

IMPLEMENTING THE NEW MUNICIPAL TAX LAW

Administering the mandated changes

JOINT MEETING

TAWCO and DATA Tax Groups

Tuesday, September 22, 2015

HOSTED BY: Chris Fast, City of Lima

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PANEL DISCUSSION

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OCCASIONAL ENTRANT

Presented by Tina Timberman

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Occasional Entrants

The new ORC 718.011 and how it affects
employee withholding

Presented By: Tina Timberman
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Key Changes



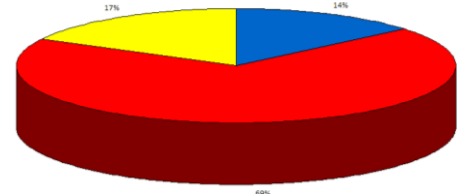
- Expanded from 12 to 20 days
- Tax is not retroactive to day one once threshold of 20 days is achieved
- New classification of businesses
- Preponderance of a day language was added
- New definitions of worksite locations
- Wages that are not taxable for withholding purposes are now exempt from tax (with some exceptions)

Classifications of Businesses

- Small Employers – A business with less than \$500,000.00 in total revenue
- Businesses over \$500,000.00 in total revenue in a taxing jurisdiction
- Businesses over \$500,000.00 in total revenue in a non-taxing jurisdiction



Preponderance of a Day Language



- Lines 1280-1285 of 718.011
 - Small employers employees are not subject to preponderance of the day language.
- For determining withholding, the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day.
- Employee is only subject to tax once preponderance of a day has been met 20 times in a calendar year. The taxpayer is subject to tax each future day that preponderance is met. Although, the employee will still be able to apply for a refund on any tax that was withheld for any portion of the day not worked within the taxing municipality.

Different Types of Worksites

Need to read and understand the differences between and application of the law related to:

LINE 1208: FIXED LOCATION

LINE 1211: WORKSITE LOCATION

LINE 1215: PRINCIPAL PLACE OF WORK

LINE 1258: PRESUMED WORKSITE LOCATION

LINE 1334: EXCEPTION FOR SMALL EMPLOYER



If employer is “small employer,” they are only required to withhold for all employees where the business is located (employer’s fixed location), if that location has a municipal income tax. If fixed location is in a non taxing jurisdiction, no withholding is required.

Exempt Income

MUST GO BACK TO LINE 693 – EXEMPT INCOME

LINE 693 – Income that is not subject to withholding because of the Occasional Entrant provision is **EXEMPT** from tax, except for:

1. Tax is still due at the resident level.
2. Exemption does not apply to qualifying wages that an employer elects to withhold as a courtesy.
3. Exemption does not apply if both of the following apply:
 - A. Tax was withheld for principal place of work where the employer's fixed location is.
 - B. Employee receives a refund from this location on the basis of not performing services in that municipal corporation. If the employee receives a refund, then the wages are no longer exempt from tax where the work was actually performed, regardless of the number of days spent in any municipal corporation.





Refunds

- An employee who does not live or work in your municipality can still request a refund for time worked outside.
- With the new withholding language, you will have employers withholding at their fixed location regardless of where the employee is working.
- Also with preponderance of a day language, you may have an employer withhold on the entire days wage for a few hours of work.
- The changes to the law will cause new refunds and more complexity in calculating the correct taxable wages.
 - However, ORC 718 still allows you to continue any negotiated contracts with employers in your municipality.
- With the new language allowing municipalities to share information, I encourage anyone who gives a refund for tax due to another municipality to notify them. In the end, this will make sure all municipalities are receiving the tax due and could avoid further refund requests.



Delivery Drivers & Refunds

- Delivery drivers in-route are considered to be taxed at the businesses principle place of work.
 - For taxation purposes, traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer is considered taxed at the business's place of work.
 - The delivery person is exempt from tax in the municipalities where the products are being delivered regardless of the amount of time spent.
 - Until a refund is requested from the taxing municipality. At that point the wages become taxable in the work place location, regardless of the amount of days.
 - This is why its so important to share refund information with other municipalities. They will be unaware any tax is due without notification from you.

Problems and Pitfalls with Occasional Entrant Provision (List Not All Inclusive)



- In most cases, first 20 days are tax free.
- Tax is not retroactive to day one once the threshold of 20 days is achieved.
- Employer is not required to withhold for first 20 days for a nonresident employee who works in multiple jurisdictions (with exceptions, including “presumed worksite location”).
- “Day” is based on where “preponderance of a day” is spent. Only one municipality will qualify as where “preponderance” was spent for a given day. Employee must reach preponderance of a day on twenty separate days in a municipal corporation before the next preponderance of a day becomes subject to the tax.

Problems and Pitfalls with Occasional Entrant Provision Continued

- If employer withholds for a fixed location for the first 20 days, and the employee did not work or live in that location, a refund can be requested. If the municipality issuing the refund does not notify the city where the work was performed, and the city of residence, the employee might not go back and pay where tax is now due. The W-2 will be presented to city of residence showing credit for tax paid (even though refund was issued.)
- Small employers located in a township or unincorporated area will have no withholding responsibility at all. Employees are exempt from tax at the location where the work was performed, regardless of number of days. An employee working for a small employer (who is located in a township) could actually work in your municipality **EVERYDAY** for the entire tax year and not be subject to the tax.



How the changes to Occasional Entrance language will affect your revenue



- The changes will cause some employees working in your municipality to have tax free days or pay no tax at all. You may receive some additional withholding from fixed location; however, it will more than likely be available for refund requests.

EFFECTIVE DATE



LINE 4991 - From uncodified Section 3:

“This act applies to municipal taxable years beginning on or after January 1, 2016. For municipal taxable years beginning before January 1, 2016, tax administrators may continue to administer, audit, and enforce the income tax of a municipal corporation under Chapter 718 and ordinances and resolutions of the municipal corporation as that chapter and those ordinances and resolutions existed before January 1, 2016.”

