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Office of Research and Drafting

Legislative Budget Office

H.B. 399
135th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 399's Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Brown and Lampton

Local Impact Statement Procedure Required: No

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Highlights

Fund	FY 2025	FY 2026	Future Years
State General Revenue Fund			
Revenues	Loss of $528,000 to $694,000	Loss of $528,000 to $694,000	Loss of $528,000 to $694,000 per year
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)			
Revenues	Loss of $9,000 to $12,000	Loss of $9,000 to $12,000	Loss of $9,000 to $12,000 per year

Note: The fiscal year for the state, school districts, and certain other local governments runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill's enhanced incentives for organ donations would reduce state income tax revenue by an estimated $547,000 to $718,000 annually.
- Losses to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065) would each be 1.7% of the total, with the rest of the revenue loss to the GRF.
- School districts that charge income taxes on the traditional base would incur small annual revenue losses, estimated to total roughly between $1,400 and $1,800 statewide.

Detailed Analysis

The bill would enhance the current deduction for donation of an organ by a living donor, and it would create a nonrefundable credit for employers that pay employees while those employees are on leave recovering from donating organs. Bill provisions, if enacted, would go into effect in tax year (TY) 2024.

For the latest year with published tax data, TY 2021, 246 taxpayers claimed the current deduction, for actual expenses of donation not to exceed $10,000. The bill would eliminate the limitation to actual expenses, increasing the deduction for all donors to $10,000. This would increase the yearly state income tax revenue loss resulting from the deduction by an estimated $34,000 per year. The credit to employers for compensation paid to employees while on medically necessary leave after donating organs, limited to no more than $300 per day for 30 days, would cost an estimated $513,000 to $684,000 per year in foregone state revenue.

Number of organ donors claiming the current deduction

The living organ donor deduction was enacted in H.B. 119 of the 127th General Assembly, that biennium's main operating budget act.[1] The new deduction was effective for TY 2007 and thereafter. Under the bill as well as in current law, a deduction may be claimed for donation of all or part of the donor's liver, pancreas, kidney, intestine, lung, or bone marrow. Organ donor deduction data are posted on the Department of Taxation website starting with TY 2011, but initially are combined with deductions for deposits to individual development accounts.[2] Data on organ donor expenses are shown separately starting with TY 2015 and are shown in the following table.

Organ Donor Expenses Deducted			
Tax Year	Value	Number of Tax Returns	Average Value
2015	$327,849	152	$2,157
2016	$125,704	162	$776
2017	$320,557	180	$1,781
2018	$471,375	214	$2,203
2019	$698,615	267	$2,617
2020	$637,157	286	$2,228
2021	$748,559	246	$3,043

[1] Historically, 41% of donated organs in Ohio during 1988 through 2023 came from living donors and 59% from deceased donors, in data on the Organ Procurement & Transplantation Network website, within the U.S. Department of Health & Human Services: optn.transplant.hrsa.gov/data/view-data-reports/build-advanced.

[2] Individual development accounts can be used by low to moderate income individuals and families as part of a savings and match program for home ownership and for benefits to refugees.

Estimated decrease in tax revenue from the current deduction

The current organ donor deduction cost the state an estimated $15,000 in foregone tax revenue in TY 2021, based on the amount of expenses claimed as shown in the table above and an estimated 1.97% average marginal personal income tax rate.[3] This rate is derived from gross income and tax liability data, so implicitly incorporates all adjustments, exemptions, and credits taken in determining taxes due.

Organ donor expenses deducted have trended upward in the years shown in the table. If continued, this uptrend would tend to increase the estimated amount of foregone revenue in years after TY 2021 as a result of this deduction. On the other hand, Ohio personal income tax rates were reduced in TY 2023 and TY 2024, tending to reduce foregone revenue.

Estimated additional tax revenue loss with $10,000 deduction

As seen in the table above, the average deduction in the latest year, 2021, was $3,043. Increasing the amount of the deduction to $10,000, $6,957 higher, would increase the total deduction to about $1.7 million, based on the number of donors in 2021. At an average marginal tax rate of 1.97%, this implies about a $34,000 yearly tax loss.

