

TAX PROVISIONS

On June 30, 2017, Gov. John Kasich signed Am. Sub. H.B. 49, Ohio's biennial budget bill, into law. The following major tax provisions were included in the legislation:

Municipal Income Tax

State-level reporting and collection of municipal business net profits: driven by OSCPA, this change allows, but does not require, businesses to file a single annual or estimated tax return through the Ohio Business Gateway (OBG) on which the business can report and pay the total tax due to all of the municipalities in which the business earned net profits. If the business makes the election to file through OBG: (1) it renews automatically every year until terminated by the taxpayer; (2) the Ohio Department of Taxation (ODT) would solely administer and audit those business taxes. Available starting Jan. 1, 2018.

Eliminates the current "throw-back" provision: driven by OSCPA, this provision applies to all impacted taxpayers but retains the other two current law rules for apportioning the sale of goods whereby sales are apportioned to a municipality if the goods are either: (1) both shipped from and delivered within the municipal corporation; (2) delivered within the municipal corporation, but shipped from elsewhere, if employees of the business regularly solicit sales within the municipal corporation. The change applies to taxable years beginning in 2018.

Estimated payments: driven by OSCPA, allows individual municipal income taxpayers to pay fourth-quarter estimated payments until the 15th day of the first month of the ensuing taxable year (January 15 for calendar year taxpayers), for taxable years beginning in 2018. Retains the current fourth-quarter estimated tax payment deadline (December 15 for calendar year taxpayers) for taxpayers that are businesses.

Withholding tax penalty: authorizes municipal corporations to impose a penalty not exceeding 50% (and thus allowing for less than 50%) of the unpaid amount for employers that do not timely remit municipal income tax withholding. Current state law mandates that the penalty equals 50% of the unpaid amount. This change was sought by OSCPA to make it clear that a 50% penalty is not required.

Electronic filing through MeF program: requires the Department of Taxation to study the feasibility of accepting municipal income tax returns through the existing joint federal/state Modernized e-File (MeF) program and to issue a report on its findings before January 1, 2018. (The MeF is a web-based electronic tax filing system developed and maintained by the I.R.S. and made available to taxpayers through approved private sector tax filing software providers.)

Personal Income Tax

Retains the current Business Income Deduction: under current law, 100% of business income is deductible up to \$250,000, and business income in excess of that is taxed at a flat rate of 3%; all other (nonbusiness) income, such as wages, investment income, and retirement income, is taxable under the graduated rate schedules.

Inflation indexing of income tax brackets and exemptions: updates the income tax brackets for individual nonbusiness income and estates and trusts by incorporating inflation adjustments that have been made through 2016 under existing law. Continues annual inflation indexing for tax years 2017 and 2018 applicable to (1) the income ranges for the personal income tax brackets and (2) the amounts claimed per exemption.

Reduction of number of brackets: reduces the number of brackets from 9 to 7 by eliminating the bottom two income tax brackets (\$0-\$5,000 and \$5,000-\$10,000). Repeals the low income tax credit; specifies taxpayers with Ohio adjusted gross income less exemptions and less taxable business income of \$10,500 or less will owe no tax. Requires the Tax Commissioner to annually adjust this value for inflation. OSCPA promoted this change.

College or disability savings tax deduction increase: increases the maximum income tax deduction for contributions to a federally tax advantaged college savings plan or disability expense savings account to \$4,000 (from \$2,000) annually for each beneficiary. Effective date: taxable years beginning in 2018 or thereafter.

Sales and Use Tax

Sales tax on electronic services: strongly backed by OSCPA, specifies 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. (Current law states that ADP, CS, and EIS are not taxable when they are "incidental or supplemental" to another, nontaxable service). This provision applies retrospectively to all cases pending or transactions made on or after December 21, 2007.

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Local sales and use taxes: tax rate increments: allows counties and transit authorities to increase their local sales and use tax levies in increments of 0.1%, rather than 0.25%, and allows such incremental adjustments beginning July 2018.

Use tax collections by certain out-of-state retailers: requires out-of-state sellers to collect and remit state and local use taxes, beginning January 1, 2018, if the seller has annual Ohio sales of at least \$500,000 and either uses in-state computer software to make Ohio sales or provides or enters into an agreement with a third party to provide content distribution networks in Ohio to accelerate or enhance the delivery of the seller's web site to Ohio consumers.

Sales tax holiday: provides a three-day sales tax "holiday" in August 2018 during which sales of clothing, school supplies, and instructional materials within certain price ranges are exempt from sales/use taxes.

Commercial Activity Tax

CAT revenue allocation changes: increases the share of CAT revenue credited to the GRF from 75% to 85% beginning July 1, 2017, and decreases the shares allocated to reimburse school districts and other local taxing units for their loss of tangible personal property taxes, from 20% to 13% for school districts and from 5% to 2% for other taxing units.

CAT administrative expense earmark: reduces the Department of Taxation's administrative share of CAT revenue from 0.85% to 0.75% (and thus increases the GRF share by 0.10%) beginning July 1, 2017.

Historic rehabilitation credit against the CAT: extends, to July 1, 2019, a temporary provision authorizing owners of an historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax. Otherwise, the credit may be applied only against the income tax, financial institutions tax, and the insurance company franchise taxes.

Miscellaneous

Appeals of Board of Tax Appeals (BTA) decisions: removes authority to appeal BTA decisions directly to the Ohio Supreme Court. Under continuing law, BTA decisions may be appealed to the appropriate Court of Appeals. Does not affect decisions rendered for cases on the BTA's small claims docket, which cannot be appealed. Authorizes a party to request that the appeal be transferred to the Ohio Supreme Court if the appeal involves a substantial constitutional question or a question of great public interest. OSCPA and other business groups unsuccessfully urged a veto of this provision by Gov. Kasich.

Tax Amnesty Program: requires the Tax Commissioner to administer a temporary tax amnesty program from January 1, 2018 to February 15, 2018, with respect to delinquent taxes including the financial institutions tax, commercial activity tax, state income tax, alcohol, tobacco, and cigarette excise taxes, state and local sales and use taxes, and school district income taxes and local alcohol and cigarette excise taxes. Specifies that the program applies only to taxes that were due and payable as of May 1, 2017, which were unreported or underreported, and which remain unpaid on the date on which the program commences. Specifies that the program does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, that relates to a still-open tax period, or for which an audit has been conducted or is pending.

Requires the Commissioner to waive or abate all applicable penalties and half of any interest that accrued on the taxes, if during the program a person pays the full amount of delinquent taxes owed and half of any interest accrued on the taxes.

For questions or more information, contact OSCPA Government Relations at government@ohiocpa.com.