THE OHIO SOCIETY OF CPAs
ADVANCING THE STATE OF BUSINESS

OSCPA FALL 2017 LEGISLATIVE PRIORITIES

1) **Bright Line Residency.** OSCPA supports HB 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, the following bright line criteria are being added, 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.

2) **ODT Audits of PEOs on SBD/BID.** In response to the Ohio Department of Taxation's (ODT) recent audit positions on the Small Business Deduction and Business Income Deduction (SBD/BID), HB 334 and SB 186 (132nd GA) amend Revised Code section 5733.40(A)(7) to provide that wages and guaranteed payments paid by a Professional Employer Organization (PEO) to the owner of a pass-through entity that has contracted with the PEO may be considered business income for purposes of the SBD/BID. Especially important to OSCPA, the bills also apply retroactively to taxable years beginning on or after January 1, 2013 to protect negatively impacted small business owners.

3) **Sales Tax on Services Expansion – EIS.** 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 HB 466 (131st GA), which specifically exempted only digital advertising services, by issuing another updated Information Release in September 2016. OSCPA supported passage of broader language in HB 49 (132nd GA) 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. The provision also applied retroactively to all cases pending or transactions made on or after December 21, 2007, but was **vetoed by the Governor.**

4) **Pass-Through Entity Reform.** OSCPA supports former SB 288 (131st GA), legislation to streamline 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. The bill will provide 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.

5) **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. HB 333 (132nd GA) amends ORC section 5747.08 to allow married couples to elect to file either separate state tax returns or a joint state return, irrespective of their federal filing status. Consideration should also be given to having a separate tax table for married filing separately vs. jointly, similar to what the IRS does.