

Ohio is pulling a reverse Robin Hood

Hard-working Ohioans still at risk of double taxation

by Steven McGarrity, executive director

This week, the Ohio Supreme Court dismissed a lawsuit filed by two taxpayers against the State of Ohio. The taxpayers were represented by attorneys from Community Legal Aid. The situation faced by these two taxpayers is so fantastical, it is almost unbelievable. Unfortunately, it is all too real. And these taxpayers are not alone. We estimate thousands of other low-income taxpayers in Ohio face the same problem. The State of Ohio takes money that should be credited to these taxpayers and uses it for its own purposes. It's like Robin Hood - but in reverse.

The taxpayers worked and paid income taxes to Ohio and Ohio pretended they never paid their taxes. How is that possible?

If a person has a job, their employer is required to withhold income taxes from the employee's paycheck. The employer sends the federal income tax to the IRS and the state income tax to the Ohio Department of Taxation. The employer is required to provide a W-2 at the end of each year. But if the employer does not provide the W-2 or if the employee loses the W-2, the employee still needs to know how much money their employer sent to the federal and state governments so they can enter that amount on their tax return and determine how much they owe, or as in most cases, how much they will get in a refund.

So where can a taxpayer get that information? For federal taxes it is very easy. If a taxpayer files a federal tax return and incorrectly reports the amount withheld the IRS will provide notice then correct the amount. But for Ohio taxes, the Ohio

Department of Taxation instructs taxpayers to enter ZERO dollars as the amount withheld and will not automatically credit the taxpayer.

It's as if the Ohio Department of Taxation is saying that it knows how much of the taxpayer's money it is sitting on, but if the taxpayer can't independently prove how much that is, the Department of Taxation will just pretend it has none of the taxpayer's money.

If a private company intentionally did this to customers, it would be a crime. If the State of Ohio does it to its citizens, it says it is perfectly acceptable.

[In the lawsuit Community Legal Aid filed in the Supreme Court of Ohio](#), we asked the Court to require the Department of Taxation to create policies and procedures to provide information on withholding amounts to taxpayers and to automatically track and provide notice of overpayment and/or credit taxpayer money, just like the IRS does. For several years before filing the lawsuit, we have attempted to convince the Department of Taxation to comply with the law. We knew the odds were long that we would prevail in this lawsuit due to procedural issues. But we hoped that when the absurdity of the current practice of the Department of Taxation was brought into public view by this lawsuit, that they would agree that refusing to credit taxpayers for taxes paid was not appropriate. Unfortunately, we were proven wrong.

The lawsuit did result in some positive changes. Prior to the lawsuit, if a taxpayer contacted the Ohio Department of Taxation and asked for information about how much their employer withheld, the taxpayer was told that information was not available. Now, the Department of Taxation will provide that information when it is requested. Ohio also now requires all but the smallest of employers to upload electronically W-2 information for all employees. This should enable Ohio to develop a system to automatically credit taxpayers for income taxes withheld by employers. The Department of Taxation, however, has not committed to doing so. The only sure remedy to fix both problems of providing withholding information and crediting

taxpayers' accounts is a statutory change by the Ohio General Assembly.

This article is part of Legal Aid's ["Big Ideas" series](#).

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