

UNDERSTANDING THE NEW ORC 718

Deadlines

Estimated Tax Payments

Penalty and Interest

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EFFECTIVE DATE

Uncodified Section 3 (Sub HB 5 of 130st GA):

- “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.”

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Fiscal Year Filers

For Business returns using a fiscal year instead of the calendar year, the beginning of the fiscal year must be after January 1, 2016 in order to be governed under the new laws resulting from House Bill 5.

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What changes occurred first?

With changes effective for tax years on and after 1/1/16, the following have happened:

- Estimated tax thresholds and due dates for the 2016 tax year.
- Withholding thresholds and due dates for withholding in 2016.
- Penalty and Interest charges on withholding for 2016 (individual and net profit will be effective with 2016 tax year).

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GENERAL RULE

- All tax years up to and including 2015 will be administered and collected using Ordinances, Rules and Regulations and ORC 718 in effect prior to 1/1/16, regardless of when these tax years are filed.
- All tax years 2016 and forward will be administered and collected using Ordinances, Rules and Regulations, and new ORC 718 required to be in effect as of 1/1/16.

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Estimated Tax Payments

- A statewide threshold for requiring the remittance of estimated taxes was enacted to be \$200.00 after withholding and credits for taxes paid to other municipalities.
- If the taxpayer meets the \$200.00, the taxpayer shall file a declaration of estimated taxes.
- A taxpayer can file an amended declaration that increases or decreases the amount declared on or before any subsequent quarterly payment day.
- After amending the declaration, the unpaid balance shall be paid in equal installments on or before the remaining due dates.

(ORC 718.08)

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Estimated Tax Payments

Due Dates:

- 1st Quarter is due by April 15 (or the State of Ohio filing deadline) in the amount of 22.5% of tax liability of the taxable year
- 2nd Quarter is due by June 15 in the amount of 45.0% of tax liability of the taxable year
- 3rd Quarter is due by September 15 in the amount of 67.5% of tax liability of the taxable year
- 4th Quarter is due by December 15 in the amount of 90.0% of tax liability of the taxable year

(ORC 718.08)

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Estimated Tax Payments

- Underpayment of estimated taxes is subject to penalty and interest. The penalty is 15% of the unpaid amount plus interest.
- Estimated Tax Payments are exempt from late filing penalties, but not late payment penalties.
- Safe Harbors provisions remain at 100% of prior year amount due after credits and 90% of current year after credits

(ORC 718.08)

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Estimated Tax Payments

- Municipalities can assess late payment penalties and interest after each quarterly payment due date, but the penalty and interest may need to be returned if the taxpayer meets either safe harbor provision.
- Return of penalty and interest would not be a refund and would need to be removed from the 1099-G amount.
- We would recommend municipalities **NOT** assess any penalty and interest for underpayment of estimated taxes until the annual return is filed.

(ORC 718.08)

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Estimated Tax Payments

- Municipalities are not mandated to require estimated tax payments
- The Municipal Tax Administrator may waive the requirement for estimated taxes for any class of taxpayers

(ORC 718.08)

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Withholding Thresholds and Due Dates

Monthly Remittance:

- Prior year remittances total more than \$2399.00 or remittance totals more than \$200.00 in any month of the preceding calendar quarter, the withholding tax must be remitted on a monthly basis.
- Payment is due by the 15th of the following month

(ORC 718.03(B)(1)(a))

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Withholding Thresholds and Due Dates

Quarterly Remittance:

- Prior year remittances total less than \$2399.00 tax can be remitted on a quarterly basis.
- Payment is due by the last day of the month following the last day of each calendar quarter

(changed effective 9/14/16 or with third quarter 2016 filing with the enactment of Senate Bill 172 of the 131st General Assembly)

(ORC 718.03(B)(1)(b))

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Withholding Thresholds and Due Dates

Semi-Monthly Remittance:

- Prior year remittances total more than \$11,999.00 or remittance totals more than \$1000.00 in any month of the preceding calendar year, the withholding tax can be remitted on a semi-monthly basis.
- Payment is due by the third banking day after 15th or the last day of month
- Semi-Monthly remittance is not a statewide mandate. Each Municipality can choose if semi-monthly remittance is required.

