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Office of Research and Drafting

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H.B. 609
(with AM3174-1 and AM2550-1)
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 609's Bill Analysis

Version: In Senate Ways & Means

Primary Sponsor: Rep. West

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill establishes a two-month "amnesty" period in FY 2021 during which taxpayers owing past-due state taxes and certain fees may pay their taxes or fees and would not have to pay penalties and accrued interest normally due. The amnesty applies only to taxes and fees that were due and payable as of the bill's effective date and that were unreported or underreported.
- The bill will reduce revenue streams from penalties and fees that would have been otherwise collected during FY 2021. However, the bill may also accelerate the timing of tax collections that would have been potentially collected at a later date. The magnitude of revenue gains and losses from penalties and fees in FY 2021 are undetermined, but the likely result is a net gain amounting to millions of dollars.
- To the extent tax revenue is pulled forward into FY 2021, there would be revenue losses in FY 2022 and subsequent fiscal years. Those losses would likely amount to somewhat less than the FY 2021 revenue gain on the assumption that some tax liabilities might have avoided detection indefinitely.
- GRF taxes collected under the amnesty program will accrue to the Budget Stabilization Fund (BSF) instead of the GRF, implying a reduction in GRF revenue. However, the bill provides that Local Government Fund (LGF) and Public Library Fund (PLF) shares that would have been distributed from the GRF would be credited to those funds prior to deposits of the remainder of collections into the BSF. 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.

- Non-GRF funds would also experience revenue gains and losses in FY 2021, but the net result is more ambiguous, due to the smaller number of taxpayers that the Department of Taxation generally monitors under the taxes that generate revenue to those funds.

Detailed Analysis

The bill establishes a temporary, two-month tax "amnesty" from April 1 to May 31, 2021, with respect to delinquent state-administered taxes,[1] except for the foreign and domestic insurance taxes which are paid to and administered by the Department of Insurance. The proposed amnesty program also covers delinquent state income tax withholding remittances by employers and certain fees administered by the Department of Taxation. The amnesty applies only to taxes that were due and payable as of the bill's effective date and that were unreported or underreported. The amnesty does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending.[2] If, during the amnesty, a person pays the full amount of delinquent taxes or fees owed, the Tax Commissioner must waive all penalties and accrued interest that are normally charged. The bill authorizes the Commissioner to require a person to file returns or reports, including amended returns or reports. In addition to receiving a waiver of penalties and accrued interest, a person who pays the amount due is immune from criminal prosecution or any civil action with respect to the tax or fee paid, and no assessment may be issued against the person for that tax or fee. The most recent general tax amnesty was conducted from January 1 through February 15 in 2018.

The amnesty program would start after the filing of income taxes was extended with the enactment of H.B. 197 of the 133rd General Assembly. In response to that act, the Tax Commissioner authorized an extension of the deadline to file state income taxes until July 15, matching the extended deadline for federal returns. The extended deadline applied also to school district income taxes, certain returns and payments filed by pass-through entities, and municipal net profit taxes if they are administered by the Department of Taxation. Filing deadlines for other taxes were not extended.

Taxes covered by the amnesty

The GRF taxes covered under the amnesty program are the following: income tax; commercial activity tax (85% is deposited in the GRF);[3] state sales and use taxes; financial

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[1] School district income taxes and permissive county and transit authority sales taxes are covered by the amnesty. However, local lodging and resort taxes are not included in the program.

[2] Cash collections from audit and compliance programs over several years totaled $721.5 million in FY 2019, of which $44.2 million was from a voluntary disclosure program for a number of state-administered taxes offered by the tax department. 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.

[3] Under continuing law, commercial activity tax receipts are deposited into the GRF (85.0%), the School District Tangible Property Tax Replacement Fund (Fund 7047, 13.0%), and the Local Government Tangible

institutions tax; public utility excise tax; kilowatt-hour tax; natural gas consumption tax; cigarette, tobacco, and vaping excise taxes; alcoholic beverage tax; liquor gallonage tax; and some revenue from the petroleum activity tax.[4]

Certain taxes and fees are not credited to the GRF due to provisions of the Revised Code or restrictions imposed by the Ohio Constitution. The following taxes covered by the amnesty are credited to other funds and not the GRF: motor fuel excise tax, fuel use tax, casino wagering tax, severance taxes, wireless 9-1-1 charges, tire fees, and horse racing taxes.[5]

Fiscal effect

When taxes are not paid by their due date, penalties and fees are imposed, and those increase with the length of the delinquency and nonpayment. The COVID-19 pandemic situation has created substantial employment losses and severe economic dislocation for both individuals and businesses, and this will result in an increase in tax delinquencies. The bill abates penalties and fees during the amnesty period, and thus will directly reduce revenue from such sources by an uncertain amount in FY 2021.

