Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

S.B. 26
133rd General Assembly

Bill Analysis

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Version: As Reported by H. Finance*

Primary Sponsor: Sen. Kunze

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SUMMARY

Income tax

- Allows teachers to claim an income tax deduction of up to $250 for amounts paid out-of-pocket for professional development and classroom supplies.
- Removes a provision that makes income earned from the practice of law or from lobbying ineligible for the business income deduction and 3% flat tax rate.
- Requires all taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) codes associated with each source of their business income.
- Delays the repeal of the income tax credit for contributions to campaigns for state offices until taxable years beginning in or after 2020.
- Delays the repeal of the income tax credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT) until taxable years beginning in or after 2020.

Sales and use tax

- Exempts from sales and use tax the sale of feminine hygiene products associated with menstruation.
- Exempts from sales and use tax the sale of prescription diapers or incontinence pads covered by Medicaid.

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* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Public Office Compensation Advisory Commission

- Abolishes the Public Office Compensation Advisory Commission.

DETAILED ANALYSIS

Income tax deduction for teacher expenses

The bill authorizes Ohio teachers to deduct up to $250 of unreimbursed expenses incurred each year for professional development and classroom supplies.

The deduction piggy-backs on an existing federal income tax deduction for teacher expenses. As with the federal deduction, the Ohio deduction would apply to the following expenses, when not reimbursed to the teacher:

1. Books, supplies, computers and other equipment, and supplementary materials used in the classroom. With respect to supplies for a health or physical education class, the deduction only applies to amounts spent on athletic supplies.
2. Expenses paid to participate in professional development courses related to the teacher's curriculum or students.

To qualify, a teacher must be licensed in Ohio or hold an Ohio-issued certificate or permit and be eligible for the federal deduction. Persons eligible for the federal deduction include any kindergarten through 12th grade teacher, instructor, counselor, principal, or aide who works in a primary or secondary school for at least 900 hours per school year.

The deduction applies to expenses that exceed what the teacher may claim as a federal deduction. For example, if a teacher incurs $350 of qualifying expenses in a year, the teacher may claim $250 as a federal deduction, and the remaining $100 as a deduction from Ohio taxes. (The first $250 deduction is already factored into the teacher's Ohio tax liability, since Ohio uses federal adjusted gross income as the starting point on the Ohio income tax return and the federal deduction directly reduces FAGI.)[1] The deduction would be allowed for taxable years beginning in or after 2020.[2]

Business income deduction

The bill removes a recently enacted provision that excludes income earned from the practice of law or lobbying from being eligible for the business income deduction and 3% flat tax rate. The exclusion, enacted in H.B. 166, applies specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics

[1] R.C. 5747.01(A)(34) and (JJ) and 26 U.S.C. 62.

[2] Section 3 of the bill.

Committee.[3] The exclusion currently is scheduled to apply to taxable years beginning in or after 2020.[4]

The bill specifies that taxpayers having business income and required to make estimated tax payments in 2020 must calculate payment amounts based on their annual tax liability assuming repeal of the business income deduction exclusion.[5] That is, a taxpayer whose 2020 tax liability is affected by the bill's repeal of the exclusion must compute estimated payments as if the taxpayer may claim the business income deduction for 2020.

The bill also requires taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) code or codes for each of the business or professional activities from which their business income was derived, pursuant to administrative rules adopted by the Department of Taxation.[6]

The repeal of the business income deduction exclusion and the enactment of the NAICS code reporting requirement apply to taxable years beginning in or after 2020.[7]

Delays application of repealed tax credits

H.B. 166 repealed two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT). The credits were repealed for taxable years beginning in 2019 or thereafter.[8] The bill delays the application date to taxable years beginning in 2020 or thereafter.[9]

The campaign contribution tax credit is a nonrefundable credit for contributions made to the campaign committees of candidates for a state office (e.g., Governor or member of the General Assembly). The credit may not exceed $50 per individual taxpayer.[10]

The second repealed tax credit allows a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner's share of the institution's FIT tax payments. The refundable credit equals the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.[11]

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[3] R.C. 5747.01(A)(31), (B)(2), and (HH).

