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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

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Office

H.B. 515  
134<sup>th</sup> General Assembly

## Final Analysis

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**Primary Sponsors:** Reps. Hoops and Riedel

**Effective date:** September 23, 2022

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### SUMMARY

- Specifies two situations in which income from the sale of an ownership interest in a business is considered business income for Ohio income tax purposes.
- Changes, from daily to monthly, the reporting and payment period for the sports gaming tax.

### DETAILED ANALYSIS

#### Income tax: sale of an ownership interest in a business

The act revises the statutory law that governs how the state's income tax applies to the sale of an ownership interest in a business. Such sales include, for example, the sale of an interest in a limited liability company (LLC) or of a stake in a partnership.

#### Background

Under prior law, income from the sale of an ownership interest in a business was generally considered to be nonbusiness income, with some possible exceptions. This treatment was affected not only by statute, but also by Supreme Court precedent and Department of Taxation guidance.<sup>1</sup>

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<sup>1</sup> R.C. 5747.212, not in the act (apportioning nonresident income from business sales); see *Corrigan v. Testa*, 149 Ohio St.3d 18 (2016), which reversed an attempt to tax a nonresident's income from the sale of an Ohio business under R.C. 5747.212 because the nonresident's connection was only "an indirect one," and insufficient to establish a nexus with Ohio under the Due Process Clause. See also Department of Taxation [Information Release IT 2016-01 \(PDF\)](#), which is available on the Department's website: [tax.ohio.gov](http://tax.ohio.gov).

Under continuing law, whether income is considered “business” or “nonbusiness” income has important implications on when and how it is taxed. Furthermore, income that is considered to be “nonbusiness income” is treated differently depending on whether the seller of the interest is a resident or nonresident of Ohio:

1. **Ohio residents:** If the sale of an ownership interest is considered nonbusiness income, income from the sale is not eligible for the business income deduction (BID) or the flat tax on business income (3%).

Under continuing law, a taxpayer can deduct their first \$250,000 of business income (\$125,000 for spouses filing separate returns.) Any income above that amount is subject to the 3% flat tax. Both apply only to income classified as “business” income.<sup>2</sup>

2. **Nonresidents:** Generally, nonresidents would pay no Ohio tax on income from the sale of their ownership interest if it is considered nonbusiness income, since – under continuing law – nonbusiness income from the sale of intangible property is allocated to the seller’s domicile, which would be outside of the state.<sup>3</sup>

## The act

The act codifies two situations in which the sale of an ownership interest will be considered business income:

1. **The sale is treated as a sale of assets for federal income tax purposes.** A taxpayer may structure their sale as a “sale of assets” as part of a business’s full or partial liquidation, rather than the sale of their ownership interest. Under prior law, income from such a sale may have been, but was not necessarily, considered business income; whether federal law treated a sale as a sale of assets did not necessarily mean that Ohio would treat the sale the same way.<sup>4</sup>
2. **The seller materially participates in the activities of the business during the taxable year in which the interest was sold or during any of the five preceding taxable years.** IRS rules for material participation generally consider the number of hours the taxpayer spent participating in the business, either on their own or in relation to other business participants.<sup>5</sup> Under prior law, a nonresident may have been required to pay Ohio tax on

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<sup>2</sup> R.C. 5747.01(A)(28) and R.C. 5747.02(A)(4), not in the act.

<sup>3</sup> R.C. 5747.20, not in the act.

<sup>4</sup> R.C. 5747.01(B) (specifying under continuing law that income from the liquidation of a business qualifies as business income).

<sup>5</sup> R.C. 5747.01(B).

their sale if the nonresident materially participated in the business, but the circumstances in which that situation occurred appeared to be rather fact-dependent.<sup>6</sup>

When either of those two conditions exist, income from the sale will be considered business income. In the case of nonresidents, this means that a portion of the income will be taxable in Ohio, based on the proportion of the business' activity that is apportioned to Ohio and subject to constitutional due process considerations.<sup>7</sup> In the case of either residents or nonresidents, the income will be eligible for preferential treatment under the BID and the 3% flat tax.

## **Application**

The act states that the change related to the sale of ownership interests is a remedial measure intended to clarify existing law. These changes apply to any audits, refund applications, petitions for reassessment, and appeals pending on or after September 23, 2022, the act's effective date.<sup>8</sup>

## **Sports gaming tax reporting**

The act changes the reporting and payment period for the sports gaming tax from daily to monthly. Ohio legalized sports gaming, i.e., betting, in H.B. 29 of the 134<sup>th</sup> General Assembly. That act took effect on March 23, 2022, but does not require that the state permit sports gaming until January 1, 2023. It also levied a 10% tax on the gaming receipts of sports gaming proprietors.<sup>9</sup>

Under H.B. 29, sports gaming proprietors were required to file tax returns and remit sports gaming tax on their sports gaming receipts by noon on each day banks are open for business. This is the same reporting frequency required for the casino revenue tax. The act changes this frequency for sports gaming proprietors, instead requiring them to file returns and remit payments by noon on the 15<sup>th</sup> day of each month.<sup>10</sup>

This change applies on and after the first day of the first month after the act's effective date, September 23, 2022, though, as discussed above, the sports gaming tax is unlikely to be levied until after 2022.<sup>11</sup>

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<sup>6</sup> *Corrigan*, 149 Ohio St.3d at 33 (2016) (recognizing that the sale of ownership interest may be apportioned and taxed by Ohio as business income if the taxpayer is considered to be in unity with the business, i.e., is actively managing the business).

<sup>7</sup> R.C. 5747.21 and 5747.212, not in the act.

<sup>8</sup> Section 3.

<sup>9</sup> R.C. 5753.021, not in the act; Section 4 of H.B. 29 of the 134<sup>th</sup> General Assembly.

<sup>10</sup> R.C. 5753.01 and 5753.04.

<sup>11</sup> Section 4.

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## HISTORY

Action	Date
Introduced	12-16-21
Reported, H. Ways & Means	03-23-22
Passed House (91-0)	03-30-22
Reported, S. Ways & Means	05-31-22
Passed Senate (31-0)	06-01-22
House concurred in Senate amendments (90-0)	06-01-22

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