THE OHIO SOCIETY OF CPAs
ADVANCING THE STATE OF BUSINESS

# Municipal Income Tax Withholding & Refund Q & A Guide

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## Applicable only to tax periods beginning on or after January 1, 2022

Hybrid work arrangements significantly impact municipal income tax withholding requirements and raise other municipal tax issues.

This ***Municipal Tax Q&A Guide*** ("Q&A Guide") is provided to assist OSCPA members with understanding the post-2021 Ohio municipal income tax system withholding requirements and other potential municipal tax impacts resulting from hybrid working arrangements. The Q&A Guide is meant to provide a general understanding of municipal income tax provisions impacting typical hybrid work arrangements. Practitioners and users must carefully review the ordinances, facts and circumstances of each municipality and situation before making any recommendation or decision about actual municipal income tax compliance.



CAUTION: This information is provided as general guidance and does not constitute accounting or legal advice. Users cannot rely on this document to file tax returns, remit withholdings, or avoid penalties. Users must carefully review the facts and circumstances for each situation, and the related tax provisions, before taking any course of action related to the topics discussed herein. {00145100-2 }

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# I. General Ohio Municipal Tax Withholding Requirements

1. **What is the general rule for municipal income tax withholding ("General Rule")?**

   Employers must withhold municipal income taxes based on where an employee's work is actually performed, including for each portion of a day worked in any taxing municipality at which an employee performs services for the employer, unless the employer qualifies for an exception to the General Rule. See Question 3.

2. **Under the General Rule, if an employee works in more than one municipality on a single calendar day, must the employer withhold tax for each of those municipal locations worked during that single day?**

   Yes – Employers are responsible for withholding tax on any portion of a day's wages earned in each taxing municipality in which an employee works on a given calendar day, even if the employee worked in multiple locations on such calendar day, unless the employer qualifies for an exception to the General Rule. See Question 3.

3. **What are the exceptions to the General Rule for municipal tax withholding?**

   - The 20-Day Occasional Entrant Exception (Section II).
   - Independent Contractor Occasional Entrant Exception (Section III).
   - Small Employer Withholding Exception (Section IV).
   - The work is performed in a location with no municipal income tax.

4. **If an employee works 20 or fewer days in a municipality, does the employer have to withhold to that municipality?**

   Under the General Rule, the employer must withhold to that municipality unless the situation qualifies for one of the exceptions listed in the Answer to Question 3 above. These exceptions apply only in limited circumstances and do not always protect an employer from withholding tax for a municipality in which the employee works 20 or fewer days. See Sections II through IV below.

5. **Can employers enter into withholding agreements with municipalities that layout a withholding procedure or percentage of employee wages that will be withheld upon?**

   Yes – Employers often find it helpful to have withholding agreements with municipalities in which their employees frequently and regularly perform services. For example, employers and municipalities may agree that employer will simply withhold x% of each employee's wages even if the employee works more than x% within the municipality for some periods during the year.

6. **If an employee lives in an Ohio location with no municipal income tax (i.e., a township or nontaxable municipality) and often works at home, can the employer simply withhold tax to the office municipality on all of an employee's wages earned through the year?**

   The law does not provide authority for an employer to do this. However, from a practical standpoint, this could be done, but the employer should be aware of potential consequences, including but not limited to the following:

   (a) The employee will need to file an annual tax return with the office municipality to obtain a refund of tax withheld on wages earned at the employee's home;

   (b) The employer will need to certify such tax return (and, therefore, should track actual work location); and

   (c) The employee may complain or take some action because the tax is not authorized to be withheld under the law.

7. **Must an employer register with a municipality if the employer will merely withhold resident municipality income tax as "courtesy" withholding?**

   When an employer withholds to a home municipality as a courtesy, it must still register with the municipality and open a withholding tax account.

## II. The 20-Day Occasional Entrant Exception

**8. What is the 20-Day Occasional Entrant Exception?**

The 20-Day Occasional Entrant Exception is an optional "shield" from the General Rule for withholding that can be used by qualifying employers to withhold to an employee's Principal Place of Work municipality even though the employee worked in another municipality so long as the employee did not work more than 20 days in such other municipality (i.e., the occasionally entered municipality) during the calendar year.

