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State and Local Tax Alert: Ohio General Assembly Passes Municipal Income Tax Reform Legislation

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On December 19, 2014 Governor Kasich signed Am. Sub. H.B. 5 (the Bill) into law thus concluding three years of contentious lobbying between selected trade associations on one side of the debate (primarily The Ohio Chamber of Commerce, The Ohio Society of CPAs and The National Federation of Independent Business) and Ohio's roughly 600 municipalities on the other side of the debate. The Bill purports to make municipal income tax compliance more uniform and simpler. The Bill's advocates assert that greater uniformity and simplicity will result in lower internal and external municipal income tax compliance costs for individuals and businesses, and as a consequence the Bill will help Ohio's economy. As you might expect this is all debatable. What is not debatable however is that certain changes made by the Bill are very complicated and not clear; and much non-uniformity remains in the law. The legality of some amendments is questionable and we would not characterize some amendments as "pro-taxpayer." Regardless your facts will dictate how much or how little you will be impacted by the Bill.

We anticipate many of our clients will not find the Bill to be a panacea and that municipal income tax compliance will remain time consuming, cumbersome and expensive. This is all disappointing as the Bill started with much promise. Every five to ten years the General Assembly undertakes municipal income tax reform in some capacity yet this latest round concluded with little progress being made toward reducing the burden of local tax compliance in any meaningful way.

Notwithstanding our opinion we encourage you to read the Bill carefully so you can determine how the Bill impacts you. The Bill is expansive in scope touching on substantive issues, procedural issues and administrative issues. Fortunately the new laws do not take effect until January 1, 2016 at the earliest so you have a lot of time to review the Bill. This one year delay is helpful as we anticipate a fair amount of technical corrections to be made in 2015, some of which could be significant.

Here is a list of some noteworthy provisions. This list is not exhaustive and other provisions in the Bill may be of interest to you and/or your business.

1. The Bill requires all municipalities to allow a five year net operating loss carryforward deduction.
2. The Bill amends the occasional entrant rule in various ways. For example,
 - a. The Bill purports to increase the number of days certain employees can work “tax free” in a city from 12 to 20. You should read this amendment carefully. Some employees might be able to work 20 days “tax free”; some employees might not be able to work any days “tax free”; and some employees will simply see their corresponding withholding taxes shifted from one city to another.
 - b. The Bill creates a small employer exception for employers with total gross receipts under \$500,000. The exception allows small employers to withhold and remit income tax just to the city where the employer is located regardless of the city where the employee actually performed services for the employer.
 - c. The Bill establishes that an employee can work in just one city per day and sets forth the manner to determine that one city.
3. The Bill amends the rules for how corporations are to file tax returns on a consolidated basis. The Bill allows a tax administrator in certain instances to require a corporation to file its tax return on a consolidated basis.
4. The Bill amends the process by which a taxpayer may request an alternative apportionment formula or when a tax administrator may require a taxpayer to use an alternative apportionment formula.
5. The Bill establishes a de minimis payment threshold whereby a taxpayer is not required to pay tax if the amount due is less than \$10. That said the taxpayer is still required to prepare and file a tax return even if the amount due is less than \$10.
6. The Bill relieves a taxpayer from making estimated tax payments if the total amount estimated to be due is less than \$200 for the year. For those taxpayers required to make estimated tax payments the Bill establishes uniform due dates for making such payments.
7. The Bill establishes thresholds for when a city can require an employer to remit withholding taxes semi-monthly, monthly or quarterly and when the employer must make such remittances electronically.
8. The Bill establishes uniform tax return filing dates and extended due dates as well as uniform procedures for requesting extensions to file tax returns.
9. The Bill sets forth procedural rules for audit, assessment and appeal.
10. The Bill establishes a uniform interest rate for assessments and refunds; and the Bill sets forth uniform discretionary penalties.