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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 197  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Ways and Means

**Primary Sponsors:** Reps. Powell and Merrin

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### SUMMARY

- Makes technical and corrective changes to the tax laws.
- Makes a few substantive changes in tax laws to correct apparent errors in previous legislation.
- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 30, 2018, including the recently enacted "Further Consolidated Appropriations Act, 2020."
- Narrows application of a sales and use tax exemption for diapers and incontinence products reimbursed by the Medicaid program.
- Declares an emergency.

### DETAILED ANALYSIS

The bill primarily makes various technical corrections to tax-related statutes to address obsolete provisions, typographical or syntactical errors, incorrect cross-references, organization, and effective dates. A few of the bill's changes address more substantive issues. The bill also incorporates into Ohio income tax law recent changes to federal tax law and limits the application of an existing sales and use tax exemption for Medicaid-covered adult incontinence products.

#### Substantive issues

The bill makes a few changes to statutes to remedy apparent errors or oversights from previous legislation. The changes could have substantive effects to the extent that the current law is construed strictly as it is written.

R.C. Section	Explanation
R.C. 323.154	Homestead exemption: The deadline for applying for the homestead exemption recently was changed from early June to December 31, but this section still requires new applicants to be notified of whether they qualify in October. The bill changes the notification deadline to 30 days after the application is approved or denied. It also changes the deadline for an applicant to appeal the decision to 60 days after being notified.
R.C. 718.01(PP)	Municipal income tax assessments: Current law distinguishes the kinds of actions or notices that are or are not considered to be a formal assessment for an alleged municipal income tax deficiency. (Issuance of an assessment invokes rights, duties, and appeal deadlines.) The bill supplies an apparently omitted word, “not,” to clarify that correspondence that does not meet the definition of what constitutes an assessment is not an assessment.
R.C. 5721.39(D)	Delinquent property tax certificate interest period: The interest accrual period for a tax certificate bought at public auction is limited to three years, although the holding period is up to six years; by comparison, the interest period for a certificate bought in a private sale is six years, equal to the maximum holding period. The mismatch between the interest period and holding period for auctioned certificates appears to have resulted from a 2008 conference committee amendment extending the holding period but not conforming the interest period (H.B. 562 of 127th General Assembly).
R.C. 5743.05	Cigarette tax refunds: When a taxpayer claims a refund of any state tax other than the cigarette excise tax, and the Department of Taxation determines that the amount to be refunded is at least as much as (“not less than”) the refund amount the taxpayer claimed, the Department pays the amount the Department determined. Under the wording of the cigarette excise tax statute, there is no such directive for when the Department’s calculated refund is not less than the amount the taxpayer claimed; the statute contemplates only instances when the calculated refund is less than the taxpayer’s claimed refund because of an apparently missing “not” in the appropriate phrase. The bill corrects this by supplying the apparently missing “not.”

## Obsolete language

The bill removes language that is no longer operative because it refers to a previously repealed provision or the circumstances under which it would operate can no longer exist, as indicated in the following table.

R.C. Section	Explanation
R.C. 131.45	Refers to a state sales tax dedicated to school funding that was never levied; it failed as a ballot issue in 1998.
R.C. 133.06, 5705.29(F) <sup>1</sup>	Refers to former R.C. 133.301, which was repealed in 2002 in the wake of <i>DeRolph</i> litigation. The repealed section authorized short-term borrowing by school districts for operating expenses; it was ruled unconstitutional.
R.C. 133.18, 5705.03, 5705.195	Refers to how assessment percentages for tangible personal property used in business are to be used to compute the tax rate for property tax levies. That class of property has not been taxable since 2008.
R.C. 319.301(E)	Includes phase-in language for the tax reduction factor 20-mill floor and 2-mill floor (for school districts and JVSDs, respectively) that applied only in the first several years the floors were in effect.
R.C. 5705.211 <sup>2</sup>	Authorizes a school property tax levy that is premised on a former school foundation funding formula (circa 2006) that no longer is in effect.
R.C. 5727.87, 5751.23 <sup>3</sup>	Compensated counties for reductions in property tax collection fee revenue resulting from (1) legislated reductions in public utility tangible personal property assessment rates and (2) the repeal of taxes on business TPP. (The fees are a percentage of tax collections.) Compensation ended in 2011 and 2015, respectively.
R.C. 5733.40	Section is amended to add reference to ‘C’ corporations as a class of investor in a pass-through entity for which the entity does not have to withhold tax (because there is no longer any underlying tax liability for a C corporation since the repeal of the corporation franchise tax). Substitutes this more general reference for the current, and more particular, reference to financial institutions.
R.C. 5735.06	Refers to a “cents-per-gallon” motor fuel tax rate that is no longer defined or operational.
R.C. 5739.01	Refers to several specific dates on which a service first became subject to the sales tax.

