

As Introduced

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H. B. No. 592

Representative Merrin

Cosponsors: Representatives Amstutz, Schaffer, Ryan, Smith, R.

A BILL

To amend section 5726.01 of the Revised Code to
subject small business investment companies to
the commercial activity tax rather than the
financial institutions tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5726.01 of the Revised Code be
amended to read as follows:

Sec. 5726.01. As used in this chapter:

(A) "Affiliated group" means a group of two or more
persons with fifty per cent or greater of the value of each
person's ownership interests owned or controlled directly,
indirectly, or constructively through related interests by
common owners during all or any portion of the taxable year, and
the common owners. "Affiliated group" includes, but is not
limited to, any person eligible to be included in a consolidated
elected taxpayer group under section 5751.011 of the Revised
Code or a combined taxpayer group under section 5751.012 of the
Revised Code.

(B) "Bank organization" means any of the following:

(1) A national bank organized and operating as a national bank association pursuant to the "National Bank Act," 13 Stat. 100 (1864), 12 U.S.C. 21, et seq.;

(2) A federal savings association or federal savings bank chartered under 12 U.S.C. 1464;

(3) A bank, banking association, trust company, savings and loan association, savings bank, or other banking institution that is organized or incorporated under the laws of the United States, any state, or a foreign country;

(4) Any corporation organized and operating pursuant to 12 U.S.C. 611, et seq.;

(5) Any agency or branch of a foreign bank, as those terms are defined in 12 U.S.C. 3101;—

~~(6) An entity licensed as a small business investment company under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C. 661, et seq.~~

"Bank organization" does not include an institution organized under the "Federal Farm Loan Act," 39 Stat. 360 (1916), or a successor of such an institution, a company chartered under the "Farm Credit Act of 1933," 48 Stat. 257, or a successor of such a company, an association formed pursuant to 12 U.S.C. 2279c-1, an insurance company, or a credit union.

(C) "Call report" means the consolidated reports of condition and income prescribed by the federal financial institutions examination council that a person is required to file with a federal regulatory agency pursuant to 12 U.S.C. 161, 12 U.S.C. 324, or 12 U.S.C. 1817.

(D) "Captive finance company" means a person that derived

at least seventy-five per cent of its gross income for the 47
current taxable year and the two taxable years preceding the 48
current taxable year from one or more of the following 49
transactions: 50

(1) Financing transactions with members of its affiliated 51
group; 52

(2) Financing transactions with or for customers of 53
products manufactured or sold by a member of its affiliated 54
group; 55

(3) Financing transactions with or for a distributor or 56
franchisee that sells, leases, or services a product 57
manufactured or sold by a member of the person's affiliated 58
group; 59

(4) Financing transactions with or for a supplier to a 60
member of the person's affiliated group in connection with the 61
member's manufacturing business; 62

(5) Issuing bonds or other publicly traded debt 63
instruments for the benefit of the affiliated group; 64

(6) Short-term or long-term investments whereby the person 65
invests the cash reserves of the affiliated group and the 66
affiliated group utilizes the proceeds from the investments. 67

For the purposes of division (D) of this section, 68
"financing transaction" means making or selling loans, extending 69
credit, leasing, earning or receiving subvention, including 70
interest supplements and other support costs related thereto, or 71
acquiring, selling, or servicing accounts receivable, notes, 72
loans, leases, debt, or installment obligations that arise from 73
the sale or lease of tangible personal property or the 74
performance of services, and "gross income" has the same meaning 75

as in section 61 of the Internal Revenue Code and includes 76
income from transactions between the captive finance company and 77
other members of its affiliated group. 78

A person that has not been in continuous existence for the 79
two taxable years preceding the current taxable year qualifies 80
as a "captive finance company" for purposes of division (D) of 81
this section if the person derived at least seventy-five per 82
cent of its gross income for the period of its existence from 83
one or more of the transactions described in divisions (D) (1) to 84
(6) of this section. 85

"Captive finance company" does not include a small dollar 86
lender. 87

(E) "Credit union" means a nonprofit cooperative financial 88
institution organized or chartered under the laws of this state, 89
any other state, or the United States. 90

(F) "Diversified savings and loan holding company" has the 91
same meaning as in 12 U.S.C. 1467a, as that section existed on 92
January 1, 2012. 93

(G) "Document of creation" means the articles of 94
incorporation of a corporation, articles of organization of a 95
limited liability company, registration of a foreign limited 96
liability company, certificate of limited partnership, 97
registration of a foreign limited partnership, registration of a 98
domestic or foreign limited liability partnership, or 99
registration of a trade name. 100

(H) "Financial institution" means a bank organization, a 101
holding company of a bank organization, or a nonbank financial 102
organization, except when one of the following applies: 103

(1) If two or more such entities are consolidated for the 104

purposes of filing an FR Y-9, "financial institution" means a 105
group consisting of all entities that are included in the FR Y- 106
9. 107

(2) If two or more such entities are consolidated for the 108
purposes of filing a call report, "financial institution" means 109
a group consisting of all entities that are included in the call 110
report and that are not included in a group described in 111
division (H) (1) of this section. 112

(3) If a bank organization is owned directly by a 113
grandfathered unitary savings and loan holding company or 114
directly or indirectly by an entity that was a grandfathered 115
unitary savings and loan holding company on January 1, 2012, 116
"financial institution" means a group consisting only of that 117
bank organization and the entities included in that bank 118
organization's call report, notwithstanding division (H) (1) or 119
(2) of this section. 120

