

Occasional Entrant Rules Substitute House Bill 5

130th General Assembly

NWOTCA Tax Preparer Seminar

November 16, 2016

Amy L. Arrighi, Chief Legal Counsel
The Regional Income Tax Agency

Withholding – Small Employers

- The small employer withholding rules:
 - A small employer is a nongovernment employer whose gross receipts the previous year totaled less than \$500,000
 - Gross receipts are from all sources, including intangible income, grants, and expense reimbursements (so payments made to a common paymaster to cover the related party's payroll are included in gross receipts)

Withholding – Small Employers

- The small employer withholding rules (continued):
 - To qualify for the small employer withholding rules, a small employer must have a fixed location in Ohio -- even if that fixed location is in an Ohio jurisdiction not imposing municipal income tax
 - A “fixed location” is a permanent place of doing business in Ohio, such as an office, a warehouse, storefront, or similar location owned or controlled by an employer.

Withholding – Small Employers

- The small employer withholding rules (continued):
 - A small employer with a fixed location in Ohio withholds as if all of the wages of all employees were earned for work performed at that fixed location -- even if that fixed location is in an Ohio jurisdiction not imposing municipal income tax

Withholding – Small Employers

- The small employer withholding rules (continued):
 - If the employer qualifies to use the small employer withholding rules, the law suggests that the rules are not optional... unless the employer enters an agreement with the “work place” municipalities involved
 - If the employer qualifies to use the small employer withholding rules, “the occasional entrant rules” do not apply – even if the small employer’s fixed location, which must be in Ohio, is in an Ohio jurisdiction not imposing municipal income tax.

Withholding – Small Employers

- The small employer withholding rules (continued):
 - What happens if the small employer has three locations such as Cleveland, Brecksville, and Olmsted Township?
 - It appears that the employer must withhold either Cleveland income tax or Brecksville income tax on all employees for qualifying wages earned in any municipality imposing income tax
 - Principal place of work (we will discuss later)
 - Main reporting office if no principal place of work

Withholding – Small Employers

- The small employer withholding rules (example 1):
 - Joe's Plumbing's only location in Ohio is in Cleveland
 - Joe's Plumbing's gross revenue from all sources last year was \$325,000
 - Joe's Plumbing employs seven full-time employees who unclog drains in Cleveland, Cleveland Heights, Beachwood, Parma, and Rocky River
 - Each employee worked more than 20 days in each of the above municipalities

Withholding – Small Employers

- The small employer withholding rules (example 1):
 - Result: For the entire calendar year Joe's Plumbing withholds Cleveland tax on all qualifying wages of all employees

Withholding – Small Employers

- The small employer withholding rules (example 2):
 - Joe's Plumbing's only location in Ohio is in Prairie Township in Franklin County
 - Joe's Plumbing's gross revenue from all sources last year was \$325,000
 - Joe's Plumbing employs six full-time employees who unclog drains in Columbus, Dublin, Grove City, and Hilliard
 - Each of the six employees worked more than 20 days in each of the above municipalities

Withholding – Small Employers

- The small employer withholding rules (example 2):
 - Result: For the entire calendar year Joe's Plumbing withholds municipal tax as if all work performed by all employees was in Prairie Township (thus, Joe's Plumbing does not withhold any workplace tax)

Withholding – Small Employers

- The small employer withholding rules (example 3):
 - Joe's Plumbing's has two locations in Ohio:
 - One in Prairie Township in Franklin County
 - One within the city limits of Delaware
 - Joe's Plumbing's gross revenue from all sources last year was \$325,000

Withholding – Small Employers

- The small employer withholding rules (example 3):
 - Joe's Plumbing employs six full-time employees who unclog drains in Columbus, Delaware, Dublin, Grove City, and Hilliard
 - Four employees work out of the office in Prairie township office
 - Two employees work out of the office in the City of Delaware
 - Each of the six employees worked more than 20 days in each of the above municipalities

Withholding – Small Employers

- The small employer withholding rules (example 3):
 - Result: Joe's Plumbing might be required to withhold Delaware, Ohio income tax on all qualifying wages of all employees, even those who worked out of the Prairie Township fixed location

Withholding – Small Employers

- The small employer withholding rules (example 4):
 - Jane's Web Designs' only location in Ohio is in Youngstown
 - Jane's Web Designs' gross revenue from all sources last year was \$325,000
 - Jane's Web Designs employs five full-time employees
 - Two employees work at the Youngstown location: Jane and her secretary Bob

Withholding – Small Employers

- The small employer withholding rules (example 4):
 - Two of the other Jane's Web Designs employees work from their homes in Los Angeles, CA and only set foot in Youngstown for three days out of the year for the company's annual New Year's Party and open enrollment presentations

