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S.B. 10
135th General Assembly

Final Analysis

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Primary Sponsor: Sen. Blessing

Effective date: Emergency: March 15, 2023

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SUMMARY

- Incorporates changes to federal tax law taking effect since February 17, 2022, into Ohio income tax law.
- Revises the terms of various appropriations.

DETAILED ANALYSIS

Incorporation of Internal Revenue Code changes

The act incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) taking effect after February 17, 2022.¹ The incorporated changes include those made by the “Inflation Reduction Act of 2022” (IRA), H.R. 5376 of the 117th Congress, in August 2022 and the “Consolidated Appropriations Act,” H.R. 2617 of the 117th Congress, in December 2022. These changes directly affect the tax base of Ohio income tax taxpayers by adjusting federal adjusted gross income (FAGI), the starting number for determining a taxpayer’s Ohio taxable income.² The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI.³

The following are the most significant of the federal changes in the IRA affecting Ohio law:

- Extends limitations on excess business losses from January 1, 2027, to January 1, 2029. (An excess business loss is generally the amount by which the total deductions from trades or businesses are more than total gross income or gains from trades or

¹ R.C. 5701.11(A).

² R.C. 5747.01(A), not in the act.

³ R.C. 5748.01(E), not in the act.

businesses, plus a threshold amount. Excess business losses cannot be deducted in the current year but the excess is treated as a net operating loss carryover which may lead to a reduced FAGI in a subsequent year.)

- Similarly extends limitations on excess farm loss from January 1, 2027, to January 1, 2029.
- Increases the current maximum deduction per square foot for energy efficient commercial buildings.

The most significant changes in the Consolidated Appropriations Act affecting Ohio law involve the tax treatment of retirement distributions and contributions. Below are some examples of incorporated provisions:

- Authorizes tax-free rollovers of up to \$35,000 from 529 education savings plans to Roth IRAs.
- Authorizes up to \$1,000 withdrawals from tax-preferred retirement plans for certain emergency expenses without triggering the standard 10% penalty. (This penalty increases a taxpayer's FAGI.)
- Requires automatic enrollment and yearly escalation of employee contributions into retirement plans started after December 29, 2022.
- Increases the age of the required beginning date for mandatory retirement account distributions from 72 to 73 in 2023, and then to age 75 in 2033.

Reason for incorporation

Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.⁴ The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

If federal tax law amendments are not incorporated, an affected taxpayer would have to adjust the taxpayer's federal adjusted gross income or taxable income, either by adding or subtracting the relevant amounts, in order to compute the taxpayer's Ohio tax liability.

Alternative tax law election

The act also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Former law authorized a taxpayer whose taxable year ended after March 31, 2021, and before February 17, 2022, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (These two dates were the dates of the two most recent incorporations.) The election was available to taxpayers who were subject to the personal income tax and to electric and telephone companies that were subject to municipal income taxes.

⁴ See *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

The act allows this election to be made for a taxpayer’s taxable year ending after February 17, 2022, but before the incorporation of the act’s effective date, March 15, 2023. The act retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.⁵

Appropriation revisions

The act revises the following recent appropriations made in H.B. 45 of the 134th General Assembly:

- \$161 million to provide rental and utility assistance in accordance with the American Rescue Plan Act (ARPA). Former law required that an eligible household’s rent and utility arrearages must have been incurred by December 31, 2021, in order to qualify for assistance. The act removes that cut-off date.⁶
- \$50 million for economic relief grants to certain performing arts organizations and cultural museums. Under continuing law, an organization or museum must meet certain criteria in order to qualify for a grant. The act removes one of those criteria – a requirement that the organization or museum undergo an annual, independent audit.⁷
- \$5 million to provide civil legal services to Ukrainian refugees. The act replaces the term Ukrainian “refugees” with the term Ukrainian “arrivals.”⁸

HISTORY

Action	Date
Introduced	01-11-23
Reported, S. Ways & Means	02-08-23
Passed Senate (30-0)	02-08-23
Reported, H. Ways & Means	03-01-23
Passed House (88-7)	03-01-23

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⁵ R.C. 5701.11(B).

⁶ Section 225.12 of H.B. 45 of the 134th General Assembly.

⁷ Section 701.10 of H.B. 45 of the 134th General Assembly.

⁸ Sections 265.10 and 265.20 of H.B. 45 of the 134th General Assembly.