

**UNDERSTANDING THE NEW ORC 718
Municipal Returns and Attachments
Extension Requests
Changes Mandated by House Bill 5**

Presentation by
Robert Wright
Tax Commissioner
City of Bowling Green

1

GENERAL RULE

- All taxable 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 taxable 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.

2

718.05 RETURN AND PAYMENT OF TAX

- (A) An annual return with respect to the income tax levied by a municipal corporation shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is liable for the tax.
- If the total credit allowed is equal to or exceeds the tax imposed, no return is required unless the municipal corporation requires filing of a return (mandatory filing).
- (B) If an individual is deceased, any return or notice shall be completed and filed by the executor, administrator, or other person charged with the property of the decedent.
- (C) If an individual is unable to complete and file a return or notice, it can be filed by the individual's duly authorized agent, guardian, conservator, fiduciary or other person charged with the care of the person or property of the individual.

3

718.05 RETURN AND PAYMENT OF TAX

- (D) Returns or notices required of an estate or a trust shall be completed by the fiduciary of the estate or trust.
- (E) No municipal corporation shall deny spouses the ability to file a joint return. The municipal return does not have to be filed in the same manner as the Federal tax return.
- (F) (1) Each return required to be filed shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and the person who prepared the return for the taxpayer. Each return shall also include the taxpayer's SSN or TIN. Each return shall be verified by a declaration under penalty of perjury.

4

718.05 RETURN AND PAYMENT OF TAX

ATTACHMENTS: TAXPAYER WHO IS AN INDIVIDUAL

ONLY THE FOLLOWING CAN BE REQUIRED FOR AN ANNUAL RETURN:

- All of the taxpayer's IRS Form W-2's including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation;
- Taxpayer's IRS Form 1040;

WITH AN AMENDED RETURN OR REFUND:

- Any other documentation necessary to support the refund request or the adjustments made in the amended return.

ELECTRONICALLY FILED RETURN:

- Taxpayer is not required to provide paper copies of any of the foregoing documents to the tax administrator **UNLESS THE TAX ADMINISTRATOR REQUESTS SUCH COPIES AFTER THE RETURN HAS BEEN FILED.**

5

718.05 RETURN AND PAYMENT OF TAX

ATTACHMENTS: TAXPAYER WHO IS NOT AN INDIVIDUAL

ONLY THE FOLLOWING CAN BE REQUIRED WITH AN ANNUAL RETURN:

- Taxpayer's IRS form 1041, 1065, 1120, 1120-REIT, 1120F, 1120S

WITH AN AMENDED RETURN OR REFUND REQUEST:

- Any other documentation necessary to support the refund request or the adjustments made in the amended return.

THROUGH THE OBG (OR SOME OTHER MANNER):

- Taxpayer shall either mail the documents required to the tax administrator at the time of the filing, or if electronic submission is available, submit electronically through the Ohio Business Gateway. (NOTE: The Ohio Department of Taxation shall publish a method of electronically submitting the documents required through the OBG on or before JANUARY 1, 2016. Taxation shall transmit all documents submitted electronically to the appropriate tax administrator. OBG has contracted with a programming firm to enhance the OBG.)

6

ABILITY TO COMPEL RECORDS –**718.23 AUTHORITY OF TAX ADMINISTRATOR –
INSPECTION OF RECORDS**

(A) Tax Administrator may examine books, records, and federal and state income tax returns of any employer, taxpayer or other person subject to, or that the tax administrator believes is subject to, the provisions of ORC 718 for the purpose of verifying the accuracy or to determine tax due.

(B) Taxpayer shall make records open to the tax administrator's inspection during business hours, and shall retain records for specific periods. Tax records shall be preserved of a period of six years.

7

ABILITY TO COMPEL RECORDS –**718.23 AUTHORITY OF TAX ADMINISTRATOR –
INSPECTION OF RECORDS**

(C) Tax Administrator may examine any person under oath that the tax administrator reasonably believes has knowledge concerning income, or any transaction affecting such income. Tax Administrator may compel any person to attend a hearing or examination and to produce any books, papers, records, federal returns.

