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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 228
134th General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Rep. Roemer

Effective date: February 7, 2022

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SUMMARY

State administration of municipal net profits taxes

- Requires the Department of Taxation to develop and maintain a web portal that will be used to securely exchange information with municipalities for the purpose of the Department administering municipal net profits taxes.
- Extends the annual deadline for a taxpayer to opt into or out of remitting those taxes to the state.
- Requires the Tax Commissioner to notify municipalities of the taxpayers that have opted into or out of remitting those taxes to the state.
- Requires a municipality to report certain information about the affiliates of taxpayers opting into remitting those taxes to the state if the taxpayer and affiliates file consolidated returns.
- Modifies the deadline by which a municipality must provide taxpayer information to the Department when a taxpayer opts into remitting those taxes to the state.
- Gives the Commissioner discretion on whether to withhold municipal net profits tax collections from a municipality that fails to comply with reporting requirements.
- Requires those taxes, if withheld by the Commissioner, to be paid to the municipality when it complies with reporting requirements.
- Authorizes the Commissioner to refund or carryforward any overpaid municipal net profits taxes without the filing of an application for refund.
- Limits a taxpayer's municipal net profits tax refund to be offset only by outstanding debt or liabilities related to those taxes.

- Repeals a provision invalidated by the Ohio Supreme Court authorizing the Tax Commissioner to retain 0.5% of all municipal net profits taxes the Commissioner collects.
- Expressly authorizes the Attorney General to charge the costs of collecting municipal net profits taxes, interest, and penalties to a taxpayer that owes such amounts.

Municipal income tax retirement deduction

- Authorizes a municipal income tax deduction for pension or retirement benefits paid by a pass-through entity to a retired partner, retired shareholder, or retired member.

Land conveyance

- Authorizes the conveyance of 1.13 acres of state-owned land in Cincinnati, currently held for the benefit of the University of Cincinnati, for \$1.6 million, with the proceeds to be directed to the University.

DETAILED ANALYSIS

State administration of municipal net profits taxes

Under continuing law, a business subject to municipal income taxes on the basis of its net profits may either report and remit these taxes separately to each taxing municipality or, beginning in 2018, elect to report and remit all municipal net profits taxes to the Department of Taxation, which ultimately directs the revenue to the appropriate taxing municipality. The act makes several changes to the manner in which the state collects and administers municipal net profits taxes. First, it requires the Department to develop and maintain a web portal that will be used by the Department and municipalities that levy income taxes to securely share information for the purpose of the Department administering those taxes. Second, the act modifies several deadlines and reporting requirements respecting state-administered municipal net profits taxes. Third, it modifies the procedures for refunds and the distribution of revenue from such taxes. Fourth, the act expressly authorizes the Attorney General to assess collection costs for past-due municipal net profits taxes, interest, and penalties.

Web portal information sharing

The act requires the Department to develop and maintain a web portal to securely exchange information with municipalities for the purpose of the Department administering municipal net profits taxes. The Tax Commissioner must establish the procedures by which municipalities may access the portal and the format in which information must be submitted. If, for any reason, the portal is unavailable, the Department and municipalities must share information by another secure means. The Commissioner may extend, by up to 45 days, the deadline to provide any information that is required to be, or would have been, shared through the portal.

The portal may, if the Commissioner chooses, also be used for the administration of the municipal income tax for electric light companies and local exchange telephone companies or

for reporting to the Commissioner, as required under continuing law, income tax collections and refunds by each municipality that levies an income tax.¹

The act authorizes the Commissioner to adopt rules necessary to administer the portal.² The portal must be available for use by February 7, 2022, the act's effective date, and the Commissioner must continue to add functionality to the portal until the portal is capable of handling the exchange of all information necessary for the Department's administration of municipal net profits taxes.³

Taxpayer election

The act extends the deadline for a taxpayer to opt into or out of reporting and remitting municipal net profits taxes to the state from the first day of the third month after the beginning of the taxpayer's taxable year to the 15th day of the fourth month of that year. Under continuing law, the election applies to the taxable year for which it is made and automatically renews for each ensuing taxable year until the taxpayer terminates the election.

The act also requires the Tax Commissioner to notify municipalities, at least quarterly, of the taxpayers that have opted into or out of the state-administered collection of such taxes. The Commissioner must also provide to all municipalities that levy income tax on or after January 1, 2018, a list of the taxpayers that have opted into remitting taxes with the state, which must be made available through the portal. This list must include certain identifying taxpayer information, including taxpayers' names, addresses, and federal employee identification numbers.⁴

Information reported to Tax Commissioner

Under continuing law, once a municipal corporation is informed that a taxpayer has elected to remit municipal net profits taxes to the state, the municipal corporation must submit to the Tax Commissioner certain taxpayer information, including any net operating loss carry forwards, credits, overpayments, and any other relevant information.

The act requires this information to be reported to the Commissioner within the earlier of 90 days after the taxpayer files its final return directly with the municipality or 15 days after the end of the taxable year for which the taxpayer made the initial election. Former law required this information to be reported within 90 days after a municipality received notice that the taxpayer had made that election. The act also requires municipalities to report such information for any affiliates of that taxpayer if the taxpayer and those affiliates file consolidated returns.

¹ R.C. 718.841(A) to (D).

² R.C. 718.841(E).

³ Section 4.

⁴ R.C. 718.80(B).