Data on the Organ Procurement & Transplantation Network website indicate that among living donors who were Ohio residents during the 2015-2021 period shown in the table above, the number who donated organs in 2015 to 2019 was 316 (24%) higher than the number who claimed this exemption.[4] In 2020 to 2021, on the other hand, the number of exemptions claimed as shown in Department of Taxation records exceeded the number of donated organs indicated on the federal website by 91 (21%). This mismatch may simply reflect a timing difference in the years to which donations are assigned in the two sets of records. To the extent, if at all, that taxpayers incurred organ donation expenses not claimed as deductions on their income tax returns, availability of the larger $10,000 deduction might result in additional claims and somewhat higher tax revenue losses than the estimate above.

Estimated tax revenue loss from employer tax credit

The bill would let an employer, including a pass-through entity (PTE), claim a credit against the state income tax for compensation paid to an employee who (1) donates an organ and (2) receives that compensation while on medically necessary leave to recover from making the donation. For the employer to be allowed to claim the credit, the amount of this compensation must equal the amount that the employee would have received if that employee had worked for the employer during the recovery period. For a PTE, taxpayers who hold an equity interest in a qualifying employer that paid the donation leave benefits would be allowed to claim their distributive or proportionate shares of the credit. Any excess of the amount of the credit over a taxpayer's tax liability before the credit could not be refunded (i.e., the credit would be

[3] The estimated average marginal income tax rate is a weighted average of increases in tax liability per return for each dollar of increase in gross income per return, weighted by numbers of tax returns in each of 38 income ranges published by the Department of Taxation.

[4] The Organ Procurement & Transplantation Network website: optn.transplant.hrsa.gov/data/view-data-reports/build-advanced.

nonrefundable), but unused credit amounts could be carried forward to subsequent tax years by up to three years.

The bill limits the amount of the credit to the lesser of the amount paid or $300 per day, not to exceed 30 days, implying a maximum per donor who is an employee of $9,000. In addition, each employer is limited to a maximum amount of credits that could be claimed each year of $54,000.

Not all employers could make use of the credit. The income of businesses organized as C corporations, for example, is not subject to Ohio's income tax, so those employers could not use the credit. Other business entities organized as S corporations are PTEs, the owners of which could claim their shares of the credit. Employers that are government or nonprofit entities would owe no income tax, so they could not use the new credit. Sole proprietors and partnerships could use the credit. The bill may preclude self-employed persons with no employees from claiming the credit.[5]

In 2021, U.S. Bureau of Labor Statistics data show 58% of Ohio's adult population as employed. Very few organ donors are not adults.[6] About an estimated 40% of employees work for employers subject to Ohio's income tax. Data on numbers of employees by legal form of organization are available from County Business Patterns, a U.S. Census Bureau product. For 2021, County Business Patterns show that about 2.0 million employees worked for S corporations, proprietorships, and partnerships statewide, 36.9% of total Ohio employment. County Business Patterns excludes several industries as well as most government entities and the self-employed. The 40% estimate includes an allowance for employees of the excluded industries (but not including governments or the self-employed), and is only an approximation.

Based on these figures, an estimated 23% (58% multiplied by 40%) of Ohio adults in 2021 worked for employers subject to the state personal income tax. Based on the 2021 information in the table above of "Organ Donor Expenses Deducted," of the 246 returns claiming the credit in 2021, an estimated 57 (246 multiplied by 23%) were claims by employees who worked either for employers subject to the state income tax or for PTEs.