(See AUDIT – ORC 718.36)

8

718.05 RETURN AND PAYMENT OF TAX

- (F) (4) After a taxpayer files a return, the tax administrator may request and the taxpayer shall provide, any information, statements or documents required by the municipal corporation to determine and verify the taxpayer's municipal income tax liability.
- (G) (1) Each return required shall be completed on or before the date prescribed for the filing of state individual income tax returns under division (G) of section 5747.08. No remittance is required if the amount shown to be due is ten dollars or less.
- This does not allow a taxpayer to purposely under pay the amount due.

9

718.05 RETURN AND PAYMENT OF TAX

REQUEST FOR EXTENSION OF TIME TO FILE:

- (G) (2) (a) Any taxpayer that has requested an automatic 6-month extension for filing the federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. Extended due date shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. (For a calendar year filer, the due date will be Oct 15th) Extension of time to file is not an extension of time to pay.
- (G) (3) If the State Tax Commissioner extends the due date for filing a state return, the municipal due date shall be extended accordingly.

10

718.05 RETURN AND PAYMENT OF TAX

- “A taxpayer that has not requested or received a six-month extension for filing the taxpayer’s federal income tax return may request that the tax administrator grant the taxpayer a six-month extension of the date for filing the taxpayer’s municipal income tax return. If the request is received by the tax administrator on or before the date the municipal income tax return is due, the tax administrator shall grant the taxpayer’s requested extension.

11

718.05 RETURN AND PAYMENT OF TAX

- (G) (4) If the tax administrator considers it necessary in order to ensure payment of tax imposed by the municipal corporation, the tax administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

WHO DOES THIS APPLY TO? IN WHAT SITUATIONS WOULD THERE BE A REQUIREMENT FOR A RETURN THAT IS NOT OTHERWISE REQUIRED?

- A non-mandatory filing municipality could compel the filing of a return in order to ensure proper payment of tax imposed.
- (H) (2) A taxpayer not required to remit tax for a taxable year shall file an annual net profit return.

Even if no tax is to be remitted, a return is still required to be filed. There is no provision waiving the requirement to file a tax return.

12

718.05 RETURN AND PAYMENT OF TAX

- (I) The following does not apply to withholding payments required to be made under ~~division (B)(1)(a) (monthly withholding) or (2)(a) (semi-monthly)~~ of section 718.03.
 1. In short, anything required to be filed, or any payment required to be made within a prescribed period or before a prescribed date that is delivered AFTER that period or date by US Mail, the date of the postmark shall be considered the date of delivery or date of payment.
 2. In the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service shall be the date used. (POSTAL METER DATE DOES NOT APPLY.)
 3. If a payment is required to be made by electronic funds transfer under chapter 718, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.

13

718.05 RETURN AND PAYMENT OF TAX

(K) Each return shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the tax administrator about matters pertaining to the return. The instructions accompanying the return shall indicate that checking the box authorizes the tax administrator to contact the designated person during exam or review of the return and authorizes the designated person only to provide information that is missing from the return, information about the exam or review of the return, or status of a refund or payments, and to respond to notices about math errors, offsets, or return preparation that the taxpayer has received from the tax administrator and has shown to the preparer / designated person.

14

718.05 RETURN AND PAYMENT OF TAX

(L) Tax Administrator shall accept a generic form of any income tax return, report or document, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules adopted by the municipal corporation or tax administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of ORC 718 and the municipal corporation ordinance or resolution governing the filing of returns, reports or documents.

(M) Tax administrator shall accept a facsimile signature in lieu of a manual signature for a tax return preparer.

15

718.05 (N) (2) FILING OF AFFIDAVIT OF NO SITUS

- A person may notify the tax administrator that they do not expect to be a taxpayer for a taxable year if both of the following apply:
 1. The person was required to file a tax return for the immediately preceding taxable year due to performing services at a worksite location within the municipal corporation.
 2. The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year.

