



TAX TANGLE

Businesses should brace for the possibility of withholdings that follow employees to their homes



►BY JUDY STRINGER

Small businesses may have one more COVID-fueled operational headache coming their way.

Ohio employees currently are regarded as working from their employer's principal place of business for tax purposes, even if they are really working from home.

That's thanks to House Bill 197 passed in March. Among a number of pandemic emergency measures, the bill temporarily suspends the state's "20-day rule," which requires employers to begin withholding tax for a municipality when an employee has

been working in that municipality for more than 20 days.

The rule's suspension was intended to be a "convenience to employers," according to Richard Fry, Akron partner in charge and taxation group practice leader at Buckingham, Doolittle & Burroughs.

"In effect, Ohio businesses were permitted to withhold the same local income tax rate they had been withholding before the pandemic forced so many employees to work from home, rather than having to withhold different rates depending on everybody's residence," Fry said.

Two bills currently in the Ohio Legislature and a pending lawsuit filed in Franklin County Common Pleas Court, however, seek to immediately repeal the 20-day rule suspension. Fry and other tax and legal experts say a repeal could open a filing floodgate for businesses that permit employees to telecommute. Companies could easily go from submitting payroll reports in one or two municipalities to being subject to dozens of various taxing rates and filing requirements, said Thomas Hall, director of taxation at payroll processing firm Ahola Corp. in Brecksville.

Although many area municipalities are affiliated with RITA (Regional Income Tax Agency) or CCA (the city of Cleveland's Central Collection Agency), Hall said Northeast Ohio is home to "a lot" of communities that tax independently, including Akron, Parma and Cuyahoga Falls.

"Companies would have to register in each of those communities where they have employees working, and it can be a lot of paperwork ... and a lot of communication back and forth because locations that are used to getting those taxes are going to be asking why they are no longer getting them," he said.

Beyond an uptick in payroll filings, Cleveland-based Meaden & Moore vice president of tax services Jonathan Ciccotelli said, reinstating the 20-day rule with many companies still operating remotely would likely subject some employers, particularly professional service firms, to net income tax provisions in multiple communities as well.

"There are going to be cases where a company will have to appropriate income away from its principal loca-



"IN EFFECT, OHIO BUSINESSES WERE PERMITTED TO WITHHOLD THE SAME LOCAL INCOME TAX RATE THEY HAD BEEN WITHHOLDING BEFORE THE PANDEMIC FORCED SO MANY EMPLOYEES TO WORK FROM HOME, RATHER THAN HAVING TO WITHHOLD DIFFERENT RATES DEPENDING ON EVERYBODY'S RESIDENCE."

— Richard Fry, Akron partner in charge and taxation group practice leader at Buckingham, Doolittle & Burroughs

the Ohio House and Senate to reverse the rule's suspension have been stalled in committee, Kall said, and he thinks there's a good chance they will die there.

Fry said the lawsuit, filed by the conservative Buckeye Institute against the city of Columbus, could be a bigger factor in determining how future withholdings flow among municipalities. It is similar to a case currently before the U.S. Supreme Court, he said, between Massachusetts and New Hampshire.

"There are constitutional protections that prohibit states and municipalities from subjecting nonresidents to tax if their income was not earned in the state or municipality," he said. "So there is no real way to get around the constitutional issue. The question is whether an employee's wages are considered to be earned at the employer's location, even when the employee is working from home."

The reality is, these tax watchers concur, flexible work schedules are here to stay and "resident" municipalities providing services to home-based workers are going to demand — sooner rather than later — the income tax due to them, Ciccotelli said.

"I do not think it's just a COVID-19 dilemma we are talking about," he said. "The pandemic greatly accelerated it, but the need to have this discussion has been building slowly over the last couple of years."

"The state along with the municipalities are going to have to deal with the draconian dynamics of this tax legislation, if you will, versus the world as we know it in 2021 and beyond."

Contact Judy Stringer: clbfreelancer@crain.com



Ciccotelli



Kall

come-taxing residence.

"When those requests are made, typically the employer has to verify that those days worked outside of Cleveland or wherever are factually accurate," he said. "Cities aren't going to just take my word or your word, so I think we are going to see some of those requests come employers' way."

Of course, the impact will not be exclusive to small business. Organizations of all sizes will have to account for their work-from-home employees at a magnitude not experienced previously. But, with scant HR and accounting staffs, smaller companies will face a greater compliance challenge than their larger counterparts, according to David Kall, vice chair of the tax and benefits department at McDonald Hopkins in Cleveland.

"The compliance goes up, but so does the complexity," he said. "You have to figure out the different rates in these various taxing jurisdictions on a paycheck-by-paycheck basis."

While that process could be

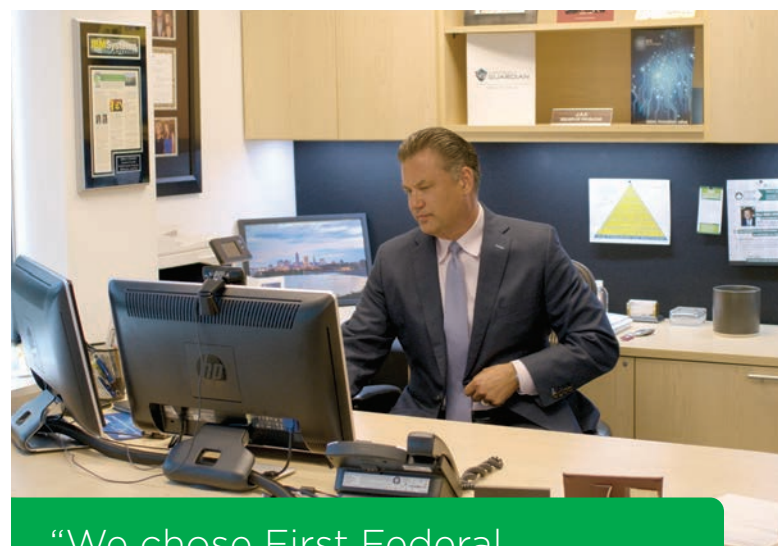
"streamlined" for businesses that contract with payroll service providers like Ahola or ADP, Kall said, the cost of those services will increase with a jump in filings and do so at a time when small businesses are already struggling to absorb and manage other coronavirus expenses.

"It's pretty complicated right now from a small business perspective, and that's putting it gently," he said.

The jury is out as to whether the 20-day rule suspension will be lifted before it expires on its own. The provision sunsets 30 days after the end of the pandemic emergency, Hall noted, which no one can pinpoint at this time.

There are powerful interests that want to keep it in place — namely Ohio's "Big Six." According to a recent study by the Greater Ohio Policy Center, the state's six biggest cities stand to lose \$306 million in annual tax revenue if withholdings are redirected to where work-from-home employees live amid the pandemic.

Companion pieces of legislation in



"We chose First Federal Lakewood because of the people."



At First Federal Lakewood, you're choosing much more than a bank. You're choosing an organization made up of people who are committed to reinvesting in our community and helping it thrive - just like you.

We're here to help you meet today's goals and invest in tomorrow.

Visit FFL.net/thrive to learn how we can help your business thrive.



FFL.net [f](#) [t](#) [i](#) [n](#) [@](#)

EQUAL HOUSING LENDER • MEMBER FDIC

STAY IN THE KNOW
with *Crain's* email newsletters

Subscribe FOR FREE by visiting crainscleveland.com/newsletters

CRAIN'S
CLEVELAND BUSINESS