



# **Tax Practitioner Seminar**

January 27, 2017

## **Refunds and Compliance After HB5**

## **Administration of Refunds After HB 5**

## Refunds – All Taxpayer Types

- HB 5 provided specific requirements for communicating with taxpayers about refunds.
- For refunds denied, in whole or in part, on a taxpayer's original request, the taxpayer must be notified in writing of the amount denied, the reason for the denial and how to request an Assessment that may be appealed to the municipality's income tax board of review.
- For refunds denied, in whole or in part, on a taxpayer's amended request, the taxpayer must be provided with an Assessment that states the amount of the refund denied, the reason for the denial and contains instructions for appealing the Assessment to a municipality's income tax board of review.

## Refunds – All Taxpayer Types

- Taxpayers whose refunds are denied on an original request will receive correspondence similar to existing refund correspondence, explaining the reason for the denial and also containing the following language:
  - ❖ "If you wish to appeal the denial of your refund to the municipality's Income Tax Board of Review, the law requires that you request an appealable Assessment of this denial. Complete the Request for Appealable Assessment form available at [www.ritaohio.com](http://www.ritaohio.com)."
- A new form - Request for Appealable Assessment will be available on the RITA website with instructions for the taxpayer to submit the request.
- Taxpayers who complete the Request for Assessment to appeal a refund denial will be issued an Assessment.

# Request for Appealable Assessment Form



Phone: 1-800-860-7482 Fax: 440-526-8013 TDD: 440-526-5332  
www.ritatob.com

## REQUEST FOR APPEALABLE ASSESSMENT

### PURPOSE OF THIS FORM

If (i) the Regional Income Tax Agency ("RITA"), as your municipality's income tax administrator, has denied, in whole or in part, a municipal income tax refund which you have requested on an original filing and (ii) you believe that RITA should not have denied that refund requested, you have the right to request that the denial be issued in the form of an "Assessment" that you may then appeal to the municipality's local board of tax review. [Use this form to request that RITA send you the appealable Assessment.](#)

### ACTIONS YOU MUST TAKE IMMEDIATELY

Please complete this "Request for Assessment" form and return to the address set forth below. The request will be processed by RITA and the Assessment will be served by either certified mail or delivery service.

Name: \_\_\_\_\_

Street Address or P.O. Box Number: \_\_\_\_\_

City, State, and ZIP Code: \_\_\_\_\_

Social Security Number or FEIN: \_\_\_\_\_ Tax Year: \_\_\_\_\_

Type of municipal income tax (please check appropriate line):

Individual (Form 37 or Form 15A)

Business (Form 27)

Signature and date: \_\_\_\_\_

Please mail the completed form to the following address:

RITA  
Attn: Request for Assessment Department  
PO Box 47700  
Broadview Heights, OH 44147-7900

### APPLICABLE LAWS

Division 83(3) of Ohio Revised Code section 718.10

If a tax administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the tax administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under section 718.11 of the Revised Code.

Ohio Revised Code section 718.11:

(A)(1) The legislative authority of each municipal corporation that imposes a tax on income in accordance with this chapter shall maintain a local board of tax review to hear appeals as provided in this section. The legislative authority of any municipal corporation that does not impose a tax on income on or June 20, 2003, but that imposes such a tax after that date, shall establish such a board by ordinance not later than one hundred eighty days after the tax takes effect.

(2) The local board of tax review shall consist of three members. Two members shall be appointed by the legislative authority of the municipal corporation, but that appointee may not be an employee, elected official, or contractor with the municipal corporation at any time during their term or in the year immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the municipal corporation. This member may be an employee of the municipal corporation, but may not be the director of finance or equivalent officer, or the tax administrator or other similar officer or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(3) The term for members of the local board of tax review appointed by the legislative authority of the municipal corporation shall be one year. There is no limit on the number of terms that a member may serve. If a member is reappointed by the legislative authority, the board member appointed by the top administrative official of the municipal corporation shall serve at the discretion of the administrative official.

(4) Members of the board of tax review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

(5) A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of the vacancy when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.

