THE OHIO SOCIETY OF CPAs
ADVANCING THE STATE OF BUSINESS

OSCPA 2019-2020 LEGISLATIVE PRIORITIES

1) **Business Income Deduction and Related Tax Changes**. H.B. 166, the state's biennial budget bill, contained numerous policy and tax changes. The most hotly debated change this year was the BID: the House retroactively reduced it from $250,000 to $100,000 and eliminated the flat 3% rate, the Senate increased it back to the full $250,000 but did not reinstate the 3% rate after 2019, and the Conference Committee and DeWine Administration struggled for weeks to find a compromise. OSCPA actively lobbied legislative leaders to keep the BID intact, and also advised legislators not to adopt language modeled on the federal 199A deduction. At the eleventh hour, the House and Senate agreed to keep the BID at current levels, but effective 1/1/20, exempt attorneys and lobbyists from qualifying for it. Lawmakers also adopted into law a 4% across-the-board income tax cut and eliminated the bottom two tax brackets and related tax liability, leaving 5 brackets remaining. STATUS: Unfortunately, the vague language does not define "legal services" meaning it could apply to businesses beyond law firms that have an attorney on staff, or that have outside (of Ohio) corporate counsel registered with the Ohio Supreme Court. OSCPA and its tax experts are now evaluating the new law to see what, if any, changes are necessary. Related, the Ohio State Bar Association may sue to overturn the exemption, saying it is arbitrary and therefore unconstitutional. H.B. 166 also:
   a. Requires for purposes of school district income taxes that use "earned income" as the tax base, amounts subject to the BID must be added back when computing a taxpayer's taxable income.
   b. Modifies eligibility for several means-tested income tax credits such that high-income taxpayers with little nonbusiness income are not eligible for the tax credits.

2) **Diversity and Inclusion**. OSCPA has formally supported S.B. 11, which modernizes Ohio anti-discrimination laws by including gender preference and sexual orientation under the list of protected classes. OSCPA believes doing so will help Ohio attract a more diverse population of CPAs, allow our state to better compete for top talent and enhance economic development efforts in our state. OSCPA is a member of OhioBusinessCompetes.com, a broad business coalition supporting D&I in the workplace. STATUS: This bill has had two hearings before the Senate Commerce and Labor Committee.

3) **Ensure Ohio CPAs Legally Can Provide Professional Services to Medical Marijuana Businesses.** While Ohio voters overwhelmingly approved the growth, manufacture, and sale of medical marijuana products, it was possible that Ohio CPAs could lose their license for working with these businesses because marijuana is still an illegal drug at the federal level. As a result, OSCPA secured a law change that protects your CPA certificate by making it clear that solely providing professional services to these companies will not subject impacted CPAs to license revocation – or any other form of discipline – by the Accountancy Board of Ohio. STATUS: This language in R.C. 4701.16(D) was signed into law as part of Am. Sub. H.B. 166, the budget bill.

4) **Regulatory Reform.** S.B. 1, seeks to decrease Ohio regulations by 30% (or alternatively eliminate two rules for every new rule). OSCPA testified in favor of the effort to limit rules not needed for the health, safety or welfare of Ohioans but emphasized that a "one size fits all" approach would not be a good idea. At OSCPA's recommendation last session, the bill was amended to limit the impact to state cabinet-level agencies – excluding independent licensing boards such as the Ohio Board of Accountancy that typically have rules that follow uniform national models to allow for easier interstate mobility around the country. STATUS: A version of S.B. 1 was incorporated by the Senate into Am. Sub. H.B. 166, the budget bill signed into law that requires state agencies eliminate two existing rules for every one new one put into place.

5) **State Conformity to the Federal Partnership Audit Rules.** In November 2015, Congress enacted the Bipartisan Budget Act of 2015. The new regime centralized the IRS's ability to audit, assess and collect any determined underpayment directly from a partnership at the entity level, subject to certain available elections. The new system under the Internal Revenue Code (IRC) took effect Jan. 1, 2018, with IRS audits likely to start in late 2020. The MTC model statute establishes more uniform standards for reporting federal audit adjustments for all taxpayers to the states. It also addresses significant changes made to federal audit procedures by the system that impact state specific issues, such as residency and apportionment. STATUS: This provision was signed into law as a part of the budget bill (H.B. 166). Ohio became the eighth state in the nation to conform to this federal change. The new law in R.C. 5747.10 and 5747.11 applies to changes in liability arising from federal adjustments with a final determination date of October 1, 2019, or thereafter.

