OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 116
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsor: Rep. Demetriou

Local Impact Statement Procedure Required: No

Ruhaiza Ridzwan, Senior Economist

Highlights

- The tax deduction for the capital gains from the sale of digital assets used as a method of payment, up to $200 per transaction, increased annually for inflation would decrease the state personal income tax (PIT) revenue by an undetermined amount.
- The majority (98.25%) of any PIT revenue loss would be borne by the GRF under codified law. The remaining PIT revenue losses would be borne by the Local Government Fund (LGF, Fund 7069), which will receive transfers equal to 1.75% of GRF tax receipts under current law. Any reductions to LGF allocations would also decrease distributions to counties, municipalities, and townships.

Detailed Analysis

State and municipal taxation

The bill provides a personal income tax (PIT) deduction, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, for capital gains received by the taxpayer from the sale of a digital asset used as a method of payment for goods or services, provided the amount of payment in the transaction does not exceed the deduction threshold. The deduction threshold equals $200 per transaction for the taxable year ending on or after the bill's effective date.

The bill requires the Tax Commissioner, in August of each year, to determine the percentage increase in the consumer price index (CPI) for all urban consumers (United States city average, all items) from the first day of January of the preceding calendar year to the last day of December of the preceding year, and make a new adjustment to the deduction threshold for taxable years beginning in the current calendar year by multiplying that amount by the percentage increase in the CPI for that period, including adding the resulting product to the deduction threshold for taxable years beginning in the preceding calendar year, and rounding the resulting sum upward to the nearest multiple of $5.

The adjusted amount applies to taxable years beginning in the calendar year in which the adjustment is made and to taxable years beginning in each ensuing calendar year until a calendar year in which a new adjustment is made under the bill. The Commissioner must not make a new adjustment in any calendar year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding calendar year. After making an adjustment, the Commissioner is required to certify the new deduction threshold to the tax administrator of each municipal corporation to which such deduction applies.

The bill prohibits municipal corporations from taxing capital gains received from the sale of a digital asset used as a method of payment for goods or services, provided the amount of payment in the transaction does not exceed the deduction threshold, as applicable to the taxable year under the income tax deduction allowed for the state PIT.

The prohibition related to the PIT and municipal income tax on capital gains applies to taxable years ending on or after the bill's effective date.

Fiscal effect

The tax deduction for the capital gains from the sale of digital assets used as a method of payment, up to $200 per transaction, increased annually for inflation would decrease PIT revenue by an undetermined amount. Information related to the number of taxpayers and the amount of capital gains associated with such digital assets is not publicly available.

For tax year 2022, there were 81,420 Ohio resident tax returns (or 1.4% of total tax returns) that replied "yes" to a question of their income tax form asking "At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?" Taxpayers that sold, exchanged, or otherwise disposed of a digital asset held as a capital asset must file "Form 8949, Sales and other Dispositions of Capital Assets," but data from that form is unavailable to LSC. Therefore, further information about the number of transactions per taxpayer cannot be estimated. The state revenue loss for the bill's PIT deduction is indeterminate.

The majority (98.25%) of any PIT revenue loss would be borne by the GRF under codified law. The remaining PIT revenue losses would be borne by the Local Government Fund (LGF, Fund 7069), which will receive transfers equal to 1.75% of GRF tax receipts under current law. Any reductions to LGF allocations would also decrease distributions to counties, municipalities, and townships.

Other provisions

Money transmitter

The bill specifies that "transmit money" does not include digital asset mining, staking, exchanging a digital asset for another digital asset, developing or deploying software which allows for the exchange of a digital asset for another digital asset, or operating a node on a blockchain protocol. The bill specifies that a money transmitter license is not required for any individuals who engage in a digital asset mining, staking, exchanging a digital asset for another digital asset, developing or deploying software which allows for the exchange of a digital asset for another digital asset, and operating a node or series of nodes on a blockchain protocol.

Security and investment laws

The bill specifies that a business providing or offering to provide digital asset mining or staking services is not considered to be offering a security or investment contract for the purposes of a security or investment contract.

Regulations

The bill prohibits a political subdivision from adopting or enforcing an ordinance, resolution, regulation, or order specific to digital asset mining businesses that does not also apply to other similarly situated businesses. The bill also prohibits a political subdivision from rezoning or redistricting parcels in a manner that affects a digital asset mining business without going through the proper notice and comment process. The bill allows a digital mining business that believes a political subdivision rezoned or redistricted parcels in a manner that discriminates against the business to appeal the rezoning or redistricting to the court of common pleas of the county where the business is located.

The bill prohibits any department, agency, or instrumentality of the state and political subdivision from prohibiting, restricting, or otherwise impairing the ability of an individual to do either of the following: (1) accept digital assets as a method of payment for legal goods and services, or (2) take custody of digital assets using a hardware wallet or self-hosted wallet.

The bill allows any person to engage in digital asset mining in areas of this state zoned for residential use, provided that the person complies with all applicable local ordinances, resolutions, regulations, and orders in areas zoned for residential use. The bill also allows a digital asset mining business to operate in any area of this state that is zoned for industrial use, provided the digital asset mining business meets the requirements for industrial use.

Prohibited taxes, fees, and assessments

The bill includes a statement that the General Assembly must not enact a bill that proposes to impose a fee, tax, assessment, or other charge on digital assets used as a method of payment for goods and services that is based on the use of the digital assets as a method of payment; on the sales, use, or consumption of such digital assets; or on the basis of receipts received from the sale of such digital assets. However, the bill does not prohibit the General Assembly from enacting a bill imposing a fee, tax, assessment, or other charge if the fee, tax, assessment, or charge would apply if the transaction had taken place with legal tender of the United States.

The bill also includes similar statements for the legislative authority of charter counties, limited home rule townships, and municipal corporations.

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