**9. Are employers required to use the 20-Day Occasional Entrant Exception and withhold to the employee's Principal Place of Work rather than the actual work municipality (i.e., the occasionally entered municipality)?**

No – Employers are not required to use the 20-Day Occasional Entrant Exception. In fact, the 20-Day Occasional Entrant Exception can sometimes be more complicated for employers because, for instance, tracking employees is still required.

**10. Can an employer simply withhold to an employee's designated Principal Place of Work to avoid any tax, penalties, and interest imposed by an actual work municipality?**

Not necessarily. The employer can only withhold to the employee's Principal Place of Work instead of an actual work city if the 20-Day Occasional Entrant Exception applies.

Important Note: Withholding to the Principal Place of Work does not apply in a typical hybrid work arrangement for purposes of determining whether or how much to withhold to the office and home municipalities.

**11. Can an employer simply withhold to an employee's designated Principal Place of Work to eliminate the need to track actual employee work locations?**

No – Withholding to the Principal Place of Work pursuant to the 20-Day Occasional Entrant Exception does not eliminate the need to track actual work locations of employees. For instance, tracking will be necessary to determine when the 20-day threshold is exceeded and may be needed for net profit tax apportionment purposes.

**12. How does the 20-Day Occasional Entrant Exception work and how can an employer qualify?**

An employer can withhold to an employee's Principal Place of Work instead of an occasionally entered municipality if the employee performed services on behalf of the employer in the occasionally entered municipal corporation on 20 or fewer days* in the calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is in the municipal corporation.

(b) The employee performed services at one or more presumed worksite locations in the occasionally entered municipal corporation. A "***presumed worksite location***" means a construction site or other temporary worksite in Ohio at which the employer provides services that can reasonably be expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:

1) The nature of the services is such that it will require more than 20 days to complete the services; or

2) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than 20 days.

(c) The employee is a resident of the municipal corporation and has requested that the employer withhold tax as a courtesy in accordance with the General Withholding Rule.

(d) The qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

***Note**: See the Answer to Questions 19 which discusses how to measure a "day" within a municipality for purposes of this exception.

## 13. What is an employee's Principal Place of Work?

The ***Principal Place of Work*** is a term that is only relevant with regard to whether municipal income tax must be withheld for an occasionally entered municipality (i.e., only with regard to the 20-Day Occasional Entrant Exception).

To determine an employee's Principal Place of Work, an employer must use the following ***Cascading Test*** provided by statute or ordinance:

(a) If the employee is required to report to a "***fixed location***" for employment duties on a regular and ordinary basis, that location will be the employee's Principal Place of Work. A "fixed location" means a permanent place of doing business in Ohio, such as an office, warehouse, storefront, or similar location owned or controlled by an employer (in other words, an employee's house can never be considered a fixed location—because it is not usually owned or controlled by the employer—unless it qualifies as the location described in (c) below).

(b) If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, then the Principal Place of Work will be the "***worksite location***" in Ohio to which the employee is required to report for employment duties on a regular and ordinary basis. A worksite location is often a customer's location at which the employee is working. However, the law provides that an employee's home cannot qualify as a worksite location for that employee.

(c) If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location in Ohio, "principal place of work" means the location in Ohio at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employer. (The problem with this test is that an employer will usually not know

this location until half-way through the year). See Question 19 discussing how a "day" is measured for this test.

(d) If the employee does not have an Ohio fixed location, an Ohio worksite location, or a place in Ohio at which the employee spends the greatest number of days performing services on behalf of the employer, then the 20-Day Occasional Entrant Exception cannot be used to avoid withholding tax for the occasionally entered municipality.

**14. Can an employer simply designate an employee's Principal Place of Work?**

Technically, no. While employers can certainly assign employees to work at specific locations, the employer's designation of the employee's Principal Place of Work must still meet the definitional and Cascading Test described in the Answer to Question 13 immediately above. For example, it is not clear that an employer may designate an employee's home as the employee's Principal Place of Work even if the employee will be expected to primarily work from home the entire year because the employee's home can only qualify as a Principal Place of Work if the employee spends a greater number of days in a calendar year performing services at home compared to elsewhere—this can only actually be determined halfway through the year or later.

