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State and Local Tax: City of Columbus Tax Incentives Are No Longer Available If You File Your Columbus Net Profits Tax Return with the Ohio Department of Taxation

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Columbus has implemented a new policy prohibiting businesses from benefiting from incentives granted and administered by Columbus for any year in which the business elects to file its Columbus net profits tax return with the Ohio Department of Taxation (the department). Earlier this month, Columbus publicized its new policy by notifying all recipients of Columbus-based incentives (e.g., the Enterprise Zone Program, the Community Reinvestment Area Program, the Job Growth Incentive, the Job Creation Tax Credit, and the Downtown Office Incentive). Going forward, we anticipate Columbus will make this policy a specific condition within its incentives agreements.

We anticipate Columbus implemented this policy in order to have a mechanism to accurately and timely verify that incentives recipients have complied with their corresponding contractual obligations. On the other hand, we anticipate some in the business community would assert Columbus implemented its policy to deter businesses from opting-in to the state-administered municipal net profits tax that the Ohio General Assembly enacted this past summer as part of Am. Sub. House Bill 49 (HB 49), the state's biennial budget bill.

The state-administered municipal net profits tax was intended to simplify the filing and payment of municipal net profits tax. Beginning with taxable years starting on or after January 1, 2018, HB 49 allows a business, at the business' election, to file its net profits tax returns with the department in lieu of doing so with each applicable municipality. The department then processes the business' net profits tax returns and distributes the tax revenues to the applicable municipalities, minus a 0.5% administration fee. Effectively, H.B. 49 transfers the administration of municipal net profits tax from municipalities to the department. The department's administration includes the power to audit, assess, and hear appeals. In this regard, no city can audit or assess a business if the business files its net profits tax returns with the department. Nor can any city appeal a decision made by the department with respect to a net profits tax assessment or refund.

It is important to highlight that if a business elects to file its net profits tax returns with the department, such election applies to **all** municipalities in which the business is subject to tax. Thus Columbus' policy indirectly impacts all other municipalities.

The Ohio General Assembly passed HB 49 less than two years after the effective date of its last municipal income tax uniformity bill. [Click here](#) to see our January 9, 2015 Client Alert regarding Am. Sub. HB 5. Columbus and many other municipalities contend HB 49 further erodes their Ohio constitutionally conferred power to impose a net profits tax. To this end, this past November, a coalition of roughly 130 municipalities, including Columbus, filed a lawsuit in Franklin County challenging the legality of HB 49's state-administered municipal net profits tax provisions. Several weeks later, another 22 municipalities filed a similar lawsuit in Lorain County. We anticipate additional cities will file similar lawsuits.

Columbus' policy creates additional considerations for businesses that are evaluating whether to opt-in to the state-administered municipal net profits tax. Because it is likely that other municipalities will follow Columbus' lead and adopt similar policies, businesses must consider whether they are jeopardizing current or future incentives in Columbus and elsewhere by opting-in.

Any business that has incentives with Columbus should consider the following:

- If it wishes to file its net profit tax returns with the department, review its existing incentives agreement (s) and consider whether Columbus has the contractual right to withhold benefits.
- Be mindful of this policy when negotiating new incentives agreements.
- Monitor other municipalities to see if they adopt similar policies.
- Monitor state legislative developments for possible actions.

Vorys encourages you to consider this Alert carefully and contact your Vorys attorney with any questions that you may have. For questions on incentives matters, please contact: Scott J. Ziance, (614) 464-8287, sjziance@vorys.com; or, Christopher J. Knezevic, (614) 464-5627, cjknezevic@vorys.com. For questions regarding municipal net profits tax, please contact: David A. Froling, (614) 464-3022, dafroling@vorys.com.