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H.B. 157
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Reps. Jordan and Edwards

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill amends and extends a temporary rule in Section 29 of H.B. 197 of the 133rd General Assembly governing the municipal income taxation of employees working at a temporary worksite – including their homes – due to the COVID-19 pandemic. H.B. 110 of the 134th General Assembly enacted provisions that are substantially the same as many of the bill's provisions. H.B. 110's provisions are effective September 30, 2021, so the bill's provisions will have a significant fiscal effect only if they are effective before September 30.
- Subject to the caveat stated above, the bill creates a fiscal effect for municipalities that is uncertain. Certain municipalities will experience an undetermined, but potentially significant, revenue loss through increased income tax refunds and decreased withholdings. Other municipalities may experience a revenue gain through increased income tax withholdings.

Detailed Analysis

The H.B. 197 temporary rule

Under a temporary rule in Section 29 of H.B. 197 of the 133rd General Assembly, if an individual had to work at a temporary worksite because of the COVID-19 emergency, that employee was still considered to be working at his or her regular place of employment. This treatment affected the municipality (1) for which the employer must withhold income taxes, (2) that may tax the employee's pay, and (3) that may tax (whether and how much) the employer's own income. Therefore, the temporary rule prevented employers from applying codified law to wages of workers who suddenly were working away from their regular place of employment. From a practical perspective, H.B. 197 ensured that employers would not have to modify their employee withholding accounting setup or modify the municipality to which they

would file and remit tax withholdings and net profit taxes, as long as the Governor's COVID-19 emergency remained in place. Thus, H.B. 197 allowed the employer to not withhold taxes for that employee in the municipality where the employee's temporary worksite (home) was located and also prevented the employer from becoming subject to income tax by that municipality.

The bill's amendments to the temporary rule

Provisions enacted in H.B. 110 of the 134th General Assembly

Provisions substantially the same as the bill's provisions that are described in this section were enacted in H.B. 110 of the 134th General Assembly and are effective September 30, 2021. These provisions of the bill, therefore, will have a fiscal effect only if they become effective before September 30.

The bill extends the temporary rule to December 31, 2021. The temporary rule, by its own terms, expires 30 days after the end of the Governor's COVID-19 emergency declaration. The Governor rescinded the emergency declaration on June 18, 2021, effective immediately, thus ending the temporary rule on July 18, 2021.

The bill states that, between January 1, 2021, and December 31, 2021, the temporary rule only applies to withholding tax obligations and apportioning or situsing the employer's net profit tax, and is not to be used for determining the income for tax purposes of a nonresident employee for the nonresident city. By providing that, after January 1, 2021, the temporary rule does not apply for purposes of determining the location at which a nonresident employee's work was completed, services were performed or rendered, or activities were conducted for the purpose of determining the employee's municipal income tax liability, the bill in effect appears to require municipalities to approve an employee's request for a refund of taxes withheld under the temporary rule on and after January 1, 2021.¹ If so, this provision may have significant negative fiscal effects on certain municipalities, depending on the number of taxpayers asking for refunds of withheld income taxes.

The bill states that no tax, penalties, or interest may be imposed if municipal income tax is withheld for the principal place of work during the period of March 9, 2020 through December 31, 2021, regardless of whether the employee reported to work in another work location because of COVID-19 or on the order of the employer. The bill prohibits a municipal corporation from assessing taxes, penalties, or interest against an employer for the employer's failure to properly withhold tax from an employee's wages, as long as the employer does properly withhold in accordance with Section 29, including the retrospective changes made by the bill. This prohibition may reduce revenue to certain municipalities that would have imposed such tax, penalties, and interest.

Finally, the bill provides that, if an employee requests a refund of municipal income taxes withheld pursuant to the temporary rule, the municipal tax administrator may not require any documentation from the employer to process the request other than a statement verifying that

¹ The full effect of this provision is unclear because courts have generally found that a municipality cannot tax a nonresident's income that is not earned in that city and that taxpayers are entitled to a refund of tax withheld on that income. The issue of whether municipalities are required to approve requests for due process refunds of taxes withheld has been the subject of litigation.

the employer has not refunded any withholding to the employee and the number of days the employee worked at their employee's principal place of work. Though most municipalities would experience little direct fiscal effects from this provision, it is possible that municipalities with a large commuting workforce may experience an increase in the cost of processing requests for refunds and other administrative costs, if pandemic-related WFH would result in an outsized number of requests for refunds, particularly for taxpayers for whom the temporary work location due to COVID-19 was fully, or in part, different than their pre-pandemic work location. Under Ohio law, there is a three-year statute of limitation for claiming a refund or credit of any overpayment of municipal income tax. Thus, this provision may affect more than one fiscal year.

