall & Farrin LLC.

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