[4] Section 757.150(C) of H.B. 166.

[5] Section 6(B) of the bill.

[6] R.C. 5747.08(L). The rules must be adopted in accordance with the general administrative rules procedures in R.C. Chapter 119.

[7] Section 6(A) of the bill.

[8] Section 757.150(B) of H.B. 166 (referring to R.C. 5747.29 and 5747.65).

[9] Section 4 of the bill.

[10] R.C. 5747.29, not in the bill.

[11] R.C. 5747.65, not in the bill.

Feminine hygiene product sales tax exemption

The bill exempts from sales and use tax feminine hygiene products principally used in connection with the menstrual cycle, e.g., tampons, panty liners, menstrual cups, and sanitary napkins. The exemption does not extend to general grooming and hygiene products such as soaps, cleaning solutions, and shampoo.[12] Unlike with many other sales and use tax exemptions, a consumer will not be required to furnish an exemption certificate to the vendor as a condition of obtaining the exemption.[13] The exemption applies to all such items purchased on or after the first day of the first full month that begins at least 30 days after the bill's effective date.[14]

Sales tax exemption: Medicaid-covered incontinence products

The bill authorizes a sales and use tax exemption for prescription adult diapers and incontinence pads, provided the products are (1) purchased by or for a person who has been diagnosed as incontinent and (2) covered, i.e., reimbursed, by Medicaid. An incontinence pad is defined to be an absorbent product not worn on the body that is designed to protect furniture and other items from damage from human incontinence.[15] The exemption applies beginning on the first day of the first month that begins at least 30 days after the bill's effective date.[16]

Current law exempts from sales and use tax durable medical equipment, mobility enhancement equipment, and prosthetic devices purchased pursuant to a prescription.[17] However, the Tax Commissioner considers diapers and incontinence pads to fall outside those categories, thus subjecting them to sales and use tax.[18] Currently the only circumstance under which a diaper is specifically exempted from sales and use tax is if the diaper is purchased during the state's three-day clothing and school supply "sales tax holiday."[19]

Public Office Compensation Advisory Commission

The bill abolishes the Public Office Compensation Advisory Commission, which is required to submit proposed compensation plans and reports annually by October 15, detailing the Commission's recommendations for the compensation of the officers whose salaries are

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[12] R.C. 5739.01(TT) and 5739.02(B)(57).

[13] R.C. 5739.03.

[14] Section 6(C) of the bill.

[15] R.C. 5739.02(B)(56).

[16] Section 6(C) of the bill.

[17] R.C. 5739.02(B)(19).

[18] See Appendix L ("Health Care Item List") to Information Release ST 2010, "Sales and Use Tax: Drugs, Durable Medical Equipment, Mobility Enhancing Equipment, and Prosthetic Devices," Ohio Department of Taxation (2010, rev. 2019), available at https://www.tax.ohio.gov/Portals/0/sales_and_use/information_releases/ST%202010-03%20appendix-l-health-care-list-2018-5-2.pdf.

[19] R.C. 5739.02(B)(55).

fixed by the General Assembly. The Commission was created by S.B. 296 of the 132nd General Assembly, which took effect December 27, 2018, meaning that the Commission's first report is due on October 15, 2019. It appears that the Commission's members have not yet been appointed.

Existing law specifies that the Commission consists of nine members appointed to serve two-year terms as follows: two by the Governor, two by the Senate President, two by the Speaker of the House, one by the Senate Minority Leader, one by the House Minority Leader, and one by the Chief Justice of the Supreme Court. The Commission must select its chairperson by vote of at least five of its members. Members do not receive compensation, but must be reimbursed for actual and necessary expenses incurred in the performance of their duties.[20]

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Ways & Means	05-08-19
Passed Senate (32-0)	05-08-19
Reported, H. Ways & Means	10-01-19
Reported, H. Finance	---

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[20] R.C. 101.61, repealed.