OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Mackenzie Damon

Sub. S.B. 22

132nd General Assembly
(As Passed by the General Assembly)

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

Reps. Schaffer, Scherer, Rogers, Henne, Retherford, Anielski, Antani, Antonio, Barnes, Brenner, Carfagna, Craig, Dever, Faber, Ginter, Gonzales, Green, Hambley, Hoops, Hughes, Lang, McClain, Miller, Patmon, Patton, Perales, Reineke, Rezabek, Romanchuk, Ryan, Seitz, Sheehy, Slaby, R. Smith, Sprague, Stein, Sweeney, Thompson, West, Wiggam

Effective date: Emergency: March 30, 2018

ACT SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 30, 2017, including the recently enacted "Tax Cuts and Jobs Act" and "Bipartisan Budget Act of 2018."

- Expands Ohio's 529 education savings plan so that, as recently authorized in federal law, earnings used for K-12 education expenses are tax-exempt and contributions are eligible for Ohio's tax deduction, even if ultimately used to pay K-12 education expenses.

CONTENT AND OPERATION

Incorporation of Internal Revenue Code changes

The act incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 30, 2017.[1]

---

[1] R.C. 5701.11 and 5747.01(O).

Numerous changes to federal law are incorporated, including several changes made by the "Tax Cuts and Jobs Act," H.R. 1 of the 115th Congress, in December of 2017, and by the "Bipartisan Budget Act of 2018," H.R. 1892, in February 2018. Several of these changes directly affect the tax base of many Ohio income tax taxpayers by increasing or decreasing federal adjusted gross income (FAGI), the starting number for determining a taxpayer's Ohio taxable income. The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI. Since the Tax Cut and Jobs Act sets expiration dates for many of its provisions, presumably the expirations are 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.[2]
- 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.[3]
- 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.

---

[2] 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).

[3] See footnote 2.

- 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.

Because existing 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.

The Bipartisan Budget Act of 2018 extended several provisions that were set to expire in 2017, including an above-the-line deduction for higher education expenses that directly affects Ohio taxable income once the provision is incorporated.

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.[4] 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.

---

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

Alternative tax law election

The act also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Prior law authorized 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 before S.B. 22.) The election was available to taxpayers who were subject to the personal income tax and to electric and telephone companies that are subject to municipal income taxes.

The act allows this election to be made for a taxpayer's taxable year ending after March 30, 2017, but before March 30, 2018 (the act'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.

Extension of eligible 529 plan expenses

Federal law authorizes states to operate tax-preferred college savings programs, known as "529 plans." Ohio offers such a plan, under which individuals may contribute to an investment account to pay for future post-secondary expenses. Ohio's plan is administered by the Ohio Tuition Trust Authority.[5] Under prior law, earnings from 529 plans were exempt from federal and state income tax only to the extent they were used to pay the qualified higher education expenses of the plan beneficiary.

The recently enacted federal Tax Cut and Jobs Act extended this favorable federal tax treatment to include 529 plan earnings used for primary and secondary school (K-12) education. States may amend their 529 plans to incorporate this change in federal law. Accordingly, the act expands Ohio's 529 plan so that earnings used for K-12 education expenses may qualify for favorable federal and state tax treatment.[6]

Continuing Ohio law also allows a state income tax deduction for contributions to a 529 plan. The deduction is limited to $4,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer's spouse, regardless of whether the taxpayer and spouse file separate returns or a joint return. Annual contributions exceeding $4,000 per beneficiary may be applied in ensuing years. Under the act, 529 plan contributions

---

[5] Ohio law also offers a separate college savings program that qualifies as a 529 plan, under which individuals may purchase "tuition units." However, this plan has been closed to new contributions since December 31, 2003. https://www.collegeadvantage.com/guaranteed-plan-resources.

[6] R.C. 3334.01, 3334.02, 3334.08, 3334.09, 3334.18, 3334.19, and 3334.20.

become eligible for this deduction even if used to pay for K-12 education expenses instead of post-secondary expenses.[7]

HISTORY

ACTION	DATE
Introduced	01-31-17
Reported, S. Ways & Means	02-08-17
Passed Senate (32-0)	02-08-17
Reported, H. Ways & Means	02-28-18
Passed House (90-7)	02-28-18
Concurrence (32-1)	03-21-18

18-SB22-132/ec

[7] R.C. 5747.70.