HOW TO ADMINISTER

- Old Ordinance and old ORC 718 will apply to taxable years through 2015, whenever filed.
- For example, a taxpayer who comes to your office on May 25, 2018 and files tax returns for 2014, 2015, 2016 and 2017 will have returns that follow TWO SEPARATE SETS OF RULES. Taxable years 2014 and 2015, even though filed well beyond 1/1/16, will follow current Ordinance and ORC 718, and taxable years 2016 and 2017 will follow new Ordinance and new ORC 718.
- But, what does that really mean?

- Penalty and interest assessed to 2014 and 2015 will follow your current P & I rates, including late filing penalty. Penalty and interest assessed to 2016 and 2017 will follow new Ordinance rates, including late filing penalty.
- If you did not allow offsetting prior to 1/1/16, the 2014 and 2015 taxable years will follow any current rules regarding offsetting. Taxable years 2016 and 2017 will follow new offsetting rules.
- Taxable year 2017 will also set the basis for any net operating loss carried forward to taxable year 2018.

- Your system must be capable of tracking changes from the OLD LAW and NEW LAW based on taxable years.
- Penalty and interest assessments must be based on taxable years, with any updated penalty and / or interest consistent with the proper law based on the taxable year.
- Do you have your system do the calculation of offsets, or is this a function of the audit process, and the final result is entered into the system?
- How does your system allocate credit for tax paid to another municipality, or is this a function of the audit process, and the final result is entered into the system?
- How has your software vendor adapted to these changes?

Authority to Levy a Tax

ORC 715.013 (line 451) Provides the restriction that a municipal income tax must be levied in accordance with the Chapter 718 of the Revised Code.

“This section does not prohibit a municipal corporation from levying an income tax or withholding tax in accordance with Chapter 718 of the Revised Code or a tax on any of the following.....”

- A municipal income tax that does not comply with the provisions of ORC 718 places the ability to administer the tax in possible jeopardy, per drafters of the language. Adding this language to ORC 715.013 implies that a municipal income tax cannot be levied unless it complies with the provisions of ORC 718.

Authority to Levy a Tax

ORC 718.04 (line 2086)

“A municipal corporation may levy a tax on income and a withholding tax if such taxes are levied in accordance with the provisions and limitations specified in this chapter.”

By 1/1/16, Ordinance or Resolution must include:

1. Statement that tax is an annual tax levied on income of every person residing in or earning or receiving income in the municipal corporation.
2. The tax shall be measured by “municipal taxable income.”
3. Statement that municipal corporation is levying tax in accordance with the limitations specified in 718, and that the resolution or ordinance incorporates the provisions of 718.

4. Rate of the tax.
5. Whether, and extent to which, credit is allowed against the tax.
6. Purpose(s) of tax.
7. Any other provision necessary for administration of the tax, provided that the provision does not conflict with any provision of 718.

Other provisions included in 718.04 require the compliance of the municipal corporation.

HOW TO ADMINISTER

- Has your municipality passed a new Tax Ordinance with language as provided in the OML Sample Ordinance?
- Will you be compliant as of 1/1/16 with the required language in your Ordinance?
- Repercussions of not having this change in place could be the elimination of your ability to impose the municipal income tax for your municipality.
- Have you worked with your Council to ensure that they understand the need for the changes?

What are the first changes we will see?

With changes effective with taxable years on and after 1/1/16, the following will happen right away:

- Withholding thresholds and due dates for withholding for 2016 taxable year.
- Estimated tax thresholds and due dates for 2016 taxable year.
- Penalty and Interest charges on withholding for 2016 (individual and net profit will be effective with 2016 taxable year).
- Local Board of Tax Review must be established by 1/1/16.

718.03 WITHHOLDING

718.03(A)(1): Lines 1750-1763

- Each employer, agent of an employer, or other payer located or doing business in a municipal corporation that imposes a tax on income in accordance with this chapter shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the municipal corporation **multiplied by the applicable rate** of the municipal corporation's income tax, **except for qualifying wages for which withholding is not required** under section 718.011 of the Revised Code or division (D) or (F) of this section.

718.03 WITHHOLDING

718.03(D): Lines 1835-1841

- “An employer, agent of employer, or other payer is not required to withhold municipal income tax with respect to an individual’s disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation’s successor entity.”

718.03(F): Lines 1852-1856

- Division (F) – Line 1852 – Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

718.03 WITHHOLDING

718.03(A)(2): Lines 1764-1768

- In addition to withholding amounts required under division (A)(1), an employer may also deduct and withhold resident tax at the request of the employee.

Confusion with:

718.011(B)(1): Lines 1249-1255

- An employer is not required to withhold.....unless one of the following conditions apply:

718.011(B)(1)(c): Lines 1272-1275

- The employee is a resident of the municipal corporation and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 718.03 of the Revised Code.

Does this refer to employment or resident tax?

The question has already been raised.

HOW TO ADMINISTER

- Does this mean that an employer is **REQUIRED** to withhold residence tax if the employee requests such withholding?
- How are the third party vendors (ADP, Paychex, Paycor, etc) interpreting this provision?
- How do WE interpret this provision?

718.03 WITHHOLDING

718.03(C): Lines 1824-1834

- An employer must file a return showing the amount of tax withheld from each employee.

718.03(E)(1) & (2): Lines 1842-1851

- An employee is not relieved of their tax liability if their employer fails to withhold.
- The failure of the employer to remit the taxes withheld relieves the employee from liability unless there was collusion between the two.