Withholding – Small Employers

- The small employer withholding rules (example 4):
 - The last of Jane's Web Design's employees works from home in Auburn Township in Geauga County and skips the New Year's Party and attends the annual open enrollment sessions by Skype. This employee has never even seen the Youngstown office

Withholding – Small Employers

- The small employer withholding rules (example 4):
 - Results: As the law is written, Jane's Web Designs withholds Youngstown tax for the entire year on all qualifying wages of all employees... including the two employees in California and the employee in Auburn Township
 - These three employees whose withholding exceeds the tax due to Youngstown tax will have to file for refunds

Withholding – Small Employers

- The small employer withholding rules (example 5):
 - MegaSecurity employs 7,847 employees in Ohio
 - Only 123 of MegaSecurity's employees work in Sandusky at the company's fixed location and at various client sites
 - The remaining 7,724 employees work mostly in Cleveland, Columbus, Toledo and Cincinnati and most have never set foot in the Sandusky office

Withholding – Small Employers

- The small employer withholding rules (example 5):
 - Effective January 1, 2016, for the legitimate business purpose of liability management, MegaSecurity incorporates a subsidiary, MegaSecurity Ohio, and transfers all of its Ohio employees to MegaSecurity Ohio
 - MegaSecurity Ohio takes over the Sandusky fixed location
 - MegaSecurity Ohio had gross revenue in 2015 of \$0 (it didn't exist in 2015)

Withholding – Small Employers

- The small employer withholding rules (example 5):
 - Is MegaSecurity Ohio with its 7,847 employees a small employer?
 - Does MegaSecurity Ohio have a fixed location in Ohio?
 - How does MegaSecurity Ohio withhold under the small business withholding rules as written?

Withholding – Small Employers

- The small employer withholding rules (example 5):
 - Effective January 1 of the following year, for the legitimate purpose of consolidating the payroll activities of its subsidiaries, MegaSecurity creates a new subsidiary: MegaSecurity Associates and transfers all employee of MegaSecurity, Ohio to MegaSecurity Associates
 - MegaSecurity Associates is billed for one room in MegaSecurity Ohio's Sandusky office where an employee works and handles payroll disputes for Ohio and West Virginia works

Withholding – Small Employers

- The small employer withholding rules (example 5):
 - Is MegaSecurity Associates with its 257,492 employees a small employer?
 - Does MegaSecurity Associates have a fixed location in Ohio?
 - How does MegaSecurity Associates withhold under the small business withholding rules as written?

Withholding – 20 Day Rule

- Important for our understanding of the Occasional Entrant Rule is the definition of the employee's Ohio “principal place of work” (PP of W).

Withholding – 20 Day Rule

- What is an employee’s “principal place of work?”
 - The fixed location in Ohio to which the employee is required to report for duty on a regular and ordinary basis
 - A “fixed location” means a permanent place of doing business in this state such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

Withholding – 20 Day Rule

- What is an employee’s “principal place of work?”
 - If there is no “fixed location in Ohio,” then the PP of W is the Ohio “worksite location” to which the employee is required to report for duty on a regular and ordinary basis
 - The “worksite location” is “a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year.”

Withholding – 20 Day Rule

- What is an employee’s “principal place of work”?
 - If there is no “fixed location in Ohio” and if there is no “worksite location in Ohio,” then the principal place of work is the location in Ohio at which the employee spends the greatest number of days in a calendar year performing services for the employer

Withholding – 20 Day Rule

- All employees must have a “principal place of work”
- If there is a tie, the employer, using a reasonable method, must use allocate the employee’s qualifying wages between the “tied” principal places of work

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule:
 - Extends from 12 to 20 the number of days an employee must perform services in a municipality before the employer is required to withhold tax for that municipality for that employee
 - Recall that if the employer qualifies to use the small employer withholding rules, “the occasional entrant rules” do not apply

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule:
 - If the threshold is not exceeded for the employee and if the employee’s “principal place of work” is within a municipality imposing income tax, withhold only for the PP of W municipality for that employee for that day
 - If the threshold is not exceeded for the employee and if the employee’s “principal place of work” is not within a municipality imposing income tax, then no withholding is required for that employee for that day

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule:
 - For the first 20 days that the employee is in the “occasional entrant” municipality, the employer withholds only for the PP of W (no withholding for those first 20 days if PP of W is in a jurisdiction not imposing income tax)
 - If the 20-day threshold is exceeded, the employer must begin withholding for the employee on the 21st day for the “occasional entrant” municipality
 - Even if the 20-day threshold is exceeded, the employer is not responsible for the withholding for the “occasional entrant” municipality for the first 20 days for that employee

