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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 515
134th General Assembly

Final Fiscal Note & Local Impact Statement

[Click here for H.B. 515's Bill Analysis](#)

Primary Sponsors: Reps. Hoops and Riedel

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill specifies certain situations under which the sale of an equity or ownership interest in a business is considered business income, thus subject to preferential treatment under the business income deduction and the 3% rate in continuing law. This provision will reduce revenue from the personal income tax (PIT). Due to lack of data on such sales, LBO does not have an estimate of the magnitude of the annual revenue loss.
- The changes described above would apply to any audits, refund applications, petitions for reassessments, and appeals pending on or after the bill's effective date. This provision could result in a substantial reduction in PIT receipts, possibly tens of millions of dollars.
- Reductions in PIT revenue to the GRF as a result of the bill will lower amounts distributed to local governments and public libraries through the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065). In the current biennium, the PLF receives 1.70% of GRF tax revenue under an uncodified provision of H.B. 110 of the 134th General Assembly, the main operating budget act. In codified law, the LGF and the PLF each receive 1.66% of GRF tax revenue.
- The bill changes the reporting period for the sports gaming tax so that sports gaming proprietors must file monthly tax returns, instead of daily returns. This provision has no direct fiscal effect.

Detailed Analysis

Sales of business interests

The bill modifies income tax law related to sales of business interests. The bill codifies two situations in which the sale of an ownership interest will be considered business income: (1) the sale is treated as a sale of assets for federal income tax purposes, or (2) the seller materially participates in the activities of the business during the taxable year in which the interest was sold

or during any of the five preceding taxable years. (Rules in the federal Internal Revenue Code for material participation generally consider the number of hours the taxpayer spent participating in the operation of a business.)

If either of the two conditions above are satisfied, the income from the sale of a business interest would be eligible for preferential treatment under the business income deduction (BID) and the 3% flat tax on business income. Under continuing law, a taxpayer can deduct their first \$250,000 of business income (\$125,000 for spouses filing separate returns) under the personal income tax (PIT). Any business income above that amount is subject to a 3% flat tax. Both apply only to income classified as “business” income. Nonbusiness taxable income is taxed at graduated PIT rates, up to 3.99% in codified law.

Income from the sale of ownership interest which is nonbusiness income is generally taxable for Ohio residents and nontaxable in Ohio for nonresidents (as nonbusiness income from the sale of their intangible property is allocable to the nonresident’s domicile or home state).¹ By reclassifying certain nonbusiness income as business income, the bill will reduce PIT revenue due to the BID and the lower tax rate on business income, most likely starting with tax returns filed for tax year 2022 (FY 2023). The fiscal loss is likely to vary substantially from year to year, and the revenue decrease may be millions of dollars for years with sizable sales of businesses or business interests. No data on sales of business assets or business interests that would qualify under the bill are available to LBO to allow for a precise estimation.

Reclassifying such capital gains as business income may have a secondary effect, in some cases, that could partially offset the revenue loss explained above. Such reclassification could, in some cases, make taxable by Ohio the capital gains received by nonresidents of the state, when they may not be taxable currently. Potential revenue gains from this provision are unpredictable due to uncertainty regarding the particular facts and circumstances of a taxpayer’s case that could make such income taxable.

Section 3 of the bill states it is a “remedial measure intended to clarify existing law.” The bill’s changes apply to any refund applications, petitions for reassessments, and appeals pending on or after the bill’s 90-day effective date, and any transaction subject to an audit on or after the effective date of the bill. This provision would result in an undetermined one-time large reduction in PIT receipts, possibly in the millions of dollars, though this revenue decrease may occur over several fiscal years, possibly starting in FY 2023. LBO staff cannot rule out a revenue loss in the several tens of millions of dollars. Separately, the Department of Taxation estimated the revenue loss from the retroactive component of the bill may potentially be in the lower hundreds of millions of dollars.

Reductions in PIT revenue to the GRF as a result of the bill would lower amounts distributed to counties, municipalities, and townships through the Local Government Fund (LGF, Fund 7069), and to public libraries through the Public Library Fund (PLF, Fund 7065). In the current biennium, the PLF receives 1.70% of GRF tax revenue under an uncodified provision of H.B. 110 of the 134th General Assembly (the main operating budget act). In codified law, the LGF

¹ The tax treatment of income from the sale of an ownership interest in a business is affected by Ohio law, Supreme Court precedent, and Department of Taxation guidance. In general, the sale of an ownership interest is considered nonbusiness income, with certain exceptions.

and the PLF each receive 1.66% of GRF tax revenue, so the GRF would bear the bulk of any PIT revenue loss from the bill.

Sports gaming receipts tax reporting

H.B. 29 of the 134th General Assembly legalized sports wagering at brick-and-mortar locations in Ohio and via internet and mobile devices beginning no later than January 1, 2023. The bill also imposed a 10% tax on sports gaming receipts. The bill changes the reporting period for the sports gaming tax so that sports gaming proprietors must file monthly tax returns, instead of daily returns. This provision has no direct fiscal effect. (Continuing law, unchanged by the bill, requires casinos to file daily returns.)