718.03 WITHHOLDING

718.03(G): Lines 1863-1868

- LINE 1863 – Employer, agent of employer, or other payer required to withhold is liable for payment, whether or not taxes have been withheld. The amount is deemed to be held in trust.
- In conjunction with 718.03(E)(1) this empowers the municipal corporation to pursue both parties for any taxes due, however, does not allow municipal corporation to collect the same amounts twice.

HOW TO ADMINISTER

- If tax is not withheld by an employer, and the employee is a resident of your municipal corporation, you need to be careful not to collect the same money from both parties.
- If you bill the employer, and receive payment, you must go back through all of the employee W-2's and verify that they did not file and pay tax.
- If the employee ALSO paid the tax, who would you refund the money to? Consider, for purposes of such example, refunding the money paid by the individual employee back to the employee since the employer was REQUIRED to withhold and pay, and failed to do so.
- Regardless of who pays the tax, you must ensure that you are not collecting from both parties on the same earnings.

718.03 WITHHOLDING

718.03(I): Lines 1884-1893

- Individual with control or direct supervision of or charged with responsibility for withholding the tax or filing reports and making payments shall be personally liable for failure to file a report or pay the tax due.
- Dissolution of employer, agent of employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of employer, or other payer to file returns or pay any tax due.

718.03 WITHHOLDING

718.03(J): Lines 1894-1902

- Employers are required to deduct and withhold tax on tips and gratuities on those qualifying wages that are under the employer's control (ie payments by debit, credit, or other electronic means).

WITHHOLDING

LINE 1750 – ORC 718.03 – Withholding

LINE 1775 – Monthly Withholding

Look back: If previous calendar year exceeded \$2,399. or if total in any month of preceding calendar quarter exceeded \$200.

MONTHLY WITHHOLDING DUE:

15 days after the last day of each month

718.03 WITHHOLDING

718.03(B)(1)(a): Lines 1775 – 1786

- Monthly withholding look back: If previous calendar year exceeded \$2,399. or if total in any month of preceding calendar quarter exceeded \$200.
- Monthly withholding due date is 15 days after the last day of each month.
- Note that the payment must be “received” by the tax administrator by the due date (all of the other periods also show this as a “received by” date).

HOW TO ADMINISTER

- LOOK BACK IS PROBLEMATIC.
- You could have an employer who, based on the look back of the previous calendar quarter, qualifies as monthly at one point, and then quarterly some other time during the year.
- Consider the employer with seasonal work. If they have no withholding during the first quarter of the year, the look back for April might show that they qualify for quarterly withholding. Their look back for July, with lots of activity in April, May and June could indicate that they are now MONTHLY withholders.
- An employer, based on the two different look back periods, could change withholding frequency during the calendar year, and could change more than once.

HOW TO ADMINISTER

- How will you handle a change in withholding frequency during the year?
- Does your system look at just the last frequency entered to determine how the filing should be done? For example, if you change a quarterly filer to a monthly filer, does your system take the first quarter payment and convert it to a third month payment in your system? Would it appear, incorrectly, that payments might be missing for January and February, since your system now thinks that this employer is a MONTHLY remitter?
- Is there a way for your system to show that a quarterly filer has fulfilled requirements for all three months included in the quarter? In those cases where frequency changes during the year, this would make all three months within each quarter to appear as though they have been filed, eliminating the possibility of sending out delinquent notices when not necessary.
- What other problems could occur with changing frequencies? Will this be an issue for the employer to keep track of changing frequencies? Will this create problems during reconciliation?

WITHHOLDING

LINE 1787 – Quarterly Withholding

Any employer, agent of an employer, or other payer not required to make monthly withholding shall make quarterly withholding payments.

QUARTERLY WITHHOLDING DUE:

15 days after the end of each calendar quarter.

718.03 WITHHOLDING

718.03(B)(1)(b): Lines 1787-1791

- Quarterly Withholding: Any employer, agent of an employer, or other payer not required to make monthly withholding shall make quarterly withholding payments.
- Quarterly withholding is due 15 days after the end of each calendar quarter.

HOW TO ADMINISTER

- The problems detailed previously regarding the look back period apply whether the account starts out as a quarterly or monthly remitting account.
- Can you consider determining that just the previous year look back will apply for purposes of withholding?

Pros – This would provide consistency of look back, and no changes of frequency during the year.

Cons – Is this in conflict with ORC 718, or can you use your ability to control penalty and interest to make this determination?

HOW TO ADMINISTER

For example:

Since the withholding section allows you to make an agreement with an employer regarding remittance of withholding tax, could you use this provision to determine that your “agreement” with employers is that they will use only one look back period? If an employer, based on the previous calendar month, is required to remit quarterly, you would make them a quarterly remitter for the entire year.

Could this be permitted? If so, how would you communicate this?

Could you state that you would not penalize for any change in withholding frequency if the employer uses only the prior calendar year as look back, provided that the employer did have activity in your municipal corporation for the entire previous calendar year (to establish basis).

WITHHOLDING

LINE 1796 **OPTIONAL**

SEMI-MONTHLY WITHHOLDING

LOOK BACK: If previous calendar year exceeded \$11,999, or if the total in any month of the preceding calendar year exceeded \$1,000.

SEMI MONTHLY WITHHOLDING DUE:

For first 15 days, 3rd banking day after the 15th

For 16th through end of month, 3rd banking day after the last day of the month.

