



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 232 of the 132nd G.A.

Status: As Introduced

Sponsor: Reps. Rogers and Rezabek

Local Impact Statement Procedure Required: Yes

Subject: Income tax deduction for attorney pro bono work

State & Local Fiscal Highlights

- The bill would allow a personal income tax deduction for lawyers and law firms that provide pro bono legal assistance to indigent clients, at an hourly rate plus associated expenses. This tax benefit would expire after six years.
- The amount of the resulting revenue loss is uncertain. It would likely be well under the potential loss of up to \$19 million plus expenses, figured as if all lawyers active in Ohio gave the maximum number of unpaid hours that qualify for the deduction. Most of the revenue loss would be borne by the GRF.
- Distributions to units of local government and public libraries from the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065) would be reduced by 1.66% and 1.68%, respectively, of the GRF revenue loss in the current biennium.

Detailed Fiscal Analysis

H.B. 232 would allow a personal income tax deduction in tax years 2017-2022 for uncompensated attorney hours of qualifying pro bono legal services at \$125 per hour, up to \$10,000 per attorney, plus qualified expenses incurred. It would also allow pass-through entity (PTE) law firms to deduct these costs if the attorney performing the pro bono work was paid by the law firm. The qualifying pro bono legal services would be provided for indigent persons through or on behalf of a legal aid society in Ohio. Qualified expenses are defined as reasonable expenses including court costs, filing fees, costs associated with discovery, compensation of expert witnesses, lodging, meals, transportation, and other costs directly attributable to providing the pro bono services.

The deduction would reduce GRF revenue and consequently would reduce distributions through the LGF and PLF to local governments. For a lawyer in the top tax bracket, a \$10,000 deduction would reduce tax before credits by \$500, and generally

would reduce taxes owed by that amount.¹ In the next lower bracket, yearly tax savings would be \$460. How many lawyers and PTE law firms might claim a deduction for unpaid professional services appears uncertain. Occupational data from the U.S. Bureau of Labor Statistics (BLS) show 15,920 lawyers in Ohio in 2016 who were employees, so do not include those who were self-employed. Their average pay from this employment was reported to be about \$113,400 per year, in the income tax bracket just below the top bracket. If all 15,920 lawyers gave 80 hours of qualifying pro bono legal help, the personal income tax revenue loss would be about \$7 million for lawyers with income on average in that income tax bracket.

The total number of lawyers in Ohio is considerably higher than the BLS occupational data show. American Bar Association data show 38,623 resident active lawyers in the state as of December 31, 2016.² If all of these lawyers or their law firms gave 80 hours of pro bono legal help and deducted \$10,000, the personal income tax revenue loss might range \$18 million to \$19 million. The amount of qualified expenses incurred for these pro bono cases is not readily quantifiable but would be an additional deduction from income subject to tax.

For self-employed attorneys, earnings from their business as lawyers is already deductible under current law as business income up to \$125,000 for those who are married and file separately and up to \$250,000 for others.³ Compensation of lawyers employed by a limited liability company, partnership, or S corporation in which they have a 20% or greater ownership interest would similarly be deductible as business income up to these limits. The limits are applied to the sum of all of a taxpayer's business income for a tax year. Any remaining taxable business income would be taxed at a 3% rate. The tax benefit, if any, from an additional deduction of up to \$10,000 for qualifying unpaid legal services provided by a lawyer whose income was taxed as business income would depend on the other income and deductions of the lawyer (and the lawyer's spouse if married filing jointly). Many of the 15,920 Ohio lawyers included in the BLS occupational data as employees would likely not qualify to deduct as business income their earnings from this employment.

The actual revenue loss could be expected to be lower than the maximum amounts noted above. If, for example, 20% of all lawyers provided 80 hours of uncompensated legal services in a year, the revenue loss would be about \$4 million; if 10%, \$2 million;

¹ Exceptions to this generalization include lawyers who are not full-year Ohio residents and those with income taxed by another state.

² American Bar Association, "ABA National Lawyer Population Survey: Lawyer Population by State," 2017.

³ Information in this paragraph on taxation of business income is based on the 2016 filing instructions posted on the Department of Taxation's website.

and if 2%, \$400,000. LSC does not have a basis for assessing the amount of such unpaid service being provided or that would be provided if this bill becomes law.

Revenue from the personal income tax is deposited into the GRF. A reduction in GRF tax revenue would reduce transfers to each of the LGF and the PLF by 1.66% in codified law. In FY 2018 and FY 2019, the PLF receives 1.68% of GRF revenue under a provision of H.B. 49 of the 132nd General Assembly. Revenue transferred to the LGF and PLF is distributed to units of local government and public libraries.

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