

# ***Employer Withholding Taxes***

Loretta Hall

Tax Commissioner Agent

Employment Tax Division



Department of  
Taxation

# ***Agenda***

- The Basics
- Electronic Filing Requirements
- Professional Employer Organizations
- Issues
- Future Items

# Basics

- Who Is Required to Withhold?
  - Every employer maintaining an office or transacting business in Ohio that pays compensation to an employee; resident or non-resident.
  - Compensation to employees working out of their homes in Ohio is subject to withholding; this is considered transacting business in the state of Ohio.
  - Employers are required to withhold School District Withholding taxes from any employee who lives in a taxing school district.
- Exceptions to withholding:
  - Compensation paid for services provided in a domestic home (nanny, housekeeper, etc.)
    - Withholding is voluntary in these instances, however should be withheld at the employee's request
  - Independent Contractors
  - Some Agricultural Labor (see US code 26, section 3121, division G)

# ***Basics***

- Registration
  - Registration is required within 15 days of the date the withholding liability begins
  - Form IT-1, Application for Registration as an Ohio Withholding Agent can be submitted three ways:
    - Online registration through the Ohio Business Gateway
    - Telephone registration at 888-405-4089
    - Mail form to PO Box 182215, Columbus, OH 43218-2215

# REGISTER ONLINE

## Ohio Withholding Registration

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Company Name	Ohio Department of Taxation
Company ID	*****0003

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\* Denotes a required field.

### Business Information

\* Type of Ownership:

\* Legal/Owner Name of Business:

(ex. ABC Company)

Trade Name/DBA:

Ohio Charter / Certification Number:

\* NAICS:

NAICS SubType:

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**Department of  
Taxation**  
P.O. Box 182215  
Columbus, OH 43218-2215  
(888) 405-4089



**IT 1** Rev. 8/14  
**Application for Registration  
as an Ohio Withholding Agent**

--	--	--	--	--	--	--	--

Employer withholding account no.  
(For department use only)

--	--	--	--	--	--	--	--

Federal employer identification no.

--	--	--	--	--	--	--	--

Ohio corporate charter no. / certificate no.

Reactivate for account number? ☐ Yes. If yes, provide number if available. 

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Will you have an employee that resides in a taxing school district? ☐ Yes ☐ No

1. Check type of ownership: ☐ Sole owner ☐ Partnership ☐ Corporation ☐ Nonprofit ☐ LLC ☐ LLP ☐ LTD  
☐ Single member LLC ☐ Other (please specify) \_\_\_\_\_

2. Date of first Ohio payroll, if known (MM/DD/YY) \_\_\_\_\_

3. Provide NAICS code and state nature of business activity \_\_\_\_\_ (For the most current listings, search NAICS on our Web site at [tax.ohio.gov](http://tax.ohio.gov).)

4. Legal name \_\_\_\_\_  
(Corporation, sole owner, partnership, etc.)

5. Trade name or DBA \_\_\_\_\_

6. Primary address \_\_\_\_\_  
Address of corporation, sole owner, partnership, etc. City State ZIP code

Business phone no. \_\_\_\_\_

Fax no. \_\_\_\_\_

Secondary phone no. \_\_\_\_\_

7. Mailing address \_\_\_\_\_  
(If different from primary) State ZIP code

8. Check the box applicable to your estimated employer withholding remittance amount per year:

☐ Less than \$2,000 a year ☐ At least \$2,000, but less than \$84,000 ☐ Greater than \$84,000

9. Ohio liquor permit number (if any) 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

10. Information for individual responsible for filing returns and making payment of Ohio and school district withholding taxes:

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone no. \_\_\_\_\_

SSN / ITIN 

--	--	--	--	--	--	--	--

City \_\_\_\_\_

State \_\_\_\_\_

ZIP code \_\_\_\_\_

11. Name, phone number, fax number and e-mail address of individual the department should contact regarding this account

Name \_\_\_\_\_

Phone no. \_\_\_\_\_

Fax no. \_\_\_\_\_

E-mail address \_\_\_\_\_

Date \_\_\_\_\_ Signature of applicant \_\_\_\_\_

**Federal Privacy Act Notice**

Because we require you to provide us with a Social Security number, the *Federal Privacy Act of 1974* requires us to inform you that providing us with your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax.