Other provisions

The bill also specifies that Section 29 does not prohibit an employer from withholding income tax to the actual municipal corporation where the employee works from home or at another location. The bill allows an employer to reassign employees during the period above, change the principal place of work, and withhold municipal income taxes for the municipality where the work is actually performed. So, the bill removes the requirement in the temporary rule that the offsite work arrangement be required by the employer as a result of the emergency declaration. Depending on an employer's decision regarding withholding, the reassignment may possibly increase or reduce municipal income tax withholding revenue to affected municipalities, when compared to the fiscal effect of Section 29 in H.B. 197 or codified law. In cases where the reassignment and the new work location is an employee's home in a township,² this provision may result in a loss of withholding tax revenue to the municipality where the prior principal place of work was located. However, compared to codified law, reassigning an employee to a different principal place of work and withholding income taxes for that new work location (if required) would have no fiscal effect.

Municipal income tax law

Under codified 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, a firm's own income is subject to the municipality's tax on net profits.

Municipalities levy a municipal income tax on wages, salaries, and other compensation earned by residents of the municipality and by nonresidents working in the municipality, and on the net profits of businesses attributable to their activities in the municipality. Most municipalities allow a partial or full credit to residents for municipal income taxes paid to another municipality where they are employed. A few municipalities do not allow any credit, so residents of those municipalities who work in another municipality pay an additional tax to their place of residence. Administration of the municipal income tax is strictly local, either by the cities and villages themselves or by central collection agencies under contract with various municipalities.

² Generally, townships do not impose a municipal income tax, except in limited circumstances.

Businesses generally remit employees' withholding taxes to municipalities in which they do business. Businesses may also remit income tax withholding to their employees' municipality of residence, though that is not a requirement.³

In calendar year (CY) 2018, the latest data available from the Department of Taxation, 642 municipalities (242 cities and 400 villages) levied the tax. Municipal income tax collections statewide were estimated at \$5.60 billion, ranging from approximately \$9,715 in the village of Cecil (in Paulding County) to approximately \$864.6 million in Columbus (Franklin).

Data on working from home (WFH)

Prior to CY 2020, estimates from the U.S. Census Bureau suggested that less than 4% of Ohio workers worked from home. The pandemic upended employment-related commuting patterns as many employees switched to WFH at the behest of governments and employers who implemented such policies. WFH is not uniformly available to all employers and employees, varying greatly by the type of work performed and the type of industry. In 2020, the share of employees able to work from home was estimated by the U.S. Bureau of Labor Statistics to be as high as 81% for the financial industry, to lows of 20% for leisure and hospitality.⁴ Researchers at the National Bureau of Economic Research (NBER) found that, nationwide, of those employed pre-COVID-19, about half were working from home in the spring of 2020, including 35.2% who reported they were commuting and recently switched to working from home.⁵ Currently, however, the share of employees WFH is likely to be much less than the level registered last year, as the most stringent COVID-related restrictions have been lifted. No reliable estimates of WFH for each Ohio municipality exist, though available research suggests the impact of WFH policies would be greater on municipalities with a higher concentration of workers in the "knowledge" economy and a higher percentage of nonresident workers that commute into that municipality from surrounding areas. On the other hand, the impact of WFH would be lower for municipalities whose industrial mix is dominated by warehousing, manufacturing, and production of goods.

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³ Businesses operating in multiple municipalities may opt to remit taxes to the Department of Taxation which will distribute the amounts to the various cities. Under H.B. 49 of the 132nd General Assembly, firms may file one municipal net profit tax return through the Ohio Business Gateway. The tax department handles all administrative functions for those centrally filed returns and distributes payments to the appropriate municipalities.

⁴ The percentage was even lower, 8%, for the agriculture, fishing, forestry, and hunting occupations. Data available at <https://www.bls.gov/opub/mlr/2020/article/ability-to-work-from-home.htm>.

⁵ Brynjolfsson, Erik, et al. *COVID-19 and Remote Work: An Early Look at U.S. Data*, NBER Working Paper 27344, <http://www.nber.org/papers/w27344>.