"Financial institution" does not include a diversified 121
savings and loan holding company, a grandfathered unitary 122
savings and loan holding company, any entity that was a 123
grandfathered unitary savings and loan holding company on 124
January 1, 2012, or any entity that is not a bank organization 125
or owned by a bank organization and that is owned directly or 126
indirectly by an entity that was a grandfathered unitary savings 127
and loan holding company on January 1, 2012. 128

(I) "FR Y-9" means the consolidated or parent-only 129
financial statements that a holding company is required to file 130
with the federal reserve board pursuant to 12 U.S.C. 1844. In 131
the case of a holding company required to file both consolidated 132
and parent-only financial statements, "FR Y-9" means the 133
consolidated financial statements that the holding company is 134

required to file. 135

(J) "Grandfathered unitary savings and loan holding 136
company" means an entity described in 12 U.S.C. 1467a(c) (9) (C), 137
as that section existed on December 31, 1999. 138

(K) "Gross receipts" means all items of income, without 139
deduction for expenses. If the reporting person for a taxpayer 140
is a holding company, "gross receipts" includes all items of 141
income reported on the FR Y-9 filed by the holding company. If 142
the reporting person for a taxpayer is a bank organization, 143
"gross receipts" includes all items of income reported on the 144
call report filed by the bank organization. If the reporting 145
person for a taxpayer is a nonbank financial organization, 146
"gross receipts" includes all items of income reported in 147
accordance with generally accepted accounting principles. 148

(L) "Insurance company" means every corporation, 149
association, and society engaged in the business of insurance of 150
any character, or engaged in the business of entering into 151
contracts substantially amounting to insurance of any character, 152
or of indemnifying or guaranteeing against loss or damage, or 153
acting as surety on bonds or undertakings. "Insurance company" 154
also includes any health insuring corporation as defined in 155
section 1751.01 of the Revised Code. 156

(M) (1) "Nonbank financial organization" means every person 157
that is not a bank organization or a holding company of a bank 158
organization and that engages in business primarily as a small 159
dollar lender. "Nonbank financial organization" does not include 160
an institution organized under the "Federal Farm Loan Act," 39 161
Stat. 360 (1916), or a successor of such an institution, an 162
insurance company, a captive finance company, a credit union, an 163
institution organized and operated exclusively for charitable 164

purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or a person that facilitates or services one or more securitizations for a bank organization, a holding company of a bank organization, a captive finance company, or any member of the person's affiliated group.

(2) A person is engaged in business primarily as a small dollar lender if the person has, for the taxable year, gross income from the activities described in division (O) of this section that exceeds the person's gross income from all other activities. As used in division (M) of this section, "gross income" has the same meaning as in section 61 of the Internal Revenue Code, and income from transactions between the person and the other members of the affiliated group shall be eliminated, and any sales, exchanges, and other dispositions of commercial paper to persons outside the affiliated group produces gross income only to the extent the proceeds from such transactions exceed the affiliated group's basis in such commercial paper.

(N) "Reporting person" means one of the following:

(1) In the case of a financial institution described in division (H)(1) of this section, the top-tier holding company required to file an FR Y-9.

(2) In the case of a financial institution described in division (H)(2) or (3) of this section, the bank organization required to file the call report.

(3) In the case of a bank organization or nonbank financial organization that is not included in a group described in division (H)(1) or (2) of this section, the bank organization or nonbank financial organization.

(O) "Small dollar lender" means any person engaged 194
primarily in the business of loaning money to individuals, 195
provided that the loan amounts do not exceed five thousand 196
dollars and the duration of the loans do not exceed twelve 197
months. A "small dollar lender" does not include a bank 198
organization, credit union, or captive finance company. 199

(P) "Tax year" means the calendar year for which the tax 200
levied under section 5726.02 of the Revised Code is required to 201
be paid. 202

(Q) "Taxable year" means the calendar year preceding the 203
year in which an annual report is required to be filed under 204
section 5726.03 of the Revised Code. 205

(R) "Taxpayer" means a financial institution subject to 206
the tax levied under section 5726.02 of the Revised Code. 207

(S) "Total equity capital" means the sum of the common 208
stock at par value, perpetual preferred stock and related 209
surplus, other surplus not related to perpetual preferred stock, 210
retained earnings, accumulated other comprehensive income, 211
treasury stock, unearned employee stock ownership plan shares, 212
and other equity components of a financial institution. "Total 213
equity capital" shall not include any noncontrolling (minority) 214
interests as reported on an FR Y-9 or call report, unless such 215
interests are in a bank organization or a bank holding company. 216

(T) "Total Ohio equity capital" means the portion of the 217
total equity capital of a financial institution apportioned to 218
Ohio pursuant to section 5726.05 of the Revised Code. 219

(U) "Holding company" does not include a diversified 220
savings and loan holding company, a grandfathered unitary 221
savings and loan holding company, any entity that was a 222

grandfathered unitary savings and loan holding company on 223
January 1, 2012, or any entity that is not a bank organization 224
or owned by a bank organization and that is owned directly or 225
indirectly by an entity that was a grandfathered unitary savings 226
and loan holding company on January 1, 2012. 227

(V) "Securitization" means transferring one or more assets 228
to one or more persons and subsequently issuing securities 229
backed by the right to receive payment from the asset or assets 230
so transferred. 231

Section 2. That existing section 5726.01 of the Revised 232
Code is hereby repealed. 233

Section 3. The amendment by this act of section 5726.01 of 234
the Revised Code is intended to be remedial in nature and to 235
clarify the law as it existed prior to the enactment of this act 236
and shall be construed accordingly. The amendment shall apply to 237
tax years beginning on or after January 1, 2014. 238