

AN ACT

To amend sections 4141.321, 5701.11, 5733.41, and 5747.41 and to enact section 5747.065 of the Revised Code and to amend Section 36 of H.B. 481 of the 133rd General Assembly to modify the law governing taxation and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4141.321, 5701.11, 5733.41, and 5747.41 be amended and section 5747.065 of the Revised Code be enacted to read as follows:

Sec. 4141.321. (A) The director of job and family services shall inform an individual who files an application for determination of benefit rights ~~on and after January 1, 1997,~~ of all of the following at the time the individual files the application:

(1) Unemployment compensation is subject to federal and state income ~~tax~~taxes;

(2) Requirements exist pertaining to estimated tax payments;

(3) An individual may elect to have federal and state income ~~tax~~taxes deducted and withheld from the unemployment compensation benefits payable to that individual in the ~~amount specified in~~ amounts required under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1 et seq. and section 5747.065 of the Revised Code;

(4) An individual may change the withholding status the individual has previously elected once during the individual's benefit year.

(B) ~~The~~ If the individual makes the election under division (A)(3) of this section, the director shall deduct and withhold from unemployment compensation benefits payable to an individual ~~after December 31, 1996,~~ federal income tax in the amount specified in the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1 et seq., ~~if the individual informs the director that the individual elects to have the director make the deduction~~ and state income tax as required under section 5747.065 of the Revised Code.

(C) ~~In making the deduction specified in~~ deducting federal income tax under division (B) of this section, the director shall comply with the procedures specified by the United States department of labor and the internal revenue service that pertain to the deducting and withholding of income tax. The director shall adopt rules establishing priorities for the deduction and withholding of federal income tax amounts under division (B) of this section.

(D) ~~Amounts~~ Federal income tax deducted and withheld pursuant to division (B) of this section shall remain in the unemployment compensation fund until transferred to the internal revenue service as a payment of income tax.

Sec. 5701.11. The effective date to which this section refers is the effective date of this section as amended by ~~H.B. 197~~ S.B. 18 of the ~~133rd~~ 134th general assembly.

(A)(1) Except as provided under division (A)(2) or (B) of this section, any reference in Title LVII of the Revised Code to the Internal Revenue Code, to the Internal Revenue Code "as amended," to other laws of the United States, or to other laws of the United States, "as amended," means the Internal Revenue Code or other laws of the United States as they exist on the effective date.

(2) This section does not apply to any reference in Title LVII of the Revised Code to the Internal Revenue Code as of a date certain specifying the day, month, and year, or to other laws of the United States as of a date certain specifying the day, month, and year.

(B)(1) For purposes of applying section 5733.04, 5745.01, or 5747.01 of the Revised Code to a taxpayer's taxable year ending after ~~March 30, 2018~~March 27, 2020, and before the effective date, a taxpayer may irrevocably elect to incorporate the provisions of the Internal Revenue Code or other laws of the United States that are in effect for federal income tax purposes for that taxable year if those provisions differ from the provisions that, under division (A) of this section, would otherwise apply. The filing by the taxpayer for that taxable year of a report or return that incorporates the provisions of the Internal Revenue Code or other laws of the United States applicable for federal income tax purposes for that taxable year, and that does not include any adjustments to reverse the effects of any differences between those provisions and the provisions that would otherwise apply, constitutes the making of an irrevocable election under this division for that taxable year.

(2) Elections under prior versions of division (B)(1) of this section remain in effect for the taxable years to which they apply.

Sec. 5733.41. The purpose of the tax imposed by this section is to complement and to reinforce the tax imposed under section 5733.06 of the Revised Code.

For the same purposes for which the tax is levied under section 5733.06 of the Revised Code, there is hereby levied a tax on every qualifying pass-through entity having at least one qualifying investor that is not an individual. The tax imposed by this section is imposed on the sum of the adjusted qualifying amounts of the qualifying pass-through entity's qualifying investors, ~~that are not~~ neither individuals as follows: for qualifying investors nor subject to division (G)(2) of section 5733.01 of the Revised Code, at six and eight-tenths per cent for the entity's taxable year ending in 2005, at five and one-tenth per cent for the entity's taxable year ending in 2006, at three and four-tenths per cent for the entity's taxable year ending in 2007, at one and seven-tenths per cent for the entity's taxable year ending in 2008, and at zero per cent for the entity's taxable year ending in 2009 or in subsequent years; and for all other qualifying investors that are not individuals, at the a rate of eight and one-half per cent equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code.

