

## OSCPA 2021-2022 LEGISLATIVE PRIORITIES

Top issues that are on OSCPAs legislative and regulatory agenda – both those now pending and those that will soon be introduced are outlined below:

- 1) Biennial Budget Bill.** The Ohio Senate Finance Committee released on June 1 its substitute version of Ohio’s biennial budget bill, H.B. 110, after the Ohio House passed its version 70-27 on April 21. The Senate version includes a 5% across the board personal income tax rate cut, reducing taxes by about \$874 million over the biennium. OSCPAs will be keeping a close eye on the BID as lawmakers look for ways to meet the constitutional requirement to balance Ohio’s budget should increased spending come into play, such as through K-12 school funding. Related, last year the Columbus Dispatch editorialized in favor of changing the BID, citing lawyers, lobbyists and accountants as professionals who should not benefit. Members concerned about the BID are encouraged to track how BID savings are used to reinvest in their businesses as we anticipate another future battle.

The Senate in H.B. 110 is also proposing to extend through the end of 2021 the temporary municipal income tax withholding provision (Section 29, H.B. 197), as well as clarify that the provision was not intended to apply to taxability. This change will allow qualified employees to receive a refund (as it stands now, both 2020 and 2021) of taxes withheld to a municipality where they neither lived nor physically performed services. The substitute bill also provides that the net profit tax payroll factor should be calculated at the principal place of work location through the end of 2021.

After the June 10 Senate floor vote leaders of the House, Senate and DeWine Administration will negotiate their differences through the joint House/Senate conference committee process. The bill must be signed into law by July 1, per Ohio’s constitution.

- 2) Diversity and Inclusion.** Over the past four years, OSCPAs has formally supported legislation that would make Ohio a more welcoming and diverse state. Efforts include:
  - a. Seeking to expand Ohio anti-discrimination laws by including gender preference and sexual orientation under the list of protected classes. OSCPAs believes this change 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. Legislation in past General Assemblies did not make it across the finish line; OSCPAs will be working with other interested parties on a successful outcome this session. Legislation (S.B. 119 and H.B. 208) is currently pending, though no hearings have taken place yet this year. Related, OSCPAs is a member of OhioBusinessCompetes.com, a broad business coalition with hundreds of members supporting D&I in the workplace.
  - b. OSCPAs is also prioritizing efforts to end racism in our state through a multipronged approach: Board and CEO leadership, including reengaging OSCPAs’s Diversity and Inclusion Task Force; significant organizational financial support to mobilize and engage Ohio CPAs in this effort; and advancing public policy efforts that focus on ending racism. SCR 4, which declares racism a public health crisis, is now before the Senate Health Committee.

- 3) Responding to the COVID-19 Crisis and related business impact.** Since March 16, 2020 OSCPAs has been working closely with the DeWine Administration and Ohio General Assembly at the state level and the Ohio Congressional Delegation and AICPA at the federal level to secure needed relief for

struggling business owners and other Ohioans. With the help of member experts, early on OSCPA shared recommendations with the DeWine Administration on how state government could quickly make changes to aid the Ohio business community in continuing operations and keeping employees on the payroll. STATUS: We continue to work on additional state and federal issues – including successful efforts in March 2021 to exempt federal and state pandemic business relief from Ohio’s Commercial Activity Tax (CAT) and forgiven PPP loans from being added as personal income on state tax returns.

**4) Easing Licensure Requirements for CPAs.** OSCPA-driven legislation (H.B. 442, 133<sup>rd</sup> GA) was enacted last session and took effect April 12, 2021. This law change will allow candidates to accelerate when they can start taking the CPA Exam. Ohio joined 37 other states plus Washington DC in allowing candidates to start the exam process as soon as they have secured a bachelor’s degree or its equivalent (120 semester hours). STATUS: OSCPA worked with the Accountancy Board of Ohio on conforming existing rules, including the number of specific accounting and business hours that must be completed prior to testing and possible scholarship changes. STATUS: Those rules are expected to be approved by the ABO at its June meeting, after which they will go through the Joint Committee on Agency Rule Review process and be evaluated by the Administration’s Common Sense Initiative. As currently proposed, the rule will enable Exam candidates to start sitting when they have completed at least 120 semester hours, including 14 of the 30 accounting hours and all 24 business hours. All 150 hours – including the remaining 6 accounting hours – must be completed for licensure, consistent with what all other states require. This change will put Ohio candidates on even footing with the majority of other states by allowing candidates to start the exam process sooner in their college journey, speeding up when they ultimately can be licensed and giving them another incentive to stay in Ohio.

