



Sub. H.B. 262

123rd General Assembly
(As Passed by the General Assembly)

Reps. Roman, D. Miller, Netzley, Sulzer, Tiberi, Cates, Jacobson, Taylor, Pringle, Clancy, Perz, Schuler, Young, Mottley, Grendell, Schuck, O'Brien, Vesper, Krebs, Padgett, DePiero, Willamowski, Buehrer, Boyd, Jolivette, Schuring, Roberts, Hood, Sullivan, Metelsky, Smith, Allen, Van Vyven, Householder, Krupinski, Hollister, Ford, Salerno, Womer Benjamin, Flannery, Hartnett, Distel, Perry, Austria, Peterson, Amstutz, Haines, Carey, Damschroder, Kilbane, Maier, Bender, Patton, Verich, Barnes, J. Beatty, Corbin, Trakas, Terwilleger, Olman, Gerberry, Harris, Jones, Callender, Britton, Gardner, R. Miller, Hoops, Calvert

Sens. Drake, DiDonato, McLin, Spada

Effective date: *

ACT SUMMARY

- Prohibits the Department of Taxation from placing a taxpayer's Social Security number on the outside of any material mailed to the taxpayer.
- Expands the environmental compliance facilities for which an electric company may claim the Ohio coal tax credit against its public utility excise or corporation franchise tax liability.
- Requires the taxing authority of a taxing unit that does not levy a tax to adopt an operating budget, rather than a tax budget, and exempts such a taxing unit from certain tax levy law requirements.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

CONTENT AND OPERATION

No Social Security number on mailings

(sec. 5703.55)

The act prohibits the Department of Taxation from placing a taxpayer's Social Security number on the outside of any material mailed to the taxpayer. In the past, income tax returns and related information mailed to individuals had a mailing label attached that included a taxpayer's Social Security number.

Ohio coal tax credit

Expansion of the tax credit

(secs. 5727.391 and 5733.39)

Electric companies may claim a tax credit against public utility excise tax liability for using Ohio coal. The credit is \$3 per ton of Ohio coal burned on or after January 1, 2000, and on or before April 30, 2001, in a coal-fired electric generating unit during the taxable year, provided that (1) the unit is owned by the company claiming the credit or leased by it under a sales and leaseback transaction, and (2) a compliance facility, which basically controls emissions of sulfur or disposes of byproducts, is attached to, incorporated in, or used in conjunction with the coal-fired electric generating unit.

Under continuing law, on and after January 1, 2002, the Ohio coal tax credit is eliminated in the public utilities excise tax law and reestablished in the corporation franchise tax law where it may be taken against corporation franchise tax liability at the same \$3 per ton rate and under the same two conditions as under the public utilities excise tax law. The credit may be taken for Ohio coal used after April 30, 2001, but before January 1, 2005. (This transfer of the credit is the result of Am. Sub. S.B. 3 of the 123rd General Assembly, the electric deregulation act, which removes electric companies from the public utility excise tax and requires them to pay the corporation franchise tax, beginning in tax year 2002.)

The act expands the compliance facilities for which an electric company may claim the Ohio coal tax credit under both the public utilities excise and corporation franchise tax laws. Under prior law, one type of system that qualified as a compliance facility was a flue gas desulfurization system connected to a coal-fired electric generating unit that either was placed in service prior to July 10, 1991, or construction of which was commenced prior to that date. Under the act, the July 10, 1991 qualifying date is eliminated so that the credit applies to any flue

gas desulfurization system connected to a coal-fired electric generating unit, regardless of the date it was placed in service or its construction was commenced.

Prior law defined a compliance facility, in part, as property used for the primary purpose of complying with Phase I acid rain control requirements under the federal Clean Air Act Amendments of 1990. The act eliminates the "Phase I" reference, so that property used to comply with acid rain control requirements under other phrases of that federal law may fall within the definition of a compliance facility.

