OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 235*
134th General Assembly

Bill Analysis

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Version: As Reported by House Ways & Means

Primary Sponsor: Sen. Roegner

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SUMMARY

Sales and use tax exemptions

- Exempts from sales and use tax all of the following:
  - Electronic tax filing and payment services used in business to report or pay income tax, other than employee withholding, on behalf of an individual.
  - Exempts certain taxable services that might be provided incidentally or supplementally to those electronic tax preparation services.
  - Documentary service charges imposed by motor vehicle and manufactured home dealers.
  - Memberships to gyms or other recreational or sports club facilities operated by certain kinds of nonprofit organizations.
  - Certain watercraft that are seasonally stored or repaired in Ohio.

Refunds of tax penalties

- Allows taxpayers to obtain a refund of any tax-related penalties and fees the taxpayer overpaid or paid improperly.

Tax credit for commercial vehicle operator training expenses

- Authorizes a temporary nonrefundable income tax credit of up to $25,000 per year for training expenses paid by employers to train employees to operate a commercial vehicle.

* This analysis was prepared before the report of the House Ways and Means Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Limits the total amount of credits that may be awarded each year to $1.5 million.

Property tax rate statements

- Modifies the content and format of property tax rate statements required annually to be published in the newspaper or enclosed with each tax bill.

Municipal income tax inquires, notices, and penalties

- Limits the circumstances under which municipal income tax inquiries or notices may be sent to a taxpayer subject to a filing extension.
- Limits the penalty that may be imposed on a taxpayer for failing to timely file municipal income tax returns.

DETAILED ANALYSIS

Sales and use tax exemptions

Electronic filing fees

The bill exempts from sales and use tax income tax preparation services to electronically file an individual's federal, state, or local income tax return, transmit documents or schedules related to such a return, or electronically remit an individual's tax, provided such services are provided for use in business. The exemption applies only to services rendered on behalf of an individual. Fees charged for submitting returns, documents, or tax payments on behalf of entities that are not a natural person are not subject to the bill's exemption, nor are fees charged to employers for electronically filing or remitting federal, state, or local income tax withholdings on behalf of an employee (referred to in this analysis as "qualifying tax preparation services").[1]

Under continuing law, qualifying tax preparation services used outside the business context, i.e., for personal use, are not subject to sales and use tax. However, current law does impose sales and use tax on such services used in business by classifying them as automatic data processing, computer services, or electronic information services (hereafter referred to collectively as "taxable electronic services").[2] The bill effectuates the exemption by reclassifying qualifying tax preparation services as personal and professional services, which are not considered taxable electronic services and thus are not subject to sales or use tax, even if they are used in business.

[1] R.C. 5739.01(B)(3)(e) and (Y)(2)(l).

[2] See Ohio Department of Taxation guidance, ST 1999-04 – On-line Services and Internet Access, updated September 2022, which may be accessed by conducting a keyword "On-line Services and Internet Access" search on the Ohio Department of Taxation's website: tax.ohio.gov.

The exemption applies on and after the first day of the first month after the provision's effective date.[3]

Incidental taxable electronic services exemption

Under continuing law, a "mixed" transaction involving both taxable electronic services and some other kind of service (i.e., a personal or professional service) in the same transaction is not taxable if the purchaser's "true object" is to receive the benefit of the other service and if the electronic service is only incidental or supplemental to the purchaser's receipt of the other service.

By classifying qualifying tax preparation services described above as a personal or professional service, the bill exempts otherwise taxable electronic services that are furnished incidentally or supplementally as part of a transaction for those services to the extent those services could be distinguished from and would not otherwise qualify as a qualifying tax preparation service.[4]

Documentary service charges

The bill also exempts from the sales and use tax documentary service charges on the sale of a motor vehicle by a motor vehicle dealer or a manufactured or mobile home by a manufactured housing dealer.[5] Under continuing law, a motor vehicle dealer or manufactured housing dealer may charge a consumer a documentary service fee for paper work, title runner expenses, and other costs associated with making financial arrangements for the sale. The fee must not exceed the lesser of $250, or 10% of the sale price, excluding tax, title, and registration fees.[6] According to guidance published by the Department of Taxation, documentary service charges are currently included in the price of a motor vehicle or manufactured or mobile home in computing sales or use tax on the transaction.[7]

As is the case for other existing exemptions that apply to all consumers, no exemption certificate is necessary to obtain the bill's documentary service charge exemption.[8]

The exemption applies on and after the first day of the first month after the provision's effective date.[9]

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[3] Section 3(A).

[4] R.C. 5739.01(B)(3)(e).