**15. Can an employer change an employee's Principal Place of Work during the calendar year?**

An employee's Principal Place of Work can change during the calendar year if the employer assigns the employee to a new qualifying work location. But the new location must meet the definitional Cascading Test of what constitutes a Principal Place of Work (described in the Answer to Question 13).

For example, if an employee works at a client location at the start of the year, this location would typically be the employee's Principal Place of Work. The employer may choose to reassign the employee to report to work at another client's location or its own office during the year, thereby "changing" the employee's work location and, thereby, changing the employee's Principal Place of Work.

Yes, if all the requirements of being a Principal Place of Work are met (see the Answer to Question 13).

**17. Can a non-Ohio location qualify as a Principal Place of Work?**

No.

**18. If the employer does not require the employee to report for employment duties to a fixed location (i.e., the office) or worksite location (i.e., customer location) on a regular and ordinary basis, can the employer simply withhold to the employee's home as the Principal Place of Work (rather than withholding to an occasionally entered municipality)?**

The law is unclear. If the employer does not require the full-year employee to report to the office or customer location on a regular and ordinary basis, then the 20-Day Occasional Entrant Exception may not be available to the employer until half-way through the calendar year, at which point the employee's home may qualify as the Principal Place of Work. See the Answers to Questions 13 and 14.

**19. If an employee works in two cities on a single calendar day, does that count as a "day" in both municipalities for purposes of measuring the 20-day limit?**

No. An employee shall be considered to have spent a "day" in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that calendar day. In other words, the "day" shall only be counted against the municipality in which the *preponderance* of that day's work was performed (the municipality in which most of the work was performed). This is often referred to as the *Preponderance of the Day Test*. See the Answer to Question 23.

**20. If an employee spends time traveling or making deliveries between two or more municipalities during a calendar day, to which municipality is such travel time attributed for purposes of measuring the 20-day limit in each municipality?**

For the purposes of determining the amount of time an employee spent in a particular location when measuring the 20-day limit, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's Principal Place of Work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(d) Transporting or delivering property described in (c) above, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

**21. For purposes of measuring the number of days worked throughout the year for the "third" Cascading Test (described in Question 13.c.), does the Preponderance of the Day Test apply?**

Yes, therefore, an employee shall be considered to have spent a day performing services in a location for purposes of determining the Principal Place of Work only if the employee spent more time performing services for or on behalf of the employer in that location than in any other location on that calendar day. However, although travel and delivery time is allocated in a manner like that used for purposes of measuring the 20-Day Occasional Entrant Exception (see Answer to Question 20), the term "location" is substituted for the term "municipal corporation" in such description (because a Principal Place of Work can be in a non-taxable Ohio jurisdiction).

**22. If the 20-Day Occasional Entrant Exception does not apply and an employee works in two or more taxable municipalities on the same calendar day, to which municipality must the employer withhold?**

The employer must withhold to both municipalities and report the portion of that day's wages earned in each municipality. The employee should be prepared to substantiate the facts with contemporaneous notes to prove the portion earned in each municipality.

**23. If an employee works six hours in a township and two hours in a taxing municipality on a day, will that day count against the 20-day threshold for that tax municipality for purposes of the 20-Day Occasional Entrant Exception?**

Yes. The day will be treated as a day in the tax municipality and will count against the 20-day threshold for that municipality because the Preponderance of the Day Test only compares time spent in different municipalities.

**24. Once an employee's 20-day threshold is exceeded in a municipality, does the employer have to retroactively withhold to that municipality and get a refund from the Principal Place of Work municipality?**

No.

# III. Independent Contractor Occasional Entrant Exception

**25. What is the Independent Contractor Occasional Entrant Exception?**

The Independent Contractor Occasional Entrant Exception is very similar to the 20-Day Occasional Entrant Exception described above, but generally applies to individuals who earn non-wage compensation for performing personal services inside a municipality (i.e., compensation reported on Form 1099 rather than on a W-2).