However, an amnesty program may also push a number of taxpayers, if they are able, to accelerate the payment schedule of their tax debt, especially in instances where penalties and fees have grown disproportionately, relative to the original tax liability. Therefore, an amnesty program accelerates the timing of tax collections as taxpayers seek to reduce their total tax burden, though the increase in collections from the bill in FY 2021 is undetermined. The acceleration of the payment of taxes and fees would also decrease revenue from those taxes and fees in subsequent fiscal years, when in many cases the tax liabilities would have been identified by the Department of Taxation. 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. Those amounts were lower than revenue from previous amnesties. Thus, there might be a potential for diminishing returns with successive amnesties in a short amount of time.[6]

As of this writing, estimates of unreported, underreported, or underpaid tax liabilities that may qualify for the amnesty program are not available to LBO economists. The magnitudes likely depend on the number of taxpayers that the Department of Taxation must monitor. For example,

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Property Tax Replacement Fund (Fund 7081, 2.0%). The distributions to funds 7047 and 7081 are used to make reimbursement payments to school districts and other local taxing units, respectively, for the phase out of property taxes on general business tangible personal property.

[4] Taxes on sales on motor fuel used for propelling vehicles on public highways and waterways is deposited in a non-GRF fund. All other revenue is deposited in the GRF.

[5] For example, the casino wagering tax is distributed to several non-GRF funds under Ohio Constitution, Article XV, Section 6. The restriction for motor fuel taxes is based on Ohio Const., art. XII, sec. 5a.

[6] In addition, with consecutive amnesties in a short time period, some taxpayers may choose to not pay their liability on time so they can improve their business cash position, and then wait to pay the liability during the next amnesty.

it is likely easier for the Department to identify unreported or underreported tax liabilities for the kilowatt-hour tax or motor fuel tax, for which taxpayers number in the hundreds, than such tax liabilities for the personal income tax, for which taxpayers number in the millions. The magnitude of the tax gap (tax collected minus tax due) also depends on the type of tax. For example, use tax compliance has been historically low, especially for tax remittances from thousands of out-of-state vendors that sell taxable items to Ohio purchasers. H.B. 166 (the current budget act) substantially modified nexus for sales and use tax purposes to improve use tax compliance by marketplace facilitators.[7]

GRF tax revenue to the Budget Stabilization Fund

Taxes and fees collected under the amnesty, with the exception of GRF taxes, are to be distributed in the same manner as the underlying tax liability would have been distributed had it been paid as required by law. For FY 2021, for state taxes deposited in the GRF, revenue gains and losses generally would be shared by the GRF (96.62%), the Local Government Fund (LGF, 1.68%), and the Public Library Fund (PLF, 1.70%).[8] LBO does not have an estimate of the amounts involved, but potential gains totaling more than $10 million from the bill in FY 2021 cannot be ruled out.

However, the bill specifies that after the shares of GRF tax receipts allocated to them are deposited in the LGF and PLF, the remaining GRF tax revenue collected under the amnesty program will subsequently be deposited in the Budget Stabilization Fund (BSF, Fund 7013) on or before July 15, 2021, by OBM. Thus, the bill increases revenue to the BSF, LGF, and PLF in FY 2021, and decreases GRF revenue from the abatement of penalties and fees. Non-GRF funds would also experience revenue gains and losses in FY 2021, but the net result is more ambiguous, due to the smaller number of taxpayers that the Department of Taxation generally monitors under the taxes that generate revenue to those funds.

Appropriation

The bill appropriates up to $250,000 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 line item 110630, Tax Amnesty Promotion and Administration, used by the Department of Taxation. The bill also requires repayment of the amount transferred after receipt of the necessary amount from the amnesty program.

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[7] H.B. 166 required persons that own or operate large electronic marketplaces through which retail sales are facilitated on behalf of other sellers to collect and remit use tax due on all transactions facilitated through their marketplace. This provision is helping to reduce unreported and unpaid sales and use taxes, as the majority of U.S. electronic market places is controlled by four or five companies. This provision resulted in additional state and local sales and use taxes totaling about $321 million in FY 2020.

[8] Any receipts that would have been collected in subsequent fiscal years would be allocated differently under current law: the allocations of GRF tax revenue to each of the LGF and PLF would amount to 1.66%, their shares under codified law, starting in July 2021.