[5] R.C. 5739.02(B)(58) and 5739.03.

[6] R.C. 1317.07, 4517.261, and 4781.24, not in the bill.

[7] See Ohio Department of Taxation guidance, ST 1982-01 – Documentary Fees, updated November 2004, which may be accessed by conducting a keyword "Documentary Fees" search on the Ohio Department of Taxation's website: tax.ohio.gov.

[8] R.C. 5739.03.

[9] Section 3(A).

Certain gym memberships

Continuing law subjects to sales and use taxation memberships to gyms or other recreational or sports club facilities but exempts memberships to such facilities provided by state agencies and local governments.[10]

The bill also exempts such membership services if provided by a federally tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code.[11] Such organizations include those that have charitable, religious, educational, or certain other purposes, that do not attempt to influence legislation or engage in political campaigns to any substantial extent, and that do not distribute net earnings to private persons.

This exemption applies on and after July 1, 2023.[12]

Watercraft use tax exemption

The bill exempts certain watercraft from state and local use taxes. In general, use tax is imposed on items purchased outside Ohio and used or stored in the state if no Ohio sales tax was paid. The use tax is assessed at the same state and local (i.e., county and transit authority) rates as the corresponding sales tax and applies to most purchases of tangible personal property, including watercraft.

Under the bill, a watercraft purchased outside the state or, in some cases, in the state is specifically exempted from use tax if all of the following apply:

- The watercraft is in Ohio only for storage or maintenance (e.g., cleaning, repairing, or installing equipment, fixtures, or technology);
- The watercraft is not used or stored in Ohio from May through September of any year;
- The watercraft does not have to be registered in Ohio (e.g., the watercraft is registered in another state and used in Ohio for fewer than 60 days);
- The owner paid one of the following:
  - Sales or use taxes in another jurisdiction (i.e., another state, a political subdivision of another state, or the District of Columbia) on the watercraft, or would have paid that tax if that jurisdiction taxed the sale, use, or ownership of the watercraft;
  - Any Ohio sales taxes imposed on the watercraft at the time of purchase, as authorized under and subject to the conditions of continuing law and calculated on the basis of a sales or use tax credit offered by another state.[13] Continuing law permits a nonresident who purchases a watercraft in Ohio and who satisfies certain

[10] R.C. 5739.02(B)(22).

[11] R.C. 5739.01(B)(3)(l) and (m).

[12] Section 3(B).

[13] R.C. 5741.02(C)(11).

criteria, including registering or titling the watercraft in another jurisdiction that levies tax on the sale, use, or ownership of the watercraft at a lower rate, to pay sales tax in Ohio at that lower rate, provided that other state offers a credit for sales taxes charged by Ohio. Under current law, if that owner brings the watercraft back to this state for storage or maintenance, then the watercraft becomes subject to Ohio's full use tax rate above that already-remitted lower rate.[14]

Under continuing law, a watercraft on which sales or use tax has been paid to another jurisdiction is taxable in Ohio only to the extent that Ohio's use tax rate exceeds the rate paid to the other jurisdiction or, if the watercraft was purchased by a nonresident who paid Ohio sales tax at the lower rate levied in the jurisdiction of titling or registration, the lower rate paid to Ohio, as described above.[15] Tangible personal property "halted temporarily" in Ohio is subject to use tax, unless the use is specifically exempted by law.[16] There is a limited exemption for a nonresident's transient use of property in the state.[17]

The bill specifies that the use tax exemption does not apply to watercraft storage, repair, or installation services themselves, which are subject to sales and use tax under continuing law.[18]

The use tax exemption applies to all such watercraft beginning on the first day of the first month that begins on or after the exemption's effective date.[19]

Refunds of tax penalties

The bill allows taxpayers to apply to the Tax Commissioner or Superintendent of Insurance for a refund of any amount the taxpayer overpaid or paid erroneously or illegally, including tax-related penalties and fees. In general, current law specifies that the Commissioner or Superintendent is only required to refund overpaid taxes, with interest.

Under continuing law, generally, the Commissioner or Superintendent may impose penalties if a taxpayer fails to comply with tax filing and reporting requirements – for example, if a taxpayer fails to file a tax return, pay the full amount due, pay a tax electronically when required to do so, or obtain a required license or registration.

In many cases, the Commissioner is given discretion to forgive or waive tax penalties. This discretion applies to cases in which a penalty was charged improperly, as well as to cases in

[14] R.C. 1547.53(B), 1547.531(B), and 5739.027, not in the bill.

[15] R.C. 5741.02(C)(5).