Under this exception, such compensation earned inside a taxing municipality on 20 or fewer days is treated as *exempt income* unless:

(a.) The individual is a resident of that municipality;

(b.) The individual's base of operations located in that municipality; or

(c.) The compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure.

**26. If the Independent Contractor Occasional Entrant Rule applies, where is the compensation subject to municipal income tax?**

Compensation to which the Independent Contractor Occasional Entrant Rule applies is required to be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation must be treated as earned or received where the individual is domiciled.

**27. What is a "base of operation" for purposes of the Independent Contractor Occasional Entrant Rule?**

A "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

# IV. Small Employer Exception

### 28. What is the Small Employer Exception?

If a business qualifies as a "***Small Employer***," then it need only withhold municipal income tax to the employer's "***Fixed Location***" (if one exists) even though its employees may work in other taxable municipalities.

### 29. What businesses qualify as a "Small Employer"?

Any business that had less than $500,000 of revenue during the preceding taxable year and is not a government entity as listed below can qualify as a small employer. For this purpose, "revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fess, including premium fess and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles.

"Small employer" does not include any of the following:

- The federal government
- Any state government, including any state agency or instrumentality
- Any political subdivision
- Any entity treated as a government for financial accounting and reporting purposes

### 30. What constitutes a "Fixed Location" for purposes of the Small Employer Exception?

A "***Fixed Location***" means a permanent place of doing business in Ohio, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

# V. Withholding for Typical Hybrid Work Schedules

This section of the Q&A Guide assumes an employer adopts a typical hybrid work schedule, or allows employees to pick a hybrid schedule, such as one of the following:

- One day in the office and four days at home (or vice versa)
- Two days in the office and three days at home (or vice versa)

**31. If an employee works a typical hybrid work schedule (either a day at the office or a day at home), must the employer withhold for both municipalities throughout the year or can it choose a primary municipality to withhold to throughout the year?**

The employer must withhold for both municipalities throughout the year based on the location the employee worked each day or portion of a day. In this situation, an employer cannot choose to only withhold to just one municipality.

**32. If an employee works a typical hybrid work schedule, does the 20-Day Occasional Entrant Exception protect an employer from having to withhold to an employee's home location?**

No. The 20-Day Occasional Entrant Exception will not protect employers from having to withhold to both the office location and home location throughout the year because the 20-day threshold will be exceeded in both locations. As a result, the employer must withhold tax based on the wages actually earned in each location for each day or portion of a day.

**33. If an employee works a typical hybrid work schedule, can the employer simply withhold to the Principal Place of Work, either the office or home municipality, throughout the year?**

No. The Principal Place of Work concept only applies with regard to the 20-Day Occasional Entrant Exception, which merely protects an employer from having to withhold on wages earned in a municipality in which the employee spends 20 or fewer days working throughout the year. Because the employee will be spending

more than 20 days in both the office and home locations throughout the year, the 20-Day Occasional Entrant Exception (and Principal Place of Work concept) will not apply. Instead, the employer will have to withhold to each municipality based on how much time the employee works at the office or at home.

**34. If an employee works a typical hybrid work schedule, will the 20-Day Occasional Entrant Exception ever be applicable for employers to use?**

Yes, but only if the employee were to work 20 or fewer days in a municipality other than the office location and home location. In that case, the employer can avoid withholding to this "third" municipality if the employer instead withholds to the Principal Place of Work municipality.

**35. If an employee works a typical hybrid work schedule, will the office municipality or the home municipality be the Principal Place of Work?**

The law is unclear, and each employee's facts and circumstances must be closely examined. The Principal Place of Work is generally going to be the office municipality unless the employee works more days in the home municipality throughout the year. However, an employer will not know that the employee worked more days throughout the year in the home municipality until at least halfway through the year.

Note: With a typical hybrid work schedule, whether the office or home serves as the Principal Place of Work is only relevant with regard to a third occasionally entered municipality.

**36. How does an employer designate an employee's Principal Place of Work?**

The law does not provide a clear mechanism for an employer to "designate" an employee's Principal Place of Work. Instead, employers may reassign employees to different work location in which case the Cascading Test for determining Principal Place of Work must be applied. See the Answer to Question 13.

