



# Ohio Legislative Service Commission

## Bill Analysis

Sam Benham

### Am. S.B. 2

131st General Assembly  
(As Passed by the Senate)

**Sens.** Peterson, Beagle, Sawyer, Tavares, Balderson, Burke, Eklund, Faber, Gardner, Hite, Hottinger, Hughes, Jones, Lehner, Obhof, Oelslager, Patton, Seitz, Widener

---

## BILL SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since April 1, 2015.
- Declares an emergency.

---

## CONTENT AND OPERATION

### Incorporation of Internal Revenue Code changes

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after April 1, 2015.<sup>1</sup> The changes being incorporated are those enacted by the "Protecting Americans from Tax Hikes Act of 2015," which took effect December 18, 2015.<sup>2</sup> The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.<sup>3</sup>

---

<sup>1</sup> R.C. 5701.11.

<sup>2</sup> This act was enacted as part of H.R. 2029, the "Consolidated Appropriations Act, 2016," P.L. No. 114-113, <https://www.congress.gov/bill/114th-congress/house-bill/2029/text?format=xml>.

<sup>3</sup> Cf. *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

The principal amendments to the IRC that the bill incorporates are the following income tax provisions:

- Enhanced earned income tax credit
- Elementary and secondary school teacher deduction for classroom expenses
- Qualified tuition expenses deduction
- Exclusion of IRA distributions for charitable purposes
- Depreciation cost recovery period adjustments for race horses and motor sports entertainment complexes and certain leasehold improvement property, restaurant property, and retail improvement property
- Bonus depreciation deductions and enhanced expensing (Ohio departs from federal income tax law and generally requires taxpayers to spread the immediate tax reductions from bonus depreciation and enhanced expensing in equal parts across six years)
- Exclusion of 100% of gain on certain small business stock
- Exclusion of discharge of principal residence indebtedness for individuals
- Parity for exclusion for employer-provided mass transit and parking benefits
- Depreciation allowance for second generation biofuel plant property
- Deduction for energy efficient commercial buildings
- Election to expense advanced mine safety equipment
- Special expensing rules for certain film and television productions
- Basis adjustment to stock of S corporations making charitable contributions of property
- Income adjustments for businesses in a designated empowerment zone

Most of the foregoing provisions are extensions of pre-2016 federal provisions. Some of them are extended only for a limited period of time. (For more information about the federal amendments, see the "Estimated Revenue Effects Of Division Q Of Amendment #2 To The Senate Amendment To H.R. 2029 (Rules Committee Print 114-



40), The 'Protecting Americans From Tax Hikes Act Of 2015'," December 16, 2015 by The Joint Committee on Taxation, available at [www.jct.gov](http://www.jct.gov)).

### **Effect of incorporation**

All but one of the federal amendments relate to exclusions or deductions affecting a taxpayer's federal adjusted gross income (or taxable income for trusts and estates), the starting number for determining the taxpayer's Ohio adjusted gross income or Ohio taxable income.<sup>4</sup> If these amendments were not incorporated, a taxpayer would have to add these exclusions or deductions to the taxpayer's federal adjusted gross income or taxable income for purposes of computing the taxpayer's Ohio tax liability or adjust the basis of the taxpayer's Ohio earned income tax credit for taxable years beginning in 2015 and thereafter.

In addition to extending various exclusions and deductions affecting federal income, the federal act makes permanent the increase in the federal earned income tax credit percentage for households with three or more children and increasing the credit for some married joint filers. Since Ohio's earned income tax credit is calculated on the basis of the federal earned income tax credit, the federal amendment enhancing that credit would increase Ohio's credit for taxpayers affected by the federal amendment.<sup>5</sup>

### **Emergency clause**

The bill declares an emergency, causing the bill to become effective immediately and exempting it from the referendum.

---

## **COMMENT**

The bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after March 22, 2013, and before April 1, 2015, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The March and April dates are the dates of the two most recent incorporations.) The election was available to taxpayers who were subject to the personal income tax and to electric companies that are subject to municipal income taxes.

After the bill passed the Senate, the General Assembly enacted the most recent incorporation bill, H.B. 19, which became effective on April 1, 2015. Because S.B. 2 does

---

<sup>4</sup> R.C. 5747.01, not in the bill.

<sup>5</sup> R.C. 5747.71, not in the bill.



not reflect the enactment of this recent incorporation, the bill in its current form could be construed to be changing this election period so that it extended back to taxable years ending after March 22, 2013, but before the bill's effective date, instead of between April 1, 2015—the effective date of H.B. 19—and the bill's effective date.<sup>6</sup> An amendment to the bill specifying an election period running from April 1, 2015, to S.B. 2's effective date would preclude this construction and resume the election pattern in previous incorporation acts.

The bill retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.<sup>7</sup>

---

## HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Finance	02-11-15
Passed Senate (31-0)	02-11-15

S0002-PS-131.docx/emr

---

<sup>6</sup> R.C. 5701.11(B)(1).

<sup>7</sup> R.C. 5701.11(B)(2).