718.03 WITHHOLDING

718.03(B)(2)(a): Lines 1796-1813

- Optional Semi-monthly withholding look back: If previous calendar year exceeded \$11,999, or if the total in any month of the preceding calendar year exceeded \$1,000.
- Semi-monthly withholding due dates: *For first 15 days, 3rd banking day after the 15th. For 16th through end of month, 3rd banking day after the last day of the month.*

HOW TO ADMINISTER

PROS:

- Cash flow
- More frequent withholding remittance from larger employers
- Tracking changes in withholding / gross payroll might be enhanced
- Changes in withholding from staffing reductions would be identified sooner, allowing quicker adjustment to revenue projections for year

CONS:

- Double the transactions and payments to process from larger employers
- If remitted via snail mail, double the number of pieces of mail to process, double the time of entry per month, double the work load per month for these particular employers
- Increased workload might not offset any additional benefit of receiving the payroll more quickly
- Would require creation of additional form for remittance and new Reconciliation form, both available on the website.

WITHHOLDING

LINE 1814 OPTIONAL

REQUIRE WITHHOLDING PAYMENTS BY ELECTRONIC FUNDS TRANSFER

If the employer, agent of the employer, or other payer is required to make payments electronically for purpose of paying federal taxes withheld (under section 6302 of the IRC, 26 C.F.R.), the municipality can require electronic funds transfer of taxes withheld from employees.

718.03 WITHHOLDING

NOTE: 718.05(I): Lines 2270-2272

“This division shall not apply to payments required to be made under division (B)(1)(a) or (2)(a) of section 718.03 of the Revised Code.”

718.03(B)(1)(a) refers to MONTHLY WITHHOLDING.

718.03(B)(2)(a) refers to SEMI MONTHLY WITHHOLDING.

(continues on next slide)

718.03 WITHHOLDING

- 718.05(I)(1) – “the date of the postmark stamped on the cover.....shall be deemed to be the date of delivery or the date of payment.”
- 718.05(I)(2) – “electronic funds transfer....payment is considered to be made when the payment is credited to an account designated....for receipt of tax payments.” (with exception for delayed payments stated).

THIS MEANS THAT, for purposes of withholding, the **MONTHLY and SEMI-MONTHLY payments must be RECEIVED by the due date.** The postmark date and the electronic funds transfer designated date paid DO NOT APPLY.

THE POSTMARK AND ELECTRONIC FUNDS TRANSFER DATE PAID as shown above **will apply to QUARTERLY payments.**

HOW TO ADMINISTER

- WITHHOLDING ACCOUNTS, based on frequency, will have TWO DIFFERENT METHODS to determine timely filing / payment.
- MONTHLY and SEMI-MONTHLY – RECEIVED BY
- QUARTERLY – POSTMARKED BY

This is problematic for employers, and for you as an administrator. YOU CANNOT CHANGE THIS. You will have to go through and determine which were “received” and which were “postmarked” timely. If you do not want to differentiate between the different remittance frequencies (and think back to the problems for an employer who might change frequencies during the year), you can determine that you will not assess penalty and interest as long as all payments are “postmarked” by the due date.

OR – YOU CAN ADMINISTER THIS EXACTLY AS WRITTEN.

718.03 WITHHOLDING - RECONCILIATION

718.03(H): LINE 1869-1883

- Annual Reconciliation due by last day of February of each year.
- Must include names, addresses, SSN, of all employees with tax withheld (or should have been withheld) for preceding calendar year; amount of tax withheld from each employee, amount of qualifying wages paid, and other information required for federal income tax reporting purposes on form W-2.
- Any other information as may be required by Tax Administrator.
(LINE 1882)
- LINE 1877 – Reconciliation must show amount withheld or should have been withheld **for every other municipal corporation.**

HOW TO ADMINISTER

- An employer is now required to provide you with every place where tax was withheld, and the amount withheld for each.
- While this appears, on the surface, to be extremely helpful information, how can you use this?
- For employees who are residents, they should be providing this information with their annual filing (mandatory filing). If you do not have mandatory filing, and you have a resident who appears to have no other withholding, and they were not fully withheld for your municipality, you could do a proposed “finding of liability” and bill the taxpayer for the additional tax due.
- How else could you use this information?

718.08 ESTIMATED TAXES

- LINE 2625 – “every taxpayer shall make a declaration of estimated taxes for the current taxable year.”
- LINE 2626 – “on the form prescribed by the tax administrator”
- LINE 2627 – “if the amount payable as estimated taxes is at least two hundred dollars”
- LINE 2629 – Taxes withheld from qualifying wages shall be considered as paid to the municipal corp in equal amounts on each payment date **UNLESS** the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.

HOW TO ADMINISTER

- Threshold has been set at \$200 for requiring estimated tax payments.
- Problematic for taxpayers who are not able to discipline themselves to make payments, and even \$200 is difficult for them to come up with when tax return is due.

718.08 ESTIMATED TAXES

- **LINE 2635 – An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed, or, if the payment is made by electronic funds transfer, the date the payment is submitted.**
- **NOTE: An overpayment of tax from one taxable year carried to another taxable year could be from a combination of estimated tax payments made, withholding payments remitted, credit for tax paid by a partnership (and credit is taken by partner), prior year credit carried to that tax return, etc.**
- **Which payment are you supposed to assume created the actual overpayment that is being carried over? And what difference does it make when the payment is made?**

718.08 ESTIMATED TAXES

- LINE 2642 – Taxes withheld by a casino operator or by a lottery sales agent are deemed to be paid to the municipal corporation on the date the taxes are withheld from the taxpayer’s winnings.
- LINE 2647 – Taxpayers filing joint returns shall file joint declarations of estimated taxes.
- LINE 2649 – A taxpayer may amend a declaration under rules prescribed by the tax administrator. (NOT required by Ordinance.) BUT, there are exceptions that are already prescribed in this section. The word “amendment” will be bolded and underlined to identify those exceptions.
- LINE 2651 – A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the tax administrator. (NOT required by Ordinance.)

HOW TO ADMINISTER

- Administrator must prescribe rules for filing a declaration if taxpayer has a taxable year of less than 12 months. This would apply to:
 1. Part year resident who moved out after 12/31.
 2. Short year filer (business entity filing return), possibly changing periods from fiscal to calendar, or calendar to fiscal year filer
 3. Who else would this apply to?