**5) Bonus Depreciation.** With the enactment of several pro-taxpayer provisions in the federal CARES Act, there’s currently the potential for unintended tax increases at the state level. To address this issue, OSCPA worked to secure the introduction of legislation, [House Bill 86](#) (formerly H.B. 749, 133<sup>rd</sup> GA), to temporarily suspend, for taxable years 2020 and 2021, and for taxable years with a federal net operating loss (NOL) carryback from taxable years 2020 and 2021, special provisions relating to Ohio’s “bonus depreciation” adjustments in years when a taxpayer has an NOL. The legislation clarifies that taxpayers who would normally be affected by these provisions are still required to make the adjustments without regard to the special NOL rules. Those taxpayers with a federal NOL in taxable years 2020 and 2021 will add back the depreciation expense allowed by Internal Revenue Code sec. 168(k) and of qualifying sec. 179 depreciation expense as they would without regard to Ohio law. STATUS: OSCPA testified in support of H.B. 86 in the House Ways & Means Committee at its second hearing on May 25.

**6) Protect Municipal Income Tax Reform Laws.** OSCPA spearheaded efforts to pass H.B. 5 (130<sup>th</sup> 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 (132<sup>nd</sup> 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 was challenged by some cities. On Nov. 5, in a significant win for the business community the Ohio Supreme Court upheld by 6-1 the State of Ohio’s ability to require uniformity of municipal tax processes and to centrally collect municipal net profits taxes at the state level. The Court rejected by 5-2 the State’s authority to charge a 0.5% administrative fee to do so. OSCPA filed a Supreme Court amicus brief in support of the State in November 2019, and oral arguments were held virtually on May 13, 2020.

- b. Closely watching for any legislation impacting municipal income tax laws – positive or negative – introduced in Ohio’s 134<sup>th</sup> General Assembly. To date, OSCPA continues to work with the Ohio Department of Taxation in attempts to refine the centralized collection process for the municipal net profits tax through [House Bill 228](#). H.B. 228 passed 91-1 on the House floor on May 26 and is currently awaiting hearings in the Senate Ways & Means Committee.
- c. OSCPA is also engaged on Ohio’s temporary law provision for municipal income tax withholding that was enacted in H.B. 197. STATUS: Currently, Section 29 is tied to Gov. DeWine’s state of emergency order declared on March 9, 2020, which is still in effect, although the veto override of Senate Bill 22 brings that order to an end on July 23. Even when the order ends, the withholding provision is still effective for 30 more days (August 22). However, two bills (H.B. 157 and S.B. 97) are proposing to extend the withholding policy through the end of 2021, and it is also the subject of currently pending lawsuits. Our team worked with lawmakers to secure amendments impacting remote worker issues, especially employee refund requests. H.B. 157 passed 63-31 on the House floor on May 26 and is currently awaiting hearings in the Senate Ways & Means Committee. The Senate amended their proposal into Sub. HB 110, the biennial budget bill.

**7) Limit Sales Tax on Services Expansion.**

- a. 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 (131<sup>st</sup> GA), which specifically exempted only digital advertising services, by issuing another updated Information Release in September 2016. Former H.B. 569 (132<sup>nd</sup> 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. OSCPA is again seeking legislation introduced to address this issue. STATUS: “Internet access” for businesses is no longer subject to the sales/use tax as of July 1, 2020. Ohio, along with six other states, had been grandfathered since 1998. The taxability of other EIS and ADP are mostly unchanged though. See the [Information Release ST 2020-01](#) ODT released on June 8, 2020.
- b. The Senate in H.B. 110 is proposing to eliminate from Ohio’s sales and use tax employment services (providing personnel to perform work under the supervision and control of the purchaser) and employment placement services (locating employment for a job seeker or locating job candidates for an employer). OSCPA previously recommended eliminating the taxability of these transactions in our 2016 [Tax Reform Task Force report](#).