<sup>1</sup> Conforming changes in R.C. 5705.13, 5705.35(A), 5705.36, and 5747.51(E).

<sup>2</sup> Conforming changes in R.C. 319.301(A)(1) and 3317.01.

<sup>3</sup> Conforming change in R.C. 5727.84.

R.C. Section	Explanation
R.C. 5739.02(B)(48) <sup>4</sup>	Authorizes a sales and use tax exemption for sales of machinery, equipment, and supplies to certain direct sale businesses; the exemption expired in 2013.
R.C. 5739.021, 5739.028, 5748.09	Refers to February special election date for a county or transit sales tax ballot issue or a school district income tax. February as a special election date was eliminated in 2015 by H.B. 64.
R.C. 5739.02(D), 5739.08, 5739.105, 5747.02(C), 5747.41	States that the levy of a state tax does not prevent a local government from levying the same kind of tax. The statement dates to a period when the prevailing judicial doctrine, known as “implied pre-emption,” asserted that the levy of a tax by the state implicitly pre-empted local governments from levying such a tax unless expressly authorized by law. (Doctrine overturned in 1998; R.C. 715.013 enacted in wake of court decision.) In some instances, the statement appears even when the local tax is expressly authorized by law.
R.C. 5747.01 <sup>5</sup>	Refers to adjustments to income to compute taxable income that are no longer operative, including complex trust distributions to beneficiaries, college costs, federal addbacks for health plan beneficiaries, and a former version of the business income deduction.
R.C. 5747.082	Includes phase-in of electronic filing requirement for tax return preparers based on number of returns; phase-in ended in 2013.
R.C. 5733.46, 5747.75 <sup>6</sup>	Authorizes a credit for investing in an ethanol production plant; credit expired and could not be claimed after 2015.

## Organization

The bill reorganizes the language of the following sections as described below.

R.C. Section	Explanation
R.C. 1545.21	Adds missing paragraph break.
R.C. 5713.30 <sup>7</sup>	Moves text in division (A)(3).

<sup>4</sup> Conforming change in R.C. 5739.03.

<sup>5</sup> Conforming changes in R.C. 5703.94, 5747.011, 5747.012, 5747.013, 5747.11, 5747.231, and 5751.01(E)(7).

<sup>6</sup> Conforming changes in R.C. 122.075, 125.831, 901.13, 4301.20, 5733.98, and 5747.98.

<sup>7</sup> Conforming change in R.C. 929.01.

R.C. Section	Explanation
R.C. 5725.98, 5726.98, 5729.98, 5733.98, 5747.98, 5751.98 <sup>8</sup>	In the law listing the order in which tax credits may be claimed against various state taxes, removes divisional references preceding each listed credit. Credits are still arranged in the order that, in general, benefits taxpayers most, so, for example, nonrefundable credits are claimed before refundable credits.
R.C. 5739.08, 5739.09 <sup>9</sup>	Separates county lodging tax authority from township and municipal authority; reorders divisions; moves two existing provisions to new sections, one addressing alternative definitions of “hotel” (5739.091) and one addressing use of revenue (5739.092).
R.C. 5747.02(D)	Removes a duplicative list of income tax credits that a trust may not claim, instead specifying that a trust may claim any credit the trust is otherwise authorized under continuing law to claim. (All of the credits currently on the list could not, by their terms, be claimed by trusts anyway.)
R.C. 5751.01	Moves operating provisions and related sub-definitions to new sections (5751.40, 5751.41, 5751.42) to preserve this section’s purpose of defining terms for the chapter.

## Cross-references

The bill corrects erroneous cross-references in tax-related statutes as indicated in the following table.

Cross-references
R.C. 133.01, 133.06, 133.18, 135.142, 3316.03, 3316.06, 5703.54, 5705.213, 5705.29, 5705.35, 5705.36, 5705.49, 5709.85, 5709.93, 5715.36, 5727.33, 5727.80, 5733.055, 5733.40, 5739.011, 5739.02, 5739.034, 5739.21, 5743.33, 5743.65, 5747.061, 5747.51(l), 5747.55, 5751.09

## Typographical errors

The bill corrects typographical and syntactical errors in tax-related statutes where one or more words are missing, repeated, misplaced, or misspelled or where there is erroneous punctuation, as indicated in the following table.

<sup>8</sup> Conforming change in Section 757.40 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>9</sup> Conforming changes in R.C. 133.07, 305.31, 307.671, 307.672, 307.674, 307.678, 307.695, 351.01, 351.03, 351.141, 1711.15, 1711.16, 4582.56, and 5739.01(M).