16

718.05 (N) (2) FILING OF AFFIDAVIT OF NO SITUS

- The person shall provide the notice as a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation.
- The affidavit must include the following statement:
"The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation, or otherwise become subject to the tax levied by the municipal corporation during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipal corporation if such a registration is required by the municipal corporation's resolutions, ordinances, or rules."

17

718.05 (N) (2) FILING OF AFFIDAVIT OF NO SITUS

- If a person submits an affidavit as described, the tax administrator shall not require the person to file any tax return for the taxable year unless the tax administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.
- Nothing in this division prohibits the tax administrator from performing an audit of the person.
- ***NOT IN THE LANGUAGE – Nothing prohibits the tax administrator from requesting that the taxpayer advise if their status has changed, after the filing of the affidavit.***

18

718.051 USE OF OHIO BUSINESS GATEWAY

- (A) Any taxpayer subject to municipal income taxation on net profit from business or profession may file any income tax return, estimated tax, or extension for filing a municipal income tax return*, and may make payment of amounts shown due on such returns by using the Ohio Business Gateway.

*Remember that virtually no extension requests will need to be submitted on or before the filing deadline, unless the taxpayer has no federal extension request

19

718.051 USE OF OHIO BUSINESS GATEWAY

- (B) Taxes withheld may be remitted through OBG
- (C) Nothing in this section affects due dates for filing employer withholding tax returns.
- (D) No municipal corporation shall be required to pay any fee or charge for operation or maintenance of OBG.
- (E) Use of OBG does not affect legal rights of municipalities or taxpayers as otherwise permitted by law. State is not a party to administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.
- (F) The State Tax Commissioner shall adopt rules establishing format of documents, information that must be submitted when filing municipal tax returns, but the State Commissioner shall not adopt rules that conflict with 718.05 of the Revised Code. State Commissioner will consult with OBG steering committee before adopting rules.

20

718.01 (TT) Classifications of Businesses

- Small Employers – A business with less than \$500,000.00 in total revenue
- For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles.
- "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes. Small Employers are not required to withhold municipal income tax for municipalities other than its primary work location (718.011(E)).

21

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 for occasional entrants, 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.
- The law allows municipalities to share information. A municipality that gives a refund for tax due to another municipality will notify the other municipality. In the end, this will make sure all municipalities are receiving the tax due and could avoid further refund requests.

22

Form 2106 Employee Business Expenses

- Every municipality must allow the deduction of 2106 expenses from earned income reported on a W-2. This deduction is limited by the 2% adjusted as reported on Schedule A.
- Taxpayer must submit both the Form 2106 and Schedule A when claiming this deduction.
- A nonresident may deduct only the expenses related to the taxpayer's work in the non-residential municipality.

(ORC 718.01 (A)(2))

23

718.012 Domicile

- An individual is presumed to be domiciled in a municipal corporation for all or part of a taxable year if the individual was domiciled in the municipal corporation on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the municipal corporation for all or part of the taxable year.
- An individual may rebut the presumption of domicile if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the municipal corporation for all or part of the taxable year.

24

718.012 Domicile

For the purpose of determining whether an individual is domiciled in a municipal corporation for all or part of a taxable year, only the following factors shall be considered:

- The location of financial institutions in which the individual or the individual's spouse have any accounts, including, but not limited to, checking, savings, certificates of deposit, or individual retirement accounts;
- The location of issuers of credit cards to the individual or the individual's spouse or of any other persons making installment loans to the individual or the individual's spouse;
- The location of institutional lenders which have made loans to, or which are guaranteed by, the individual or the individual's spouse;
- The location of investment facilities, brokerage firms, realtors, financial advisors, or consultants used by the individual or the individual's spouse;
- The location of either the insurance company that issued or the insurance agent that sold any policy of insurance to the individual or the individual's spouse, including, but not limited to, life, health, disability, automobile, or homeowner's insurance;
- The location of law firms, accounting firms, and similar professionals utilized by the individual or the individual's spouse for legal, tax, accounting, financial, or retirement services;
- The location of physicians, dentists, osteopaths, optometrists, or other health care providers, or veterinarians utilized by the individual or the individual's spouse;