This estimate may understate the likely share of organ donors who work for employers subject to Ohio's income tax. Only 2% of Ohio living donors since 1988 were age 65 or older, and 76% were between ages 18 and 49, based on data on the Organ Procurement & Transplantation Network website. To account for this, the share of Ohio's adult population that was employed in 2021, in the calculations above, is adjusted upward to 77%, reflecting the higher share of the population who are employed in age groups more likely to donate organs. The estimated share of employees at employers subject to the state income tax as a share of the working age

[5] The bill limits qualifying employers to those registered and authorized to use the E-Verify federal employment verification program. E-Verify provides a way for employers to confirm the employment eligibility of employees. A self-employed person with no employees would have no reason to confirm his or her own employment eligibility, though such a business person might be eligible to register and become authorized to use E-Verify, so perhaps satisfying this criterion.

[6] The Organ Procurement & Transplantation Network website indicates that from 1988 through 2023, only five of more than 7,900 living donors in Ohio were under age 18.

population rises to 31% (77% multiplied by 40%). The implied number of donors in 2021 who worked for employers subject to income tax rises to 76.

At the maximum of $9,000 per employee, this range from 57 to 76 employees implies a potential cost range from $513,000 to $684,000. Some employers may owe too little tax before the credit to be able to use the full amount of the credit, even when account is taken of the three-year carryforward that the bill provides. The extent to which an inability of taxpayers to use all of these credits is uncertain. Costs may rise over time, in line with the rising trend in numbers of living organ donors evident in the table.

Clearly the number of employers eligible to claim the credit in any given year could vary substantially, either higher or lower, from the number implied by the share of employees who work for employers either subject to the state income tax or that are PTEs. The numbers above are estimates of average numbers around which this variability could be expected.

Revenue sharing

The Local Government Fund (LGF) and the Public Library Fund (PLF) each receive 1.7% of GRF tax revenue in codified law while the GRF retains 96.6%. The bill would reduce total revenue by an estimated $547,000 to $718,000, the sum of the employee and employer revenue losses estimated above, reducing revenue to each of the LGF and PLF by about $9,000 to $12,000, and reducing the amount retained by the GRF by $528,000 to $694,000.[7]

Tax Commissioner report

The bill requires the Tax Commissioner to issue a report by September 1, 2025, and on each subsequent September 1 to the chairpersons of the standing committees of the House of Representatives and Senate that deal primarily with taxation. The report is to include the number of taxpayers who claimed credits as employers that paid donation leave benefits to employees who donated organs, the total number of employee donors and days on which donation leave benefits were paid, and the total value of all credits earned and all credits claimed during that taxable year.

The Department of Taxation will incur costs to prepare the required report. Such a report is similar to other reports required of the Department, and additional costs for preparation of the report mandated by the bill will likely be minimal. Any added costs may be paid from GRF appropriation item 110321, Operating Expenses.

"Traditional base" school districts

School districts that charge an income tax on the "traditional base" incur a revenue loss if a taxpayer who resides in the district claims a deduction for an organ donation. With the bill allowing a $10,000 deduction, rather than a deduction of the lesser of actual expenses or $10,000, the revenue loss may be larger with the bill. The traditional base is Ohio adjusted gross income plus the addback of any amount of business income deducted, also known as modified adjusted gross income (MAGI), minus exemptions. School district revenues would be unaffected by the bill's tax credit against the state income tax for business compensation payments to

[7] Components in some cases do not sum to totals because of rounding.

employees who donate organs. The bill's business tax benefit is a credit rather than a deduction, so it would have no effect on MAGI or exemptions.

The magnitude of any revenue loss to school districts would be small. One indication of this is the magnitude of revenue from the school district income tax on the traditional base, relative to state income tax revenue. In FY 2023, school district income tax revenue to districts on the traditional base was about $477 million, about 4% of state income tax revenue in that year of $11.3 billion. Based on this, an enhanced deduction which reduces state income tax revenue by $34,000 per year, as calculated above, might reduce school district income tax revenue statewide by about $1,400.[8] An alternative calculation based on the number of school district income tax returns filed in TY 2021 (latest available) indicates a revenue loss of about $1,800.

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[8] School district income tax revenues are calculated for 146 districts on the traditional base excluding those with income tax levies that expired.