718.08 ESTIMATED TAXES

- LINE 2654 – Declaration shall be filed on or before the date for filing the municipal income tax return, or on or before the 15th day of the fourth month after the taxpayer becomes subject to tax for the first time.
- LINE 2659 – Taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the fourth month after the beginning of each fiscal year or period.
- LINE 2662 – Original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided.

718.08 ESTIMATED TAXES

- LINE 2665 – Establishes that the portion of liability that shall be paid through estimated taxes shall be made on or before the applicable payment date, as follows:
 1. On or before the 15th day of the 4th month after the beginning of the taxable year, 22.5% of the tax liability for the taxable year;
 2. On or before the 15th day of the 6th month after the beginning of the taxable year, 45% of the tax liability for the taxable year;
 3. On or before the 15th day of the 9th month after the beginning of the taxable year, 67.5% of the tax liability for the taxable year;
 4. On or before the 15th day of the 12th month after the beginning of the taxable year, 90% of the tax liability for the taxable year.

HOW TO ADMINISTER

PROBLEMS FOR TAXPAYERS RESULTING FROM CHANGE IN ESTIMATED TAX DUE DATES:

1. Payments for second, third and fourth quarter are now due 1.5 months EARLIER than under current law. (For cities that actually bill taxpayers and send quarterly notices, this will move up the date that declarations must be entered in your system, and billings prepared.)
2. Fourth quarter is now due by 12/15 for calendar year filers. For federal tax planning purposes, this creates a real problem for taxpayers who will not have the option to pay after 12/31.
3. For purposes of the NOL Study Committee, 2016 will artificially appear to have an increased amount of revenue (since there will be 5 quarters of estimated tax paid during the calendar year), so any reporting done for the NOL Study Committee must make adjustments for this artificially inflated revenue number.

NOTE: Each municipality will have the option to determine when / if penalty and interest apply to the nonpayment or underpayment of estimated tax payments. Sole discretion to waive penalty and interest lies in the hands of the Tax Administrator, when the Tax Administrator deems it in the municipality's best interest to do so. This is a case where a municipal corporation could determine when the penalty and interest will apply. This does, however, create NON-UNIFORMITY and possible future repercussions as a result.

718.08 ESTIMATED TAXES

- LINE 2683 – When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
- LINE 2686 – On or before the 15th day of the 4th month of the year following that for which the declaration or amended declaration was filed, *an annual return shall be filed* and any balance which may be due shall be paid with the return in accordance with section 718.05 of the Revised Code.

718.08 ESTIMATED TAXES

- LINE 2691 – UNDERPAYMENT OF ESTIMATED TAX. Penalty and interest may be imposed upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section.
- *(NOTE: Division (E) provides SAFE HARBOR provisions: (1) the amount of tax paid equals at least 90% of the current tax liability, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due; (2) amount paid equals at least 100% of the liability shown on the return of the taxpayer for the preceding taxable year, and that the return reflects 12 months and was filed with the municipal corporation; and (3) that the taxpayer was not domiciled in the municipal corporation on the first day of January of the calendar year.)*

718.08 ESTIMATED TAXES

- LINE 2695 – Amount of underpayment shall be determined as follows:

FIRST PAYMENT – 22.5% of liability less amount of taxes paid by due date;

SECOND PAYMENT – 45% of liability, less amount of taxes paid by the due date;

THIRD PAYMENT – 67.5% of the tax liability, less amount of taxes paid by due date;

FOURTH PAYMENT – 90% of liability, less amount of taxes paid by due date.

HOW TO ADMINISTER

For purposes of calculating penalty and interest, do you make the calculation based on 22.5% only as being due each quarter, or based on the cumulative amount due on each quarter?

- FIRST Q – 22.5%
- SECOND Q – 45%
- THIRD Q - 67.5%
- FOURTH Q – 90%

WILL YOU ASSESS PENALTY AND INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX BASED ON:

- EACH QUARTERLY INSTALLMENT, OR
- THE TOTAL AMOUNT AS DUE AS OF FOURTH QUARTER, OR
- NOT AT ALL?

718.08 ESTIMATED TAXES

- LINE 2709 – Period of underpayment runs from the day the estimated payment was required to be made to the date on which the payment is made.
- For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid penalty.
- For example, a taxpayer who owes \$100 each quarter in estimated tax pays zero for first quarter, and \$140 for second quarter. How would you apply the payment? \$100 to Q2, and the remaining \$40 to Q1; \$100 to Q1 and the remaining \$40 to Q2; or \$200 to Q2?

ESTIMATED TAX CHANGES

LINE 2721 – SAFE HARBOR provision

LINE 2734 – Individual not domiciled in municipal corporation on the first day of the taxable year, not required to make estimated tax payments for that taxable year.

LINE 2737 – Tax Administrator may waive the requirement for filing declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

LINE 2741 – Municipal corporation may, by ordinance or rule, waive the requirement for filing a declaration of estimated taxes for all taxpayers.

HOW TO ADMINISTER

RULES FOR AN AMENDED DECLARATION.

As Administrator, you must prescribe rules for filing an amended declaration, however, many rules have already been determined. What is left that has not been mandated? Here is what ORC 718 provides (as shown on previous slides):

- LINE 2662 – Original declaration or any subsequent **amendment** may be increased or decreased on or before any subsequent quarterly payment day as provided.
- LINE 2683 – When an **amended** declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
- LINE 2686 – On or before the 15th day of the 4th month of the year following that for which the declaration or **amended** declaration was filed, *an annual return shall be filed* and any balance which may be due shall be paid with the return in accordance with section 718.05 of the Revised Code.