# Basics

- Filing Frequency and Forms
  - Filing frequency for a new account will default to quarterly if the estimated withholding amount is unknown
  - The filing frequency is reviewed annually and may change based on the amount of withholding remitted during the look-back period
    - Look-back period is the 12 month period ending June 30th of the previous calendar year
  - Employers are notified by mail, if the filing frequency has changed
  - The filing frequency is also updated on OBG



# Basics

- Filing Frequency and Forms
  - All filing frequency due dates can be found on the ODT website
    - [http://www.tax.ohio.gov/employer\\_withholding.aspx](http://www.tax.ohio.gov/employer_withholding.aspx)
  - Quarterly
    - \$2,000.00 or less combined Ohio withholding and school district withholding will be remitted for the year
    - Form IT-501 – due on the last day of the month following the close of the quarter
  - Monthly
    - More than \$2,000.00, but less than \$84,000.00 combined Ohio EWH and SDWH will be remitted for the year
    - Form IT501 – due within 15 days following the close of each month



# ***Basics***

- Filing Frequency and Forms
  - Part-Weekly
    - More than \$84,000.00 Ohio EWH (excluding SDWH) withheld during the year
    - EFT (Electronic Funds Transfer) participation is required through the Treasurer of State's office. Payments are due within three banking days. <http://tos.ohio.gov/EFT>
    - Any period of \$100,000.00 or more (excluding SDWH) must be deposited the next banking day by EFT

# Basics

- Filing Frequency and Forms
  - School district filing frequency is either monthly or quarterly. Part-Weekly does not apply.
  - Quarterly
    - \$2,000.00 or less combined Ohio withholding and school district withholding will be remitted for the tax year
    - Form SD101 – due on the last day of the month following the close of the quarter
  - Monthly
    - More than \$2,000.00 combined Ohio EWH and SDWH for the tax year
    - Form SD101 – due within 15 days following the close of each month

# ***Basics***

- Filing Frequency and Forms
  - Annual Forms
    - IT941 – Employer’s Annual Reconciliation of Income Tax Withheld
      - Used by Quarterly and Monthly employers
      - Due by January 31 of the next calendar year
    - IT942 – Employer’s 4th Quarter/Annual Reconciliation of Income Tax Withheld
      - Used by Part-Weekly employers only
      - Due by January 31st of the next calendar year
      - No longer available in paper form on the ODT website
    - SD141 – School District Employer’s Annual Reconciliation of Tax Withheld
      - Due by January 31st of the next calendar year

# Basics

- Filing Frequency and Forms
  - Other forms to remember
    - IT3 – Transmittal of Wage and Tax Statement
      - Information form
      - Due the last day of February of the following calendar year
        - » or within 60 days of discontinuing the business.
      - Send with W2 and 1099-R statements on CD-ROM
      - Please do not remit payment with this form
    - IT4 – Employer's Withholding Exemption Certificate
    - IT4NR – Employer's Statement of Residency in a Reciprocity State
    - IT-WHC – Change of Employer Name, Address or Status



## Tax Forms

**Instructions:** Enter a full or partial form number or description into the 'Title or Number' box, optionally select a tax year and type from the drop-downs, and then click the 'Search' button.

Form Title or Number:

Tax Type:

Tax Year:

Do  
**NOT**  
fold  
form.

