



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Sub. S.B. 22\***

132nd General Assembly  
(As Reported by H. Ways and Means)

**Sens.** Peterson, Beagle, Wilson, Balderson, Dolan, Eklund, Gardner, Hackett, Hite, Hoagland, Huffman, Jordan, LaRose, Manning, Obhof, Oelslager, Schiavoni, Tavares, Terhar, Thomas, Uecker

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## **BILL SUMMARY**

- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 30, 2017, including the recently enacted "Tax Cuts and Jobs Act."
- Expands Ohio's 529 education savings plan so that, as recently authorized in federal law, plan earnings used for K-12 education expenses are tax-exempt, and so that amounts contributed to Ohio's 529 plan are eligible for Ohio's tax deduction even if ultimately used to pay K-12 education expenses.
- Declares an emergency.

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## **CONTENT AND OPERATION**

### **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 30, 2017.<sup>1</sup>

Numerous changes to federal law are being incorporated, including several changes made by the "Tax Cuts and Jobs Act," H.R. 1 of the 115th Congress, in December of 2017, and by the "Bipartisan Budget Act of 2018," H.R. 1892, in February. Several of these changes directly affect the tax base of many Ohio income tax taxpayers

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\* This analysis was prepared before the report of the House Ways and Means Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> R.C. 5701.11 and 5747.01(O).

by increasing or decreasing federal adjusted gross income (FAGI), the starting number for determining a taxpayer's Ohio taxable income. The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI. Since the Tax Cut and Jobs Act sets expiration dates for many of its provisions, presumably the expirations are incorporated into Ohio law as well.

The following is a list of some of the most significant of the federal law changes affecting Ohio law. All but one of these changes will first apply to taxable years beginning January 1, 2018, or thereafter:

### **Changes affecting business owners**

- A limit on pass-through entity (PTE) losses that an owner may claim in a taxable year, to \$250,000 (\$500,000 for joint filers).
- An increase in the limit on the value of business property that may be "expensed," or deducted as a current expense (rather than a capital expense), in the year in which the property is acquired.<sup>2</sup>
- An increase in the bonus depreciation allowance, from 50% to 100%, in the first year for purchases of certain qualifying property used in business. The increased allowance applies to property placed into service after September 27, 2017.<sup>3</sup>
- A limit on the amount that may be deducted as a net operating loss (NOL), to 80% of taxable income, and the repeal of the ability of a taxpayer to "carry-back" an NOL to previous years, with some exceptions.
- A limit on the deduction for business interest that may be taken in a taxable year, to 30% of modified income.
- Changes in the rules governing business accounting methods.
- The repeal of an income exclusion for gains from exchanges of like-kind business property, unless the property is real estate.

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<sup>2</sup> For both the expensing and bonus depreciation provisions, note that Ohio requires an "add-back" of amounts deducted under either of these provisions, such that, for Ohio tax purposes, the deduction is generally spread out over six years, rather than taken solely in the year in which the federal deduction is taken; accordingly, the revenue effect of these provisions will also be spread over time. R.C. 5747.01(A)(20) and (21) and (S)(14).

<sup>3</sup> See footnote 3.

- Changes affecting the determination of a partner's share of a partnership's income or loss.

Because Ohio law permits a deduction for business income of up to \$250,000, the effect of the federal changes on the Ohio tax liabilities of taxpayers taking that deduction will vary, and may have no net effect for some of those taxpayers.

### **Changes affecting other individuals**

- The repeal of an income exclusion for up to \$20 of the amount an employer reimburses its employee for bicycle commuting expenses.
- The repeal of a deduction allowed for moving expenses incurred by a taxpayer that relocates for work, unless the taxpayer is a member of the Armed Forces.
- A prohibition on the re-characterization of certain Individual Retirement Account (IRA) contributions.

A change in the treatment of alimony income, such that alimony will be considered income for the recipient, and cannot be deducted by the payer.

The Bipartisan Budget Act of 2018 extended several provisions that were set to expire in 2017, including an above-the-line deduction for higher education expenses that directly affects Ohio taxable income once the provision is incorporated.

### **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.<sup>4</sup> 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.

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<sup>4</sup> Cf. *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

## **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 February 14, 2016, and before March 30, 2017, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The February and 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 30, 2017, but before the bill's effective date. The act retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.

## **Extension of eligible 529 plan expenses**

Federal law authorizes states to operate tax-preferred college savings programs, known as "529 plans." Ohio currently offers such a plan, under which individuals may contribute to an investment account to pay for future post-secondary expenses. Ohio's plan is administered by the Ohio Tuition Trust Authority.<sup>5</sup> Earnings from 529 plans are exempt from federal and state income tax to the extent they are used to pay the qualified higher education expenses of the plan beneficiary.

The recently enacted federal Tax Cut and Jobs Act extends this favorable federal tax treatment to include 529 plan earnings used for primary and secondary school (K-12) education. States may amend their 529 plans to incorporate this change in federal law. Accordingly, the bill expands Ohio's 529 plan so that earnings used for K-12 education expenses may qualify for favorable federal and state tax treatment.<sup>6</sup>

Continuing Ohio law also allows a state income tax deduction for contributions to a 529 plan. The deduction is limited to \$4,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer's spouse, regardless of whether the taxpayer and spouse file separate returns or a joint return; annual contributions in excess of \$4,000 per beneficiary may be applied in ensuing years. Under the bill, 529 plan

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<sup>5</sup> Ohio law also offers a separate college savings program that qualifies as a 529 plan, under which individuals may purchase "tuition units." However, this plan has been closed to new contributions since December 31, 2003. For more information on this plan, *see* <https://www.collegeadvantage.com/guaranteed-plan-resource>.

<sup>6</sup> R.C. 3334.01, 3334.02, 3334.08, 3334.09, 3334.18, 3334.19, and 3334.20.



contributions will be eligible for this deduction even if used to pay for K-12 education expenses instead of post-secondary expenses.<sup>7</sup>

### **Emergency clause**

The bill declares an emergency, causing the bill to become effective immediately and exempting it from the referendum.<sup>8</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-31-17
Reported, S. Ways & Means	02-08-17
Passed Senate (32-0)	02-08-17
Reported, H. Ways & Means	---

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<sup>7</sup> R.C. 5747.70.

<sup>8</sup> Section 3.