**Missing, repeated, or misplaced word or phrase**

R.C. 306.322, 323.155, 718.021, 1545.041, 4582.024, 4582.26, 5703.04, 5733.042, 5733.052, 5743.05, 5745.14, 5748.08, 5751.01, 5751.08, 5751.51

**Misspelled word**

R.C. 321.20, 5703.211, 5709.61, 5727.11, 5727.83, 5733.05, 5735.026, 5740.02, 5743.08, 5747.52, 5753.11

**Punctuation**

R.C. 321.03, 5705.19, 5705.252, 5705.34, 5713.03, 5713.351, 5715.13, 5721.06, 5721.191, 5725.98, 5727.02, 5727.23, 5727.32, 5729.98

**Effective date**

The bill substitutes a date certain for references to an act's effective date in various tax-related statutes as shown below. The existing references signal when an act's amendment to a section is to take effect in instances when that date is not known before the act is passed and signed into law.

**Effective date**

R.C. 5701.08, 5701.12, 5703.95, 5705.315, 5709.201, 5709.43, 5709.48, 5709.53, 5709.80, 5726.50, 5739.028, 5747.058, 5747.07, 5751.50

**Incorporation of Internal Revenue Code changes**

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 30, 2018.<sup>10</sup>

Several changes to federal law are incorporated, including several changes made by the "Further Consolidated Appropriations Act, 2020," H.R. 1865 of the 116<sup>th</sup> Congress, in December of 2019.<sup>11</sup> Several of these changes directly affect the tax base of many Ohio income tax taxpayers by increasing or decreasing federal adjusted gross income (FAGI), the starting

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<sup>10</sup> R.C. 5701.11(A).

<sup>11</sup> This act was amended to include both the "Setting Every Community Up for Retirement Enhancement Act of 2019" and the "Taxpayer Certainty and Disaster Tax Relief Act of 2019" – acts in which most of the federal tax provisions described in this bill analysis originated.

number for determining a taxpayer's Ohio taxable income.<sup>12</sup> The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI.<sup>13</sup>

The following is a list of some of the most significant of the federal law changes affecting Ohio law. Many of these changes will first apply to taxable years beginning January 1, 2020, or thereafter, but some apply beginning in 2019 or, retrospectively, in 2018:

- The extension of the deduction for qualified tuition and related expenses (applies to taxable years beginning in or after 2018).
- The extension of an exclusion from gross income of the discharge of indebtedness on a qualified principal residence (taxable years beginning in or after 2018).
- An increase in the age of required beginning date for required minimum distributions from tax-advantaged "qualified" retirement plans, e.g., IRA and 401(k) retirement plans, from 70½ to 72 (taxable years beginning in or after 2020).
- A requirement for a nonspouse beneficiary of a qualified retirement plan to withdraw all money from an inherited account within ten years (taxable years beginning in or after 2020).
- The allowance of penalty-free distributions from qualified retirement plans for births and adoptions (taxable years beginning in or after 2020).
- An expansion of section 529 education plans to allow distributions for expenses associated with apprenticeship programs and up to \$10,000 in student loan repayments (taxable years beginning in or after 2019).

### **Reason for incorporation**

Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.<sup>14</sup> The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

If federal tax law amendments are not incorporated, an affected taxpayer would have to adjust the taxpayer's federal adjusted gross income or taxable income, either by adding or subtracting the relevant amounts, in order to compute the taxpayer's Ohio tax liability.

### **Alternative tax law election**

The bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after March 30, 2017, and before March 30, 2018, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable

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<sup>12</sup> R.C. 5747.01(A), not in the bill.

<sup>13</sup> R.C. 5748.01(E), not in the bill.

<sup>14</sup> See *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

year. (The two March dates are the dates of the two most recent incorporations.) The election was available to taxpayers who were subject to the personal income tax and to electric and telephone companies that are subject to municipal income taxes.

The bill allows this election to be made for a taxpayer's taxable year ending after March 30, 2018, but before the bill's effective date. The bill retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.<sup>15</sup>

### **Sales and use tax exemption: incontinence products**

The bill narrows a sales and use tax exemption recently enacted in S.B. 26 of the 133<sup>rd</sup> General Assembly for sales of prescription diapers or protective incontinence underpads for the benefit of a Medicaid recipient to include only those products that are sold by a Medicaid provider that has entered into a valid provider agreement with the state.<sup>16</sup> (No provider may participate in the state's Medicaid program without first entering into a provider agreement with the state.)

The change will apply beginning in April 2020, which is the same month in which the exemption itself is scheduled to begin to apply.<sup>17</sup>

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## **HISTORY**

Action	Date
Introduced	04-11-19
Reported, H. Ways & Means	10-23-19
Passed House (92-0)	10-30-19
Reported, S. Ways & Means	02-25-20

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<sup>15</sup> R.C. 5701.11(B).

<sup>16</sup> R.C. 5739.02(B)(56).

<sup>17</sup> Section 6 of the bill.