

As Pending in the House Ways and Means Committee

131st General Assembly

Regular Session

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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
exempt small business investment companies from
the financial institutions tax.

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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:

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Sec. 5726.01. As used in this chapter:

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(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.

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

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(1) A national bank organized and operating as a national 18
bank association pursuant to the "National Bank Act," 13 Stat. 19
100 (1864), 12 U.S.C. 21, et seq.; 20

(2) A federal savings association or federal savings bank 21
chartered under 12 U.S.C. 1464; 22

(3) A bank, banking association, trust company, savings 23
and loan association, savings bank, or other banking institution 24
that is organized or incorporated under the laws of the United 25
States, any state, or a foreign country; 26

(4) Any corporation organized and operating pursuant to 12 27
U.S.C. 611, et seq.; 28

(5) Any agency or branch of a foreign bank, as those terms 29
are defined in 12 U.S.C. 3101;— 30

~~(6) An entity licensed as a small business investment 31
company under the "Small Business Investment Act of 1958," 72- 32
Stat. 689, 15 U.S.C. 661, et seq. 33~~

"Bank organization" does not include an institution 34
organized under the "Federal Farm Loan Act," 39 Stat. 360 35
(1916), or a successor of such an institution, a company 36
chartered under the "Farm Credit Act of 1933," 48 Stat. 257, or 37
a successor of such a company, an association formed pursuant to 38
12 U.S.C. 2279c-1, an insurance company, or a credit union. 39

(C) "Call report" means the consolidated reports of 40
condition and income prescribed by the federal financial 41
institutions examination council that a person is required to 42
file with a federal regulatory agency pursuant to 12 U.S.C. 161, 43
12 U.S.C. 324, or 12 U.S.C. 1817. 44

(D) "Captive finance company" means a person that derived 45

at least seventy-five per cent of its gross income for the 46
current taxable year and the two taxable years preceding the 47
current taxable year from one or more of the following 48
transactions: 49

(1) Financing transactions with members of its affiliated 50
group; 51

(2) Financing transactions with or for customers of 52
products manufactured or sold by a member of its affiliated 53
group; 54

(3) Financing transactions with or for a distributor or 55
franchisee that sells, leases, or services a product 56
manufactured or sold by a member of the person's affiliated 57
group; 58

(4) Financing transactions with or for a supplier to a 59
member of the person's affiliated group in connection with the 60
member's manufacturing business; 61

(5) Issuing bonds or other publicly traded debt 62
instruments for the benefit of the affiliated group; 63

(6) Short-term or long-term investments whereby the person 64
invests the cash reserves of the affiliated group and the 65
affiliated group utilizes the proceeds from the investments. 66

For the purposes of division (D) of this section, 67
"financing transaction" means making or selling loans, extending 68
credit, leasing, earning or receiving subvention, including 69
interest supplements and other support costs related thereto, or 70
acquiring, selling, or servicing accounts receivable, notes, 71
loans, leases, debt, or installment obligations that arise from 72
the sale or lease of tangible personal property or the 73
performance of services, and "gross income" has the same meaning 74

as in section 61 of the Internal Revenue Code and includes 75
income from transactions between the captive finance company and 76
other members of its affiliated group. 77

A person that has not been in continuous existence for the 78
two taxable years preceding the current taxable year qualifies 79
as a "captive finance company" for purposes of division (D) of 80
this section if the person derived at least seventy-five per 81
cent of its gross income for the period of its existence from 82
one or more of the transactions described in divisions (D) (1) to 83
(6) of this section. 84

"Captive finance company" does not include a small dollar 85
lender. 86

(E) "Credit union" means a nonprofit cooperative financial 87
institution organized or chartered under the laws of this state, 88
any other state, or the United States. 89

(F) "Diversified savings and loan holding company" has the 90
same meaning as in 12 U.S.C. 1467a, as that section existed on 91
January 1, 2012. 92

(G) "Document of creation" means the articles of 93
incorporation of a corporation, articles of organization of a 94
limited liability company, registration of a foreign limited 95
liability company, certificate of limited partnership, 96
registration of a foreign limited partnership, registration of a 97
domestic or foreign limited liability partnership, or 98
registration of a trade name. 99

(H) "Financial institution" means a bank organization, a 100
holding company of a bank organization, or a nonbank financial 101
organization, except when one of the following applies: 102

(1) If two or more such entities are consolidated for the 103

purposes of filing an FR Y-9, "financial institution" means a 104
group consisting of all entities that are included in the FR Y- 105
9. 106

(2) If two or more such entities are consolidated for the 107
purposes of filing a call report, "financial institution" means 108
a group consisting of all entities that are included in the call 109
report and that are not included in a group described in 110
division (H) (1) of this section. 111

