

Summary of House Bill 95
Changes to Municipal Taxation
Revised 9/24/03

Effective Dates-Assume the Effective Date is September 24, 2003, unless specifically stated in the language of the bill.

Due Dates

Net Profit Income Tax Returns ORC Sec. 718.05 (B) Tax Year 2004

The due date MUST be the 15th day of fourth month following end of Tax Year. For tax years ending December 31, 2004 the due date is April 15, 2005.

Withholding Reconciliations ORC Sec. 718.05 (B) Tax Year 2001

H.B. 477 stated that all Municipalities could not require a taxpayer to file an annual income tax report prior to the filing of the corresponding IRS due date. The due date for employers to file Forms W-2 with the SSA is February 28.

Extensions ORC Sec. 718.05 (D) Tax Year 2004

For taxable years beginning after 2003, the extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The IRS Authorizes 4 months automatically and additional requests are limited to 6 months from original due date .

Individual and Partnership Returns
Corporate Returns

November 30th
October 31st

Note: HB 95 contains a conflict when the extension due dates are addressed in the Business Gateway section. Updates to follow.

Net Operating Loss - There was no change implemented in HB 95. Treatment of Net Operating losses left to local option.

\$150 Deminimus - Overturned effective 9/24/03. Language left out of HB 95.

Public Utilities

Telephone Companies ORC Sec. 718.01 (F)(6) Jan. 1, 2004

Telephone companies follow the same payment and filing requirements as the electric companies.

Allocation Formula ORC Sec. 718.02 Tax Year 2004

Apportionment- The name of the formula is changed to match Ohio's definition.

Original Cost- Property value determined based on the original cost of property not the net book value.

Separate Books and Records- Taxpayers required to compute apportionment based on three-factor formula unless a substitute method in the regulations provides an equitable result.

Note: Effective with Tax Years beginning after 9/23/2003. There is a question on how rental income is to be apportioned. Most cities will continue to allocate rental income based on where the property is located but you should check with each municipality.

Review Board

Ohio Board of Appeals

ORC Sec. 718.11

Tax Year 2004

The taxpayer or Tax Commissioner may now appeal the local Board of Review's decision to the courts or to the State Board of Tax Appeals as defined in ORC Sec. 5717.011.

Refunds and Statute

Nonrefundable Credit

ORC Sec. 718.121

Tax Year 2004

If the tax is paid to a wrong municipality and the correct locality is pursuing the payment of the tax, that city must allow a nonrefundable credit for those taxes paid incorrectly, but not refundable to taxpayer because of statute.

Example: In 1998 Joe Taxpayer had \$200.00 withheld by his employer on his \$10,000 salary for Municipality "A" (tax rate 2.0%). Joe Taxpayer lived in Municipality "A" but actually worked in Municipality "B". Municipality "B" has a 2.0% rate also and Municipality "B" Tax Department notifies taxpayer he owes \$200.00. Municipality "A" is barred from refunding the money because of the three-year statute on refunds.

Municipality "B" must allow the taxpayer a credit of \$200.00 for the taxes paid to Municipality "A" in error.

Qualifying Wages

Medicare Wages (Box 5)

ORC Sec. 718.03

Jan. 1, 2004

An employer is required to withhold only on "qualifying wages", which are wages as defined in IRC Section 3121(a), generally the Medicare Wage in Box 5 of the Form W-2, with an exception to include exempt employees hired before April 1, 1986.

Cafeteria Plans – IRC Section 125 wages are not included in the definition of Medicare wages and do not need to be deducted from Box 5.

Stock Options - Income from the exercise of stock options is included in the definition of "qualifying wages", but income may be excluded from taxation as a local option.

Nonqualified Deferred Compensation Plan - Income from nonqualified plans are included in the definition of "qualifying wages" at the time they are deferred, but income may be excluded from taxation as a local option. Distributions received after January 1, 2004 will no longer be subject to local taxation.

401k, 457 and Supplemental Unemployment Compensation Benefits - These items all should be included in Box 5 and subject to withholding requirements.

Disqualifying Disposition of an Incentive Stock Option - Employer is not required to withhold, but the income is considered "qualifying wages" and the recipient is liable for the tax.

Note: Require taxpayer or employer to explain why Box 5 is not the largest wage figure on the W-2.

Net Profits

Individuals/Sole Proprietorships ORC Sec. 718.01(A)(7) Jan. 1, 2004

The income required to be reported on Schedules C, E and F. There is no provision in ORC Sec. 718 prohibiting the taxation of non-employee compensation (1099 MISC) or gambling winnings (W-2G).

Corporations and Partnerships ORC Sec. 718.01(A)(1) Jan. 1, 2004

A C corporation's federal taxable income before net operating losses and special deductions with the following adjustments:

1. Deduct Intangible Income (Interest, Dividends, Royalties....)
 - a. Intangible income (*ORC Sec. 718.01(A)(5)*) includes patents, copyrights, trademarks and other investments. Does not include lottery winnings.
2. Add back 5% of Intangible Income. (*exclude Capital Gains and Losses from computation*)
3. Add back Capital losses and 1231 losses. (*1231 are considered ordinary losses for IRS.*)
4. Deduct Capital gains.
5. Add taxes on net income deducted to compute federal taxable income.
6. Add distributions to investors of REIT Real Estate Investment Trusts.
7. Add back Guaranteed Payments to partners and retired partners.
8. Add back payment to Self Employed Retirement Plans, Health Insurance and Life Insurance payments to owners or owner-employees.

Note: Partnerships and S-Corps must file their return as if they are C-Corporations.

Sub Chapter S-Corporations

Taxation of Distributive Share ORC Sec. 718.01(F)(9) Jan. 1, 2004

It is the consensus of a number of municipalities that municipalities may tax the flow thru income of a shareholder in an S-Corp provided the income is allocated or apportioned as Ohio income.

Note: Those municipalities that qualify for the special provision to tax all distributive share income must have the issue on the November 4, 2003 ballot.

Ohio Business Gateway

Net Profit Tax ORC Sec. 718.051 Jan. 1, 2005

Businesses will have the option to file and pay their net profit taxes using Ohio's central processing system maintained by the Department of Administrative Services. The payments and required documentation will be forwarded to the municipalities in accordance with the apportioned taxable income.

Withholding Tax ORC Sec. 718.051 Jan. 1, 2007

Businesses will have the option to file and pay their withholding taxes using Ohio's central processing system maintained by the Department of Administrative Services. The payments and required documentation will be forwarded to the municipalities.