**8) 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 (132<sup>nd</sup> 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: S.B. 210 (133<sup>rd</sup> GA) was introduced and OSCPA testified as a proponent in December 2019. S.B. 210 was amended to phase-in the amount of credit that may be claimed under the new formula. For taxable years beginning in 2021, 2022, or 2023, the amount of the credit equals 25%, 50%, or 75% of the credit authorized under the new formula, respectively, or the credit amount the spouses would receive under the current formula, whichever is greater. For taxable years beginning in 2024 or thereafter, the amount of the credit equals 100% of the credit authorized under the new formula. STATUS: Significant state budget revenue concerns caused by coronavirus made passage extremely difficult due to this provision’s cost. No bill has been introduced yet in the current 134<sup>th</sup> GA.

## OSCPA priorities already enacted this session

- 1) State/Federal Tax Conformity Legislation.** [Senate Bill 18](#) incorporates into Ohio law the Internal Revenue Code changes made since March 27, 2020 when H.B. 197 (133<sup>rd</sup> GA) originally brought Ohio into conformity with the CARES Act (H.R. 748) and its applicability to Ohio's income taxes. Senate Bill 18 incorporates federal tax provisions that were enacted as part of the Dec. 27, 2020 Consolidated Appropriations Act (H.R. 133), including deductibility of forgiven loan expenses from the Paycheck Protection Program, and the more recent March 11 American Rescue Plan Act (H.R. 1319) that excluded from taxpayers' income tax the first \$10,200 of unemployment benefits received in 2020 if their modified adjusted gross income was less than \$150,000. OSCPAs testified in support of S.B. 18 on several occasions and made its passage a top priority of its advocacy efforts. STATUS: Because S.B. 18 was emergency legislation, it was enacted immediately upon Governor DeWine's signature on March 31 instead of the normal 90-day delay.

Notable Ohio-specific provisions in [Senate Bill 18](#): (1) OSCPAs spearheaded an effort to ensure Ohio businesses will not have to add Bureau of Workers' Compensation (BWC) refunds/dividends received in 2020 (and any in 2021) as gross receipts for purposes of calculating Commercial Activity Tax (CAT) liability. This issue arose in late December 2020 when the BWC shared that they were required by the IRS to issue 1099-G forms to recipients of the nearly \$8 billion in 2020 refund/dividend checks. Without this specific legislative exclusion, ODT's interpretation would have required businesses to include these dollars as taxable gross receipts for CAT purposes. (2) OSCPAs also worked to secure an amendment to ensure that second-draw PPP forgiven loans would not be subject to the CAT. Original PPP forgiven loans had already been excluded from the CAT in H.B. 481 (133<sup>rd</sup> GA) in June 2020.

- 2) Pass-Through Entity Reform.** OSCPAs supported a rate reduction to Ohio's withholding on income generated from pass-through entities, such as partnerships and S-corporations. The new law equalizes Ohio's PTE withholding rates on nonresident investors in Ohio-operating PTEs with the Ohio income tax rate, currently 3% on business income above \$250,000. Current law requires these entities to withhold on behalf of nonresident individuals at 5% and other PTEs (nonindividuals) at 8.5%. STATUS: OSCPAs originally secured the introduction of [House Bill 124](#), which was later amended into [Senate Bill 18](#) and signed by Governor DeWine on March 31. The effective date of the withholding rate change to 3% applies to PTE's taxable years beginning on or after Jan. 1, 2023.
- 3) Tort Reform.** [Senate Bill 13](#) shortens the statute of limitations for actions upon a contract from eight to six years for written contracts and from six to four years on contracts not in writing; and makes changes to the borrowing statute pertaining to applicable periods of limitations. OSCPAs supported S.B. 13 as part of the Ohio Alliance for Civil Justice, and its passing will help improve Ohio's civil litigation climate. The Ohio Alliance for Civil Justice – which is comprised of representatives of dozens of Ohio trade and professional associations – was founded to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. STATUS: Gov. Mike DeWine signed S.B. 13 on March 11, and it will become law on June 16.

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