[16] *Beatrice Foods Co. v. Lindley*, 70 Ohio St.2d 29, 33 (1982) (stating that use tax levied on tangible personal property brought permanently to or halted temporarily in the state does not violate the Commerce Clause of Article I, Section 8 of the U.S. Constitution).

[17] R.C. 5741.02(C)(4).

[18] R.C. 5741.02(C)(11)(c); R.C. 5739.01(B)(3)(a) and (b), (B)(7), and (B)(9).

[19] Section 3(A).

which the penalty was charged properly but, in the Commissioner's discretion, the taxpayer deserves leniency.[20]

Under the bill, a taxpayer who overpaid or improperly paid any penalty or fee would be automatically entitled to a refund of that amount, without the need for the exercise of the Commissioner's discretion or a waiver. As with taxes that are overpaid and refunded, the taxpayer is also entitled to interest that accrues on the overpaid penalty or fee. These changes apply to refunds that are allowed on or after January 1, 2023.[21]

Continuing law also requires that, if a taxpayer is entitled to a refund of certain taxes, the Tax Commissioner may intercept the refund and apply it to any debt that the taxpayer owes to the state, such as other past-due taxes or unpaid child support. Under the bill, the Commissioner may similarly intercept any refunded penalty for the same purpose.[22]

Tax credit for commercial vehicle operator training expenses

The bill authorizes a temporary nonrefundable personal income tax credit of up to $25,000 for employers that train their employees to be commercial vehicle operators.[23] As a credit against the income tax, it may be claimed by employers that are sole proprietors or organized as a pass-through entity such as a partnership, limited liability company, or S corporation owned at least in part by an individual, estate, or trust; it would not be available to corporations other than those electing S corporation status.

Application process

The credit is available for expenses, other than wages, paid to train employees to obtain a commercial driver's license (CDL) or to operate a commercial motor vehicle. To obtain the credit, an employer must first apply to the Director of Development with an estimate of the training expenses that the employer expects to pay in the upcoming year. The Director may certify up to $50,000 of estimated training expenses as eligible for the tax credit.

Then, in January of the year after the year the expenses are incurred, the employer applies to the Director for the tax credit, which equals one-half of the employer's actual training expenses. The application must include an itemized list of training expenses for each employee that received credit-eligible training. Upon approval, the Director issues the employer a tax credit certificate indicating the amount of the credit. The Director must also notify the Department of Taxation of each certificate issued.[24]

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[20] *See, e.g.,* 5739.12(D), 5747.15(C), and 5751.06(F), not in the bill.

[21] Section 3(E).

[22] R.C. 128.47, 718.91, 3734.905, 4307.05, 5725.222, 5726.30, 5727.28, 5727.91, 5728.061, 5729.102, 5735.11, 5735.122, 5736.08, 5739.07, 5739.104, 5741.10, 5743.53, 5745.11, 5747.11, 5749.08, 5751.08, and 5753.06.

[23] R.C. 122.91, 5747.82, and 5747.98.

[24] R.C. 122.91(A) to (C).

Credit limits

The maximum credit allowed to any employer per year is $25,000 (one-half of $50,000, the maximum amount of certifiable training expenses). The total amount of credits awarded in any year may not exceed $1.5 million (i.e., 50% of the maximum $3 million in credit-eligible training expenses the Director may annually certify). However, if, in any year, the amount of credits awarded is less than $1.5 million, the difference may be carried forward and added to the maximum amount that may be awarded the following year.[25]

Carry forward

The credit is nonrefundable, which means that the credit may not exceed a taxpayer's tax liability in any year. However, if the credit does exceed a taxpayer's liability for a particular year, the taxpayer may carry forward and apply the difference to a future tax liability for up to five years.[26]

Reporting requirements

Each employer that is issued a tax credit certificate must report to the Director of Development by January 21 of the following year whether any employees whose training is the basis of that credit quit or were fired during the year in which the certificate was issued. The employer must also report the credit attributable to those employees, as well as any other information requested by the Director.

The Director must compile that information and annually report to the General Assembly the number of all such employees reported in that year, the total amount of issued credits attributable to those employees, and any other information the Director determines is necessary.[27]

Application date and rules

The credit applies to training expenses paid on or after January 1, 2024, but before January 1, 2028.[28]

The bill requires the Director of Development to adopt rules, in consultation with the Tax Commissioner, necessary to administer the credit, which must include a description of the types of expenses that would qualify for the credit. These proposed rules must be prepared and filed within 150 days after the provision's effective date.[29]

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[25] R.C. 122.91(B).

[26] R.C. 5747.82.

[27] R.C. 122.91(D).

[28] R.C. 122.91(B).

