OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 235
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Ways and Means

Primary Sponsor: Sen. Roegner

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill exempts documentary service charges from sales and use taxation. Annual revenue losses to the state GRF might range in the low tens of millions of dollars, and to counties and transit authorities in high single-digit millions of dollars, depending mainly on motor vehicle sales.
- The bill exempts income tax electronic filing fees from sales and use taxation. The Department of Taxation estimates that the state revenue loss from this provision would amount to $8.3 million annually. That implies a revenue loss to counties and transit authorities of about $2.1 million.
- Exemption of membership dues to certain physical fitness facilities could state sales and use tax revenue by $10.8 million to $12.7 million in FY 2023 and to permissive county and transit authority sales taxes by $2.6 million to $3.0 million.
- Tax exemption for seasonally stored, maintained, or repaired watercraft will reduce state and permissive county and transit authorities' use taxes by an undetermined amount.
- The bill creates a temporary nonrefundable tax credit against the personal income tax (PIT) for employers that train their employees to be commercial vehicle operators. Employers may apply to the Director of Development on or after January 1, 2023, and before January 1, 2027, for a tax credit certificate for such expenses the employer expects to pay in the following year.
- An application for the credit to the Director of Development may be submitted in January of the year after the year the expenses are certified and incurred. Thus, this fiscal note assumes that the first year the credit may be used against the PIT would be FY 2025 (tax year 2024).

- PIT revenue losses may be up to $1.5 million in FY 2025 and may exceed that in fiscal years 2026 through 2028, due to credit carryforwards. After FY 2028, any revenue losses would be due only to credit carryforwards.
- GRF revenue losses would reduce revenue sharing with local governments and libraries through the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), by 1.66% of GRF revenue losses each under codified law.
- The bill reduces the penalty for failure to timely file municipal income taxes.

Detailed Analysis

Documentary service charges

The bill excludes from the sales and use tax documentary service charges imposed by a dealer for a retail or wholesale sale or lease of a motor vehicle or for retail sale of a manufactured home or mobile home. The fee is permitted, not required, but is commonly charged. For either transaction, the amount of the documentary service charge cannot be more than the lesser of the amount allowed in a retail installment sale, or 10% of the amount the buyer or lessee is required to pay pursuant to the contract, excluding tax, title, and registration fees, and any negative equity adjustment. The former is limited to $250.[1]

In FY 2021, Bureau of Motor Vehicles data indicate that 2.2 million new and used cars and trucks were titled in Ohio, up from 1.9 million in FY 2020. If a documentary service fee of $250 was charged on all of these vehicle transactions, state revenues in FY 2021 would have totaled $31.3 million, up from $27.6 million the year before. County and transit authority sales and use taxes are charged on the same tax base as used by the state, and would have totaled $7.8 million in FY 2021, up from $6.9 million in FY 2020. These amounts approximate upper limits on revenue losses from these transactions if the bill had been in effect in those years.

In 2020, 1,927 new manufactured or mobile homes were shipped to Ohio, according to U.S. Census Bureau data. Revenue losses from an exemption from sales and use taxes for a $250 documentary service fee, if charged on each of these transactions, would have totaled about $28,000 to the state and $7,000 to counties and transit authorities.

The Department of Taxation estimates that exempting documentary service charges from tax would result in a revenue loss of over $24 million.

Charges to electronically file income tax returns

The bill excludes from the sales and use tax provision of services to file electronically any federal, state, or local individual income tax return, report, or other related document or schedule with a federal, state, or local government entity or to electronically remit a payment of any such individual income tax to such an entity.

In tax year (TY) 2019, nearly 5.8 million state income tax returns were filed with Ohio's Department of Taxation, including more than 5.4 million resident returns. These filers would also have filed federal returns and in some cases school district or municipal income net profit tax returns. Many returns are filed electronically: 91.0% for TY 2019, 92.8% for TY 2020 (as of

[1] R.C. 1317.07.

October 15). The Department of Taxation provides through its website without charge a feature through which taxpayers can file state and school district returns and electronically remit payments. Those making use of this capability would not have incurred sales tax charges. Many taxpayers use tax software to file or employ professional accountants. One widely used tax software service, TurboTax, lists online four levels of service ranging in price from $0 for simple federal and state returns up to $120 for a more complex federal return plus $50 for a state return.[2] The Department of Taxation estimates that exempting electronic income tax filing fees from tax would result in a revenue loss of $8.3 million. This estimate implies a revenue loss to counties and transit authorities of about $2.1 million, based on 2020 local tax rates and revenues.

