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S.B. 18
134th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Roegner and Schaffer

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UPDATED VERSION*

SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 27, 2020.
- Exempts “second draw” paycheck protection program (PPP) loan amounts forgiven under the Consolidated Appropriations Act, 2021 from the commercial activity tax (CAT).
- Authorizes a CAT exemption for Bureau of Workers’ Compensation (BWC) dividends paid to employers, beginning with dividends paid in 2020.
- Declares an emergency.

DETAILED ANALYSIS

Incorporation of Internal Revenue Code changes

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 27, 2020.¹

Several changes to federal law are incorporated, including several changes made by the “Consolidated Appropriations Act, 2021,” H.R. 133 of the 116th Congress, in December of 2020 (referred to in this analysis as “CAA 2021”), and the “American Rescue Plan Act of 2021,” H.R. 1319 of the 117th Congress, in March of 2021 (referred to as “ARPA 2021”). Several of these changes directly affect the tax base of many Ohio income tax taxpayers by increasing or decreasing federal adjusted gross income (FAGI), the starting number for determining a

* Includes description of federal tax provisions included in the American Rescue Plan Act of 2021.

¹ R.C. 5701.11(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 is a list of some of the most significant of the federal law changes affecting Ohio law, including, in bold, the federal law or laws that enacted each change:

Changes affecting individuals

- A temporary look-back rule for determination of earned income for purposes for the earned income tax credit (EITC) **(CAA 2011)**. (Ohio allows a piggy-back credit based on a taxpayer's federal EITC.)
- A temporary expansion in the amount of and eligibility for the EITC **(ARPA 2021)**.
- A temporary increase in the amount of the child and dependent care credit **(ARPA 2021)**. (Ohio allows a piggy-back credit for certain taxpayers that receive the federal child and dependent care credit.)
- The extension of an exclusion from gross income for the discharge of indebtedness of a qualified principal residence **(CAA 2021)**.
- A temporary exclusion from gross income for the discharge of student loan indebtedness **(ARPA 2021)**.
- A temporary exclusion from gross income for the first \$10,200 received in unemployment benefits **(ARPA 2021)**.
- An extension of the temporary allowance of a deduction for charitable contributions by nonitemizers **(CAA 2021)**.
- A clarification that the educator expense tax deduction includes expenses for personal protective equipment and other supplies related to the prevention of the spread of COVID-19 **(CAA 2021)**.
- An exclusion from gross income for emergency financial aid grants **(CAA 2021)**.
- The transition from a deduction for qualified tuition and related expenses to an increased phase-out threshold of the Lifetime Learning Credit **(CAA 2021)**.
- Temporary special rules for health and dependent care flexible spending arrangements **(CAA 2021 and ARPA 2021)**.

Changes affecting businesses

- The allowance of a 30-year depreciation period for certain residential rental property **(CAA 2021)**.

² R.C. 5747.01(A), not in the bill.

³ R.C. 5748.01(E), not in the bill.

- The temporary allowance of a full deduction for business meals (generally, business meals are only 50% deductible) **(CAA 2021)**.
- A clarification of the tax treatment of Paycheck Protection Program loan forgiveness, including a clarification that expenses paid with covered loans can be deductible **(CAA 2021)**.
- An extension of the payment deadline for certain deferred payroll taxes (including certain self-employment taxes) **(CAA 2021)**.
- The extension of the work opportunity tax credit **(CAA 2021)**. (Ohio allows a deduction for employee wages that could not be deducted from the business owners' FAGI due to the work opportunity credit.)
- The extension of an exclusion for certain employer payments of student loans **(CAA 2021)**.
- An extension of the limitation on excess business losses for noncorporate taxpayers **(ARPA 2021)**.
- An exclusion from gross income for Restaurant Revitalization Fund (RRF) grants and Targeted Economic Injury Disaster Loan (EIDL) advances **(ARPA 2021)**.

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 bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after March 30, 2018, and before March 27, 2020, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The two March dates are 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 are subject to municipal income taxes.

The bill allows this election to be made for a taxpayer's taxable year ending after March 27, 2020, but before the incorporation provision's effective date. The bill retains a provision

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

specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.⁵

Commercial activity tax (CAT) exclusions

Exemption for forgiven PPP loan amounts

The bill exempts “second draw” paycheck protection program (PPP) loan amounts forgiven under the CAA 2021 from the commercial activity tax (CAT). A similar exemption already exists for “first draw” PPP loan amounts forgiven under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.⁶ Under continuing law, similar to federal income tax law, forgiven debt is generally considered to be taxable gross receipts for purposes of the CAT.

The CARES Act allowed businesses affected by the coronavirus pandemic to apply for PPP loans. In December of 2020, the CAA 2021 expanded the program to allow some businesses that received a PPP loan under the CARES Act to apply for a “second draw” loan. For both types of loans, the debt will be forgiven if the loan is used for payroll costs or mortgage, rent, or utility payments during an 8- or 24-week period beginning with the loan’s origination. Such canceled debt is not taxable for federal income tax purposes, whereas most forgiven debt is considered taxable income.⁷

Exemption for BWC dividends

The bill authorizes a CAT exemption for Bureau of Workers’ Compensation (BWC) dividends paid to employers, beginning with dividends paid in 2020.⁸

Under continuing law, the BWC is required to develop a procedure for the return of excess workers’ compensation premiums to employers if the board of directors determines that the surplus of earned premiums over losses is larger than needed to maintain solvency. Currently, such payments, referred to as “dividends,” are considered to be taxable gross receipts for purposes of the CAT.⁹

HISTORY

| Action | Date |
|---------------------------|----------|
| Introduced | 01-26-21 |
| Reported, S. Ways & Means | 02-09-21 |
| Passed Senate (32-0) | 02-10-21 |

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⁵ R.C. 5701.11(B).

⁶ Section 36 of H.B. 481 of the 133rd General Assembly.

⁷ Section 276 of the CAA 2021 and Section 1106(i) of the CARES Act.

⁸ R.C. 5751.01(F)(2)(nn) and Section 5.

⁹ R.C. 4123.321, not in the bill.