OFFSETTING

UNDERSTANDING THE BASICS:

Definition of “net profit” for an individual means the individual’s net profit required to be reported on schedule C, E or F, reduced by any net operating loss carried forward. For purposes of the “new” NOL carryforward, you will follow the NOL calculations as provided in the AFTI definition. *(NOL will not be part of this discussion.)*

TOTAL OFFSETTING APPLIES TO RESIDENTS ONLY.

Nonresidents may not include pass through entities in determining taxable income. A nonresident must report any net profit (exclusive of nonresident’s distributive share of net profit or loss from pass through entities owned directly or indirectly by the nonresident).

OFFSETTING

Under the definition of “income” =

FOR RESIDENTS

“.....any net operating loss incurred in the taxable year andresident’s distributive share of any net operating loss generated in the same taxable year and attributable to the resident’s ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year.....against any other net profit of the resident or the resident’s distributive share of any net profit attributable to the resident’s ownership interest in a pass-through entity.....”

OFFSETTING

- A resident may, for residence tax reporting, offset current year schedule income and loss, regardless of where activity exists. This includes (per definition of “net profit”) income and losses from schedules C, E and F of the resident, and pass-through income and losses of the resident to arrive at overall income or loss for the taxable year.
- A nonresident will report net profit (income and losses associated with schedules C, E and F) earned in a given municipal corporation exclusive of pass through entities.

OFFSETTING

- A municipal corporation that passed a ballot initiative in either 2003 or 2004 to tax the S Corp shareholder's distributive share in the hands of the individual owner will have those same rules apply with offsetting.
- The S Corp income or loss will only be used for purposes of offsetting against other income or loss from net profit IF the municipal corporation voted to tax such income or loss in the hands of the individual owners.
- If the municipal corporation did not vote to tax S Corp at the individual level, then any income or loss attributable to the individual owner will not apply.

OFFSETTING

- The offsetting provision does not apply to qualifying wages. A net profit loss cannot be used to offset qualifying wages.

OFFSETTING

EXAMPLE 1:

Resident A lives in Dayton (2.25% tax, full credit).

A owns rental properties in the following cities:

Centerville (1.75%), with income of \$5,000, tax paid \$87.50

Kettering (2.25%) with loss of (\$3,450), nothing paid

On the Dayton return, A can offset the Centerville gain with the Kettering loss.

\$5,000 Centerville income

(3,450) Kettering loss

\$1,550 net profit reportable to Dayton

How much credit does Dayton allow against this rental profit? If \$87.50 was paid to Centerville, and Dayton allows full credit, what is the amount allowable? Consider the offsetting, and how credit for other tax paid should apply.

Does the credit language in your Ordinance provide enough detail and explanation to show that only the reported profit should have tax credit permitted?

OFFSETTING

EXAMPLE 2:

Resident A lives in Dayton (2.25% tax, full credit).

A owns rental properties in the following cities:

Centerville (1.75%), with income of \$5,000, tax paid \$87.50

Kettering (2.25%) with loss of (\$3,450), nothing paid

A also is a partner in a partnership located in Troy, with a reportable share of profit of \$10,000.

Troy (1.75%) with share of income \$10,000, tax paid \$175.00

On the Dayton return, A will report:

\$5,000 Centerville income

(3,450) Kettering loss

\$10,000 Troy partnership share of profit

\$11,550 net profit reportable to Dayton

How much credit does Dayton allow against this profit? If \$87.50 was paid to Centerville, \$175.00 paid to Troy, and Dayton allows full credit, what is the amount allowable? Would you prorate the total reportable profit to determine how much of the \$11,550 is attributed to Centerville and Troy activity, and allow credit accordingly?

Continued on next slide.

EXAMPLE 2 Continued

Of the \$11,550:

- 33.33% is attributable to Centerville (\$5,000 of total \$15,000 income is 33.33%) and
- 66.67% is attributable to Troy (\$10,000 of total \$15,000 income is 66.67%).

\$3849.62 – Centerville attributable net profit (33.33% of \$11,550)

Credit for Centerville tax on Dayton residence return - \$67.37
(1.75% of \$3849.62)

\$7700.38 – Troy attributable net profit (66.67% of \$11,550)

Credit for Troy tax on Dayton residence return - \$134.76
(1.75% of \$7700.38)

Total credit allowable, taxes paid to other cities = \$202.13 (vs the actual tax paid to Centerville/Troy of \$262.50.)

Does the credit language in your Ordinance provide enough detail and explanation to show that only the reported profit should have prorated or allocated tax credit permitted?

(Source: 716.06)

148-1.08 CREDIT FOR TAX PAID

148-1.081 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

- (A) If a resident of the City of Oakwood is subject to a municipal income tax in another municipality as well as in this City, he shall not pay a total municipal income tax (on the same income) greater than the tax imposed at the highest rate to which he is subject.
- (B) Every individual who resides in the City of Oakwood who receives net profits, qualifying wages, commissions or other taxable income for work done or services performed or rendered outside the City of Oakwood, and who is liable and has paid to another municipality an income tax on the same income taxable and taxed under this chapter, shall be allowed a credit against the tax imposed by this chapter (on the same income to the extent such income is taxed under this chapter) of the amount so paid by him, or on his behalf to such other municipality. This credit shall not exceed the Oakwood tax imposed on the income earned in the other municipality(ies) where such tax is paid. The amount of income reported on federal Schedules C, E, and F, earned in and taxed by a given municipality (as a percentage of total income reported on federal Schedules C, E and F attributable to taxing and non taxing jurisdictions) shall be used to determine each municipality's contribution to net Oakwood taxable income, prior to calculation of the resident city credit for taxes paid to other cities on net profit income. The rate to be used for calculation of this credit shall be the lesser of the resident city tax rate or the appropriate rate at which such income was taxed by such other municipality. The resident city credit(s) for taxes paid to another municipality(ies) on net profit income shall be calculated as follows:

$$\text{Oakwood net profits taxable income (\$)} \times \text{municipality contribution (\%)} \times \text{tax rate (\%)} = \text{allowable credit}$$