Transmittal of Wage and Tax Statements		OHIO IT 3 Rev. 10/11
Ohio Withholding Acct. No. <input type="text"/>	Tax Year <input type="text"/>	Federal Employer ID No. <input type="text"/>
Name <input type="text"/>	1. Number of tax statements (Combined W-2 or 1099-R) <input type="text"/>	
Address <input type="text"/>	2. Total Ohio employee compensation \$ <input type="text"/>	
City, state, ZIP code <input type="text"/>	3. Total Ohio income tax liability \$ <input type="text"/>	
<input type="checkbox"/> Check here if magnetic media is enclosed.	4. Total Ohio school district tax liability \$ <input type="text"/>	
I declare under penalties of perjury that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return and report.		
Signature of responsible party <input type="text"/>	Social Security number <input type="text"/>	
Title <input type="text"/>	Date <input type="text"/>	

**DO NOT MAIL A REMITTANCE WITH THIS FORM.** Mail form to OHIO DEPARTMENT OF TAXATION, P.O. BOX 182667, COLUMBUS, OH 43218-2667.

# ***Electronic Filing Requirements***

- Rule 5703-7-19 All employer withholding and school district employer withholding taxpayers must file and pay electronically.
  - Effective 11/13/2014
  - Quarterly and monthly employers
    - E-file all employer withholding forms using the Ohio Business Gateway
    - E-file all school district withholding forms using the Ohio Business Gateway



# ***Electronic Filing Requirements***

- Part-weekly employers
  - Required part-weekly EFT submission through the Treasury of State's office
  - IT-942 - Ohio Employer's EFT 4th Quarter/Annual Reconciliation of Income Tax Withheld must be submitted through the Ohio Business Gateway
  - <http://eft.tos.ohio.gov>
- Payroll providers
  - Bulk File upload through the Ohio Business Gateway
  - [http://www.tax.ohio.gov/employer\\_withholding/PayrollServiceProviders.aspx](http://www.tax.ohio.gov/employer_withholding/PayrollServiceProviders.aspx)

# ***Professional Employer Organizations***

- PEO
  - ORC 4125.01 - PEO Defined as a sole proprietor, partnership, association, limited liability company or corporation that enters into an agreement with one or more client employers for the purpose of co-employing all or part of the client employer's workforce at the client employer's work site
  - Employer of record
    - Required to register as an employer withholding agent using the PEO's FEIN, Federal Employer Identification Number
    - Required to withhold and remit employer/school district withholding taxes on behalf of the employees
    - Required to file forms and remit payments electronically
    - <http://www.tax.ohio.gov/business/peoreporting.aspx>



# Issues

- EFT Incorrect Payroll Date
  - The Payroll Date is the Due Date of the period being filed, not the last day of the period being filed
    - Using the last day of the period as the payroll date causes the forms/payments to stack into the same period until the employer or payroll provider updates the information
    - This may also cause the employer to be billed for interest and late fees
      - Eventually some of the items will be considered late based on the erroneous payroll date
  - The Payroll Date must be changed with each EFT submission

# *Issues*

- Incomplete IT-942 - Ohio Employer's EFT 4th Quarter/Annual Reconciliation of Income Tax Withheld
  - Causes delay in processing the forms
  - Causes the employer withholding account to appear out of balance
  - Lines most often left blank
    - Line 5 – Total income tax withheld for 1st, 2nd and 3rd quarters
    - Line 7 – Previous payments

