According to Schmidt, the department issues 17 million letters every year, and it can be a scary event for a person to get a letter. The agency is trying to ensure that letters are being sent for the right reasons and will also examine its language to make sure the letters are as clear and understandable as possible, he said.

Noting that the earned income tax credit program is one of the most important poverty reduction programs in the nation, Schmidt said his department is focused on improving every aspect of its administration of the program, from how taxpayers can claim the credit to who gets selected for an audit.

Schmidt said the department received new authority to automatically pay out the EITC to taxpayers who are eligible for the credit but fail to claim it. The department is working to implement that authority for the next processing year, he said.

Schmidt also said the department has launched a media and outreach campaign to expand the use of the Free File program and enrolled more than 100,000 new taxpayers, which he called a "remarkable success." He said the department is hoping to replicate that effort and improve on it in the next filing season.

According to Schmidt, the department is addressing the issue of return preparation and consumer protection by increasing its enforcement efforts against predatory tax return preparers, focusing on those who operate in underserved communities and target low-income taxpayers. He said the department is looking at potential legislative options to strengthen some of its authority in this area.

Because New York has such a diverse population, Schmidt said, the department is working to improve language access. The agency recently overhauled its website to better serve those with limited English proficiency and is recruiting more Spanish language speakers to operate in its call center.

Schmidt said the department also has a new campaign to make sure people who received unemployment insurance are aware of the tax implications before the next tax filing season. ■

## OHIO

### Local Income Tax Central Administration Upheld, but Not Fee

#### by Andrea Muse

The Ohio Supreme Court ruled that the state law allowing taxpayers to opt into a centralized tax collection system for local income taxes is constitutional but said the state cannot retain a portion of the tax payments.

The court held November 5 in *City of Athens v. McClain* that the General Assembly did not exceed its constitutional authority by enacting statutory provisions giving businesses the option to file composite returns and make payments of municipal net profits taxes to the Ohio Department of Taxation instead of filing returns and making payments directly to the municipalities.

But the court ruled that the statutory provision allowing the state to retain 0.5 percent of the municipal tax payments to defray the cost of administration exceeds the General Assembly's authority.

Frank J. Reed Jr. of Frost Brown Todd LLC, who represented Athens and other municipalities, told *Tax Notes* November 6 that in some respects they were pleased with the decision because the court found that the 0.5 percent retention was unconstitutional, as they had argued. Reed added that from a practical standpoint, the department might stop administering the tax now that it can no longer retain a portion of the tax payments.

Ohio Department of Taxation spokesman Gary Gudmundson told *Tax Notes* that the department "appreciates any guidance we receive from the Court on the tax laws of the state." He added that the department "will cease collecting a fee that helped defray the substantial costs and to ease the burden on businesses relating to administering this tax on behalf of the municipalities."

Ohio enacted H.B. 49 in 2017, which authorized taxpayers to elect centralized administration of the municipal net profits taxes and dedicated a portion of the municipal tax payments to an administrative fund. The centralized administration option became

available for tax years beginning on or after January 1, 2018, and all municipalities imposing the net profits tax were required to adopt the statutory provisions by ordinance or resolution by January 31, 2018.

More than 100 municipalities, including the city of Athens, challenged the law, arguing that it violated the state constitution's home rule amendment, Article XVIII, section 3 of the Ohio Constitution. But the Franklin County Court of Common Pleas disagreed, and the municipalities appealed. The Tenth District Court of Appeals affirmed the trial court on a 2-1 vote.

According to the supreme court, some of the municipalities, including Elyria, argued that the General Assembly does not have the power take over the administration of a validly enacted municipal tax. The court continued that other municipalities, including Athens and Akron, contended that the General Assembly exceeded its authority both by imposing centralized administration over the local taxes and by requiring a uniform municipal code. Those municipalities also claimed that the state's retention of a portion of the municipal tax payments was unconstitutional.

> ***Reed said the department might stop administering the tax now that it can no longer retain a portion of the tax payments.***

The supreme court noted that the Ohio Constitution "specifically authorizes the General Assembly to limit municipal home-rule power" to levy taxes. The court agreed with the state that the term "levy" has a broader meaning than just the legislative enactment of the tax and includes the administrative acts the enactment of the tax requires, such as collecting the tax and determining liabilities.

The court continued that imposing a centralized administration method was a "constitutionally proper act of limitation by the General Assembly."

"Throughout the history of municipal home rule in this state, it has been well understood that the state has broad preemptive power in the municipal-tax area," the court added, finding that the General Assembly has the power "to require that such taxes be imposed in strict accordance with the terms dictated by legislation passed by the General Assembly."

But the court concluded that "allowing the state to retain a portion of the tax proceeds to defray its expenses cannot be seen as a legitimate exercise of the General Assembly's power to limit or restrict municipal taxation."

While the court noted that state law directs a portion of other taxes to be used to defray administrative expenses, it stated that those local taxes are imposed under the enabling authority of state law in contrast to the taxes at issue in this case, which are imposed under home rule authority.

The court found it appropriate to sever the retention provision to save the constitutional portion of the statutory scheme, determining that "the centralized-administration scheme can clearly stand on its own, as long as the state finds an alternative way to finance it."

Dissenting in part, Justice Sharon L. Kennedy contended that the General Assembly's power to limit taxes did not extend to allowing it to compel a municipality to adopt a uniform statutory scheme for administering the local net profits tax. Kennedy added that holding otherwise "cannot be squared with the plain language of the Home Rule Amendment."

Justice R. Patrick DeWine, joined by Justice Judith L. French, also dissented in part, arguing that both the centralized administration statutory scheme and the 0.5 percent retention were constitutional. DeWine continued that "the question the majority should be asking is not whether the fee is authorized by the Ohio Constitution but whether it is prohibited," concluding that nothing in the state constitution "prohibits the state from charging a fee for a service that it lawfully provides to a municipality."

The municipalities in *City of Athens v. McClain* (Slip Opinion No. 2020-Ohio-5146) were represented by attorneys from Walter Haverfield LLP, Frost Brown Todd LLC, and Roetzel & Andress LPA. ■