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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 276
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 276's Bill Analysis](#)

Version: As Enacted

Primary Sponsors: Sens. Roegner and Manning

Local Impact Statement Procedure Required: No

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Highlights

- The proposed Ohio Revised Limited Liability Company Act is not likely to significantly affect the number of business filings submitted to the Secretary of State and thus will have little impact on filing fees deposited into the Business Services Fund (Fund 5990) under the Secretary of State's budget.
- Defining "attorney unclaimed funds" and allowing those funds to be used by the nonprofit Ohio Access to Justice Foundation does not affect the amount of reported funds under the state's Unclaimed Funds Program. If any attorney unclaimed funds are eventually claimed, the Foundation must repay the amount claimed, along with interest, to the Unclaimed Funds Trust Fund.
- The bill requires that series limited liability corporations (LLCs) established under the bill, for purposes of the commercial activity tax (CAT), file as a combined taxpayer under certain circumstances established in the bill. Overall, there is not any impact to current CAT tax filings by existing LLCs, and the bill would prevent new series LLCs from avoiding CAT tax liability.

Detailed Analysis

Ohio Revised Limited Liability Company Act

The bill appears to have no direct fiscal impact on the state and political subdivisions, including the Secretary of State, the agency responsible for business filings under the proposed Ohio Revised Limited Liability Company Act (ORLLCA). Overall, the revisions under the proposed ORLLCA would not substantially alter the number of business filings submitted by limited liability corporations (LLCs) under current law. Any such filing fee revenue is deposited into the Business Services Operating Fund (Fund 5990). As of June 1, there were 935,496 active LLCs registered in

Ohio according to Secretary of State records. In calendar year 2019, approximately 87,500 new LLCs registered in Ohio in total. The filing fee for articles of incorporation for LLCs is \$99.

The changes under the proposed ORLLCA touch on three general areas: (1) the authority of members, managers, and operating agreements, (2) penalties for failure to maintain a statutory agent, and (3) establishment of asset series. Please see the LSC bill analysis for a detailed discussion of all of these changes.

Commercial activity tax on series LLCs

The bill requires that, for purposes of the commercial activity tax (CAT), an LLC and all of its series must file as a combined taxpayer if it is determined, based on either of the two circumstances described in the bill, that an entity was created to avoid paying the CAT tax.

Under either of the two circumstances, i.e., a series LLC avoids the minimum tax on a bright line threshold compared to if the whole series was a single taxpayer, the series is determined to be created to avoid the CAT and must file as a combined taxpayer. No other circumstances give rise to the determination that the series was created to avoid the CAT. Under current law, a combined CAT taxpayer effectively pays and files the CAT as a single taxpayer with taxable gross receipts of the entire group aggregated in computing the tax.

These provisions would appear to prevent potential losses in CAT tax collections that could result from the creation of the new types of series LLCs that are also established in other provisions under the bill. However, these changes appear to not impact CAT tax proceeds from existing LLCs.

Attorney unclaimed funds

The bill defines “attorney unclaimed funds” as (1) funds held in interest on lawyer trust accounts for purposes of depositing client funds that are nominal amounts or for a short period of time, (2) funds held in an interest on trust accounts for nondirected escrow accounts, and (3) residual settlement funds whether for named or unnamed plaintiffs, received by the Department of Commerce’s Division of Unclaimed Funds, and held, paid out, or allocated by the Division pursuant to the terms and conditions of the court order authorizing the settlement fund. The bill requires 100% of attorney unclaimed funds to be submitted by holders to the Department. Subsequently, it permits the Ohio Access to Justice Foundation to hold these funds and use them to provide financial assistance to legal aid societies, to enhance or improve access to justice, or to operate the foundation. The Ohio Access to Justice Foundation is a charitable, tax-exempt foundation established by the State Public Defender.

These provisions do not appear to have a fiscal effect on the state since, under current law, these funds are already subjected to the Unclaimed Funds Law and being collected by the Department. Additionally, it requires that if a claim is made by the owner of an attorney unclaimed fund held by the Ohio Access to Justice Foundation, the Foundation must reimburse the Unclaimed Funds Trust Fund the amount claimed, with interest. The amount of attorney unclaimed funds currently being held by the Department is unclear since there is no specific code for these type of funds. However, according to the Department and based on research from the Ohio Access to Justice Foundation, Oregon, which began directing attorney unclaimed funds to support legal aid and access to justice in 2010, receives \$100,000 annually in attorney unclaimed funds.