



Ohio Legislative Service Commission

Bill Analysis

Mackenzie Damon

Am. H.B. 390

131st General Assembly
(As Passed by the House)

Reps. Schaffer and Retherford, Amstutz, Cera, Rogers, Anielski, Antonio, Baker, Bocchieri, Brenner, Brown, Buchy, Burkley, Celebrezze, Duffey, Fedor, Ginter, Green, Hagan, Hall, Hambley, Huffman, Lepore-Hagan, Maag, Manning, McClain, McColley, M. O'Brien, Patterson, Perales, Rezabek, Romanchuk, Ryan, Scherer, Schuring, Sears, Slaby, Slesnick, K. Smith, Sprague, Strahorn, Thompson, Young

BILL SUMMARY

- Exempts from sales and use tax the sale of natural gas by a municipal gas company and applies the exemption retroactively.
- Authorizes abatement of unpaid property taxes, penalties, and interest owed on property owned by a metropolitan housing authority that would have qualified for tax exemption if not for a failure to comply with certain exemption procedures.

CONTENT AND OPERATION

Municipal gas company sales exemption

The bill exempts from state and local sales and use taxes natural gas sold to customers by a municipal gas utility – defined as a municipally owned or operated system for distributing natural gas.¹ The exemption applies to sales occurring before or after the bill's effective date (see **COMMENT**, below).²

Continuing law exempts from sales and use tax sales of natural gas by a "natural gas company," which is broadly defined to include any entity that engages in the business of supplying or distributing natural gas for lighting, power, or heating

¹ R.C. 5739.01(RRR) and 5739.02(B)(7).

² Section 4.

purposes to in-state consumers.³ However, the statute governing which entities are natural gas companies for this purpose does not apply to municipal corporations.⁴

Tax abatement for housing authority property

The bill authorizes the abatement of unpaid property taxes, penalties, and interest on property that is owned by a metropolitan housing authority and that would have been tax-exempt if not for a failure to comply with the procedures for obtaining tax-exempt status. The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. The application must be filed within 12 months after the bill's effective date.⁵

With the exception of the bill's abatement provisions, continuing law allows the Commissioner to abate only up to three years' worth of unpaid property taxes, interest, and penalties. No exemption may be granted if, after any abatement of taxes, there remain unabated unpaid taxes.⁶

Procedures for receiving tax abatement

The application form must include the name of the county in which the property is located; the legal description or parcel number of the property; its taxable value; the amount of unpaid taxes, penalties, and interest; and any other information required by the Tax Commissioner.

If the property owner meets all of the qualifications specified in the bill, the unpaid charges must be abated. If the property does not meet the qualifications, or is otherwise being used for a purpose that would foreclose its right to exemption, the charges are not abated. For any year that the applicant is not entitled to tax abatement, the Commissioner must order the county treasurer to collect the unpaid charges for that year.

If property is already subject to an application for exemption pending on the bill's effective date, the Commissioner may consider the abatement without requiring the property owner to file another application.

³ R.C. 5727.01, not in the bill.

⁴ R.C. 5727.05.

⁵ Section 3.

⁶ R.C. 5713.08 and 5713.081, not in the bill.



COMMENT

Section 4 of the bill applies the bill's municipal gas service exemption retroactively to all gas sales made before the bill's effective date, without limitation.

Section 28, Article II of the Ohio Constitution provides that "The General Assembly shall have no power to pass retroactive laws" This provision prohibits the General Assembly from enacting laws imposing new substantive duties and obligations upon a person's past conduct and transactions. A law may run afoul of this prohibition if it impairs or takes away vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, among other things.⁷

To the extent that Section 4 would cause counties or transit authorities to refund their sales and use tax collections from prior municipal gas sales, it has the potential of violating this prohibition.⁸

HISTORY

ACTION	DATE
Introduced	11-05-15
Reported, H. Ways & Means	01-27-15
Passed House (93-0)	02-24-16

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⁷ *State v. White*, 132 Ohio St.3d 344 (2012).

⁸ See *Commissioners v. Rosche Bros.*, 50 Ohio St. 103 (1893); *State ex rel. Crotty v. Zangerle*, 133 Ohio St. 532 (1938); *Bd. of Educ. of the Cincinnati Sch. Dist. v. Hamilton County Bd. of Revision*, 91 Ohio St.3d (2001).