**37. Can an employee's Principal Place of Work change during the year?**

Yes, but this generally only happens when the employer reassigns an employee to a new work location and application of the Cascading Test (described in the Answer to Question 13) results in a new Principal Place of Work. The employer should be careful to fully document any change to an employee's assigned work location. For example, employers should specifically declare and document each employee's change in work location. Some ways to do this could include writing memos to the employees' files, having managers appoint and record the location, notifying employees of the location in writing, etc.

**38. If an employee works a typical hybrid work schedule, may an employer simply apply a standard percentage to prorate wages for each payroll withholding period between the office and home municipalities?**

Technically, the law requires that an employer identify the amount of wages actually earned at the office municipality and at the home municipality and withhold accordingly. This type of tracking is not easy and oftentimes not practical because an employer's systems or resources may not provide for such a determination. In that case, employers should try to reduce audit risk by documenting the amount of time employees are expected to spend in each location throughout a typical pay period and proportionally withhold on that basis.

Of course, if a municipality were to audit the employer or employee, the municipality will generally require that records show actual work location (in hindsight). Any differences between the proration and actual work location could cause a municipality to impose additional taxes, penalties, and interest. However, this risk may be unavoidable for some employers.

Employers should consider contacting their municipalities to gain pre-approval of any estimated withholding approach or enter into a withholding agreement with their municipalities (see Question 5).

**39. If an employer has employees sign a *Hybrid Work Agreement* stating the number of days the employee is expected to work in each locality, can the employer use that agreement to prorate taxes between the work and home municipality for each payroll period?**

An employer may use such an arrangement, but any differences between the expected work location and actual work location could cause a municipality to impose additional taxes, penalties, and interest. Employers should consider mandating through its personnel policies that employees report any changes to a hybrid work schedule. Of course, the employer should consult with legal counsel because such an arrangement may impact collective bargaining agreements or raise other labor law issues.

**40. If an employer uses a *Hybrid Work Agreement*, whose responsibility would it be to true-up actual days worked in each location if different than what is stated in the *Hybrid Work Agreement*?**

Municipal tax law essentially imposes the duty to true-up actual workdays on both the employer and the employee. If audited, employers may be subject to assessment of tax, penalties, and interest on under-withheld taxes. Likewise, if an employee is audited, the employee may be subject to assessment of tax, penalties, and interest on such under-withheld tax. However, tax should not be assessed twice.

Employers may want to consider shifting the exposure of an assessment of tax to employees through the *Hybrid Work Agreement* in exchange for the benefit of having flexible work locations. For instance, in exchange for permitting a hybrid work schedule, employers might consider requiring employees to report true-up differences to municipalities on their personal municipal income tax returns and require employees to provide proof of payment upon request of the employer (in case the employer is audited).

**41. If an employee lives in a location with no Ohio municipal income tax (such as a township, nontaxing city, or another state) and works some days in a municipality with an income tax, can the employer prorate some days of the payroll withholding period at zero per cent?**

Yes. An employer is not required to withhold municipal income taxes for a work-location with no Ohio municipal income tax. Therefore, when reporting for a full payroll withholding period, the employer could prorate some days or portions of a day at zero per cent. If the employee is working in another state, that state could have its own local income taxes and require the employer to withhold taxes.

**42. If an employee works a typical hybrid work schedule, for what location must the employer withhold taxes?**

The employer must withhold taxes to the actual work location of the employee, whether that is at the home or at the office.

**43. If an employee works a typical hybrid work schedule and on one calendar day works in both the office and at home, to which of these locations must the employer withhold taxes?**

Both. Because the 20-Day Occasional Entrant Exception will not apply between these two locations, the employer must withhold taxes based on the wages earned at the actual work location for each portion of that single calendar day.

**44. If an employee with a typical hybrid work schedule lives outside Ohio, but the employee's office is in Ohio, can the employer simply withhold tax to the office municipality on all of an employee's wages earned through the year?**

Same Answer as provided to Question 6.

