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H.B. 121
135th General Assembly

Bill Analysis

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Version: As Reported by House Ways and Means

Primary Sponsors: Reps. Robb Blasdel and Mathews

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SUMMARY

- Allows a business with remote employees to use a modified municipal income tax apportionment formula with respect to those employees.

DETAILED ANALYSIS

Municipal income tax apportionment for remote employees

Under continuing law, municipal corporations may impose an income tax on the net profit of businesses operating within their jurisdictions. When determining the portion of a business' total net profit that is taxable by a particular municipality, the business uses a three-factor formula based on the business' payroll, sales, and property.

The bill allows businesses with employees who work remotely to use a modified version of this apportionment formula. Instead of apportioning the payroll earned, sales made, or property used by a remote employee to that employee's remote work location, the employer may instead apportion those amounts to a designated "reporting location." This alternative is available both to businesses that file returns with municipal tax administrators and businesses that elect to file a single return covering all municipal corporations with the Tax Commissioner.

Under continuing law, an employee's payroll is generally only included in the existing apportionment formula if the employee performs services at a location "owned, controlled, or used by, rented to, or under the possession of" the employer, or a vendor or customer of the employer.¹

¹ R.C. 718.02(C) and 718.82(C).

Designating a reporting location

To use the bill's modified apportionment formula, the business must assign a remote employee to a designated reporting location, which is any location owned or controlled by the employer or, in some circumstances, by a customer of the employer.² An employee's designated reporting location will be (a) the location at which the employee works on a regular or periodic basis, (b) if no such location exists, the location at which the employee's supervisor works on a regular or periodic basis, or (c) if neither such locations exist, any reporting location designated by the employer, provided that the designation is made in good faith and is reflected in the employer's business records.

A business can change a remote employee's designated reporting location at any time. If the business is a pass-through entity, e.g., a partnership or LLC, it can also designate a reporting location for any of its equity owners who work remotely.

Election

A business that wishes to use the bill's modified apportionment formula must make an election to do so with each municipality in which it is required to file a net profits tax return or, if the business has elected to file a single return with the Tax Commissioner, with the Commissioner. The election can be made on the business' net profit return, timely filed amended return, or a timely filed appeal of an assessment. Once the election is made, it applies to each municipality in which the business operates and to all future taxable years, until it is revoked.

Application of existing law and effective date

Aside from the apportionment of payroll, sales, and property attributable to remote employees, all other aspects of continuing law's apportionment formula will continue to apply to a business that makes the election allowed under the bill. The business can still request to use an alternative apportionment method, as under existing law, although the bill specifies that the business cannot be compelled to use an alternative method that would require it to file a return with a municipality solely because an employee is working remotely in that municipality.

The bill applies to taxable years ending on or after January 1, 2022.³

² A customer location qualifies only if it is located in a municipality to which the employer is required to withhold income taxes on employee wages, due to one or more employees providing services at that location. R.C. 718.021(A)(3)(b).

³ R.C. 718.02, 718.021, 718.17, 718.82, and 718.821 and Section 3.

HISTORY

Action	Date
Introduced	03-21-23
Reported, H. Ways & Means	05-22-23