148-1.082 REFUNDABLE CREDIT FOR QUALIFYING LOSS

- (A) As used in this section:
- (1) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
 - (2) (a) Except as provided in division (A)(2)(b) of this section, "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.
 - (b) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division (A)(2)(a) of this section computed without regard to division (A)(2)(b) of this section and a fraction:

OAKWOOD
CREDIT
LANGUAGE
(Tentative,
Ordinance not
adopted yet)

LOCAL BOARD OF TAX REVIEW

- Your local Board of Tax Review should have a manual that outlines the procedures for an appeal, how a hearing is conducted, and provide forms for use for the members of the Board.
- Create a form that provides information for taxpayers who wish to file an appeal (on next slide).
- You should meet with your Board to provide training opportunities for them to be more comfortable with the new and old Tax Ordinances.
- Consider whether or not your Law Director or Solicitor should act as an advisor to the Board. This will only work if you use outside Counsel to represent you in matters regarding municipal income tax. Otherwise, you could have a conflict of interest when the municipality decides to appeal a decision of the Local Board of Review.

HOW TO FILE AN APPEAL WITH THE LOCAL BOARD OF TAX REVIEW

PLEASE REFER TO SECTION 718.11 OF THE REVISED CODE

1. Right to Appeal: An Appeal may be filed when a Taxpayer:
 - A. Disputes an Assessment issued by the Tax Administrator regarding an underpayment of municipal income tax.
 - B. Disputes a reduction in or elimination of a claim for refund, and the Tax Administrator has issued an Assessment notice.
 - C. Disputes any Assessment issued by the Tax Administrator
2. A Taxpayer may appeal to the Local Board of Tax Review by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after receipt of the Assessment notice from the Tax Administrator.
3. The written appeal should be sent to:

NAME OF MUNICIPALITY
NAME OF INDIVIDUAL RECEIVING APPEALS (Secretary of the Board/ c/o Tax Admin)
ADDRESS (municipality)
CITY STATE ZIP

To confirm receipt of the Appeal, you may contact (NAME OF PERSON) at (PHONE).
4. TIMEFRAME:
 - The Local Board of Tax Review will schedule a hearing to be held within sixty (60) days after receiving the Appeal of Assessment. The Taxpayer will receive, by ordinary mail, a notice instructing the Taxpayer of the date of the Appeal Hearing, the location, and the time of the Hearing.
 - Should the Taxpayer need additional time to prepare, the Taxpayer must request, in writing, an extension of time. This extension should specify the additional time frame necessary to prepare for the hearing. Such extension request will be sent to the same address and individual as shown in #3 above. The request for extension must be received no later than five working days prior to any scheduled hearing on this matter.
 - The Taxpayer has the right to waive the hearing.
 - The Board may allow a hearing to be continued as jointly agreed to by both the Taxpayer and the Tax Administrator. In such case, the hearing must be completed within one hundred twenty days after the first day of the hearing, unless the parties agree otherwise.
5. The Taxpayer may appear before the board and may be represented by an attorney at law, a certified public accountant, or other representative.
6. The Board may affirm, reverse, or modify the Assessment or any part of the Assessment issued by the Tax Administrator.
7. The Board shall issue a Final Determination on the Appeal within ninety (90) days after the Board's final hearing on the Appeal. A copy of its Final Determination will be sent to all parties to the Appeal, by ordinary mail, within fifteen (15) days after issuing the Final Determination.
8. The Taxpayer and the Tax Administrator both have the right to appeal the Final Determination by the Local Board of Tax Review pursuant to Section 5717.011 of the Ohio Revised Code.

LOCAL BOARD OF TAX REVIEW MANUAL

Procedural Rules, Scheduling and Conducting a Hearing, Issuing a Final Determination

Procedural Rules for the Local Board of Tax Review

1. The Board shall adopt Rules governing its procedures. The rules governing the Local Board of Tax Review shall be in writing, and may be amended as needed by the Local Board of Tax Review. The rules may not conflict with the provisions of Section 718.11 of the Revised Code, or the Ordinance of this Municipality. Such amendment will require a majority vote of the membership of the Board, and the amendments must be approved by the Law Director / Solicitor for compliance to Chapter 718 of the Revised Code or the ordinances of the municipal corporation before such vote may commence.
2. The Board shall keep a record of its transactions. Such records are not public records open or available for inspection under Section 149.43 of the Revised Code. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case under Appeal must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove any such documentation, copies of returns or reports, final determinations, or working papers from the hearing.
3. Each member of the Local Board of Tax Review shall sign a “Confidentiality Agreement”, witnessed by the Tax Administrator or their designee. The original of this “Confidentiality Agreement” shall be maintained by the Tax Administrator, with a copy provided to the member of the Local Board of Tax Appeals and the law director / solicitor for the municipal corporation. Any disclosure of confidential information by a member of the Local Board of Tax Review, obtained as a result of an Appeal, including returns or reports, testimony provided at any hearing, or other information shall constitute a first degree misdemeanor, and each such disclosure shall constitute a separate criminal charge. The legislative authority or top administrative official who made the appointment for a member who divulged confidential information will immediately terminate the member’s appointment to the Board.
4. A member who has a conflict of interest of any kind with an upcoming hearing, Taxpayer or case shall immediately notify the other members of the Local Board of Tax Review, and the legislative authority or top administrative official who appointed the member to the Board. The Board member will immediately be excused from serving on the matter where a conflict exists.
5. If a member is temporarily unable to serve on the Board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board in the member’s place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

6. Members of the Local Board of Tax Review appointed by the legislative authority of the municipal corporation may be removed by the legislative authority by a majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publically heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable. If the nature of the charges and subsequent testimony would divulge confidential taxpayer information, all protected confidential information must be redacted prior to any such hearing.