**45. In the past, municipalities have generally required that vacation and sick time be allocated to the Principal Place of Work municipality. Does that treatment still apply when working under a typical hybrid work schedule?**

In the past, municipalities have generally required that tax on wages for vacation and sick time be allocated to the Principal Place of Work because the vacation and sick time was usually earned in the Principal Place of Work. However, under a typical hybrid work schedule, such vacation and sick time will be earned both at the home and the office location. As a result, it seems more appropriate to allocate vacation and sick time between the home and the office location in the same proportion other wages are allocated between these two locations.

## VI. Net Profit Tax Impact of Typical Hybrid Work Schedules

**46. Will an employer owe Net Profit Tax to an employee's home municipality solely because an employee works from a home location?**

Yes. The net profit tax is imposed on all businesses generating net profit from activities conducted within a municipality. Of course, the net profit must be apportioned using the three-factor apportionment formula.

*Payroll*: The numerator of the payroll factor only includes wages, salaries, and other compensation paid to an employee for services performed at a location that is owned, controlled, or used by, rented to, or under the possession of the employer or the employer's customer or vendor.

*Property*: For an at-home employee, reportable property could include computers, monitors, printers, and other office equipment that is owned by or leased by the employer.

*Sales*: The numerator of the sales factor includes gross receipts resulting from sales and services performed in the municipality during the taxable period. Therefore, if the employee is generating "sales," then such sales could be included. For example, in a professional situation, such as an accountant or other professional that works from home, gross receipts can usually be directly attributable to that employee's work efforts.

**47. How can employers simplify their Net Profit Tax reporting if they allow employees to work from a home location?**

Employers can greatly reduce their tax preparation costs by signing up for the centralized net profit tax system administered by the Ohio Department of Taxation. This system covers every Ohio municipality.

Another option would be to file net profit tax returns using the Regional Income Tax Agency's on-line filing system. While not all Ohio municipalities are covered by RITA, employers in some areas may find that RITA covers their work force.

## VII. Withholding If No Established Work Schedule

This section of the Q&A Guide assumes an employer has an office location but does not require employees to report to the office location. Instead, employees are free to come into the office or not come into the office throughout the year, at their own discretion.

**48. If an employer does not require a set number of days be worked in the office and instead allows employees to decide when or whether to work in the office or from home, does the employer need to withhold to both municipalities?**

Unless an exception to the General Rule withholding rule applies, an employer is required to withhold for any municipalities in which an employee works. Therefore, the employer will need to track in which municipalities the employee works and withhold for both locations for each payroll withholding period.

**49. If an employee only ends up working 20 or fewer days in the office location throughout the entire calendar year, does the employer still need to track and withhold for both jurisdictions?**

The law is unclear. In such a circumstance, the 20-Day Occasional Entrant Exception could protect an employer from withholding to the office municipality so long as the employer instead withholds to the Principal Place of Work municipality. However, the challenge is that the work-from-home location does not usually qualify as a Principal Place of Work location. See Section II describing the 20-Day Occasional Entrant Exception. If no Principal Place of Work exists, the employer cannot use the 20-Day Occasional Entrant Exception.

**50. Can the employer simply withhold tax to the office municipality for all of an employee's wages earned throughout the year and let (or even require) the employee to "true-up" with both municipalities by filing the annual tax returns with both municipalities?**

No, because the employer is not protected from its withholding responsibility to the actual work municipality (i.e., the employee's home). Remember, the General Rule—employers must withhold to the actual work location. If an employer does not withhold to the actual work location, then the employer would be subject to the assessment of tax, penalties, and interest. Employees could also be subject to tax, penalties, and interest their home municipalities.

The employer could mitigate the risk of tax, penalties, and interest, if it required employees to make estimated payments to the home municipality. However, this will not completely eliminate the employer's risk and it could raise problems with employees.

## VIII. Refunds – In General

Except as otherwise specifically indicated, this section only addresses refunds that may be requested by employees for calendar years 2022 and after.

**51. Under what circumstances might an employee request a refund from the Principal Place of Work municipality?**

Under the 20-Day Occasional Entrant Exception, employers may withhold tax to the Principal Place of Work municipality even though the employee worked in some other municipality (or even outside Ohio). In such a situation, employees are generally entitled to obtain refunds from the Principal Place of Work municipality to the extent the wages were not actually earned in the Principal Place of Work. However, tax will likely then be due to the location the wages were actually earned. See Question 52.

