Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

H.B. 382
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Jordan

Michael Hinel, Attorney

SUMMARY

- Prohibits municipal corporations from levying an income tax on compensation earned by nonresidents for personal services and on net profits from sole proprietorships owned by nonresidents.

DETAILED ANALYSIS

Municipal taxation of nonresident income

The bill prohibits municipal corporations from levying income tax on the following nonresident income: (1) compensation earned by nonresidents for personal services, and (2) net profits from sole proprietorships owned by nonresidents. Currently, municipal corporations, pursuant to their constitutionally authorized home rule powers, may tax the incomes of resident individuals, nonresident individuals who earn income within the municipal corporation, and businesses with net profits apportioned to the municipal corporation.[1] The power of municipal corporations to tax nonresidents has been upheld by the courts on the grounds that individuals working in a municipal corporation enjoy the benefits and protections provided by the municipal corporation while working there (e.g., police and fire protection).[2] Unlike most other home rule powers, municipal taxation powers may be expressly limited by the General Assembly.[3]

[1] Ohio Constitution, Article XVIII, Section 3; R.C. Chapter 718.

[2] See *Angell v. Toledo*, 153 Ohio St. 179, 185 (1950) (holding that nonresidents' due process rights are not violated by being subject to a municipal income tax because they are afforded protection by municipal governments against fire and theft).

[3] Ohio Constitution, Article XIII, Section 6 and Article XVIII, Section 13; *Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St.3d 599, 606 (1998).

The bill effectively ends municipal taxation of nonresident income, with the exception of net profits derived from a business other than a sole proprietorship. However, the change will not result in a reduction of tax liability in all cases. For persons who work in one municipal corporation, live in another, and are taxed by both, it is likely that at least some part of their tax liability to the municipal corporation where they live will be offset since most municipal corporations grant a credit against their own income tax for at least some part of the income taxes their residents pay to another municipal corporation. Therefore, the bill's changes would result in a net reduction of tax liability only if the individual resides in an unincorporated area, a municipal corporation with a lower income tax rate than the municipal corporation in which the income was earned, or a municipal corporation that does not currently offer a full credit for income taxes paid to another municipal corporation.

Municipal taxation of business net profits, other than the net profits of sole proprietorships owned by nonresidents, is not affected by the bill. Such net profits would remain taxable in accordance with the three-factor apportionment formula prescribed under continuing law. Income earned by resident individuals would also remain taxable.[4]

The bill makes numerous amendments to conform existing law by removing references to the taxation of nonresidents and related provisions.[5]

The bill states that its changes would begin to apply to taxable years beginning in 2020 or thereafter.[6]

HISTORY

Action	Date
Introduced	10-29-19

H0382-I-133/ts

[4] R.C. 718.01 and 718.02.

[5] R.C. 709.023, 718.01(C)(18) and (20), (AA), and (XX), 718.02(E) and (F), 718.03, 718.04, 718.05, 718.16, 718.82, and 5703.94; and R.C. 718.011 and 718.50, repealed by the bill

[6] Section 4 of the bill.