COVID-19 Impacts Open Meetings, Tax Collection, and Limitations Periods in Ohio

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The sweeping changes brought about by Ohio's Novel Coronavirus Response Bill will directly affect how local governments throughout the state operate, both in conducting public business and in collecting tax revenues.

Allowing Public Bodies to Meet Virtually

Since Governor DeWine declared a state of emergency two weeks ago, there has been a significant amount of confusion regarding the Open Meetings Act's requirement that public bodies meet in-person to conduct their business. This in-person requirement has been exacerbated by the state's Director of Health Dr. Amy Acton's recent orders—including a stay-at-home order, a social distancing order, and prohibition on mass gathering order. This week, the Ohio General Assembly stepped in to provide clarity to public bodies.

A public body can meet "virtually" so long as it does all of the following:

- Public bodies must provide notification of virtual meetings and hearings to the public, to media requesting notification of a meeting, and to any necessary parties, at least 24 hours in advance of the meeting;
- In that notice, public bodies must provide the time, location, and manner in which the meeting or hearing will be conducted (except in the case of an emergency);
- The public body must provide public access to its "virtual" meeting or hearing in the same manner that it's being conducted—whether by live-streaming on the internet or television, call-in information for a teleconference, or by other similar electronic technology;
- The public body must ensure that the public can observe *and* hear the discussions and deliberations of the public body;

- If a public body is conducting a hearing, there must be a way to converse with witnesses and to receive evidence.

So long as a public body complies with these requirements, it may now hold meetings and hearings by teleconference, video conference, and other similar electronic technology. This provision sunsets when the Governor withdraws the state of emergency or December 1, 2020, whichever is sooner.

State and Local Tax Collection Deadlines Extended

The bill also includes several provisions relevant to municipal income tax return filing and collections, contained within Section 28 and 29 of H.B. 197.

First, it authorizes the State Tax Commissioner to extend the filing deadline for state income tax returns under R.C. 5747.08(G). An extension of this deadline effectively extends the filing return deadlines of all Ohio municipalities pursuant to R.C. 718.05(G)(1)(a) and its respective counterparts in each municipal income tax code. It also extends the filing deadline for entities that file their municipal net profits tax return with the state under R.C. 718.85.

The bill also authorizes the State Tax Commissioner to extend the time for filing estimated or accelerated payments and waive interest that would otherwise be due on those payments. While the exercise of this authority would afford relief to taxpayers, it would slow cash flow to local governments, impacting their ability to provide services and respond to the COVID-19 pandemic. For taxpayers operating on the calendar-year, the first estimated payment would be due on or before April 15, and the second payment would be due on or before June 15.

It may also be the case that those who are affected by the emergency will declare little or no estimated tax liability or amend previously filed declarations to reflect a lower estimated tax liability. Either way, municipalities should be prepared for reduction in estimated tax payments for the first and second quarters of the year.

Suspension of the “20-day rule” for Employees Forced to Work Remotely

Another aspect of the bill is that for the length of the emergency declared on March 9 and for 30 days thereafter, the location from which employees work remotely will be considered their principal place of work if they are required to do so as a result of social distancing measures. Consequently, employers will not be forced to revise their withholdings and remittances to account for those employees working from home in other municipalities. This provision does not waive the 20-day rule generally, however, so employees whose work takes them to various municipalities regardless of the declaration remain subject to the 20-day rule and to taxation and withholding as before.

The provisions in the bill regarding municipal income taxes are a consequence of the State’s assertion of comprehensive authority over all aspects of municipal income taxation. That assertion is currently being challenged by over 160 Ohio municipalities represented by Frost Brown Todd in the Ohio Supreme Court. As circumstances permit, municipal leaders should confer with their law directors to determine whether to adopt local measures parallel to the State’s actions and asserting continued home-rule authority over municipal income taxation.

Limitations Periods and Speedy Trial Timelines

Finally, the bill tolls criminal and civil statutes of limitation that would otherwise have expired between March 9, 2020, and July 30, 2020. The section is retroactive to March 9, 2020 and ends July 30, 2020 or the end of the period of emergency, whichever is sooner. This provision also applies to statutory speedy trial requirements for misdemeanor and felony offenses; administrative actions or proceedings provided under the Revised Code or the Administrative Code; and discovery.

The tolling provision provides relief, in particular, to courts (including mayor’s courts) that prior to this change had to rely on the “reasonable continuance” language of R.C. 2945.72(H) to continue cases beyond the statutory speedy trial deadline.

Local governments should consult with counsel concerning the tolling provision's applicability to specific circumstances, and the advisability of filing claims or perfecting appeals on the normally prescribed timetable where possible.

For more information please contact any attorney in Frost Brown Todd's Government Services practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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