



Ohio Legislative Service Commission

Synopsis of Senate Committee Amendments*

Mackenzie Damon, Sam Benham, and
Joe McDaniels

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(S. Ways and Means)

Effective date

Extends the effective date of the bill's provisions by one year. Instead of requiring that municipal tax ordinances or resolutions comply with the bill's provisions on or before January 1, 2015, the bill requires compliance on or before January 1, 2016.

Casual entrant rule

Applies the casual entrant exemption to all types of compensation a nonresident taxpayer earns while working 20 or fewer days in a municipal corporation, rather than only qualifying wages paid to employees and compensation paid for service on a board of directors.

Exempts nonresident petroleum refinery workers from the bill's 20-day casual entrant rule, and instead requires that the wages of such workers be withheld in accordance with current law's 12-day casual entrant rule.

Requires that, if an employer "reasonably expects" a nonresident employee to work in a municipal corporation for more than 20 days, the employer must withhold tax on the employee's wages to that municipal corporation beginning on the first day the employee works in the municipality.

Modifies the definition of a "small employer" for purposes of the casual entrant rule exception to include employers with under \$500,000 in annual "revenue," rather than employers with under \$500,000 in annual "gross receipts."

Removes a provision requiring an employer to include notice on its annual tax return if, for the first 20 days an employee works in a municipal corporation, the employer intends to withhold taxes for both that municipal corporation and the municipal corporation where the employee's principal place of work is located.

* This synopsis does not address amendments that may have been adopted on the Senate Floor.

Clarifies the definition of the "principal place of work" of a taxpayer who spends an equal number of days in two or more municipal corporations and who does not spend a greater number of days in any other municipal corporation. In such cases, the bill allows the employer to allocate the employee's tax withholdings among each of the municipal corporations in which the employee spent the greatest number of days in that year.

Residency

Increases the number of factors that may be used in determining, or rebutting the presumption of, an individual's domicile, from 11 to 25.

Apportionment

Re-instates the current law "throw-back" provision, which apportions a business' income from the sale of goods to a municipal corporation if the goods are shipped from that municipal corporation and delivered elsewhere, provided that the business, through its own employees, does not regularly solicit sales where the goods are delivered. The House-passed bill had removed the phrase "through its own employees."

Modifies the bill's apportionment rule for nonbusiness rental income to provide that the rule applies only to rental income received from the rental of property owned by the taxpayer or a disregarded entity owned by the taxpayer.

Removes the requirement that a "preponderance of the evidence" standard be used to determine whether the bill's apportionment factors do not fairly represent a taxpayer's business activity.

Removes the requirement that a taxpayer notify the tax administrator of the taxpayer's intent to use an alternative apportionment method before filing a tax return, and instead requires only that the notice accompany the return.

Provides that both the denial of a taxpayer request to use an alternative apportionment method and a tax administrator notice requiring a taxpayer to use an alternative method are considered assessments (and can, therefore, be appealed).

Specifies that the bill does not nullify or otherwise affect any alternative apportionment arrangement that is entered into before January 1, 2016.

Loss offsets

Modifies a provision of the House-passed bill that allows residents of a municipal corporation to offset net operating losses and net profit, by specifying that a resident may offset either the resident's net operating loss or the resident's distributive

share of a pass-through entity net operating loss against either the resident's net profit or the resident's distributive share of a pass-through entity net profit.

Pass-through entity net profit

Specifies that a resident's distributive share of a pass-through entity net profit must be calculated without regard to any net operating loss that the pass-through entity carried forward from a prior taxable year and applied to reduce the entity's net profit.

Tax withholding

Clarifies that exempt income is deducted from "qualifying wages" only to the extent that the exempt income would have been included in such wages.

Removes a provision that allows a municipal corporation to require an employer that accumulates more than \$100,000 in unremitted tax withholdings to remit those taxes on the next business day.

Removes a requirement that an employer's annual withholding tax report identify, and include the amount of wages paid to, employees for whom withholding was not required because the employees qualified for the bill's casual entrant exemption.

Annual returns

Requires that the deadline for filing annual municipal income tax returns be the same as the deadline for filing state income tax returns (rather than federal income tax returns, as specified in the House-passed bill). Both state and federal returns are currently due April 15.

Reduces the number of forms that a tax administrator may require a taxpayer to submit with an annual tax return, as compared to the number that could be required under the House-passed bill, and specifies that a tax administrator cannot require taxpayers to submit forms not listed in the bill with an annual or amended return.

Consolidated returns

Provides that a tax administrator may require a group of corporations to file a consolidated return only if the administrator finds both (1) that intercompany transactions have not been conducted at arm's length and (2) that there has been distortive shifting of income or expenses, rather than either (1) or (2).

Modifies a provision of the bill that allows a consolidated group to choose, when calculating its consolidated net profit, whether to include or exclude the net profit or

loss of a pass-through entity included in the group's consolidated federal tax income. The bill specifies that this election applies only if the group directly or indirectly owns at least 80% of the pass-through entity. If the group does not own at least 80% of the pass-through entity, the group is required to exclude the entity's net profit or loss when calculating its consolidated net profit.

Modifies a provision of the House-passed bill that requires an affiliated group of corporations to exclude from their consolidated tax return any incumbent local telephone exchange carrier whose primary business is providing local telephone exchange service outside of Ohio. The bill instead provides that, if the affiliated group would include at least one incumbent local telephone exchange carrier that is primarily engaged in providing local telephone exchange service in Ohio, the group must exclude all incumbent local telephone exchange carriers from their consolidated return.