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule:
 - If the employee is not a resident of a municipality for which the employer did not withhold because the employer correctly applied the Occasional Entrant Rule, that income is “exempt income” at the employee level as far as the nonresident, “occasional entrant” municipality is concerned
 - The exemption goes away if the employee claims a refund from the PP of W municipality to which the tax withheld on those wages was remitted

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule:
 - Qualifying wages are never exempt from the tax imposed by an employee's resident municipality

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule (example 1):
 - John's principal place of work is in Grove City, he works no more than 20 days in Columbus, and his employer correctly withholds Grove City tax on his wages earned in Columbus
 - John is a Bexley resident.
 - Result: John's wages earned in Columbus are exempt income as far as Columbus is concerned unless John requests a refund of the Grove City tax withheld on those wages earned in Columbus

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule (example 1):
 - Because John is a Bexley resident, John owes Bexley tax on all of his qualifying wages, including those qualifying wages earned in Columbus that were exempt income as far as Columbus is concerned
 - Bexley's rules for granting residents credit for taxes paid to another municipality would apply

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule (example 2):
 - Jane's principal place of work is in Prairie Township, she works 7 days in Columbus, and her employer correctly withholds no tax on her wages earned in Columbus.
 - Jane is a Bexley resident.
 - Results: Jane's wages earned in Columbus are exempt income as far as Columbus is concerned.

Withholding – 20 Day Rule

- The basic Occasional Entrant Rule (example 2):
 - Because Jane is a Bexley resident, she owes Bexley tax on all of her qualifying wages, even those wages that were exempt from Columbus withholding under the Occasional Entrant Rule

Withholding – 20 Day Rule

- The big exceptions to Occasional Entrant Rule:
 - Small employers that have a fixed location in Ohio (discussed earlier)
 - Professional Athletes have no protection under the Occasional Entrant Rule
 - Professional Entertainers paid on a per-event basis have no protection under the Occasional Entrant Rule

Withholding – 20 Day Rule

- The big exceptions to Occasional Entrant Rule (continued):
 - Public Figures paid to give speeches or paid to make public appearances have no protection under the Occasional Entrant Rule
 - Promoters who had no protection under the old 12 day rule now have protection under the new 20 day rule provided they are themselves not public figures paid to give speeches or paid to make a public appearance

Withholding – 20 Day Rule

- The new exceptions to Occasional Entrant Rule (continued):
 - Employees working at a “Presumed Worksite Location” – so, withhold from day #1

A “presumed worksite location” is a construction site or other temporary worksite at which the employer provides services reasonably expected by the employer to last more than 20 days in a calendar year.

Withholding – 20 Day Rule

- The new exceptions to Occasional Entrant Rule (continued):
 - Employees working at a “Presumed Worksite Location” – so, withhold from day #1
 - If the employer can reasonably expect to be providing services at a jobsite in a municipality for more than 20 days during the year, the employer must withhold on all qualifying wages earned by employees working at that jobsite, even on those wages earned by employees who the employer knows will work less than 20 days in the municipality

Withholding – 20 Day Rule

- The new exceptions to Occasional Entrant Rule (continued):
 - Employees working at a “Presumed Worksite Location” – so, withhold from day #1

Services can reasonably be expected by the employer to last more than 20 days in a calendar year if either . . .

- . . . the nature of the service requires more than 20 days to complete, or
- . . . the agreement between the employer and the employer’s customer requires the employer to perform services at the location for more than 20 days.

Withholding – 20 Day Rule

- The new exceptions to Occasional Entrant Rule (continued):
 - Employees working in their resident municipality if the employer has agreed as a courtesy to withhold resident withholding

Withholding – 20 Day Rule

- The new exceptions to Occasional Entrant Rule (continued):
 - Employees working in the municipality in which the employees' "Principal Place of Work" is located

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - What is an employee’s “principal place of work?”
 - The fixed location in Ohio to which the employee is required to report for duty on a regular and ordinary basis
 - A “fixed location” means a permanent place of doing business in this state such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - What is an employee’s “principal place of work?”
 - If there is no “fixed location in Ohio,” then the PP of W is the Ohio “worksite location” to which the employee is required to report for duty on a regular and ordinary basis
 - The “worksite location” is “a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year.”

