City and County of Denver, Colorado

TAX GUIDE

Topic No. 61

OCCUPATIONAL PRIVILEGE TAXES (OPT or HEAD TAX)

Denver imposes two separate but related Occupational Privilege Taxes (OPT). The Business OPT is imposed on businesses operating in Denver and the Employee OPT is imposed on individuals who perform sufficient services within Denver to receive as compensation at least five hundred dollars ($500) for a calendar month.

IMPOSITION OF THE OPT TAXES

Employees who perform sufficient services in Denver to receive compensation of at least $500 per month meet the requirement of a taxable employee and are liable for the Employee OPT to be withheld by the employer at a rate of $5.75 per month. The employer is also required to pay the Business OPT at a rate of $4.00 per month for each taxable employee. Additionally, the employer is required to pay the Business OPT at a rate of $4.00 per month for each owner, partner, or manager engaged in business in Denver regardless of how much they earn.

Any entity which performs any business, trade, occupation, or profession of any kind, is liable for a minimum of $4.00 per month for each month in which that entity has any activity in Denver related to its business, trade, occupation, or profession, regardless of whether a permanent location is maintained in Denver.

Businesses with owners, partners or proprietors engaged in business in Denver are subject to the business tax for each owner, partner, or proprietor even if that person pays the employee tax through an employer at a different job. The $500 earnings test does not apply to owners or partners since they are not employees.

Individuals with more than one Denver employer are required to pay the tax only once. To avoid duplicate taxation, the employee should submit a Form TD269 to secondary employers. This form can be obtained by calling 720-913-9400. With a properly executed Form TD269, the secondary employer will not withhold the employee OPT. However, the employer is still required to pay the $4.00 business tax if the employee is otherwise taxable for OPT.

If an individual works for two or more employers in two different jurisdictions imposing a head tax, such as Denver and Aurora, the employee will be liable for the employee OPT in each jurisdiction if the earnings requirements are met in each jurisdiction.

CORPORATION

A corporation is a separate legal entity, apart from any "owners." As such, a corporation has only employees, not "working owners." All employees who perform sufficient services to receive $500 per month are taxable employees and are subject to both the Employee and Business OPT.

LIMITED LIABILITY COMPANY

A limited liability company (LLC) is a legal entity formed under state law. The IRS does not recognize an LLC for federal income taxes and requires that an LLC declare itself as a corporation, partnership, or "disregarded entity" (for single member LLC's only). Denver imposes EOPT on an LLC based on its declaration with the IRS.

- Corporation – see above.
- Partnership – all "working members" are taxed as owners.
- Disregarded Entity – the single member is taxed as an owner.

DOMESTIC HELP

Individuals or households that employ domestic help (domestics) are employers as defined in DRMC Section 53-202(a)(2) and are required to withhold and remit the Employee OPT from the domestics they employ. Even though the individuals or households meet the definition of employer they are not subject to the Business OPT because they are not engaged in business in the City.

Domestic help may be employees, or they may be self-employed. Federal Insurance Contribution Amount (FICA) withholding status provides guidance as to whether the domestic help is an employee (FICA withheld) or is self-employed (FICA paid by individual only). If the domestic help is self-employed, they are required to set up an OPT account with the Department of Finance and they are required to pay the Business OPT.

EXEMPTIONS

Employees who perform services for a single employer, but whose work is performed in more than one jurisdiction that imposes an occupational privilege tax, are required to pay the tax only in the jurisdiction in which they spend the majority of their working hours. This exemption applies to the employer as well as to the employee.

There is no exemption for an employee who performs services for the same employer in Denver and a municipality that does not impose an occupational privilege tax. It does not matter if the employee spends the majority of his/her time in the other municipality. If the employee meets the $500 earnings requirement in Denver, she/he is still subject to Denver OPT, as is the employer.

There is also an exemption provided in the Business OPT for governmental or charitable entities whose employees are performing duties consistent with the organization's exempt status. The Employee OPT provides no such exemption and all liable employees are required to have the tax withheld and remitted by their employer.

OCCUPATIONAL TAX RETURNS

A. Businesses with sixty (60) or more employees must file and remit taxes on a monthly basis. Businesses with less than sixty (60) employees may file and remit quarterly.

B. Monthly payments are due the last day of the month following the month in which the liability was incurred. Quarterly payments are due the last day of the month following the three-month period in which the liability was incurred.

C. Individuals, sole proprietors, and partnerships without employees are subject to the tax have the option to pay for the entire calendar year. This annual payment is due January 31st of each year.