Effective dates for the Ohio coal tax credit

(Sections 3 to 5)

The act does not affect the January 1, 2002, elimination of the Ohio coal tax credit in the public utility excise tax law (sec. 5727.391), or the transfer of the Ohio coal tax credit to the corporation franchise tax law (sec. 5733.39), effective January 1, 2002.

Technical matters

(sec. 5727.391(A)(1))

Revised Code 5727.391 contained a partial definition of "compliance facility" that referred to R.C. 4905.01 for the remainder of the definition. The act adds the R.C. 4905.01 definition to R.C. 5727.391 so that there is a complete definition of compliance facility, reflected as new language, in R.C. 5727.391. Except for the changes discussed above, this language mirrors the definition of compliance facility found in R.C. 4905.01 and is not new. The definition had to be moved, in full, to R.C. 5727.391, because S.B. 3 eliminates the definition from R.C. 4905.01 on January 1, 2001, making the R.C. reference to R.C. 4905.01 in R.C. 5727.391 obsolete.

Taxing units

(sec. 5705.28)

Continuing tax levy law requires, generally on or before July 15, that the taxing authority of a taxing unit adopt a tax budget for the next succeeding fiscal year. For purposes of the tax levy law, a "taxing unit" is any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

In practice, there are taxing units, for example, some regional and water sewer districts, that do not levy a tax on property in their districts because they obtain funds by special assessment. But according to a recent Ohio Attorney General's Opinion, 1999 Ohio Op. Att'y Gen. 99-020, these regional water and sewer districts that do not levy taxes must adopt a tax budget nonetheless, simply because they fall within the definition of "taxing units." The Attorney General concluded that "had the General Assembly intended to except the taxing authority of a subdivision or other taxing unit that does not levy taxes or receive moneys from tax revenues from the duty to adopt a tax budget, it could have expressly so provided in R.C. 5705.28(A), as it did with respect to the exceptions set forth in R.C. 5705.28(B) and 5705.281." *Id.* at p. 2-141.

Accordingly, the act adds to the law an exception for taxing units that do not levy taxes. The act provides that the taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget. Instead, on or before July 15 of each year, the taxing authority must adopt an operating budget for the taxing unit for the ensuing fiscal year. The operating budget must include an estimate of receipts from all sources, a statement of all taxing unit expenses that are anticipated to occur, and the amount required for debt charges during the fiscal year. The operating budget does not have to be filed with the county auditor or the county budget commission.

Under the act, a taxing unit that does not levy a tax is not a "taxing unit" for purposes of the tax levy law, except it must continue to comply with the following laws: the act's operating budget provision (R.C. 5705.28); certification of available revenue from each fund created by or for a taxing authority (R.C. 5705.36); passing, amending, or supplementing appropriation measures (R.C. 5705.38 and 5705.40); restrictions on the appropriation and expenditure of moneys (R.C. 5705.41); execution of contracts for improvements paid by special assessments and contracts running beyond a fiscal year (R.C. 5705.43 and 5705.44); and liability for wrongful payments from public funds (R.C. 5705.45). Documents prepared in accordance with those provisions are not required to be filed with the county auditor or county budget commission (which is required for a tax budget).

The act also requires that total appropriations from each fund of a taxing unit that does not levy a tax cannot exceed the total estimated revenue available for expenditures from the fund, and appropriations must be made from each fund only for the purposes for which the fund is established.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|-----------------------------------|----------|---------------|
| Introduced | 03-22-99 | p. 330 |
| Reported, H. Ways & Means | 06-17-99 | pp. 892-893 |
| Passed House (96-0) | 06-28-99 | pp. 1064-1065 |
| Reported, S. Ways & Means | 10-20-99 | pp. 1094-1095 |
| Recommitted to S. Ways & Means | 10-20-99 | p. 1095 |
| Re-reported, S. Ways & Means | 01-06-00 | p. 1284 |
| Passed Senate (31-0) | 01-25-00 | p. 1336 |
| House concurred (95-0) | 01-26-00 | pp. 1552-1553 |

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