(ORC 718.03 (B)(2)(a))

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Withholding Penalties and Interest

• **PENALTY FOR FAILURE TO TIMELY PAY:** **50%** of the amount not timely paid.

• **PENALTY FOR FAILURE TO TIMELY FILE:** \$25 per month or fraction of a month, not to exceed \$150.

• **INTEREST:** Federal short term rate, rounded to the nearest whole percent, plus 5%, calculated annually. For 2016, the interest rate is 5.0%. For 2017, the interest rate will be 6.0%.

(ORC 718 .27 (C))

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Withholding Penalties and Interest

Example: The Second Quarter 2016 withholding remittance reported was postmarked July 20, 2016. The amount due was \$2305.15.

The total penalty assessed would be the \$1187.20.

The remittance report was received after the filing deadline and is therefore charged a late filing penalty of \$25.00.

The payment was received after the deadline and is subject to the 50% late payment penalty of \$1152.58 ($\$2305.15 \times 50\% = \1152.575 rounded to \$1152.58 per ORC 718.25)

The interest charged is \$9.61 for one month ($\$2305.15 \times 5\% \text{ per annum} / 12 \text{ for one month} = \9.6047)

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Withholding Penalties and Interest

Example: The Second Quarter **2015** withholding remittance reported was postmarked August 10, 2015. The amount due was \$2305.15.

The total penalty assessed would have been \$103.74 by the City of Bowling Green.

The remittance report was received after the filing deadline and is therefore charged a late filing penalty of \$69.16. ($\$2305.15 \times 3.0\% \text{ per month} = \69.16)

The interest charged is \$34.58 for one month ($\$2305.15 \times 1.5\% \text{ per month for one month} = \34.58)

The City of Bowling Green did not have a separate late payment penalty prior to 2016.

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Withholding Deadlines

- Semi-Monthly Remittance is three banking days after the 15th and after the last day of a month for municipalities requiring semi-monthly remittance
- Monthly Remittance is due by the 15th of the following month
- Quarterly Remittance is due by the last day of the month following the calendar quarter
- Annual Reconciliation is due by the last day in February of the following year. The Annual Reconciliation must include the name of every other municipality which tax was withheld or should have been withheld and any other information required for federal income tax reporting purposes

(ORC 718.03)

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Interest

INTEREST RATE: the federal short-term rate, rounded to the nearest whole number per cent, plus five per cent. For tax year 2016, the rate is 5% and for 2017 the rate is 6%. The interest rate is calculated in the same manner prescribed for State Tax Commissioner except the municipal rate adds 5 points while the State adds 3 points (ORC 5703.47 (B)).

IMPOSITION: Interest shall be imposed at the rate described in division (A) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

The federal short term rate is determined in July, and the Municipality announces the interest rate in October that will apply to the next calendar year.

For purposes of determining the Federal Short Term Rate, you can visit:

<http://apps.irs.gov/app/picklist/list/federalRates.html>

(ORC 718.27)

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Penalty for Late Filing

With respect to returns (other than estimated income tax returns*), a penalty of \$25.00 for each failure to timely file each return, regardless of liability, assessed each month or fraction thereof, for the duration that the return remains unfiled. Maximum penalty for each failure to file is \$150.00.

A return is defined to include any tax return, report, reconciliation, schedule, and other document required to be filed with a tax administrator or municipality.

*There is no late filing penalty permitted for estimated income tax returns.

(ORC 718.27)

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Penalty for Late Payment

- With respect to unpaid income tax and unpaid estimated income tax, a municipal corporation may impose a penalty equal to fifteen percent of the amount not timely paid.

- This is a one time assessment, made on each separate occurrence of late payment.

- This affects taxpayers on a payment plan. If the late payment penalty was assessed before the payment plan started, then only interest can be added.