(3) If a bank organization is owned directly by a 112
grandfathered unitary savings and loan holding company or 113
directly or indirectly by an entity that was a grandfathered 114
unitary savings and loan holding company on January 1, 2012, 115
"financial institution" means a group consisting only of that 116
bank organization and the entities included in that bank 117
organization's call report, notwithstanding division (H) (1) or 118
(2) of this section. 119

"Financial institution" does not include a diversified 120
savings and loan holding company, a grandfathered unitary 121
savings and loan holding company, any entity that was a 122
grandfathered unitary savings and loan holding company on 123
January 1, 2012, or any entity that is not a bank organization 124
or owned by a bank organization and that is owned directly or 125
indirectly by an entity that was a grandfathered unitary savings 126
and loan holding company on January 1, 2012. 127

(I) "FR Y-9" means the consolidated or parent-only 128
financial statements that a holding company is required to file 129
with the federal reserve board pursuant to 12 U.S.C. 1844. In 130
the case of a holding company required to file both consolidated 131
and parent-only financial statements, "FR Y-9" means the 132
consolidated financial statements that the holding company is 133

required to file. 134

(J) "Grandfathered unitary savings and loan holding 135
company" means an entity described in 12 U.S.C. 1467a(c)(9)(C), 136
as that section existed on December 31, 1999. 137

(K) "Gross receipts" means all items of income, without 138
deduction for expenses. If the reporting person for a taxpayer 139
is a holding company, "gross receipts" includes all items of 140
income reported on the FR Y-9 filed by the holding company. If 141
the reporting person for a taxpayer is a bank organization, 142
"gross receipts" includes all items of income reported on the 143
call report filed by the bank organization. If the reporting 144
person for a taxpayer is a nonbank financial organization, 145
"gross receipts" includes all items of income reported in 146
accordance with generally accepted accounting principles. 147

(L) "Insurance company" means every corporation, 148
association, and society engaged in the business of insurance of 149
any character, or engaged in the business of entering into 150
contracts substantially amounting to insurance of any character, 151
or of indemnifying or guaranteeing against loss or damage, or 152
acting as surety on bonds or undertakings. "Insurance company" 153
also includes any health insuring corporation as defined in 154
section 1751.01 of the Revised Code. 155

(M) (1) "Nonbank financial organization" means every person 156
that is not a bank organization or a holding company of a bank 157
organization and that engages in business primarily as a small 158
dollar lender. "Nonbank financial organization" does not include 159
an institution organized under the "Federal Farm Loan Act," 39 160
Stat. 360 (1916), or a successor of such an institution, an 161
insurance company, a captive finance company, a credit union, an 162
institution organized and operated exclusively for charitable 163

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 193
primarily in the business of loaning money to individuals, 194
provided that the loan amounts do not exceed five thousand 195
dollars and the duration of the loans do not exceed twelve 196
months. A "small dollar lender" does not include a bank 197
organization, credit union, or captive finance company. 198

(P) "Tax year" means the calendar year for which the tax 199
levied under section 5726.02 of the Revised Code is required to 200
be paid. 201

(Q) "Taxable year" means the calendar year preceding the 202
year in which an annual report is required to be filed under 203
section 5726.03 of the Revised Code. 204

(R) "Taxpayer" means a financial institution subject to 205
the tax levied under section 5726.02 of the Revised Code. 206

(S) "Total equity capital" means the sum of the common 207
stock at par value, perpetual preferred stock and related 208
surplus, other surplus not related to perpetual preferred stock, 209
retained earnings, accumulated other comprehensive income, 210
treasury stock, unearned employee stock ownership plan shares, 211
and other equity components of a financial institution. "Total 212
equity capital" shall not include any noncontrolling (minority) 213
interests as reported on an FR Y-9 or call report, unless such 214
interests are in a bank organization or a bank holding company. 215

(T) "Total Ohio equity capital" means the portion of the 216
total equity capital of a financial institution apportioned to 217
Ohio pursuant to section 5726.05 of the Revised Code. 218

(U) "Holding company" does not include a diversified 219
savings and loan holding company, a grandfathered unitary 220
savings and loan holding company, any entity that was a 221

grandfathered unitary savings and loan holding company on 222
January 1, 2012, or any entity that is not a bank organization 223
or owned by a bank organization and that is owned directly or 224
indirectly by an entity that was a grandfathered unitary savings 225
and loan holding company on January 1, 2012. 226

(V) "Securitization" means transferring one or more assets 227
to one or more persons and subsequently issuing securities 228
backed by the right to receive payment from the asset or assets 229
so transferred. 230

Section 2. That existing section 5726.01 of the Revised 231
Code is hereby repealed. 232

Section 3. The amendment by this act of section 5726.01 of 233
the Revised Code is intended to be remedial in nature and to 234
clarify the law as it existed prior to the enactment of this act 235
and shall be construed accordingly. The amendment shall apply to 236
tax years beginning on or after January 1, 2014. 237