6) **Limit Sales Tax on Services Expansion.** In December 2015, ODT updated Information Release ST 1999-04 to effectively apply the state sales tax (under the guise of ADP/EIS) to several services not previously subject to the tax. ODT then limited the applicability of H.B. 466 (131st GA), which specifically exempted only digital advertising services, by issuing another updated Information Release in September 2016. Former H.B. 569 (132nd GA) sought a broader language fix in clarifying that sales of automatic data processing (ADP), computer services (CS), electronic information services (EIS), and electronic publishing services are not taxable under the sales tax, when such services are provided primarily for the delivery, receipt, or use of another, nontaxable service. STATUS: OSCPA is again seeking to have legislation introduced to address this issue.

7) **Protect new municipal income tax laws.** OSCPA was a leading proponent of H.B. 5 (130th GA), and the option of centralized filing of net profits taxes by businesses and the elimination of the sales factor throwback rule in H.B. 49 (132nd GA). These pro-business changes were supported by a large coalition representing over 350,000 Ohio businesses and professionals. OSCPA is addressing this issue from two fronts:
   - **a.** The constitutionality of these changes is being challenged by some cities. The case was thrown out by the Franklin County Court of Common Pleas, and that decision was upheld Jan. 2019 by the 10th District Court of Appeals; OSCPA was the lead party in an amicus brief supporting the State of Ohio. Plaintiffs appealed to the Ohio Supreme Court, but the Court has not yet decided whether to grant jurisdiction or let the appellate court decision stand.
   - **b.** Legislation impacting municipal income tax laws – positive or negative – likely will be introduced in the Ohio General Assembly. OSCPA already helped secure one positive development in H.B. 166 by addressing "supplemental executive retirement plans," or SERPs. The new law defines "pension" and "retirement benefit plan" in R.C. 718.01(YY) and (ZZ), essentially exempting these plans from municipal income tax for taxable years beginning in or after 2020.

8) **Pass-Through Entity Reform.** OSCPA supports streamlining the calculation, remittance and tracking of tax paid on behalf of nonresident owners of Ohio-operating pass-through entities, in response to the business income deduction (BID) granting a $250,000 exemption and 3% flat tax for small businesses. Former S.B. 288 (131st GA) proposed providing a single tax form for PTEs, a single withholding rate of 3% (instead of the current 5% and/or 8.5%), and a single tax return date of April 15. STATUS: The single 3% withholding rate was included in the House version of H.B. 166, but the Senate removed the language because of uncertainty over retaining the BID's flat rate for residents.

9) **Marriage Tax Penalty.** OSCPA has long advocated for the legislature to address the marriage tax penalty, most recently in our Tax Reform Task Force report. Former H.B. 333 (132nd GA) proposed amending R.C. 5747.08 to permit married taxpayers filing a joint state income tax return to claim an enhanced joint filer credit that would be the difference between the taxpayers' tax liability when filing jointly, prior to calculating the credit, and their combined tax liabilities if they filed separately. STATUS: No bill pending yet, although sponsors have submitted it for drafting.

10) **Municipal Bright Line Residency.** OSCPA secured the enactment of H.B. 292 (132nd GA) to correct the issue in *Cunningham v. Testa* — the Ohio Supreme Court case decided in early July 2015 that incorporated the common law of domicile into Ohio's bright-line residency statute (R.C. 5747.24). In addition to the 212 contact periods and having an abode outside Ohio for the entire taxable year, H.B. 292 created four bright line criteria, including that the individual did not: 1) claim a federal depreciation deduction for a non-Ohio abode, 2) hold a valid Ohio driver's license, 3) claim the Ohio homestead real estate exemption, or 4) receive a resident tuition discount at an Ohio institution of higher education. STATUS: OSCPA is beginning efforts to secure a similar bright line standard for the municipal income tax since R.C. 718.012 contains 25 factors.

Last updated July 26, 2019