(7) If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the board in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(8) Whenever a tax administrator issues an assessment regarding an underpayment of municipal income tax or denies a refund claim, the tax administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment or denial, the manner in which the taxpayer may appeal the assessment or denial, and the address to which the appeal should be directed.

(9) Any person who has been issued an assessment may appeal the assessment to the board created pursuant to this section by filing a request with the board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

(10) The local board of tax review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or reserves a hearing. If the taxpayer does not reserve the hearing, the taxpayer may appear before the board and may be represented by an attorney at law, certified public accountant, or other representative. The board may allow a hearing to be postponed as jointly agreed to by the parties, or such a case, the hearing must be held within sixty days after the date of the appeal.

(11) The board may affirm, reverse, or modify the tax administrator's assessment or any part of that assessment. The board shall issue a final determination on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final determination by certified mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the tax administrator may appeal the board's final determination as provided in section 2513.21 of the Revised Code.

(12) The local board of tax review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 146.02 of the Revised Code. Hearings requested by a taxpayer before a local board of tax review created pursuant to this section are not meetings of a public body subject to section 121.02 of the Revised Code.

# Refunds – All Taxpayer Types

- Taxpayers whose refunds are denied on an amended request will be sent an Assessment, explaining the reason for the denial and containing the following language:

❖ "The law requires that the denial of your refund on an amended filing be issued in the form of an Assessment. If you wish to appeal this Assessment you must file a written request with the municipality's Income Tax Board of Review. The written request shall specify the reason or reasons why this Assessment should be deemed incorrect or unlawful and shall be filed within 60 days after your receipt of this Assessment. Direct your appeal to the following address: <City/Village Income Tax Board of Review>, <street address>"

## Refunds – Some Takeaways

- If a request for refund cannot be processed because RITA needs additional information we will request that information before getting into these formal proceedings.
- Be mindful of timeframes.
  - ❖ What if the client brings to you the letter instructing him/her how to request an appealable assessment, that is dated one year earlier?
    - May still be able to request the Assessment and appeal if the statute of limitations has not expired. No other timeframe in the law.
  - ❖ What if the client brings to you the Assessment, dated a year earlier?
    - Hint - ☹
    - The law is very specific that an Assessment must be appealed within 60 days of the taxpayer's receipt of the Assessment or it is considered final.

## Compliance After HB 5

## Compliance – Audits

- Audit is now a defined term for municipal income tax.
  - ❖ It means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person for the purpose of determining liability for a municipal income tax.
- A taxpayer must be provided with certain specific written notices at or before the commencement of an audit. Some of those include:
  - ❖ An explanation of the roles and responsibilities of the taxpayer and tax administrator;
  - ❖ Advisement of the right to record the audit; and
  - ❖ Advisement of the right to have representation at the audit (tax preparer, CPA, attorney).

## Compliance – Assessments

- The law now calls for the issuance of appealable Assessments to taxpayers in certain circumstances.
- Assessment means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of review pursuant to section 718.11 of the R.C., and has "ASSESSMENT" written in all capital letters at the top of such finding.
  - ❖ A written finding by the tax administrator;
  - ❖ That starts the taxpayer's clock for appealing; and
  - ❖ And has "ASSESSMENT" written in capital letters at the top.

## Compliance – Assessments

- Assessments must be issued:
  - ❖ On the full or partial denial of a refund requested on an amended return.
  - ❖ At the taxpayer's request after denial of a refund requested on an original filing.
  - ❖ If the tax administrator denies the use of an alternate method of apportioning net profits.
  - ❖ If the tax administrator requires the use of an alternate method of apportioning net profits.
- Assessments must be served on the taxpayer by:
  - ❖ Personal service; or
  - ❖ Certified mail; or
  - ❖ Delivery service (UPS, FedEx, etc.); or
  - ❖ With the taxpayer's permission, secure electronic mail.

## Compliance – Assessments

- Assessments are not:
  - ❖ Billing statements;
  - ❖ Requests for additional information;
  - ❖ Informal notices denying refund requests on original returns;
  - ❖ Notification of math errors; or
  - ❖ Other general correspondence that is not a written finding that starts the appeal clock with the word "assessment" written in all capital letters at the top.