OHIO EMPLOYER'S EFT 4<sup>TH</sup> QUARTER/ANNUAL  
RECONCILIATION OF INCOME TAX WITHHELD

If Amended Return check here ☐

FOR DEPARTMENT USE ONLY

Ohio Withholding Account Number						Federal Employer Identification Number								For the Year				Due Date									
														y y y y				m m d d y y									
name																		Please complete this schedule if you are required to deposit by <b><i>Electronic Fund Transfer</i></b> . Show the amount of State Income Tax you were required to withhold on the applicable pay date below. <b><i>Please see instructions on the reverse side.</i></b>									
address																											
city						state						zip															
<b>1. First Month of 4<sup>th</sup> Quarter</b> – Enter day of month and amount of required state income tax withholding.									<b>2. Second Month of 4<sup>th</sup> Quarter</b> – Enter day of month and amount of required state income tax withholding.									<b>3. Third Month of 4<sup>th</sup> Quarter</b> – Enter day of month and amount of required state income tax withholding.									
Day of Month			Dollars			Cents			Day of Month			Dollars			Cents			Day of Month			Dollars			Cents			
Total of Column 1						Total of Column 2						Total of Column 3															
<b>4. Total income tax withheld for 4<sup>th</sup> quarter (add columns 1, 2 and 3)</b> .....																											
<b>5. Total income tax withheld for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> quarters</b> .....																											
<b>6. Total income tax withheld</b> .....																											
<b>7. Previous payments (including credit carryover)</b> .....																											
<b>8. Balance due (all balance dues must be remitted by EFT)</b> .....																											
<b>9. Credit carryover</b> .....																											
<b>10. Refund</b> .....																											

**Mail to:** Ohio Department of Taxation  
P.O. Box 444  
Columbus, OH 43216-0444

FOR DEPARTMENT USE ONLY

Signature of Responsible Party

Title

Phone Number

Your Social Security Number

Date \_\_\_\_\_

# *Issues*

- Credits
  - Credit Carry Forward is no longer an option on the IT941, IT942 or SD141 Annual Reconciliations
    - All overpayments must be requested as a refund on these annual reconciliation forms
  - Employers/payroll providers will be notified by ODT of any unrequested credits on the employer withholding and school district withholding accounts
    - Reply with requested documentation to verify the validity of the credit
    - Credit will be released as a refund, if determined to be valid

# Issues

- Refunds
  - Refunds are to be requested on the Annual Reconciliations, IT941, IT942 and SD141
  - Refunds are not issued from the quarterly, monthly or part-weekly periods
    - Any erroneous payment that may cause the company a hardship must be requested in writing and reviewed.
  - WT-AR - Application for Employer Withholding Tax Refund
    - Used for illegal or erroneous assessments
    - Do not use this form for refunds that are or should be requested on the annual reconciliations

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Company Name:  
Company ID:

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Withholding Account Number:  
Return Type: Original  
Reporting Year:  
Due on or Before: 2/2/2015  
Cancel Withholding Account: Yes  
Last Day of Compensation Paid: 6/30/2014  
Date Filed: 10/19/2014 5:39:06 PM  
Filed By:  
Session Confirmation ID:

Month:	Ohio Gross Payroll	Ohio Tax Withheld
January	\$7,666.38	\$93.75
February	\$6,565.01	\$72.12
March	\$5,921.88	\$67.25
April	\$5,755.14	\$69.12
May	\$8,615.76	\$113.28
June	\$11,014.75	\$151.89
July	\$0.00	\$0.00
August	\$0.00	\$0.00
September	\$0.00	\$0.00
October	\$0.00	\$0.00
November	\$0.00	\$0.00
December	\$0.00	\$0.00
Total	\$45,538.92	\$567.41

Ohio Tax Withheld: \$567.41  
Previous Payment: \$594.24  
Interest Owed: \$0.00  
Total Amount Due: \$0.00  
Balance Due: \$0.00  
Request Refund From ODT: \$26.83

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Print

# OBG IT-942

October		November		December	
Day	Withholding	Day	Withholding	Day	Withholding
3	\$1,487.26	7	\$381,901.21	5	\$382,766.42
10	\$379,976.78	14	\$147.91	12	\$18,527.52
17	\$74.09	21	\$400,249.94	19	\$404,389.08
24	\$372,943.51	28	\$2,459.35	26	\$433.56
31	\$439.65				
	\$754,921.29		\$784,758.41		\$806,116.58

Total Income Tax Withheld for Quarter:	\$2,345,796.28
Total Income Tax Withheld for 1st, 2nd, and 3rd Quarters:	\$7,356,670.60
Total Income Tax Withheld for 2014:	\$9,702,466.88
Total Tax Remitted:	\$9,703,462.38
Interest Owed:	\$0.00
Total Amount Due:	\$0.00
Balance Due:	\$0.00
Request Refund From ODT:	\$995.50





