OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Am. S.B. 22

132nd General Assembly
(As Passed by the Senate)

Sens. Peterson, Beagle, Wilson, Balderson, Dolan, Eklund, Gardner, Hackett, Hite, Hoagland, Huffman, Jordan, LaRose, Manning, Obhof, Oelslager, Schiavoni, Tavares, Terhar, Thomas, Uecker

BILL SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since February 14, 2016, including the recently enacted "Tax Cuts and Jobs Act."

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 February 14, 2016.[1] In March of 2017, the General Assembly passed an act to incorporate changes to federal law taking effect between February 14, 2016, and March 30, 2017.[2] Consequently, the effect of this bill is to further incorporate changes taking effect between March 30, 2017, and the bill's effective date.

The bill incorporates numerous changes to federal law made by the "Tax Cuts and Jobs Act," H.R. 1 of the 115th Congress, in December of 2017. Several of these changes directly affect the tax base of many Ohio income tax taxpayers by increasing or decreasing federal adjusted gross income (FAGI), from which Ohio taxable income is derived. The incorporated changes also affect the tax base of school districts levying an

[1] R.C. 5701.11.

[2] For a description of the federal law changes incorporated by H.B. 11, see the LSC Final Analysis of the act, at https://www.legislature.ohio.gov/download?key=6755&format=pdf. Because of the enactment of H.B. 11, the version of R.C. 5701.11 in the bill is out-of-date, and will need to be either updated before the legislature enacts the bill or harmonized afterward.

income tax on the basis of FAGI. Since the federal act by its terms sets expiration dates on many of its changes, presumably the expirations would be incorporated into Ohio law as well.

The following is a list of some of the most significant of the federal law changes affecting Ohio law. All but one of these changes will first apply to taxable years beginning January 1, 2018, or thereafter:

Changes affecting business owners

- A limit on pass-through entity (PTE) losses that an owner may claim in a taxable year, to $250,000 ($500,000 for joint filers).
- An increase in the limit on the value of business property that may be "expensed," or deducted as a current expense (rather than a capital expense), in the year in which the property is acquired.[3]
- An increase in the bonus depreciation allowance, from 50% to 100%, in the first year for purchases of certain qualifying property used in business. The increased allowance applies to property placed into service after September 27, 2017.[4]
- A limit on the amount that may be deducted as a net operating loss (NOL), to 80% of taxable income, and the repeal of the ability of a taxpayer to "carry-back" an NOL to previous years, with some exceptions.
- A limit on the deduction for business interest that may be taken in a taxable year, to 30% of modified income.
- Changes in the rules governing business accounting methods.
- The repeal of an income exclusion for gains from exchanges of like-kind business property, unless the property is real estate.
- Changes affecting the determination of a partner's share of a partnership's income or loss.

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[3] For both the expensing and bonus depreciation provisions, note that Ohio requires an "add-back" of amounts deducted under either of these provisions, such that, for Ohio tax purposes, the deduction is generally spread out over six years, rather than taken solely in the year in which the federal deduction is taken; accordingly, the revenue effect of these provisions will also be spread over time. R.C. 5747.01(A)(20) and (21) and (S)(14).

[4] See footnote 3.

Because Ohio law permits a deduction for business income of up to $250,000, the effect of the federal changes on the Ohio tax liabilities of taxpayers taking that deduction will vary, and may have no net effect for some of those taxpayers.

Changes affecting other individuals

- The repeal of an income exclusion for up to $20 of the amount an employer reimburses its employee for bicycle commuting expenses.
- The repeal of a deduction allowed for moving expenses incurred by a taxpayer that relocates for work, unless the taxpayer is a member of the Armed Forces.
- A prohibition on the re-characterization of certain Individual Retirement Account (IRA) contributions.
- A change in the treatment of alimony income, such that alimony will be considered income for the recipient, and cannot be deducted by the payer.

Reason for incorporation

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.[5] 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.

If federal tax law amendments are not incorporated, an affected taxpayer would have to adjust the taxpayer's federal adjusted gross income or taxable income, either by adding or subtracting the relevant amounts, in order to compute the taxpayer's Ohio tax liability.

Alternative tax law election

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 February 14, 2016, and before March 30, 2017, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The February and March dates are the dates of the two most recent incorporations.) The election was available to taxpayers who were

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[5] *Cf. State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

subject to the personal income tax and to electric and telephone companies that are subject to municipal income taxes.

The bill allows this election to be made for a taxpayer's taxable year ending after February 14, 2016, but before the bill's effective date. The act 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.

HISTORY

ACTION	DATE
Introduced	01-31-17
Reported, S. Ways & Means	02-08-17
Passed Senate (32-0)	02-08-17

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