7. A member of the Board who, for any reason, ceases to meet the qualifications for the position prescribed by Section 718.11 of the Revised Code, or the qualifications established by any Ordinance of the municipal corporation shall resign immediately by operation of law.

8. Vacancy in an unexpired term shall be filled in the same manner as the original appointment, within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board shall impair the power and authority of the remaining members to exercise all the powers of the Board.

9. The Board, which consists of three members, shall choose one member to serve as Chairperson, and one person to serve as Secretary. Such election shall be made by majority vote of the membership.

A. The Chairperson of the Board shall conduct the meeting, and be responsible for ruling on all procedure and evidentiary matters. The Ohio Rules of Evidence shall serve as a guideline on evidentiary rulings, but shall not be binding on the Board. The Chairperson will collect the written Final Determination from each member, as well as preparing his/her own Final Determination, and will present the resulting decision to the Board members. The Chairperson will provide the written decision of the Board (Final Determination) to the Secretary for distribution. The Chairperson shall gather all confidential documentation (including any audio recording by the Secretary) and return to the secure location of the Tax Administrator at the conclusion of each hearing.

B. The Secretary of the Board shall be responsible for keeping the minutes of the hearing and may, if approved by the Board, have a record of the hearing made by audio means. Such recording will be treated in the same manner as confidential documentation as outlined in #2 and #3 of this document, and shall not leave the secure area under the control of the Tax Administrator. The Secretary shall also provide written notification regarding scheduled hearings to the Taxpayer and/or their representative, and to the Tax Administrator. The Secretary shall distribute the Final Determination of the Board following the guidelines established in ORC 718.11.

C. The Chairperson and Secretary shall serve in such capacity for the duration of their appointment to the Board, or until a majority of the members vote to terminate such appointments and a new election shall immediately take place.

10. FITNESS FOR DUTY: No member of the Local Board of Tax Review shall arrive at any meeting or hearing under impairment of any kind that could affect their ability to perform the functions of their position on the Board. Any member observing another member who appears to be under impairment shall immediately call for a postponement of the hearing, and shall notify either the legislative authority or top administrative official who appointed the potentially impaired member to the Board. The legislative authority or the top administrative official shall immediately begin an investigation and determine whether or not the member is fit to serve in their capacity as a member of the Board.

SCHEDULING AND CONDUCTING A HEARING

1. Scheduling the Hearing from an Appeal of a Taxpayer

The Local Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receipt of an Appeal. The Taxpayer may request additional time to prepare, or may waive the hearing. The taxpayer may appear before the Board and/or may be represented by an attorney at law, certified public accountant, or other representative. The Board may allow a hearing to be continued if jointly agreed by the parties. In such case the hearing must be completed within one hundred twenty days after the first day of the hearing, unless the parties agree otherwise.

2. Hearing Procedures

The Chairman shall call the meeting to order. The Chairman shall administer an oath to all witnesses who will testify before the Board.

Both parties shall have the right to:

- Direct testimony, witness testimony and documentary evidence relevant to the appeal
- Cross examine adverse witnesses, and;
- Proffer evidence into the record if its admission has been denied.

The Taxpayer and/or their representative shall be provided the opportunity to provide testimony first.

At the conclusion of the presentation of all evidence, both parties shall be provided the opportunity to make closing arguments.

The Secretary of the Board shall be responsible for keeping the minutes of the hearing and may have a record of the hearing made by audio means.

3. Final Determination

The Board shall issue a Final Determination within ninety days after the Board's final hearing on the appeal.

The Secretary shall send a copy of the Board's Final Determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the Final Determination.

The Taxpayer or the Tax Administrator may appeal the Board's Final Determination as provided in Section 5717.011 of the Ohio Revised Code.

ISSUING A FINAL DETERMINATION

1. At the conclusion of the final hearing, each member of the Board shall complete a “Decision of Board Member” form, indicating their decision on the Appeal, the reasons for affirming, reversing or modifying the decision of the Tax Administrator. The “Decision of Board Member” form shall be as detailed as possible, citing Ordinance, ORC 718, or other pertinent law regarding the decision.
2. The Chairperson for the Board shall collect the “Decision of Board Member” forms from the other two members. These forms shall be treated as all confidential information, and shall be stored in the secure location under the control of the Tax Administrator.
3. The majority decision shall prevail, and the Chairman shall issue the decision of the Board, on the form “FINAL DETERMINATION OF THE LOCAL BOARD OF TAX REVIEW.” This Final Determination shall be issued within ninety days after the final hearing date. The original of this form, along with the originals of each member’s “Decision of Board Member” form, shall be kept in the secure location under the control of the Tax Administrator. No copies shall be removed from the secure location.
4. Within fifteen days after the Final Determination is made, the Secretary shall mail, by ordinary mail, a copy of the Final Determination form to all parties to the appeal.
5. The Taxpayer or the Tax Administrator may appeal the Board’s Final Determination as provided in Section 5717.011 of the Revised Code.

ROUNDTABLE DISCUSSION

- PENALTY AND INTEREST RATES
- AUDITS / ASSESSMENTS
- MUNICIPAL TAXABLE INCOME
- ANY OTHER TOPICS?

QUESTIONS?

Contact:

Chris Fast, Taxation Supervisor, City of Lima
chris.fast@cityhall.lima.oh.us

Michelle Jordan, Tax Manager, CCA – Dayton
Taxpayer Service and Support Center
michellejordan.cca@gmail.com