Membership dues

The bill exempts membership dues paid for physical fitness facility services and recreation club services if the facility or club is operated by a 501(c)(3) nonprofit organization. This change creates a loss of state sales and use tax revenue between $10.8 million and $12.7 million in FY 2023, assuming its provisions are effective on July 1, 2022. The fiscal loss is projected to rise up to 4% annually. Revenue from the sales and use tax is shared between the GRF, the Local Government Fund (LGF; 1.66%), and the Public Library Fund (PLF; 1.70%). Losses to the GRF in FY 2023 would be between $10.4 million and $12.3 million, while losses to the LGF and PLF would total between $180,000 and $220,000 per year for each fund. Permissive county and transit authority sales taxes share the state's sales and use tax base. This provision creates a local sales tax loss between $2.6 million and $3.0 million in FY 2023.

Watercraft seasonally stored, maintained, or repaired in Ohio

The bill exempts from state and local use taxes certain watercraft purchased outside the state and seasonally stored, maintained, or repaired in Ohio. The exemption applies to the price of the watercraft. Sales tax would still be due on the charges for storage, maintenance, or repair of the watercraft.

A qualifying watercraft has to meet the following conditions: (1) the owner paid sales or use tax on the watercraft to another state or under R.C. section 5739.027, unless the watercraft is used and titled or registered in a jurisdiction that does not impose a sales or use tax or similar excise tax on the ownership or use of the watercraft, (2) the watercraft is in Ohio only for storage and maintenance, (3) the watercraft is not used or stored in Ohio during May through September, and (4) the watercraft is not required to be registered in Ohio under section 1547.54 of the Revised Code.

This exemption will reduce state and permissive county and transit authorities' use taxes by an undetermined amount. Under codified law, state sales and use tax receipts are distributed to the GRF (96.68%), the Local Government Fund (LGF, Fund 7069, 1.66%), and Public Library Fund (PLF, Fund 7065, 1.66%).

The bill may have indirect effects. Witness testimony indicates that some out-of-state boat owners, knowing that seasonal storage, maintenance, or repair of watercraft in Ohio may result in use tax charges for the value of the vessel, choose when possible to avoid having such services provided in this state. The bill may result in such owners instead having these services

[2] https://turbotax.intuit.com/personal-taxes/online.

performed in Ohio. The extent of such behavioral changes and their impact on sales tax revenues are unknown.

Tax refunds

The bill allows taxpayers to apply to the Tax Commissioner or Superintendent of Insurance for a refund of any amount the taxpayer overpaid, including tax-related penalties and fees. In general, current law specifies that the Commissioner or Superintendent may only refund overpaid taxes, with interest. As with refunded taxes under current law, this provision awards interest on any overpaid tax-related penalty or fee. It provides that any refunded amount, not just taxes, may be intercepted by the Tax Commissioner and applied to a debt the taxpayer owes to the state, as authorized under continuing law.

The bill applies to refunds allowed on or after January 1, 2023. This bill may result in a revenue reduction, resulting from refunds of overpaid tax-related penalties, fees, and interest on those overpaid penalties and fees. The amount of this revenue reduction is uncertain.

Commercial vehicle operators training tax credit

The bill creates a temporary nonrefundable tax credit of up to $25,000 against the personal income tax (PIT) for employers that train their employees to obtain a commercial driver's license (CDL) or to operate a commercial motor vehicle. If the amount of the credit exceeds the tax otherwise due in any year, the excess may be carried forward and applied to a future tax liability for up to five years. An employer may apply, on or after January 1, 2023, but before January 1, 2027, for a tax credit certificate for training expenses the employer expects to pay the following year. Training expenses are described in the bill as any cost customarily incurred by an employer to train an employee who is qualified to obtain a CDL or to operate a commercial motor vehicle, excluding wages for the employee being trained. The bill specifies that the credit is allowed against a taxpayer's PIT aggregate tax liability. Thus, to the extent a taxpayer's business income is tax exempt due to the business income deduction in codified law, the tax credit would apply against the taxpayer's nonbusiness income tax liability. The credit may be claimed by employers that are sole proprietors or organized as a pass-through entity (partnership, limited liability company, or S corporation).

To obtain the credit, an employer must first apply to the Director of Development on or before the first of December of each year 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 for every application. Then, in January of the year after the year the expenses are certified and incurred, the employer applies to the Director for the tax credit, which equals one-half of the employer's actual training expenses.[3] The application shall be submitted on a form prescribed by the Director and include an itemized list of tax credit-eligible training expenses incurred by the employer for each employee and the identities of those employees. The bill also requires an employer that was issued a tax credit certificate to file with the Director, one year after the credit was issued, a form identifying all employees whose training is the basis of that credit and who quit or were terminated during the preceding year, and the amount of the credit attributable to those employees. This form should

[3] The bill specifies that this application may be submitted after January 1, and before January 21.

be filed on or before January 21 of the year following the issuance year stated on the tax credit certificate. Finally, the bill requires the Director to annually submit a report to the General Assembly that includes the total number of employees reported to the Director for the preceding year and related tax credits.