**52. If an employee requests a refund from a Principal Place of Work municipality, does that mean the employee must report the related wages to other taxable municipalities in which the employee occasionally entered and worked throughout the year?**

Yes. If an employee requests a refund from a Principal Place of Work for worked performed outside such municipality, then the related wages are subject to tax at the location the wages were actually earned. Suggestion: The employee may only want to claim a refund for wages earned at home, thereby limiting the need to file tax returns in all the occasionally entered municipalities.

**53. In a typical hybrid work arrangement, if an employee requests a refund from a Principal Place of Work municipality, does the employee owe tax to the resident municipality?**

Yes, for reasons described in the Answer to Question 52. Further, if the resident municipality imposes an income tax, the employee should file a tax return with the home municipality because the refund could change the credit claimed for taxes paid to other cities or other home municipality tax calculations. Of course, if the employee lives in a non-taxable area of Ohio, then no tax would be reportable or due on wages earned at the employee's home.

**54. Before the COVID-19 Pandemic, many municipalities required employers to verify the days worked away from the office location and to certify/sign the employee's tax returns when the employee was claiming a withholding tax refund. Can municipalities still require this?**

For calendar years 2022 and after, municipalities may request such verifications or certifications like those required in years prior to the COVID-19 Pandemic. As a result, employers may be required to verify or certify the days and locations worked away from the office. Not all municipalities require such verification or certification.

Note: For 2020 and 2021, employers are only required to report the days worked <u>at</u> the office location (because, amidst the Pandemic, the employer may not have known where the employee actually worked).

**55. If an employer withheld tax to the Principal Place of Work municipality amid the COVID-19 Pandemic, may an employee obtain refunds for days in which the employee worked away from the office during 2020 because of the COVID-19 Pandemic?**

Most municipalities maintain that taxes withheld to the Principal Place of Work in 2020 do not need to be refunded even if the employee actually worked outside the Principal Place of Work. However, many taxpayers are challenging this position by filing refund requests and not all municipalities are being consistent with their approach. CPAs and taxpayers should carefully review these issues and consider whether claims should be filed to preserve rights to refunds, pending the outcome of pending and future court cases.

Also, some Principal Place of Work municipalities will grant partial refunds if a taxpayer previously filed refund claims in years prior to 2020 (based on the portion of prior year wages earned outside the city). No law, ordinance or other legal basis seems to exist for granting such partial refunds and this approach is inconsistent with the view held by these very same municipalities that refunds are not due for 2020. Nonetheless, this inconsistency could benefit some taxpayers.

Of course, if a refund of withheld tax is obtained because work was performed elsewhere, the related wages must generally be reported as earned in the other municipality or location and may be subject to tax in such other municipality or location (including municipalities entered on 20 or fewer days).

**56. May an employee obtain refunds for days in which the employee worked away from the office during 2021 because of the COVID-19 Pandemic?**

As a direct result of The Ohio Society of CPAs' advocacy efforts, the biennial budget bill (H.B. 110) included provisions that clarified the law and requires refunds to be granted by Principal Place of Work municipalities for days worked outside the Principal Place of Work municipality during 2021. Of course, if a refund is obtained, any wages earned while at home or elsewhere should be reported as earned in those other locations and may be subject to tax by such other municipalities.

# About Us

The Ohio Society of CPAs is recognized as one of the top state accounting associations in the country with members who work in public accounting, business and industry, not-for-profits, government, and education. Driven by our values in professionalism, integrity, excellence and diversity, OSCPA and its members work to transform the accounting profession and build stronger communities across Ohio.

With more than 100 years of experience, OSCPA services as a hub of knowledge, learning, and advocacy for Ohio's 85,000 CPAs and related business professionals, providing a vibrant, solutions-oriented community to help CPAs and the businesses they serve succeed. We work with public, private and not-for-profit organizations of every size and sector, leading healthy exchanges between business leaders and policymakers to drive initiatives such as a fair and predictable tax environment in Ohio.