The tax imposed by this section applies only if the qualifying entity has nexus with this state under the Constitution of the United States for any portion of the qualifying entity's qualifying taxable year, and the sum of the qualifying entity's adjusted qualifying amounts exceeds one thousand dollars for the qualifying entity's qualifying taxable year. This section does not apply to a pass-through entity if all of the partners, shareholders, members, or investors of the pass-through entity are taxpayers for the purposes of section 5733.04 of the Revised Code without regard to section 5733.09 of the Revised Code for the entire qualifying taxable year of the pass-through entity.

If, prior to the due date of the return, a qualifying pass-through entity receives from an investor a written representation, under penalties of perjury, that the investor is described in division

(1)(1), (2), (6), (7), (8), or (9) of section 5733.40 of the Revised Code for the qualifying pass-through entity's entire qualifying taxable year, the qualifying pass-through entity is not required to withhold or pay the taxes or estimated taxes imposed under this section or sections 5747.41 to 5747.453 of the Revised Code with respect to that investor for that qualifying taxable year, and is not subject to any interest or interest penalties for failure to withhold or pay those taxes or estimated taxes with respect to that investor for that qualifying taxable year.

If, prior to the due date of the return, a qualifying trust receives from a beneficiary of that trust a written representation, under penalties of perjury, that the beneficiary is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for the qualifying trust's entire qualifying taxable year, the qualifying trust is not required to withhold or pay the taxes or estimated taxes imposed under this section or sections 5747.41 to 5747.453 of the Revised Code with respect to that beneficiary for that qualifying taxable year, and is not subject to any interest or interest penalties for failure to withhold or pay those taxes or estimated taxes with respect to that beneficiary for that qualifying taxable year.

The tax commissioner may adopt rules for the purpose of the tax levied by this section or section 5747.41 of the Revised Code, including a rule defining "qualifying investor" or "qualifying beneficiary," and a rule requiring or permitting a qualifying entity to combine its income with related members and to pay the tax and estimated tax on a combined basis.

Sections 5747.10 to 5747.19 and 5747.42 to 5747.453 of the Revised Code apply to a qualifying entity subject to the tax imposed under this section.

The levy of the tax under this section does not prevent a municipal corporation or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Revised Code from levying a tax on income.

Sec. 5747.065. (A) If a taxpayer has elected under section 4141.321 of the Revised Code to have the director of job and family services deduct and withhold state income tax from the unemployment compensation benefits payable to the taxpayer, the director shall deduct and withhold such tax at the rate or rates that the director shall prescribe in consultation with the tax commissioner.

(B)(1) The director of job and family services shall file returns and pay the amounts withheld in accordance with the requirements of section 5747.07 of the Revised Code.

(2) Annually, on or before the thirty-first day of January, the director shall issue an information return to each taxpayer with respect to whom an amount has been deducted and withheld under this section during the preceding calendar year. The information return shall show the total amount deducted from the taxpayer's unemployment compensation benefits during the preceding calendar year and any other information the tax commissioner requires. If the director is required under the Internal Revenue Code to report federal income tax deducted and withheld from unemployment compensation benefits, then the director may report the information required under this section on that report, as authorized by the Internal Revenue Code.

(C) Amounts deducted and withheld under this section shall be allowed as a credit against payment of the tax imposed by this chapter and shall be treated as taxes paid for purposes of section 5747.09 of the Revised Code. This division applies only to the person for whom the amount is deducted and withheld.

(D) Failure of the director to deduct and withhold the required amounts from unemployment

compensation benefits or to remit amounts withheld as required by this section does not relieve a taxpayer from liability for the tax imposed by section 5747.02 of the Revised Code.

(E) The director of job and family services may adopt rules as necessary to administer this section.