EXAMPLES

1. Build-To-Suit Construction Company has its offices in Denver and has many in-progress projects in Colorado. All employees perform sufficient services to receive compensation of at least $1000 per month, including those on the supervisory staff, Bill, Joe, and Al.

Bill has the Denver City Park project; therefore, his team is subject to the Denver OPT.

Joe is working on a house in Aurora. Since the crew is working full time in another city that also collects OPT, the tax is paid to Aurora.

Jim is working on both Bill's and Joe's crews as the need arise. For the current month, Jim has worked 88 hours in Denver and 80 hours in Aurora. Since Jim spent the majority of his time in Denver, he is liable for Denver EOPT and not Aurora OPT.

Al's crew is working on an extended project in Grand Junction. Since Al and his crew are not performing sufficient services to earn at least $500 per month in Denver, they would not be liable for any tax even though the business is based in Denver.

2. Edward is currently under contract as a butler to an oil executive and his family at their estate in Denver. He lives at the estate and is always on-call, therefore, having no set hours. Edward is treated as being self-employed and he pays his own employment taxes.

Included in Edward's responsibilities is the supervision of four additional domestics: a cook, a maid, a gardener, and a chauffeur, who are employed by the oil executive. Each of these employees has a standard set of duties that must be performed within the hours set forth by Edward. The oil executive pays the employment taxes, including FICA, for these employees.

For OPT purposes, Edward is treated as self-employed and is required to remit the $4.00 per month business OPT for himself. Since the other four domestics on staff are treated as employees, all employment taxes are withheld and remitted by the employer. The oil executive must withhold and remit $5.75 per month Employee OPT for each of them. However, the household is not a business; therefore, the oil executive does not owe the Business OPT for those four individuals.

3. XYZ, Inc., sets up a shell corporation under the name of ABC, Inc., in order to take advantage of certain income tax benefits. Both corporations are located in downtown Denver. The employees of XYZ perform all business functions of ABC, which leaves ABC with no employees.

Every person having a fixed or transitory situs within the City is required to pay the Business Tax for the first owner, partner, manager or employee. Even though ABC has no taxable employees in the City, it is still required to pay the $4.00 per month Business OPT.

4. M & S, Inc., a small business within the City, is owned by Madeline and Scott. They are the only employees of the corporation and both of them work fifty weeks per year. In lieu of receiving periodic paychecks, Madeline and Scott each receive an annual salary of $25,000 on December 31 of each year. The salaries are recognized in a salary payable liability account on the company's books.

In their third year, the business was struggling, and Madeline and Scott agreed not to draw a salary. Although Madeline and Scott only get paid once per year, and in fact did not get paid at all in the third year, they are liable for the $5.75 per month Employee OPT for twelve months per year since they performed sufficient services to receive at least $500 in compensation, which is reflected in the accrued

salaries account for each calendar month of the year. The corporation is required to remit for every taxable employee, along with the $4.00 per month Business OPT for each taxable employee.

If Madeline and Scott were a partnership and all other facts in the example were the same, they would not be liable for the Employee OPT for twelve months per year because they would be owners, not employees. The partnership, however, would be liable for the Business OPT for each partner for each month.

5. John Foundation has applied for and received a letter of exemption from the City and County of Denver as being an active 501(c)(3). Its headquarters is in Denver. John Foundation would be exempt from the $4.00 per month Business OPT per employee but would be responsible for collecting and remitting the $5.75 per month Employee OPT from each employee that performs sufficient services to receive at least $500 in compensation per month.

6. Joe's Plumbing Services (Joe's), headquartered in Golden, Colorado, provides plumbing services and repairs throughout the Denver metropolitan area. Work is typically done at a customer's home, not Joe's headquarters.

Mark, an employee of Joe's makes, $20 per hour. During the month of May, Mark performed repair and services within the City and County of Denver for a total of 76 hours, earning $1,520.00. Since Mark has met the threshold of performing services sufficient to earn at least $500.00 in Denver during the month of May, Joe's should withhold $5.75 (the Employee OPT) plus $4.00 (Business OPT) for a total of $9.75. Joe's would do this for each employee who has met the $500 threshold and remit the total amount withheld on their periodic OPT return.

If no employees met the threshold, Joe's would still owe the $4.00 Business OPT, since the company was engaged in business in Denver.

* DRMC Sections 53-200 through 53-299 – Employee and Business Occupational Privilege Taxes

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT DENVER TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE DRMC AND APPLICABLE RULES AND REGULATIONS.

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