OHIO LEGISLATIVE SERVICE COMMISSION

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 177 of the 132nd G.A. **Status:** As Introduced

Sponsor: Reps. West and Young **Local Impact Statement Procedure Required:** Yes

Subject: Exempts memberships to gyms and recreational facilities operated by 501(c)(3) nonprofit organizations from the sales and use tax

State & Local Fiscal Highlights

STATE FUND	FY 2018	FY 2019	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Loss of $7.0 million	Loss of $7.9 million
Local Government and Public Library Funds (counties, municipalities, townships, and public libraries)			
Revenues	- 0 -	Loss of $200,000	Loss of $300,000
Counties and transit authorities			
Revenues	Loss of $0.8 million	Loss of $2.0 million	Loss of $2.0 million

Note: The state fiscal year is July 1 through June 30. For example, FY 2018 is July 1, 2017 – June 30, 2018.

- The bill reduces the sales and use tax base, and thus decreases state sales tax revenue and revenue from local permissive county and transit authority sales taxes. The actual revenue loss would be dependent on the rate of membership sales growth or decline at the affected establishments. The majority of the estimated loss would be due to memberships to nonprofit fitness and recreational centers such as YMCA and YWCA facilities.
- In FY 2019, the state sales tax revenue loss would be shared by the General Revenue Fund (GRF, 96.66%), the Local Government Fund (LGF, 1.66%) and the Public Library Fund (PLF, 1.68%) under a provision of H.B. 49, the main operating budget act for the current biennium. In FY 2020 and future years, under permanent law, the revenue loss would be shared by the GRF (96.68%), the LGF (1.66%), and the PLF (1.66%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

Detailed Fiscal Analysis

The bill exempts sales of memberships to physical fitness facilities and recreation and sports clubs from the sales and use tax if the organization is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. Memberships to all physical fitness facilities and recreation and sports clubs were originally subjected to the sales and use tax in 1992 by Am. Sub. H.B. 904 of the 119th General Assembly. The exemption would begin on July 1 after the effective date of the bill. The Ohio Revised Code[1] specifies physical fitness facilities and recreation and sports clubs to include athletic clubs, health spas, gymnasiums, aviation clubs, gun or shooting clubs, yacht clubs, card clubs, swimming clubs, tennis clubs, golf clubs, country clubs, riding clubs, amateur sports clubs, or similar organizations.

The majority of these types of businesses fall under the North American Industry Classification System (NAICS) code 7139, which is labeled "Other Amusement/ Recreation Industries." Based on the 2012 Economic Census,[2] there are two subsets of this classification that include a substantial number of Ohio businesses which are exempt from federal taxation: (1) "fitness and recreational sports centers" and (2) "golf courses and country clubs."[3] Based on a review of tax returns[4] from various nonprofit golf and country clubs in Ohio, the majority appear to be exempted from federal taxation under sections other than 501(c)(3) and therefore would not be affected by the bill.[5] For the purposes of this estimate, LSC limited the use of the Economic Census data to Ohio nonprofit fitness and recreational sports centers, most of which classify under section 501(c)(3) and would be affected by the bill.

Fiscal effects

According to the Economic Census, Ohio generated approximately $104 million of receipts from memberships[6] in 2012. Based on historical data and projections by IHS Global Insight (a private economic forecasting firm), nominal consumer spending growth in recreation services between 2012 and 2018 nationally is estimated to be about 4.7% annually. Based on that estimate, the tax base would be $137 million in 2018. Applying a 5.75% state sales tax to this base, annual state revenue lost from nonprofit fitness and recreational centers would be approximately $7.9 million. Permissive county

[1] R.C. 5739.01(MM) and (NN).

[2] The U.S. Census Bureau conducts the Economic Census every five years.

[3] The detailed NAICS codes for these subsets are 713940 (fitness and recreational sports centers) and 713910 (golf courses and country clubs). Additionally, a small number of tax-exempt establishments that have receipts from fitness and recreational sports memberships are classified under NAICS code 713990 (other miscellaneous amusement and recreation services). Those receipts are included in the estimates detailed below.

[4] Organizations that are exempt from federal taxation must make their annual returns available for public inspection and copying.

[5] The exemption under section 501(c)(3) is reserved for nonprofit charitable organizations only. Other tax-exempt organizations may qualify under sections 501(c)(4) through 501(c)(9) of the Internal Revenue Code. Most exempted golf and country clubs qualify under section 501(c)(7).

[6] As categorized by U.S. Census Product Lines Statistics.

and transit authority sales taxes share the same tax base as the state sales tax, and are approximately 24.5% of state sales tax revenues. Thus, the annual revenue loss to local governments from county and transit authority sales and use taxes on nonprofit gym and recreational center memberships would be approximately $1.9 million. Revenue losses may grow in future years depending on spending growth for services provided by nonprofit fitness and recreational sports centers and membership rates.

Receipts from the state sales and use tax are deposited into the GRF. Under permanent law, the revenue loss would be shared by the GRF (96.68%), the LGF (1.66%), and the PLF (1.66%). However, in the current biennium as prescribed by H.B. 49 (the main operating budget act), the GRF would retain 96.66% of state sales and use tax revenue, and distributions to the LGF and PLF would be 1.66% and 1.68%, respectively. This distribution scheme would affect revenue sharing in FY 2019 only.

Sales and use tax payments are made monthly based on the preceding month's sales receipts. The changes made by the bill are to begin July 1 after the effective date of the bill, so the majority of the state revenue effect would first influence sales tax receipts in August 2018 (FY 2019). For local governments, the fiscal year is generally the calendar year. Transfers from the GRF to the LGF and PLF are made based on the previous month's tax receipts. Sales taxes levied by counties and transit authorities are collected by the state and transferred to the local authorities within 45 days after the end of the month. Therefore, local governments' and transit authorities' revenues would be impacted in four months of local FY 2018 and FY 2019 would be the first complete year affected by the bill.

Since the Economic Census is taken only every five years, assumptions about membership sales growth had to be made to apply this data to 2018 and beyond. The 4.7% nominal annual rate of growth for sales in the sector was estimated by IHS Global Insight, but how sales have actually changed since 2012, and especially how they change in the future, will affect the actual revenue loss. The lower effective cost to consumers of the memberships at the affected establishments could stimulate movement in memberships from similar for-profit entities to nonprofit competitors. It is also possible that for-profit competitors will lower their rates in some cases to maintain the same market share. Either situation would result in additional sales tax revenue lost, however the amount lost would be dependent on the price elasticity of demand for the memberships, and relevant cross-price elasticities of demand, estimates of which are difficult to determine.

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