[29] R.C. 122.91(E) and Section 4.

Property tax rate statements

Under continuing law, after the county auditor compiles and certifies to the county treasurer, no later than the first Monday in August of each year, the real property tax list, the auditor must provide to the treasurer a statement of property tax rates applicable to each taxing district in the county.[30] The treasurer must then publish the statement in the newspaper or enclose it with each tax bill. Under current law, the statement must include, for each district, voted tax rates, effective tax rates, and tax reduction factors.

The bill makes several modifications to the content and format of the statement. First, the bill makes optional the requirement to list tax reduction factors in the statement. The tax reduction factor is a tax credit against most levies that generally prevents increases in the tax due to appreciation in property value, except appreciation resulting from new construction. A separate reduction factor is calculated for each class of property – residential/agricultural and commercial/industrial. The tax reduction factor is a property tax credit, so it does not actually affect the voted rate of a levy. However, it does impact the collections that may otherwise be generated by a particular levy. These reduced collections may be converted to an effective property tax rate by dividing them by the total taxable value in the applicable class of property. In essence, a levy's voted tax rate minus the tax reduction factor for each class of property equals each class's effective tax rate.

Second, the bill requires effective tax rates to be expressed as a percentage of true, or market, value for each class of property.

Third, both the voted tax rates and effective tax rates must be expressed in mills per one dollar of taxable value, which is 35% of true value. Under continuing law, both rates must be expressed in dollars for each $1,000 of taxable value.

Lastly, the bill removes the requirement that effective tax rates be printed in bold face type.[31]

The bill's changes to the content and format of property tax rate statements apply to tax year 2023 and every tax year thereafter.[32]

Municipal income tax inquiries, notices, and penalties

The bill makes two changes to the administration and enforcement of municipal income taxes, whether such taxes are remitted to and administered by a municipal corporation, i.e., a city or village, or the Tax Commissioner. Under continuing law, taxpayers generally report and remit municipal income tax to municipal tax administrators, but a business that owes taxes on its net profits may elect to report and remit municipal net profits taxes to the Department of Taxation, which then disperses payments to each municipality to which such tax is owed. The

[30] R.C. 319.28, not in the bill.

[31] R.C. 323.08.

[32] Section 3(C).

bill's first change limits when a municipal tax administrator or the Tax Commissioner may make inquiries or send notices to taxpayers whose tax filing deadline has been extended. The second change limits the penalty that may be imposed for failing to timely file a municipal income tax return. Both changes apply to taxable years ending on or after January 1, 2023.[33]

Prohibited inquiries and notices

Under current law, the due date of a taxpayer's municipal income tax return, whether filed with a municipality or the Tax Commissioner, may be extended under various circumstances, including any of the following:

- The taxpayer has requested an extension of the deadline to file the taxpayer's federal income tax return.
- The taxpayer has requested an extension of the deadline to file the taxpayer's municipal income tax return from the municipal tax administrator or Commissioner.
- The Commissioner extends the state income tax filing deadline for all taxpayers.

When a taxpayer receives an extension, the bill prohibits a municipal tax administrator or the Commissioner from sending any inquiry or notice regarding the return until after either the taxpayer files the return or the extended due date passes. If a tax administrator sends a prohibited inquiry or notice, the municipality must reimburse the taxpayer for any reasonable costs incurred in responding to it. If the Commissioner sends such an inquiry or notice, the taxpayer's costs are reimbursed from the GRF.

The bill's new limitations do not apply, and a municipal tax administrator or the Commissioner may send an otherwise prohibited inquiry or notice, if either has actual knowledge that the taxpayer did not actually file for a federal or municipal income tax extension.[34]

Penalty limitations

The bill also limits the penalty a municipal corporation or the Tax Commissioner may impose for the failure to timely file a municipal income tax return. Currently, a municipal corporation may impose a penalty of $25 for each month a taxpayer fails to file a required income tax or withholding return, up to $150 for each return. The Commissioner may impose the same monthly penalty on those unfiled returns as well as on unfiled estimated tax declarations. The bill reduces these penalties to a one-time $25 penalty. The bill also exempts a taxpayer's first failure to timely file from the penalty, requiring the municipal corporation or Commissioner to either refund or abate the penalty after the taxpayer files the late return.[35]

[33] Section 3(D).

[34] R.C. 718.05 and 718.85.

[35] R.C. 718.27 and 718.89.

HISTORY

Action	Date
Introduced	09-22-21
Reported, S. Ways & Means	01-25-22
Passed Senate (31-0)	02-09-22
Reported, H. Ways & Means	--

ANSB0235RH-134/ts