25

718.012 Domicile

- The location of organizations described in section 501(c) of the Internal Revenue Code to which the individual or the individual's spouse make contributions or other payments or in which they participate as a congregant, member, board member, committee member, adviser, or consultant;
- The location of burial plots owned by the individual or the individual's spouse;
- The location of business ventures or business entities in which the individual or the individual's spouse has a more than twenty-five per cent ownership interest or in which the individual exercises, either individually or jointly, significant control over the affairs of the venture or entity;
- The recitation of residency or domicile in a will, trust, or other estate planning document;
- The location of the individual's friends, dependents as defined in section 152 of the Internal Revenue Code, and family members other than the individual's spouse, if the individual is not legally separated from the individual's spouse under a decree of divorce or separate maintenance as provided in section 7703(a)(2) of the Internal Revenue Code;
- The location of the individual's friends, dependents as defined in section 152 of the Internal Revenue Code, and family members other than the individual's spouse, if the individual is not legally separated from the individual's spouse under a decree of divorce or separate maintenance as provided in section 7703(a)(2) of the Internal Revenue Code;
- The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;

26

718.012 Domicile

- The location of trustees, executors, guardians, or other fiduciaries named in estate planning documents of the individual or the individual's spouse;
- The location of all businesses at which the individual or the individual's spouse makes purchases of tangible personal property;
- The location where the individual married;
- The location or identity of recipients of political contributions made by the individual or the individual's spouse;
- The number of contact periods the individual has with the municipal corporation. For the purposes of this division, an individual has one "contact period" with a municipal corporation if the individual is away overnight from the individual's abode located outside of the municipal corporation and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the municipal corporation.
- **The individual's domicile in other taxable years;**
- **The location at which the individual is registered to vote;**
- **The address on the individual's driver's license;**
- **The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;**
- The location and value of abodes owned or leased by the individual;
- Declarations, written or oral, made by the individual regarding the individual's residency;
- The primary location at which the individual is employed.

27

718.11 Board of Review

- Municipalities need to have a Board of Review appointed as specified in ORC 718.11 to hear appeals of tax year 2016 matters.
- For tax year 2015 and early, the previously established Board of Review has authority.
- There is no prohibition against the same individuals serving on both boards.
- ORC does not require members to live within the municipality of the Board of Review

28

718.11 Board of Review

- 718.27 (E) states “Nothing in this section (718.27) 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”
- The Board of Review does not have the authority to abate penalties and interest. Its purview is limited to deciding the appropriate application of the law.
- The Board of Review can hear appeal of all assessments.

29

718.41 AMENDED RETURNS

- (A) A taxpayer is required to file an amended return if any facts, figures, computations, or attachments required in the annual return must be altered as a result of an adjustment to the taxpayer's federal income tax return.
- If the taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the tax administrator before filing the amended return.
- In the case of an underpayment, an amended return shall be accompanied by payment of additional tax, plus applicable penalty and interest. If combined tax shown to be due is \$10 or less, no payment is required.
- (C) (1) - In the case of an overpayment, request for refund may be filed “within the period prescribed by division (E) of section 718.12 (Statute of Limitations) of the Revised Code for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division.”

30

718.41 AMENDED RETURNS

- (E) of 718.12 states – “Within sixty days after the final determination of any federal or state tax liability affecting the taxpayer’s municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars.”
- (B) (1) through (C) (1)- Basically, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer’s federal or state income tax return unless the return is still under statute.

31

Qualified Municipalities and Casinos

- The Cities of Wyoming and Indian Hills are qualified municipalities and tax income as reported on the taxpayers Ohio return. Both cities are in the greater Cincinnati Area
- Casinos are required to withhold and remit taxes on the winnings in the city the Casino is located - please refer to ORC 718.031

32

FOR FUTURE QUESTIONS:

Robert Wright

rswright@bgohio.org

419-354-6211 (office)

Please feel free to call us with questions!

33