## Ohio SD-141 Filing Summary

Company Name:  
Company ID:

School District Withholding Account Number:

Return Type: Original

Due Date: 2/2/2015

Reporting Year:

Cancel School District Withholding Account: Yes

Last Day of Compensation Paid: 6/30/2014

Date Filed: 10/19/2014 5:39:06 PM

Filed By:

Session Confirmation ID:

School District Name ?	School District Number ?	Effective Tax Rate ?	Tax Withheld ?	Payments ?	Under/(Over)Payment ?
CLEAR FORK VALLEY LSD	7001	1.00 %	\$171.70	\$174.45	(\$2.75)

School District Tax Withheld: \$171.70

Total Payments: \$174.45

Interest Owed: \$0.00

Total Amount Due: \$0.00

Balance Due: \$0.00

Request Refund From ODI \$2.75

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Print



## Application for Income Tax Withholding Refund

File this application in duplicate with:  
Ohio Department of Taxation  
P.O. Box 2476  
Columbus, OH 43216-2476  
Attn: Personal Audit

- ✓ Please type or print in ink.
- ✓ Retain a copy for your records.
- ✓ See important information and law on back.

For the income tax withholding period(s) \_\_\_\_\_

1. Name of taxpayer \_\_\_\_\_

2. Address \_\_\_\_\_  
Street or P.O. box City State ZIP code County

3. Ohio withholding account number \_\_\_\_\_ Federal employer identification number \_\_\_\_\_

4. Total amount of refund claimed

a. By payment of an illegal or erroneous assessment

Assessment date \_\_\_\_\_ Assessment serial number \_\_\_\_\_ \$ \_\_\_\_\_

b. Other illegal or erroneous payment to Ohio Treasurer of State \$ \_\_\_\_\_

c. Total amount of claim \$ \_\_\_\_\_

5. State full and complete reasons for above claim. Attach additional sheets, if necessary.

6. Payment of the amount upon which this refund claim is based was made or included in the following remittance(s):  
(include all payments made for the report year(s). Attach additional payment schedule, if necessary).

Type	Amount
Tax paid with forms IT 501 or IT 941	\$ _____
Any additional tax paid	\$ _____
<b>Total payments</b>	<b>\$ _____</b>

I hereby attest that I am the taxpayer(s) or his authorized agent. I declare under penalties of perjury that this return or claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete.

The taxpayer(s) will be represented in this matter by  
(complete, if known):

Name \_\_\_\_\_ Name(s) \_\_\_\_\_

Address \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

For state use only

# *Future Items*

- Proposed Rule 5703-7-19 Amendment
  - to require electronic submission of Employee information forms such as W2, 1099 and IT3 has been delayed.
  - W2 – Wage and Tax Statements
    - Currently an employer with 250 or more W2 and 1099R statements is required to submit statements on a CD-ROM or other approved Magnetic Media
  - IT3 – Transmittal of Wage and Tax Statement
    - Currently the paper form must be mailed to ODT regardless of the number of W2 and 1099R statements

# Resources

- [www.tax.ohio.gov](http://www.tax.ohio.gov)
  - FAQs
  - Finder
    - Provides information on local tax rates for all addresses in Ohio
  - Forms
  - Info releases
    - Technical advisories that offer detailed explanations of selected laws, rules, and rulings that govern the taxes administered by the Ohio Department of Taxation (ODT)
  - Email alerts
    - An email notification system that provides updates on tax topics of your choice



# *Contact Us*

- Phone
  - 888-405-4039
- Fax
  - 614-466-1588
- Mail
  - Ohio Department of Taxation  
PO Box 2476  
Columbus, OH 43216-2476
- Email
  - Via our website at [www.tax.ohio.gov](http://www.tax.ohio.gov)