The bill specifies that the total training expenses that may be certified in any year (for all applicants) may not exceed $3 million. The tax credits that may be awarded are 50% of the certified training expenses, yielding a maximum revenue loss the first year of $1.5 million. However, if in any year the amount of credits awarded is less than the annual cap, the difference may be carried forward and added to the maximum amount to be awarded the following year. The bill specifies that the application for the credit to the Director of Development may be submitted in January of the year after the year the expenses are certified and incurred. Thus, this fiscal note assumes that the first year the credit may be used against the PIT would be FY 2025 (tax year 2024). Due to the provision regarding nonawarded credits carried forward to another year, it is possible the fiscal cost of the bill may exceed the cap of $1.5 million in FY 2026 or in subsequent years, dependent on the amount and timing of credit awards by the Director of Development and the Ohio Tax Credit Authority, and credit carryforwards by taxpayers.

Under codified law, the GRF would bear 96.68% of any revenue loss while the Local Government Fund (LGF) and Public Library Fund (PLF) each would bear 1.66% of any such revenue loss. Thus, the GRF loss would be up to $1.45 million in FY 2025 and the combined loss to the LGF and PLF would be up to $50,000. The bill would increase costs for the Department of Development. However, LBO expects additional administrative expenditures as a result of the bill to be absorbed within existing appropriation levels of the agency.

Revenue sharing

The Local Government Fund (LGF) and Public Library Fund (PLF) each receive 1.66% of GRF tax revenue in codified law. The PLF in the current biennium receives 1.70% under an uncodified provision of H.B. 110 of the 134th General Assembly, the main operating budget. LGF receipts are paid to municipalities, counties, townships, and special districts. PLF funds are nearly all distributed to public libraries, with a small portion paid to local governments.

Municipal income tax changes

The bill revises Ohio law regarding municipal income tax extensions and the penalty for failure to timely file municipal income taxes. Under current law, the penalty for failure to file a timely municipal income tax return is $25 for each month the taxpayer fails to file a required income tax or withholding tax return, but cannot exceed $150. The bill reduces the penalty to a one-time $25 penalty. The bill also exempts from the penalty a taxpayer's first failure to timely file, and requires the tax administrator to refund or abate the penalty after the taxpayer files the late tax return.

Under continuing law, any taxpayer that has duly requested an automatic six-month extension for filing their federal income tax return automatically receives an extension for the filing of state and municipal income tax returns. Alternatively, a taxpayer may request that a six month extension of the date for filing the taxpayer's municipal income tax return be granted by the municipal tax administrator. If the request is received on or before the date the municipal income tax return is due, the tax administrator is to grant the requested extension.

The bill prohibits a municipal tax administrator (including the Tax Commissioner for purposes of the state-administered municipal net profits taxes) from making an inquiry or sending a notice to the taxpayer with regards to the return before the extended due date of the return, if a taxpayer receives an extension for filing a municipal income tax return.[4] The prohibition does not apply if the tax administrator has actual knowledge that the taxpayer did not apply for an extension. The bill also specifies that if a tax administrator sends a prohibited notice, the municipality must reimburse the taxpayer for reasonable costs (not defined in the bill) incurred in responding to it.

The bill will reduce municipal income tax revenue, with the reduction variable and depending on the municipality. Statewide, total municipal fiscal losses from the bill are uncertain. The provision related to prohibited notice and taxpayer reimbursement, if the administrator is the Tax Commissioner, the costs will be reimbursed from the GRF. Reimbursement of such costs from the GRF is likely to be minimal. The bill's changes are effective starting with the first tax year that ends on or after January 1, 2023.

Content and format of property tax rate statements

The bill modifies the content and format of property tax rate statements required annually to be published in the newspaper or enclosed with each tax bill by (1) making the current requirement to list tax reduction factors optional, (2) requiring effective tax rates to be expressed as a percentage of true, or market, value for each class of property, (3) requiring both the voted and effective tax rates to be expressed in mills per one dollar of taxable value in addition to the continuing requirement to express the same in dollars for each $1,000 of taxable value, and (4) removing the requirement that effective tax rates be printed in bold face type. The bill applies the modifications to tax year 2023 and every tax year thereafter. This change has no fiscal effect.

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[4] In testimony on the bill in House Ways and Means Committee, several municipalities stated that most Ohio municipalities do not receive communication from the Internal Revenue Service that a taxpayer has filed or received a federal extension to file a tax return.