Tax Law Alert

A Corporate Department Publication

December 2013

Mark A. Snider
614.227.2150
msnider@porterwright.com

Andrew R. Trafford
614.227.2183
atrafford@porterwright.com

Please see our other publications at http://www.porterwright.com/pubs.

Ohio House Bill 5 introduced; Aims to simplify municipal income tax code

Ohio Substitute House Bill 5, introduced by State Reps. Grossman (R–Grove City) and Henne (R–Clayton) will, if passed by the Ohio Senate and signed into law, make significant changes to Ohio's municipal income tax code. Supporters of the bill say the law will simplify the existing code, making it easier for businesses and individuals to navigate the state's municipal income tax system.

Below are some of the key provisions of the bill:

- **Application to municipal ordinances and effective date**
  - All municipal income tax ordinances in the state will have to be amended by Jan. 1, 2015, to comply with the provisions of the bill. A municipality that already imposes an income tax greater than 1 percent does not need to get voter approval for the changes. Municipalities are expressly prohibited from enacting any ordinances or laws that conflict with statutory limitations on municipal income tax.
- **Calculation of taxable income**
  - The bill establishes a uniform definition of taxable income for resident and nonresident individuals. Previously, many aspects of determining taxable income were left to the municipalities to decide.
  - The bill includes required exemptions for all municipalities, including:
    - non-wage income for persons under 18,
    - alimony and child support,
    - estate income (unless trade or business income),
    - gains from involuntary conversions and interest on federal bonds,
    - retirement benefits, pensions and disability benefits, unemployment compensation, accident or liability insurance proceeds, and Social Security benefits; and
    - personal injury or property damage compensation.

- The bill requires that certain forms of income must be included in the income tax base of individuals, including:
  - employee contributions to retirement and deferred compensation plans; and
  - self-employment income of religious leaders.

- **Determination of "residency"**
  - Establishes a uniform definition of residency for all municipalities. Previously, each municipality defined residency by ordinance, which resulted in inconsistent definitions. Under the bill, an individual is a "resident" of a municipality only if the individual is "domiciled" in the municipality. "Domicile" is defined in the bill as "the principal residence that the individual intends to use for an indefinite period and to which, whenever absent, the individual intends to return."
  - The bill codifies 11 common law factors to determine domicile. These 11 factors take into account the location of:
    - the taxpayers' attorneys, accountants, doctors and similar professionals,
    - businesses in which the individual or spouse is a partner or shareholder or for which the individual or spouse serves on the board of directors,
    - charitable organizations with which the taxpayer is associated,
    - the individual's friends, dependents and family members,
    - educational institutions attended by the individual's dependents or from which the individual, spouse or dependents claim the benefit of in-state tuition rates,
    - where the individual or spouse shops,
    - where the individual is registered to vote,
    - the location of property owned or leased by the individual or spouse,
    - the address listed on the individual's driver's license,
    - where the individual or spouse is employed; and
    - the address on the individual's or spouse's tax returns, bills, credit card statements or other mail.
  - Increases "casual entrant" rule to 20 days (from 12). The "casual entrant" rule allows an individual to work for a certain number of days per year in a municipality without incurring income tax liability in the municipality. This rule does not apply to professional athletes, entertainers or public figures.
  - The rule is more favorable for businesses with less than $500,000 in annual taxable gross receipts. For these small business employers, the bill requires that they withhold and remit taxes for nonresident employee compensation only to the municipality in which they have a fixed location.

- **Employer withholding**
  - The bill establishes uniform employer wage withholding requirements, according to a fixed schedule. Previously, each municipality determined its schedule and withholding amounts by ordinance.

- **Taxation of pass-through entities**
  - The bill establishes a uniform tax base for pass-through entities (such as partnerships, S corporations and multi-member LLCs). Municipalities are no longer able to choose to tax pass-through entities at either the entity or owner level.
  - The bill modifies the three-part formula for apportionment and allocation of its net profit between municipalities. Moreover, the bill gives taxpayers greater discretion to use a different formula for apportionment and allocation.

  - The bill standardizes the amount of net operating losses (NOLs) that taxpayers are permitted to deduct and carry forward. Under current law, municipalities have discretion whether to allow NOLs and for how long. The bill would require municipalities to allow taxpayers to deduct and carry forward net operating losses (NOLs) for five years. The bill creates the Municipal Income Tax Net Operating Loss Review Committee to evaluate the financial impact of the new NOL provisions.

- **Filing, refunds and assessments**
  - The bill establishes uniform filing requirements, including requiring all taxpayers (except those with tax liability of less than certain amounts) to file an annual return. The bill also prescribes uniform deadlines, forms and procedures for the annual returns that apply to all municipalities. Previously, these filing requirements were determined by each municipality's ordinances.
  - Refunds must be filed within three years after the date the tax was due or paid, whichever is later.
  - The bill establishes uniform procedures for issuing determinations of income tax liability. These "written determinations" must be properly marked and identified, and must contain certain information and procedures regarding the taxpayer's right to appeal.

- **Powers of tax administrator**
  - The bill authorizes municipal tax administrators to compel production of, among other things, the books, records, and federal income tax returns of any taxpayer. The tax administrator may also compel taxpayers (or others with knowledge) to testify under oath regarding potential tax liability. Those compelled to testify may be represented by an attorney, accountant or other tax professional.

- **Local boards of tax review**
  - The bill establishes a uniform composition of the local board of tax review. Each board will consist of three members, two appointed by municipal legislative authority and one appointed by the municipal executive. Each member will serve for terms of two-years, with no term limit for the legislatively-appointed members.
  - Current version of the bill makes no changes to the law regarding appeals of tax assessments. Taxpayers may either appeal to the Board of Tax Appeals or the appropriate Court of Common Pleas.

For more information, please contact Mark Snider at 614.227.2150 or msnider@porterwright.com, Andrew Trafford at 614.227.2183 or atrafford@porterwright.com or any Porter Wright tax and personal wealth attorneys.