Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

H.B. 45
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Ways and Means

Primary Sponsors: Reps. West and Roemer

Local Impact Statement Procedure Required: No

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Highlights

- The bill establishes a temporary tax amnesty program, effective from July 1, 2022 to August 31, 2022, during which individuals and legal entities currently in arrears of payments on specified taxes are allowed any accrued penalties and interest to be waived upon full payment of their tax. The GRF, other state funds, and local governments would likely experience a revenue loss from the waived penalties and interest.
- The bill includes an FY 2022 appropriation of $250,000 to the Department of Taxation (TAX) to cover costs associated with advertising and otherwise administering the program.
- Waiver of penalties and interest creates an incentive for taxpayers to pay tax liabilities about which the Department of Taxation is currently unaware. This indirect effect of the bill may increase tax and fee revenue by an uncertain amount in FY 2023. Historical experience with tax amnesties suggests the amount would likely be at least $10 million. Taxes and fees collected under the program are to be distributed in the same manner as the underlying tax liability would have been distributed had it been paid.
- During FY 2023, for state taxes accruing to the GRF, revenue gains or losses would be shared by the GRF (96.64%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.70%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.
- The bill declares an emergency, causing the act to go into immediate effect.

Detailed Analysis

The bill establishes a temporary, two-month tax amnesty from July 1, 2022 to August 31, 2022, with respect to delinquent state taxes, including delinquent state income tax withholding remittances by employers and certain fees administered by the Department of Taxation (TAX). The amnesty applies only to taxes that were due and payable as of the bill's effective date. Additionally, the bill's amnesty applies to permissive sales and use taxes, levied at the local level by counties and transit authorities. The amnesty does not apply to any tax liability for which a notice of assessment or audit has been issued, for which a bill has been issued, for which an audit has been conducted or is pending, or which relates to a period that ends after the effective date of Section 1 of the bill.[1]

Under H.B. 45, should a taxpayer remit the full amount of delinquent taxes or fees owed during the amnesty period, the Tax Commissioner must waive all penalties and accrued interest charged due to nonpayment.[2] Additionally, a person who remits the full amount due during the amnesty is immune from criminal prosecution or any civil action with respect to the tax or fee paid, and no additional assessment may be issued against the person for that tax or fee.

Taxes covered by the amnesty

The following statewide taxes are eligible for the bill's tax amnesty program: (1) state sales and use tax, (2) state income tax, including employer withholding remittances, (3) financial institutions tax (FIT), (4) public utilities excise tax, (5) motor fuel excise tax and motor fuel use tax, (6) petroleum activity tax (PAT), (7) cigarette excise tax, (8) severance tax, (9) commercial activity tax (CAT), (10) gross casino revenue tax, (11) 9-1-1 emergency phone tax, (12) tire sale fees, (13) horse racing fees and gambling taxes, (14) alcoholic beverage tax, (15) Liquor gallonage tax, and (16) liquor permit fees. Additionally, the bill's tax amnesty includes permissive local sales and use taxes, levied by counties and transit authorities.

The program and its provisions are only applicable to taxes due and payable as of the bill's effective date. In addition, the bill applies only to tax or fee bills that include a taxable period ending prior to the bill's effective date.

Fiscal analysis

The direct effect of the bill, by waiving penalties and interest, is to reduce revenue to the state and local governments. But it also creates an incentive for individuals with currently unknown tax liabilities to come forward to pay those tax liabilities, so a likely indirect effect is to

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[1] The Department of Taxation currently offers a voluntary disclosure program for a number of state-administered taxes. By voluntarily disclosing their liabilities, taxpayers may avoid penalties for failing to file returns and for failing to pay liabilities timely. To accomplish this objective, a voluntary disclosure agreement (VDA) is available to taxpayers who voluntarily come forward to comply with Ohio's tax laws. Companies are eligible if they submit a written voluntary disclosure request prior to any contact from the Department, including audit, compliance, or criminal investigation programs.

[2] The Tax Commissioner is required to calculate the interest rate charged on delinquencies annually. For more information see: https://tax.ohio.gov/wps/portal/gov/tax/researcher/interest-rates/interest-rates.

increase tax revenue. The COVID-19 pandemic has created substantial employment losses and a significant amount of economic dislocation for both individuals and businesses. One likely result is an increase in tax delinquencies. The bill's provisions will likely increase tax revenues during FY 2023, but may decrease penalties and interest in future years on tax liabilities that would have been discovered eventually without an amnesty.

If able, taxpayers are likely to accelerate the payment schedule of their tax debt under the amnesty program, especially in instances where penalties and fees have grown disproportionately, relative to the original tax liability. Therefore, the bill's amnesty program will likely increase tax collections during FY 2023, but by an uncertain amount.[3] As of this writing, estimates of unreported or underreported tax liabilities are not available to LBO economists. The magnitude of the fiscal effect will depend on the level of tax compliance since the most recent tax amnesty in FY 2018, as well as the targeted taxpayers' abilities to pay the tax during the amnesty window. LBO does not have an estimate as to an amount of state revenue brought in by the bill's amnesty, however, a total exceeding $10 million is likely and in line with remittances during previous amnesty programs. The bill likewise increases revenue to the counties and transit authorities who levy a sales tax.

Under the bill, taxes and fees collected are to be distributed in the same manner as the underlying tax liability would have been distributed had it been paid. This means that taxes whose revenues accrue to funds other than the GRF will increase distributions to other state funds or political subdivisions. For state taxes accruing to the GRF (most of the state taxes listed above), revenue gains or losses are shared by the GRF (96.64%), the Local Government Fund (1.66%), and the Public Library Fund (1.70%).[4] CAT revenue is largely GRF revenue (85%), but is allocated in part to the School District Tangible Property Tax Replacement Fund (Fund 7047, 13%) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081, 2%). Other high-revenue, non-GRF taxes included in the program are those from the state motor fuel tax, PAT, and gross casino revenue tax. Amnesty revenue from these tax sources will flow to the Department of Transportation, school districts, local governments, as well as to various other state agencies and initiatives.

Under the bill, TAX will also collect delinquent sales and use taxes levied by counties and transit authorities, increasing revenue to those subdivisions to the extent that unpaid tax liabilities exist. During previous tax amnesties, amounts received from local delinquencies were approximately 20% to 25% of state sales and use tax remittances.

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[3] Previous amnesties resulted in state collections of $35.2 million in FY 2002, $58.9 million in FY 2006, and $65.7 million in FY 2012 (which included receipts of $36.7 million from a special use tax amnesty). Payments under the most recent amnesty in FY 2018 were $14.3 million, including $3.7 million from a voluntary disclosure agreement program during the amnesty period. Amounts collected during the FY 2018 amnesty were significantly lower than in previous years, suggesting possible diminishing returns with successive amnesties.

[4] Any receipts that would have been collected in subsequent fiscal years would be allocated differently under continuing law: the 1.70% allocation of GRF tax revenue to the Public Library Fund was set by an uncodified provision of H.B. 110 of the 134th General Assembly, but is to revert to 1.66%, its share under codified law, starting July 1, 2023.

Appropriation

The bill appropriates up to $250,000 in FY 2022 for the Department of Taxation's initial costs for establishing the amnesty program. The bill requires, upon request of the Tax Commissioner, a transfer of up to $250,000 from the Controlling Board Emergency Purposes/ Contingencies Fund to Fund 5BW0, Tax Amnesty Promotion and Administration, line item 110630, used by the Department to administer the program. Line item amounts unexpended and unencumbered at the end of FY 2022 are reappropriated in FY 2023. The bill also requires repayment of the amount transferred once program revenues allow.

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