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Ohio Budget Bill Extends Temporary COVID-Driven Pro-Employer Local Withholding Tax Provisions; Provides Employers Additional Safe Harbors

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(Published in the Summer 2021 issue of *The Bankers' Statement*)

Ohio Governor Mike DeWine signed Am. Sub. H.B. 110 (H.B. 110) into law on June 30th. In so doing, the Governor and Ohio General Assembly effectively extended to December 31, 2021, the temporary, COVID-driven, pro-employer local withholding tax provisions contained in section 29 of Am. Sub. H.B. 197 (which were set to expire on July 18, 2021). The bill also provided employers with several additional safe harbors. Here are the key provisions:

1. Through December 31, 2021, employers can continue to assign 100% of an employee's wages to the employee's principal place of work (PPW) city (and withhold and remit the associated withholding tax to such city) even though the employee may not have been physically working in the PPW city when the employee earned those wages. Further, if the employer complies with this provision then no other city can assess the employer tax, penalty, and interest for failing to withhold to that other city.
2. Through December 31, 2021, employers have the right to assign the employee to a new PPW city if the employer so chooses. If the employer exercises this right then the employer has to assign 100% of the employee's wages going forward to the new PPW city (and withhold and remit the associated withholding tax to the new PPW city).
3. Through December 31, 2021, employers have the right to utilize the normal pre-COVID withholding tax rules set forth in R.C. 718.03 if the employer so chooses. Any employer exercising this right would have to withhold local income taxes to the city where the employee is physically working and in so doing the employer would have to take into account the twenty day rule set forth in R.C. 718.011. Absent additional legislative amendments, starting January 1, 2022, employers have to comply with the normal pre-COVID withholding tax rules set forth in R.C. 718.03 and R.C. 718.011.

4. Through December 31, 2021, any employee working outside the employee's PPW city in response to the COVID pandemic does not, in and of itself, cause the employer to be subject to that other city's net profit tax. More specifically, the employee's physical presence in the non-PPW city does not cause the employer to have a payroll factor or sales factor for net profits tax purposes. This provision is retroactive to March 9, 2020.
5. In the event an employee seeks to obtain a refund from the employee's PPW city because of the withholding tax provisions set forth in Am. Sub. H.B. 197 or H.B. 110, the PPW city may not require, as a condition for processing the employee's request, any statement or other documentation from the employee's employer, other than (i) a statement verifying the number of days the employee worked at the employer's PPW during the year; and, (ii) a statement that the employer did not refund any withheld taxes to the employee.

Employers need to take H.B. 110 into account as they prepare their work from home policies for the balance of the year and beyond. Please contact Dave Froling (614.464.3022 or dafroling@vorys.com) if you would like to discuss H.B. 110 more fully.