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S.B. 97
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Roegner

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SUMMARY

- Repeals a temporary municipal income taxation rule for employees who are working from home due to COVID-19.

DETAILED ANALYSIS

Municipal income taxation during the COVID-19 pandemic

The bill repeals a temporary rule governing the municipal income taxation of employees who are working at a temporary worksite – including their home – due to the COVID-19 pandemic.¹

The temporary rule, by its own terms, expires 30 days after the end of the Governor's COVID-19 emergency declaration.² Under recently enacted provisions of S.B. 22 of the 134th General Assembly, the General Assembly could end that emergency declaration on or after that act's effective date (June 23, 2021) by adopting a concurrent resolution to do so or, if the General Assembly does not act to extend the declaration and Governor has yet to rescind it, the emergency is scheduled to end by operation of law on July 23, 2021.³ This bill would repeal the temporary rule sooner if the bill's 90-day effective date arrives before any of those possibilities occur.

Under the temporary rule, if an individual has to work at a temporary worksite because of the COVID-19 emergency, that employee is still considered to be working at his or her regular place of employment, or principal place of work. This treatment affects which

¹ Section 1. The temporary rule was enacted in Section 29 of Am. Sub. H.B. 197 of the 133rd General Assembly.

² The current state of emergency was declared in Executive Order 2020-01D, issued on March 9, 2020.

³ Section 3 of S.B. 22 of the 134th General Assembly.

municipality the employer must withhold income taxes for, which municipality may tax the employee's pay, and whether and how much of the employer's own income is subject to a municipality's income tax.

Considering this income to be earned at the employee's principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee's temporary worksite is located and prevents the employer from becoming subject to that municipality's income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.⁴) The full effect of the provision is not clear, however, because courts have generally found that a municipality cannot tax a nonresident's income that is not earned in that municipality and that taxpayers are entitled to a refund of tax withheld on that income.⁵ This prohibition arises from due process protections – the Ohio Supreme Court has held that a municipal corporation taxing nonresident income may violate constitutional due process if there is no “fiscal relation” between the tax and the protections, opportunities, and benefits provided by the taxing municipality to the nonresident (e.g., police and fire protection).⁶

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality's tax withholding requirements and the employee becoming subject to that municipality's income tax. And, if an employee does not exceed the 20-day threshold, that employee's pay is not counted toward the business's payroll factor, one of three factors – along with property and sales – that determines whether, and the extent to which, an employer's own income is subject to the municipality's tax on net profits.⁷

HISTORY

Action	Date
Introduced	02-24-21

S0097-I-134.ks

⁴ R.C. 718.01(A)(1)(b), not in the bill.

⁵ See, e.g., *Miley v. City of Cambridge*, No. 96 CA 44, 1997 Ohio App. LEXIS 3243 (5th Dist. June 25, 1997) (granting refund where city ordinance was held unconstitutional because it taxed nonresidents for work outside the city if the employer's principal place of work was in the city).

⁶ *McConnell v. Columbus*, 172 Ohio St. 95, 99-100 (1961).

⁷ R.C. 718.01(C)(16) and (17), 718.011, 718.02, and 718.82, not in the bill.