
Opinion of the Tax Commissioner

Date Issued: October 27, 2006

Opinion No: 06-0011

Tax: Employer Withholding

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Subject: School District

This request for an Opinion of the Tax Commissioner was received on April 17, 2006. Additional information was received June 27, 2006. The request concerns Employer's compliance with the state and school district income tax withholding requirements.

EMPLOYER'S STATEMENT OF FACTS

The procedures we currently have in place are as follows:

1. We canvass our employees quarterly and annually. We send out additional copies of the IT4 form and request the employee to complete a new form if there has been a status change.
2. Every newly hired employee fills out the IT4 form during the new hire procedure.
3. Once the IT4 form is returned we enter the School District code into the payroll system according to what the employee puts on the form.
4. If the employee fails to either: fill out the form completely (leaving off their school district and code) or send in their IT4 form to the payroll department, we **do not** deduct a school district income tax.

In summary – We request that employees complete the IT4 form. We provided them the IT4 form and all necessary information. The employee is responsible for completing and returning the IT4 form. If the IT4 form is not returned, we **do not** deduct the School District tax.

QUESTION FOR WHICH OPINION IS REQUESTED

We are requesting an 'opinion of the tax commissioner' on our current procedures. We have the Ohio revised code 5747.06 and believe this to be accurate but are unsure of any exceptions.

ANALYSIS

R.C. 5703.53(B)(2) provides that an Opinion of the Tax Commissioner must relate to a “tax” as defined in R.C. 5703.50. “Tax” is defined in R.C. 5703.50(A) and is limited to “those taxes imposed on tangible personal property listed in accordance with Chapter 5711. of the Revised Code and taxes imposed under Chapters 5733., 5739., 5741., 5747. and 5751. of the Revised Code.” School district income taxes are imposed pursuant to R.C. Chapter 5748, as recognized by R.C. 5747.06, which provides:

(E) To ensure that taxes imposed pursuant to Chapter 5748. of the Revised Code are deducted and withheld as provided in this section:

(1) An employer shall request that each employee furnish the name of the employee's school district of residence;

(2) Each employee shall furnish the employer with sufficient and correct information to enable the employer to withhold the taxes imposed under Chapter 5748. of the Revised Code. The employee shall provide additional or corrected information whenever information previously provided to the employer becomes insufficient or incorrect.

(3) If the employer complies with the requirements of division (E)(1) of this section and if the employee fails to comply with the requirements of division (E)(2) of this section, the employer is not required to withhold and pay the taxes imposed under Chapter 5748. of the Revised Code and is not subject to any penalties and interest otherwise applicable for failing to deduct and withhold such taxes.

Accordingly, this Opinion is limited to the withholding requirements with regard to the state income tax and is binding to the extent provided in R.C. 5703.53 solely with regard to such tax. However, nonbinding guidance is provided concerning the withholding requirements for school district income taxes.

In addition to the portions of R.C. 5747.06 quoted above concerning the withholding of school district income taxes, R.C. 5747.06 also contains provisions for the withholding of the state income tax, including the following:

(A) *** The method of determining the amount to be withheld shall be prescribed by rule of the tax commissioner. ***

Ohio Adm. Code 5703-7-06 provides:

Under the provisions of Section 5747.18(B), Ohio Revised Code, it is hereby required that for purposes of withholding the Ohio personal income tax, as required by Section 5747.06, Ohio Revised Code, Ohio employers and employees shall utilize Ohio Form IT-4.

The number of personal exemptions to which an employee is entitled shall be determined only from a properly completed IT-4, and if such form is not properly completed and filed with the employer, the employer shall withhold the Ohio personal income tax without exemptions.

In accordance with the above rule, Employer must withhold Ohio personal income tax without exemptions unless the employee files with Employer a properly completed Ohio form IT-4, which among other things requires designation of the name and number of the employee's school district of residence. If the employee submits an incomplete form IT-4, Employer should return it to the employee for completion. Failure to receive the form with all required items completed, including both the name and number of the employee's school district of residence, requires withholding the state income tax without allowance of exemptions.

Turning to the school district income taxes, for which guidance is merely provided, as long Employer's request for the information required by R.C. 5747.06(E)(1) is made in good faith, R.C. 5747.06(E)(3) shields Employer from liability for failure to withhold school district income tax if the employee fails to comply with the requirements of R.C. 5747.06(E)(2). If Employer follows the first three procedures outlined in its facts and follows the procedures outlined in this Opinion when an incomplete form IT-4 is filed, Employer's request for the required information would appear to have been made in good faith. However, while form IT-4 is not complete unless both the name and number of the employee's school district of residence is provided, if either the name or number has been provided showing that the employee resides in a school district imposing an income tax, Employer must withhold and remit tax for that district.

ANSWER

Unless an employee files a properly completed form IT-4 with Employer, including both the name and number of the employee's school district of residence, R.C. 5747.06(A) and Ohio Adm. Code 5703-7-06 require Employer to withhold state income tax without allowance of exemptions. While no Opinion is available under R.C. 5703.53 with regard to the school district income taxes imposed pursuant to R.C. Chapter 5748, Employer would appear to make its request in good faith, and not be liable for failure to withhold school district income tax from an employee who fails to properly complete and submit the requested form IT-4, if Employer follows the procedures outlined in this Opinion and neither a school district name nor code has been provided by the employee. If either a school district name or number has been provided showing that the employee resides in a school district imposing an income tax, Employer must withhold and remit tax for that district.

This Opinion applies to only to Employer. It may not be transferred or assigned.

In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of Employer to be aware of such changes. See R.C. 5703.53(E).

William W. Wilkins
Tax Commissioner

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