Sec. 5747.41. For the same purposes for which the tax is levied under section 5747.02 of the Revised Code, there is hereby levied a withholding tax on every qualifying pass-through entity having at least one qualifying investor who is an individual and on every qualifying trust having at least one qualifying beneficiary who is an individual. The withholding tax imposed by this section is imposed on the sum of the adjusted qualifying amounts of a qualifying pass-through entity's qualifying investors who are individuals and on the sum of the adjusted qualifying amounts of a qualifying trust's qualifying beneficiaries, ~~at the a rate of five per cent of that sum equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code.~~

The tax imposed by this section applies only if the qualifying entity has nexus with this state under the Constitution of the United States for any portion of the qualifying entity's qualifying taxable year, and the sum of the qualifying entity's adjusted qualifying amounts exceeds one thousand dollars for the qualifying entity's qualifying taxable year.

SECTION 2. That existing sections 4141.321, 5701.11, 5733.41, and 5747.41 of the Revised Code are hereby repealed.

SECTION 3. That Section 36 of H.B. 481 of the 133rd General Assembly be amended to read as follows:

Sec. 36. Notwithstanding any provision of Chapter 5751. of the Revised Code to the contrary, "gross receipts," as defined in section 5751.01 of the Revised Code, excludes receipts from any forgiven indebtedness that is excluded from the gross income of the taxpayer for federal income tax purposes pursuant to section 1106(i) of the "Coronavirus Aid, Relief, and Economic Security (CARES) Act," 15 U.S.C. ~~9005(i)~~ 636m, or section 276 of the "Consolidated Appropriations Act, 2021," 15 U.S.C. 636m.

SECTION 4. That existing Section 36 of H.B. 481 of the 133rd General Assembly is hereby repealed.

SECTION 5. Notwithstanding any provision of Chapter 5747. of the Revised Code to the contrary, the Tax Commissioner may temporarily waive any interest, penalty, or interest penalty imposed under that chapter on an underpayment of tax imposed under that chapter or Chapter 5748. of the Revised Code due with respect to unemployment compensation received by the taxpayer on or after January 1, 2020, but before January 1, 2021, provided the taxpayer timely files an annual return required under section 5747.08 of the Revised Code for the taxpayer's taxable year ending in 2020. A taxpayer that has paid any interest, penalty, or interest penalty on such an underpayment may apply

for a refund of the interest, penalty, or interest penalty paid under section 5747.11 of the Revised Code. If such an underpayment is not paid before July 1, 2023, interest shall be imposed on the underpayment in accordance with division (G) of section 5747.08 of the Revised Code and penalties and interest penalties shall be assessed on such an underpayment in accordance with Chapter 5747. of the Revised Code from the time that underpayment would have been due without extension in the absence of the temporary waiver authorized under this section, and no refund of such interest, penalty, or interest penalty may be granted under this section. This section does not prohibit the Commissioner from abating any such penalty or interest penalty under division (C) of section 5747.15 of the Revised Code.

Terms used in this section have the same meanings as in section 5747.01 of the Revised Code.

SECTION 6. Notwithstanding any provision of Chapter 5751. of the Revised Code to the contrary, "gross receipts," as defined in section 5751.01 of the Revised Code, excludes any amount of excess surplus of the state insurance fund received by a taxpayer from the Ohio Bureau of Workers' Compensation pursuant to rules adopted under section 4123.321 of the Revised Code on or after January 1, 2020, and before January 1, 2022.

SECTION 7. The amendment by this act of sections 5733.41 and 5747.41 of the Revised Code applies to qualifying taxable years beginning on and after January 1, 2023.

SECTION 8. The election authorized under section 4141.321 of the Revised Code to withhold state income taxes applies to unemployment compensation benefits paid on or after January 1, 2022.

On or before December 1, 2021, the Director of Job and Family Services shall notify each individual that was receiving on that date, and that continues to receive, unemployment compensation benefits and that made an election under division (B) of that section with respect to federal income tax that the individual may elect to have state income tax withheld from those benefits for benefits paid on or after January 1, 2022, in accordance with that division. Such an election is not a change in withholding status for the purpose of division (A)(4) of that section.

SECTION 9. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to enable taxpayers to avoid making miscellaneous adjustments on their 2020 tax returns that increase costs of compliance. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____