Revisions to Statute Governing Centralized Municipal Business Tax Collections to Take Effect for Tax Year 2022

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The Ohio General Assembly passed House Bill 228, which will change the way municipal net profits taxes are collected beginning January 1, 2022. The provisions also include removal of a 0.5% administrative fee that the Ohio Department of Taxation had previously withheld from distributions to municipalities, which the Ohio Supreme Court found to be unconstitutional as a result of a lawsuit brought by nearly 200 Ohio cities and villages. See *City of Athens v. Ohio Tax Commissioner,* Ohio Supreme Court, Case No. 2019-0693, 2019-0696.

On November 5, 2020, the Court held 4 to 3 that it is constitutional to give taxpayers the option of centralized collection of municipal net profits tax, but it is unconstitutional for the state to skim off a fee of 0.5%. Justices Michael Donnelly, Maureen O'Connor, Patrick Fischer, Melody Stewart in the majority. Justice Sharon Kennedy would have held both issues unconstitutional. Justices Pat DeWine and French dissent.

The revised notification process gives the state tax commissioner, rather than taxpayers, the responsibility to notify municipalities of the taxpaying business' election to use the state's centralized collection system. Under prior law, the taxpayer had to notify each municipality in which it conducted business, creating additional work for taxpayers and municipalities. Under the new law, the taxpayer notifies the tax commissioner of its election and where it does business. The tax commissioner is also required to provide quarterly reports to municipalities, streamlining communications and reducing opportunities for error.

H.B. 228 also requires the state to develop a new web portal for the secure exchange of information between the state department of taxation and municipalities. This provision does not set a deadline

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for the development of this portal. Lastly, the clean-up provisions eliminate the 0.5% fee that the state could withhold from municipal tax distributions under previous law. The Ohio Supreme Court held that this fee was unconstitutional because it was not encompassed within the state's authority to limit the municipal power to levy taxes. Aside from the immediate effect of keeping those municipal tax dollars for municipalities, this holding also prevents the State from increasing the fee in the future.

Municipal tax professionals and other municipal leaders should continue to track legislative proposals for changes to Chapter 718 and the centralized collection system, which will now be reliant entirely on the General Assembly for funding.

Frost Brown Todd represented over 160 of the municipal plaintiffs in that lawsuit.

For more information navigating this changing landscape, please contact Thaddeus Boggs, Frank Reed, or any attorney with Frost Brown Todd's Government Services for assistance in navigating the changing landscape.

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