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - What is an employee’s “principal place of work”?
 - If there is no “fixed location in Ohio” and if there is no “worksite location in Ohio,” then the principal place of work is the location in Ohio at which the employee spends the greatest number of days in a calendar year performing services for the employer

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - What is an employee’s “principal place of work”?
 - All employees must have a “principal place of work” in Ohio
 - If there is a tie, the employer, using a reasonable method, must use allocate the employee’s qualifying wages between the “tied” principal places of work

Withholding – 20 Day Rule

- The Occasional Entrant Rule pop quiz:

Given the facts setting forth on the following slides, for what municipality or municipalities must the employer withhold if the employer wants to take advantage of the “occasional entrant” rule?

Withholding – 20 Day Rule

- The Occasional Entrant Rule pop quiz:
 - ABC Company is not a small employer
 - ABC Company has no fixed location in Ohio (a permanent place of doing business in this state such as an office, warehouse, storefront, or similar location owned or controlled by an employer)
 - ABC Company has no worksite locations in Ohio (a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year),

Withholding – 20 Day Rule

- The Occasional Entrant Rule pop quiz (continued):
 - One employee of ABC Company worked in Ohio as follows:
 - First quarter: 5 days in Brecksville and 6 days in Cleveland Heights
 - Second quarter: 7 days in Dayton and 8 days in Huber Heights
 - Third quarter: 10 days in Bowling Green and 13 days in Toledo
 - Fourth quarter: 18 days in Ada and 19 days in Lima

Withholding – 20 Day Rule

- The Occasional Entrant Rule pop quiz:

Given the facts setting forth on the following slides, for what municipality or municipalities must the employer withhold if the employer wants to take advantage of the “occasional entrant” rule?

ANSWER:

Withholding – 20 Day Rule

- The Occasional Entrant Rule pop quiz:

Reason: is the PP of W: no fixed location in Ohio; no worksite location in Ohio; so, PP of W is the Ohio location at which the employee spends the greatest number of days in the calendar year performing services – in this example, . ORC 718.011(A) and (C)

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - For purposes of counting days for the Occasional Entrant Rule, an employee works in only one taxing municipality each day
 - The taxing municipality in which the employee was deemed to have spent the most time working compared to other taxing municipalities is the municipality in which the employee worked that day for purposes of counting up to 20 days

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule:
 - So, if Jane worked 40 minutes in Eastlake, 20 minutes in Willoughby, and 7 hours in Concord Township, for purposes of counting days for the Occasional Entrant Rule, Jane worked the entire day in

Withholding – 20 Day Rule

- The nuts and bolts of the Occasional Entrant Rule (continued):
 - Time spent traveling to and from job sites and picking up goods or making deliveries is considered time spent working at the employee's principal place of work
 - However, if the employee delivers and installs goods (i.e. "affixes to real property"), then the time spent installing the goods is time spent working in the municipality where delivery was made

Withholding – 20 Day Rule

- The Occasional Entrant Rule caution:
 - Employees covered by the Occasional Entrant Rule should only have one municipality's tax withheld from their wages for any given day
 - The municipality (not jurisdiction) in which the employee was deemed to have spent the day under the rules for counting days is the municipality whose tax is withheld

Withholding – 20 Day Rule

- The Occasional Entrant Rule caution example:
 - If on the employee's 21st day working in Twinsburg, as days are counted under the Occasional Entrant Rule, the employee worked 3 hours in Twinsburg and 5 hours in a township, the employer withholds Twinsburg tax on all 8 hours of the employee's qualifying wages
 - The employer can elect not to withhold Twinsburg tax on the 5 hours worked in a township

Withholding – 20 Day Rule

- The Occasional Entrant Rule caution example:
 - On the employee's 21st day working in Twinsburg, as days are counted under the Occasional Entrant Rule, the employee also worked 2 hours in Eastlake where the employee has previously worked 30 days under the Occasional Entrant Rule (so, 6 hrs Twinsburg and 2 hrs Eastlake for that day).
 - Result: Since the employee was deemed to have “solely” worked in Twinsburg that day, the employer withholds Twinsburg tax on the wages earned in Twinsburg and in Eastlake

Withholding – 20 Day Rule

- Final words on the Occasional Entrant Rule:
 - An employer's use of the Occasional Entrant Rule for withholding is voluntary (unlike the small employer withholding rule which is mandatory)
 - Employers and municipalities now have statutory authority to enter into agreements allowing substitute methods of meeting an employer's withholding requirements (even small employers' withholding requirements)

Withholding – 20 Day Rule

- Final words on the Occasional Entrant Rule (continued):
 - Without an agreement with the municipality that allows otherwise, the preponderance of a day withholding rules will apply even if the employer elects out of the Occasional Entrant Rule
 - The common situation of a small employer that leases its employees from a professional employer organization (ORC chapter 4125) was not addressed in HB5. PEO's are normally not small employers... so, err on the side of caution

Withholding Under Substitute House Bill 5

Questions