# ***Taxability of Employment Services and Employment Placement Services***

Laura Stanley, Esq., Counsel Sales and  
Use Tax, Business Tax Division  
Debra Day, Tax Auditor Agent

# ***Taxability of Employment Services and Employment Placement Services***

- Define Employment Services and Employment Placement
- What is Taxable Base
- Sourcing of Service
- Employment Service Exclusions
- Miscellaneous Issues

# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01(B)(3) includes in the definition of a “sale” and “selling” transactions by which:
  - (k) “Employment service is or is to be provided”
  - (l) “Employment placement service is or is to be provided”



# ***Taxability of Employment Services and Employment Placement Services***

- Per R.C. 5739.01 (KK), the definition of Employment Placement is:
  - "locating or finding employment for a person or finding or locating an employee to fill an available position."





# ***Taxability of Employment Services and Employment Placement Services***

- Per R.C. 5739.01 (JJ), the definition of Employment Services requires that:
  - Personnel are provided on either a temporary or long-term basis
  - Personnel provided are under the supervision or control of another; and
  - Personnel provided receive their wages, salary, or other compensation from the employment service provider.



# ***Taxability of Employment Services and Employment Placement Services***

- Two court cases litigated these criteria:
  - Moore Personnel Services, Inc. v. Zaino, 98 Ohio St. 3d 337, 2003-Ohio-1098
  - Reed Elsevier, Inc. v. Zaino (Jun. 30, 2004), BTA No. 2003-J-1083



# ***Taxability of Employment Services and Employment Placement Services***

- Employment Placement Services have no exclusions.
- Employment Services have five exclusions.
- If the customer cannot claim exemption from sales tax per R.C. 5739.02, the service is taxable.
  - Examples of allowed exemptions include
    - Sales to a church
    - Sales to a 501 (c)(3)
    - Sales to the gov't or other political subdivision

# ***Taxability of Employment Services and Employment Placement Services***

- What is include in the price?
  - The total amount billed, which could include
    - Base Fee
    - Reimbursable costs such as travel expenses
      - Even if separately stated on the invoice to the customer these amounts are included in the taxable base to the customer
    - Any other fees associated with the placement or service

# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Manufacturer A hires EP Company to screen for potential candidates to fill the position of Chief Financial Officer. EP Company charges Manufacturer A the following:
    - \$10,000 base fee
    - \$1,000 for advertising costs EP Company incurred
    - \$3,000 for travel expenses to bring two candidates to Manufacturer A's facility for interviews
    - What is considered in the taxable base?



# ***Taxability of Employment Services and Employment Placement Services***

- The total taxable price is \$14,000
  - +\$10,000 base fee
  - + \$1,000 advertising fees
  - + \$3,000 travel expenses



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# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Manufacturer A utilizes ES Company to provide an crane operator for three months. The daily rate is \$15.00 per hour and \$0.75 per mile for all mileage the crane operator incurs travelling between Manufacturer A's two facilities
  - What is considered in the taxable base?



# ***Taxability of Employment Services and Employment Placement Services***

- The total taxable price is
  - \$15.00 per hour and
  - the mileage combined.





# ***Taxability of Employment Services and Employment Placement Services***

- When is the tax due?
  - When performance of the service is provided and invoiced to the customer
  - - OR -
  - When the price is paid
  - Whichever occurs first
- If a retainer is due prior the complete performance of the contract, the retainer is taxable when billed or paid (whichever occurs first)

**DUE**  
**TAXES**

# ***Taxability of Employment Services and Employment Placement Services***

- What is the tax rate to charge?
  - County rate for location where the personnel are posted, if that is known to the service provider (the job location)
  - If the location is not known, it would be sourced to the location of the consumer that the provider has in its records.
- If the service includes both Ohio and non-Ohio services, only the portion situated to Ohio is taxable

# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Pursuant to a contract, ES Company located in Ohio provides personnel to two plants - one in Ohio and one in Pennsylvania.
  - Where is the service sourced?