(ORC 718.27)

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Late Penalty

Example: An annual tax return is postmarked April 25, **2017** with a tax due of \$175.00.

The total penalty assessed would be \$52.00 (rounded to the nearest whole dollar)

The return was received after the filing deadline and is therefore charge a late filing penalty of \$25.00.

The payment was received after the deadline and is subject to a 15% late payment penalty of \$26.25 ($\$175.00 \times 15\% = \26.25)

The interest charges is \$0.73 for one month ($\$175.00 \times 5\%$ per annum/12 for one month = \$0.729)

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Late Penalty

Example: An annual tax return is postmarked April 25, **2016** with a tax due of \$175.00.

The total penalty assessed would be \$12.63 (This example is determined by using the City of Bowling Green Ordinance)

The return was received after the filing deadline and is therefore charge a late filing penalty of \$10.00. (City of Bowling Green \$10.00 minimum charge)

The interest charges is \$2.63 for one month ($\$175.00 \times 1.5\%$ per month = \$2.625)

The penalty for a 2016 return filed less than a month late totals is subject to \$39.37 more penalty and interest fees than for 2015.

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Late Penalty

Second Example: An annual tax return is postmarked October 12, **2017** with a tax due of \$175.00. With a copy of a federal extension request attached

The total penalty assessed would be \$31.35 (rounded to the nearest whole number)

The return was received after the filing deadline and is therefore charged a late filing penalty of \$0.00. Extension request is honored per ORC

The payment was received after the deadline and is subject to a 15% late payment penalty of \$26.25 ($\$175.00 \times 15\% = \26.25)

The interest charges is \$5.10 for seven months ($\$175.00 \times 5\% \text{ per annum}/12 \times 7 \text{ for seven months} = \5.10)

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Late Penalty

Second Example: An annual tax return is postmarked October 12, 2016 with a tax due of \$175.00. With a copy of a federal extension request attached

The total penalty assessed would be \$80.38 (rounded to the nearest whole number)

The return was received after the filing deadline and is therefore charge a late filing penalty of \$62.00. Extension was not filed by the filing deadline

The interest charges is \$18.38 for seven months ($\$175.00 \times 1.5\% \text{ per month for seven months} = \18.375)

The decreased penalty for a 2016 return filed seven months late totals \$49.38 less than under the old ORC 718 for the 2015 return.

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Interest and Penalties

Nothing in the Ohio Revised Code limits the authority of a municipal corporation to abate or partially abate penalties or interest imposed under this section when the tax administrator determines, in the tax administrator's sole discretion, that such abatement is appropriate.

This means the abatement of penalty and interest is not subject to Board of Review appeals. The Board can only judge if the penalty and interest has been assessed in accordance with ORC and Municipal Ordinance.

Each municipality is allowed to proscribe the criteria for abating penalties and interest in ordinance or rule, but are not required to do so.

(ORC 718.27)

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Interest and Penalties

"With respect to the income taxes, estimated income taxes, withholding taxes, and returns, no municipal corporation shall impose, seek to collect, or collect any penalty, amount of interest, charges, or additional fees not described in this section."

Does this restrict a municipality from charging:

1. Returned check fee? It is not a fee "with respect to the income taxes, estimated income taxes, withholding taxes, and returns." It is an administrative charge for the action of writing a check that was not honored by a financial institution. Remember.....the action of presenting a check not honored by a financial institution may also be considered a criminal offense.
2. Credit card fees? A credit card "convenience" fee is not a fee "with respect to the income taxes, estimated income taxes, withholding taxes, and returns." It is a fee charged to the taxpayer for the convenience of using a credit card to remit payment, and as such, should be the responsibility of the consumer to pay.
3. The municipal corporation may impose on the taxpayer, employer, any agent of the employer, or any other payer the municipal corporation's **post-judgment** collection costs and fees, including attorney's fees.

(ORC 718.27)

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FOR FUTURE QUESTIONS:

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Please feel free to call us with questions!

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