The act authorizes, rather than requires as in former law, the Commissioner to withhold tax collections from a municipality that fails to comply with reporting requirements and gives the Commissioner discretion to withhold up to, rather than exactly as in former law, 50% of those collections. If a municipality complies with those reporting requirements after the Commissioner informs the Director of Budget and Management to withhold tax collections, the act requires the Commissioner to inform the Director of the municipality's compliance, and the Director must pay to that municipality all such collections withheld.⁵

Annual returns

Under former law, if a taxpayer opting to remit municipal net profits tax with the state had multiple taxable years beginning in one calendar year, the taxpayer was required to aggregate the information necessary to compute the tax for all such years onto one annual return. The act removes this requirement, and, as a result, requires a taxpayer to file a single return for each taxable year, as with the federal, state, and locally administered municipal income taxes.⁶

The act also aligns the definition of "taxable year" for businesses opting into state-administered taxes with the definition that applies to businesses not making that election, i.e., the taxpayer's taxable year is the same year for federal income tax purposes.⁷

Refunds

The act authorizes the Tax Commissioner to either refund any overpaid municipal net profits tax to a taxpayer or credit the amount against the taxpayer's future net profits tax liability, even if the taxpayer does not file a refund request.⁸ Continuing law grants similar authority to the Tax Commissioner for other overpaid taxes and fees administered by the Commissioner.

The act also requires that any refund of state-administered net profits taxes may be offset only by an outstanding debt for such taxes that has been certified for collection, or by another outstanding state-administered municipal net profits tax liability. The refund may not be offset by any other kind of tax debt or liability, such as that arising from a state tax.⁹ Under continuing law, past due debts or liabilities, including taxes, owed to the state must be certified to the Attorney General for collection, and any tax refunds owed to the taxpayer must be offset by the outstanding debt or liability.

⁵ R.C. 718.80(C).

⁶ R.C. 718.85(A).

⁷ R.C. 718.01(T) and 718.81(E).

⁸ R.C. 718.83(B) and 5703.77(C).

⁹ R.C. 5703.77(D).

Collection costs

Under continuing law, if any amount owed to the state is generally more than 45 days past-due, that amount must be certified by the officer responsible for collecting it to the Attorney General, who then becomes responsible for its collection. To offset the costs of collecting past-due amounts owed to the state, the Attorney General may charge collection costs to the persons that owe such amounts.¹⁰

The act expressly authorizes the Attorney General to charge the costs of collecting state-administered municipal net profits taxes, interest, and penalties to a taxpayer that owes such amounts. Similar to other collection costs assessed by the Attorney General, the costs of collecting state-administered municipal net profits taxes, interest, and penalties are credited to the Attorney General's Administration Fund, which funds the Attorney General's costs of collection.¹¹

Allocation of revenue to Tax Commissioner

The act repeals a provision that allocates 0.5% of revenue from state-administered municipal net profits tax receipts to a Department administrative fund for the purpose of funding the Department's costs in administering those taxes. This codifies a recent Ohio Supreme Court decision that found this allocation to be unconstitutional.¹²

Application date

The act's modifications to the state administration of municipal net profits taxes apply to municipal taxable years beginning on or after January 1, 2022.¹³

Pass-through entity retirement payments deduction

The act allows a pass-through entity (PTE) to deduct in computing its municipal net profits tax liability any pension or retirement benefits paid to a retired partner, retired shareholder, or retired member.¹⁴ Under continuing law, income from any pension or retirement benefit plan, including "nonqualified plans" that are not eligible for favorable federal tax treatment, is exempt from municipal income tax in computing the individual's income tax liability.¹⁵

¹⁰ R.C. 109.08, 109.081, and 131.02, not in the act.

¹¹ R.C. 718.90(D).

¹² R.C. 718.85(B). See *Athens v. McClain*, 2020-Ohio-5146 (2020).

¹³ Section 3(B).

¹⁴ R.C. 718.01(E)(10) and 718.81(B)(10).

¹⁵ R.C. 718.01(C)(3), (YY), and (ZZ).

The PTE retirement payments deduction applies to municipal taxable years beginning on or after January 1, 2020.¹⁶

Authorization to convey land

The act authorizes the Governor to convey 1.13 acres of land, located at 792 East McMillan Street in Cincinnati.¹⁷ The authorization expires February 7, 2025.

The act identifies Yukon Investments, LLC, as the purchaser and sets the price at \$1.6 million. If Yukon Investments does not purchase the property by May 18, 2022 (100 days after the act's effective date), the Director of Administrative Services may use any reasonable method of sale that is acceptable to the University of Cincinnati's trustees to determine an alternative purchaser. If an alternative purchaser is selected, the sale is to be for a price, and subject to terms and conditions, acceptable to the Director and the University's trustees.¹⁸

Proceeds of the sale must be deposited into University of Cincinnati accounts for purposes to be determined by the University's trustees. The purchaser must pay all costs associated with the purchase, closing, and conveyance of the property.¹⁹

HISTORY

Action	Date
Introduced	03-23-21
Reported, H. Ways & Means	05-19-21
Passed House (91-1)	05-26-21
Reported, S. Ways & Means	10-27-21
Passed Senate (31-0)	10-27-21
House concurred in Senate amendments (96-0)	10-27-21

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¹⁶ Section 3(A).

¹⁷ Section 5(A) and (G).

¹⁸ Section 5(A) and (C).

¹⁹ Section 5(E).