# ***Taxability of Employment Services and Employment Placement Services***

- Only the Ohio service is taxable to Ohio.



# ***Taxability of Employment Services and Employment Placement Services***

- Employment Service Exclusions
  - Found under RC. 5739.01 (JJ)(1) to (JJ)(5)
  - Include:
    - Contractor or Subcontractor
    - Medical or Health Care Services
    - Permanent Placement
    - Transactions between affiliated members
    - Resale of services to another employment service provider

# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01 (JJ)(1) Contractor or subcontractor
  - Key factor:
    - is the transaction for the sale/purchase of qualified personnel to work at the customer's direction or
    - is the transaction for the accomplishment of a specific task
- Skilled labor does not automatically qualify a transaction for this exclusion



# ***Taxability of Employment Services and Employment Placement Services***

- Cases litigated on this exclusion include:
  - E.T.S., Inc. v. Tracy (Apr. 14, 2000), BTA No.97-S-1613
  - Crew 4 You, Inc. v. Wilkins (2005), 105 Ohio St.3d 356, 826 N.E.2d 817



# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Which of the following is considered a taxable employment service?
- Company A hires an electrician to wire a new office; or
- Company B hires an electrician to perform work under the direction of the plant manager.





# ***Taxability of Employment Services and Employment Placement Services***

- Company B is considered to be taxable employment services.



# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01 (JJ)(2) Medical and health care services
  - Key factor:
    - Are the personnel so provided professional, trained and licensed medical practitioners or others?
    - Do the above provide patient care to persons or otherwise have an active role in the patient's diagnosis, treatment, or care?
- **WARNING:** Personnel must provide patient care; otherwise they would be deemed taxable employment services.



# ***Taxability of Employment Services and Employment Placement Services***

## **Examples of Qualified Staff**

- Doctors and Nurses
- Technicians (X-ray, lab)
- Medical assistants, orderlies, nursing home staff, in home health staff
- Pharmacists

## **Example of Non-Qualified Personnel**

- Clerical, secretarial, accounting personnel

# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Which of the following is considered a taxable employment service?



- Anesthesiologist A is hired by a surgery center to perform anesthesia services on patients; or
- Anesthesiologist B is hired by a surgery center to be the medical director in charge of the facility.

# ***Taxability of Employment Services and Employment Placement Services***

- Anesthesiologist B is considered to be taxable employment services because the Anesthesiologist is not performing patient care.



# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01 (JJ)(3) Permanent Placement
  - Key factors:
    - Personnel must be provided pursuant to a contract of at least one year, and
    - Each employee covered under the contract is assigned to the purchaser on a permanent basis.
- Permanent basis means the personnel are intended to be assigned for an indefinite or unlimited period of time



# ***Taxability of Employment Services and Employment Placement Services***

- Additional key factors:
  - The contract can be written or oral
  - The number of personnel or number of positions need not be listed on the contract
  - Performance review (i.e.. invoice review) is completed to ensure:
    - All staff provided are permanently assigned, if one is deemed to be “temporary” the entire contract may be considered taxable



# ***Taxability of Employment Services and Employment Placement Services***

- Cases litigating this exclusion include:
  - H.R. Options, Inc. v. Zaino (100 Ohio St. 3d. 373, 2004-Ohio-1
  - Sunbelt Transportation Services, Inc. v. Zaino (Oct. 30, 2002), BTA No. 01-V-997
  - Excel Temporaries, Inc. v. Tracy (Oct. 30, 1998), BTA No. 97-T-257
  - J.Z.E. Electric, Inc. v. Wilkins (May 19, 2009), BTA No. 2006-A-2218
  - Bay Mechanical & Electrical Corp. v. Testa, 133 Ohio St.3d 423, 2012-Ohio-4312