Allows corporations that entered into a consolidated or combined filing arrangement before January 1, 2016, to continue filing consolidated or combined returns in accordance with that arrangement indefinitely. In doing so, the bill removes provisions of the House-passed bill that (1) allowed taxpayers to continue consolidated filing arrangements only if the arrangement was "similar" to the bill's new requirements and (2) required that taxpayers with a prior consolidated filing arrangement file returns according to that arrangement through the 2020 taxable year.

Estimated tax payments

Allows a municipal corporation to waive the requirement that all taxpayers file estimated tax returns. (By contrast, the House-passed bill allows municipal corporations to waive the estimated tax payment requirement only for "any class of taxpayers.")

Increases the annual estimated tax payment threshold, from \$100 to \$200.

Clarifies that an estimated tax payment is considered to have been made, or an estimated tax return is considered to have been filed, on the date of the postmark stamped on the cover in which the return or payment is mailed (or the date on which the payment is credited to a designated account, if payment is made electronically).

Extensions

Removes the requirement that a taxpayer who receives a federal return filing extension must submit a request for a municipal return filing extension, and instead provides that, when a taxpayer receives a federal extension, the due date for the municipal return is automatically extended for the same period as the federal return.

Provides that, if the Tax Commissioner extends the due date for filing the state income tax return for all taxpayers, a taxpayer automatically receives an extension for filing the taxpayer's municipal income tax return for the same period.

Specifies that, in addition to active-duty National Guard members and reservists, civilian support personnel serving in a combat area or contingency operation are eligible to receive a municipal tax filing and payment extension based upon the individual filing for a federal tax extension. (A separate provision already allows such personnel to receive a filing and payment extension independent of whether the individual filed for a federal extension.)

Assessments

Changes the name of a tax administrator's formal notice that a taxpayer has a municipal income tax liability, from a "written determination" to an "assessment."

Removes the requirement that a "written determination" (now, "assessment") be issued only in response to a taxpayer's written request.

Removes a requirement that the notice be labelled in 18-point font, and requires only that "ASSESSMENT" be printed on the notice in all capital letters.

Specifies that the denial of a refund request is an assessment, unless the request is made on an original annual tax return. When a refund is requested with an original return and the request is denied, the denial is considered an informal notice, but the taxpayer may subsequently request that the tax administrator issue an assessment (which makes the denial appealable).

Taxpayer Bill of Rights

Re-inserts provisions of the Introduced bill that prescribe procedures and limits for auditing municipal income taxpayers. The provisions are similar to those that apply to state income tax audits.

Re-inserts provisions of the Introduced bill that implement a uniform standard by which taxpayers may seek damages for an action or omission of a tax administrator, an employee of a tax administrator, or a municipal employee acting in relation to the municipal income tax.

Penalties

Provides that all penalties specified in the bill are discretionary.

Makes the penalty for an individual who files an annual return late (currently \$25 per return) identical to the penalty for entities that file a late return (currently \$25 per return, plus an additional \$25 per month the return remains unfiled, up to \$150).

Prescribes different penalties for the failure to report or remit taxes withheld from gambling and video lottery terminal (VLT) winnings. Currently, a tax administrator may impose a fine of up to \$1,000 for such infractions. The bill instead provides that, if a casino or VLT operator does not remit withheld taxes or remits such taxes late, the municipal corporation may impose a penalty equal to 50% of the withheld tax. If a casino or VLT operator fails to file a return or files a return late, the penalty may be \$500 per return.

Local board of tax review

Provides that, when a member of a local board of tax review is temporarily unable to serve on the board due to an illness, conflict of interest, or other absence, a temporary replacement must be appointed to serve in the member's place.

Allows parties to continue a hearing for more than 120 days if all parties agree to the continuance. The House-passed bill limits continuances to 120 days, with no exceptions.

Tax administration

Requires certain tax administrators, including those of large municipalities, to include on their correspondence the contact information of a person designated to receive taxpayer questions.

Provides that, when considering whether to compromise a claim, a tax administrator may consider whether the delinquent taxpayer would be entitled to a refund upon payment of the delinquent amount. The addition of this factor, in combination with the other factors included in the House-passed bill, would bring the bill's offer in compromise criteria in line with the state's offer in compromise criteria.

Removes a provision that allows tax administrators to request from the Tax Commissioner income tax data that the Commissioner collects in the course of administering the municipal income tax paid by electric and local exchange telephone companies.

Municipal Income Tax Net Operating Loss Review Committee

Requires that, of the three people representing municipal corporations on the Municipal Income Tax Net Operating Loss Review Committee, at least two must represent municipal corporations that do not allow net operating loss carryforwards.

Increases the minimum number of cities whose revenue data the Committee will analyze, from 12 to 13; removes a requirement that two of those cities be Cleveland and Columbus; and, instead, requires that at least three of those cities have a population of more than 250,000.

Extends the date by which the Committee must issue its report, from May 1, 2015, to May 1, 2017.

Municipal Income Tax Revenue Reporting Study Committee

Creates a Municipal Income Tax Revenue Reporting Study Committee to study the feasibility of requiring municipal corporations to separately report the portion of income tax revenue received from residents and nonresidents.

Provides that the Committee be composed of three members of the Senate, three members of the House of Representatives, and six members representing business interests or municipal corporations that levy an income tax.

Requires that the Committee issue a report of its findings on or before May 1, 2015.

Statement of intent

Adds uncodified language related to the General Assembly's authority to enact the bill under the Ohio Constitution.

Technical changes

Makes other technical changes.