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S.B. 26
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Sen. Kunze

Effective date: February 5, 2020; sales and use tax exemptions apply beginning April 1, 2020

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REVISED VERSION*

SUMMARY

Income tax

- Allows teachers to claim an income tax deduction of up to \$250 for amounts paid out-of-pocket for professional development and classroom supplies, beginning in 2020.
- Repeals a provision that makes income earned from the practice of law or from lobbying ineligible for the business income deduction and 3% flat tax rate.
- Requires all taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) codes associated with each source of their business income.
- Delays the repeal of the income tax credit for contributions to campaigns for state offices until taxable years beginning in or after 2020.
- Delays the repeal of the income tax credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT) until taxable years beginning in or after 2020.

Sales and use tax

- Beginning April 1, 2020, exempts from sales and use tax the sale of feminine hygiene products associated with menstruation.
- Beginning April 1, 2020, exempts from sales and use tax the sale of prescription diapers or incontinence pads covered by Medicaid.

* This version updates the effective date and specifies that the sales and use tax exemptions apply beginning April 1, 2020.

Public Office Compensation Advisory Commission

- Abolishes the Public Office Compensation Advisory Commission.

Food Farmacy pilot

- Expands eligibility for the Medicaid “Food Farmacy” pilot project by specifying that food-insecure patients must have some form of chronic disease, not just type 2 diabetes.

DETAILED ANALYSIS

Income tax deduction for teacher expenses

The act authorizes Ohio teachers to deduct up to \$250 of unreimbursed expenses incurred each year for professional development and classroom supplies.

The deduction piggy-backs on a federal income tax deduction for teacher expenses. As with the federal deduction, the Ohio deduction applies to the following expenses, when not reimbursed to the teacher:

1. Books, supplies, computers and other equipment, and supplementary materials used in the classroom. With respect to supplies for a health or physical education class, the deduction only applies to amounts spent on athletic supplies.
2. Expenses paid to participate in professional development courses related to the teacher’s curriculum or students.

To qualify, a teacher must be licensed in Ohio or hold an Ohio-issued certificate or permit and be eligible for the federal deduction. Persons eligible for the federal deduction include any kindergarten through 12th grade teacher, instructor, counselor, principal, or aide who works in a primary or secondary school for at least 900 hours per school year.

The deduction applies to expenses that exceed what the teacher may claim as a federal deduction. For example, if a teacher incurs \$350 of qualifying expenses in a year, the teacher may claim \$250 as a federal deduction, and the remaining \$100 as a deduction from Ohio taxes. (The first \$250 deduction is already factored into the teacher’s Ohio tax liability, since Ohio uses federal adjusted gross income as the starting point on the Ohio income tax return and the federal deduction directly reduces FAGI.)¹ The deduction applies to taxable years beginning in or after 2020.²

Business income deduction

The act repeals a provision that would have excluded income earned from the practice of law or lobbying from being eligible for the business income deduction and 3% flat tax rate. The exclusion, enacted earlier in 2019 by H.B. 166, would have applied specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as

¹ R.C. 5747.01(A)(34) and (JJ) and 26 U.S.C. 62.

² Section 3 of the act.

corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics Committee.³ The exclusion would have applied to taxable years beginning in or after 2020.⁴

The act specifies that taxpayers having business income and required to make estimated tax payments in 2020 must calculate payment amounts based on their annual tax liability assuming repeal of the business income deduction exclusion.⁵ That is, a taxpayer whose 2020 tax liability is affected by the act's repeal of the exclusion must compute estimated payments as if the taxpayer may claim the business income deduction for 2020.

The act also requires taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) code or codes for each of the business or professional activities from which their business income was derived, pursuant to administrative rules to be adopted by the Department of Taxation.⁶

The repeal of the business income deduction exclusion and the enactment of the NAICS code reporting requirement apply to taxable years beginning in or after 2020.⁷

Delays application of repealed tax credits

H.B. 166 repealed two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT). The credits were repealed for taxable years beginning in 2019 or thereafter.⁸ The act delays the application date to taxable years beginning in 2020 or thereafter.⁹

Feminine hygiene product sales tax exemption

The act exempts from sales and use tax feminine hygiene products principally used in connection with the menstrual cycle, e.g., tampons, panty liners, menstrual cups, and sanitary napkins. The exemption does not extend to general grooming and hygiene products such as soaps, cleaning solutions, and shampoo.¹⁰ Unlike with many other sales and use tax exemptions, a consumer is not required to furnish an exemption certificate to the vendor as a

³ R.C. 5747.01(A)(31), (B)(2), and (HH).

⁴ Section 757.150(C) of H.B. 166.

⁵ Section 6(B) of the act.

⁶ R.C. 5747.08(L). The rules must be adopted in accordance with the general administrative rules procedures in R.C. Chapter 119.

⁷ Section 6(A) of the act.

⁸ Section 757.150(B) of H.B. 166 (referring to R.C. 5747.29 and 5747.65).

⁹ Section 4 of the act.

¹⁰ R.C. 5739.01(TT) and 5739.02(B)(57).

condition of obtaining the exemption.¹¹ The exemption applies to all such items purchased on or after April 1, 2020.¹²

Sales tax exemption: Medicaid-covered incontinence products

The act authorizes a sales and use tax exemption for prescription adult diapers and incontinence pads, provided the products are (1) purchased by or for a person who has been diagnosed as incontinent and (2) covered, i.e., reimbursed, by Medicaid. An incontinence pad is defined to be an absorbent product not worn on the body that is designed to protect furniture and other items from damage from human incontinence.¹³ The exemption applies beginning on or after April 1, 2020.¹⁴

Public Office Compensation Advisory Commission

The act abolishes the Public Office Compensation Advisory Commission, which was required to submit proposed compensation plans and reports annually by October 15, detailing the Commission's recommendations for the compensation of the officers whose salaries are fixed by the General Assembly. The Commission was created by S.B. 296 of the 132nd General Assembly, which took effect December 27, 2018. Its first report was due October 15, 2019. It appears the Commission's members were not appointed.¹⁵

Food Farmacy pilot

The act expands eligibility for the "Food Farmacy" pilot project in Summit County by specifying that the food-insecure patients eligible for the services must have any form of chronic disease. As originally established in H.B. 166, the program was limited to food-insecure patients with type 2 diabetes.¹⁶

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Ways & Means	05-08-19
Passed Senate (32-0)	05-08-19
Reported, H. Ways & Means	10-01-19

¹¹ R.C. 5739.03.

¹² Section 6(C) of the act.

¹³ R.C. 5739.02(B)(56) and 5739.012.

¹⁴ Section 6(C) of the act.

¹⁵ R.C. 101.61, repealed.

¹⁶ Section 4 of the act; Section 333.83 of H.B. 166.

Action	Date
Reported, H. Finance	10-10-19
Passed House (91-0)	10-10-19
Senate concurred in House amendments (30-1)	10-23-19