# ***Taxability of Employment Services and Employment Placement Services***

- Cases litigating this exclusion include:
  - Premium Glass Co. v. Zaino, BTA No. 2003-T-1475
  - B.J. Alan Company v. Tracy (Mar. 1, 2002) BTA No. 99-N-196
  - Success Employment Services, Inc. v. Tracy (Apr. 14, 2000), BTA No. 98-A-489
  - Labor Pool of Cincinnati, Inc. v Tracy (Apr. 14, 2000) B.T.A. No. 98-A-491
  - Advantage Services V. Tracy (Oct. 30, 1998), BTA No. 95-T-1391

# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Engineering Inc. decides to outsource their office staff, including an office manager and two secretaries to ES Service Company.
  - Executed contract stipulates staff are permanently assigned for at least one year.
  - Contract further stipulates the monthly fee charged is \$4,500.00.



# ***Taxability of Employment Services and Employment Placement Services***

- As long as a review of the invoices shows continuous monthly invoices/payments of \$4,500, this service is nontaxable.



# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Manufacturer A needs staffing to maintain/repair their facilities. They hire ES Company to provide that staff. Executed contract stipulates staff are permanently assigned for at least one year. Contract does not stipulate the number of staff or positions to be filled. Services are to be billed based upon completed timesheets.
  - Is this considered taxable employment services?



# ***Taxability of Employment Services and Employment Placement Services***

- Based only of the contract, this would not be taxable employment services.
- However.....



# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - Review of the invoices show fluctuations in staffing
    - Month 1 – 3 staff
    - Month 2 – 5 staff
    - Month 3 – 2 staff
    - Remaining months also show fluctuations.
  - Does this meet the exclusion?



# ***Taxability of Employment Services and Employment Placement Services***

- No, this service is taxable employment services. Even though the contract language stipulates permanent placement of at least one year, the activity invoices do not support or defend this assumption.



- Performance will trump intent.

# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01 (JJ)(4) Transactions between affiliated members
  - Key factor:
    - R.C. 5739.01 (B)(3)(e) stipulates the affiliation ownership that must be met for this exclusion to apply.
      - One person or business must own or control the business operations of another member of the group.
      - In the case of corporations with stock, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights.
      - Federal attribution rules do not apply.



# ***Taxability of Employment Services and Employment Placement Services***

- R.C. 5739.01 (JJ)(5) Resale of services to another employment service provider
  - Key factor:
    - Became effective July 1, 2007, to allow employment service providers to purchase employment services from other service providers due to shortages of their own staff



# ***Taxability of Employment Services and Employment Placement Services***

- Test Your Knowledge:
  - ES Provider A needs to provide for 15 groundskeepers for an upcoming concert and doesn't have the staff. ES Provider contracts XYZ Provider for the staffing.
  - Does this meet the exclusion?



# ***Taxability of Employment Services and Employment Placement Services***

- The charge between ES and XYZ is excluded per the exemption found in R.C. 5739.01(JJ)(5).
- ES Provider to the concert hall is taxable employment services.



# ***Taxability of Employment Services and Employment Placement Services***

- Miscellaneous Issues:
  - Customers claiming exemption
  - Auditing procedures

# ***Taxability of Employment Services and Employment Placement Services***

- Customers claiming exemption (i.e. church, gov't, 501(c)(3) organization)
  - Must complete a blanket or unit exemption certificate
- Customers claiming one of the five exclusions
  - Not covered by a blanket or unit exemption certificate
- If claiming exclusion obtain as much documentation as possible to substantiate claimed exclusion

# ***Taxability of Employment Services and Employment Placement Services***

- Auditing procedures may include:
  - Determination if employment services have been provided
    - This will include review of the chart of accounts
    - Conducting facility tours
    - Learning taxpayer's operation and use of outside personnel
  - Review of contracts
  - Review of invoices
- Exemption certificates claiming resale will be reviewed to determine if the customer is truly reselling the services
- Exemption certificates claiming manufacturing will be denied.

# ***Taxability of Employment Services and Employment Placement Services***

## Questions?

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