



Sub. H.B. 483*

123rd General Assembly
(As Reported by S. Ways and Means)

Reps. Mottley, Distel, Aslanides

BILL SUMMARY

- Prescribes a uniform municipal income tax base for electric light companies, which is to be apportioned among municipal corporations on the basis of property, payroll, sales, and local municipal income tax rates.
- Prescribes uniform filing requirements whereby an electric light company files a single municipal income tax return with the state, and the state distributes the tax collections to municipalities.
- Prescribes uniform procedures for collection, enforcement, and appeals regarding municipal income taxation of electric light companies, similar to those for the corporation franchise tax.
- The bill applies to municipal income taxes paid in 2002 and thereafter.

CONTENT AND OPERATION

Municipal income taxation of utilities

Under continuing law, a municipal corporation cannot tax the income of public utilities that are subject to the public utility excise (gross receipts) tax. But under the electric industry deregulation act (S.B. 3), electric light companies become subject to the corporation franchise tax beginning in 2002, and will no longer be subject to the public utility excise tax. Once the companies are no longer subject to that tax, municipal corporations are free to tax their income. The bill's uniform reporting and payment provisions apply to municipal income taxes paid *for* 2003; and since the bill requires estimated taxes to be reported and paid in

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

the year preceding the year for which taxes are paid, estimated taxes are to be paid under the bill's uniform provisions beginning in 2002.

The bill prescribes uniform procedures for administering municipal income taxes levied on electric light companies. Generally, the bill requires an electric light company to file a single tax return and pay taxes to the state, rather than filing separate returns and making separate tax payments to each municipal corporation where the company conducts business. A set of uniform procedures and enforcement remedies will apply in lieu of the various municipal procedures and remedies; the uniform procedures and remedies are substantially equivalent to those used to administer and enforce the corporation franchise tax.

Companies covered under the bill

(secs. 5745.01 and 5745.031)

The bill applies to all companies known in the electric utility deregulation law (Chapter 4928.) as "electric light companies." This term encompasses not only electric utilities that generate, transmit, or distribute electricity, but nonutility companies that arrange for electricity to be supplied to a consumer through facilities owned by other companies; but these suppliers are covered by the bill only if 50% or more of their total Ohio sales consist of electricity or other energy commodities and the supplier elects to be subject to the bill's provisions. If such a company elects to be covered by those provisions, the company is subject to those provisions for five years. The bill also applies to so-called "combined companies"--those that have multiple lines of utility business such as natural gas and electricity supply--but only to the extent that such companies are in the business of supplying electricity. (Hereafter in this analysis, references to electric light companies should be understood to refer to the electricity-supplying part of a combined company.)

Nonprofit companies and municipal electric utilities are not subject to municipal income taxes (under the bill).

Uniform tax base

(secs. 5745.01 and 5745.02)

Currently, each municipal corporation that levies an income tax on corporations may define taxable income in its own way, so a corporation doing business in several municipal corporations might have to compute the tax due to each municipal corporation in a different manner.

The bill prescribes a uniform tax base for electric light companies: an electric light company's income for municipal income tax purposes is its "adjusted federal taxable income": i.e., its federal taxable income minus net intangible

income; minus any amount deducted under the corporation franchise tax for disposing of qualifying assets of an electric company to the extent apportioned to Ohio; plus any such amount added under the corporation franchise tax.

Each company's tax base will be determined over its federal taxable year.

Apportionment of income

(sec. 5745.02)

The bill prescribes a two-stage method for apportioning an electric light company's income to a municipal corporation. First, its adjusted federal taxable income is apportioned to Ohio. A three-factor apportionment formula is used consisting of property, payroll, and sales in Ohio as compared to everywhere. Each factor is given equal weight. If a company (other than a combined company) is involved in businesses other than electricity generation, transmission, distribution, or supply, then all of its adjusted federal taxable income is used as the base for apportionment, and the factors include all of its property, payroll, or sales regardless of whether it is employed in the electricity business. Electricity sales are apportioned in the same manner prescribed for the corporation franchise tax.

Second, a company's income as apportioned under the first stage ("Ohio net income") is apportioned to each municipal corporation in which the company uses property, employs persons, or makes sales under another three-factor formula. The factors consist of property, payroll, and sales in the municipal corporation as compared to elsewhere in Ohio.

Special rule for combined companies

If a company is a combined company (i.e., in the business of supplying electricity and some other utility, such as natural gas), then only the electricity-supplying part of the company's operations are to be included in the factors.

Appealing the apportionment

(sec. 5745.13)

Municipal corporations have the right under the bill to appeal the Tax Commissioner's apportionment of an electric light company's net income. To appeal, the municipal corporation must file a petition with the Tax Commissioner within 60 days after the Tax Commissioner issues notice of an audit adjustment to the affected municipal corporations. The Tax Commissioner must hold an administrative hearing (if one is requested) and must make any correction in the apportionment that is warranted. Any correction must be certified to the electric light company and to all municipal corporations affected by the corrected

apportionment. A municipal corporation may not appeal the Tax Commissioner's finding.

Tax determination; distribution of taxes to municipalities

(secs. 5745.03 and 5745.05)

An electric light company's Ohio net income, once apportioned to each municipal corporation, is multiplied by the municipal corporation's tax rate in effect on January 1 within a taxpayer's taxable year to determine the tax owed to that municipal corporation. Municipal corporations must certify their tax rates to the Tax Commissioner by January 31 each year. If a municipal corporation fails to certify its tax rate, 50% of the municipal corporation's distribution of revenue is withheld by the state until the rate is certified.

All tax collections are credited to the Municipal Income Tax Fund, which is created by the bill, except 1 1/2% is credited to a fund to defray the Tax Commissioner's administrative costs (up to 5% in 2002 and 2003). Distributions to municipal corporations of their apportioned shares of the taxes are paid from this fund. All investment earnings from the fund are credited to it and apportioned among municipal corporations in proportion to their respective payments from the fund. Payments made from the fund are adjusted to reflect estimated taxes already paid from the fund to a municipal corporation, and any estimated taxes paid directly to a municipal corporation by a company.

Estimated tax payments

(secs. 5745.04 and 5745.05; Section 5)

Payment and reporting of estimated taxes

The bill requires electric light companies to pay estimated taxes to the state each quarter. A company must pay 100% of its previous year's total municipal tax liability or 90% of its current liability in four equal quarterly installments. Estimated tax payments and reports must be submitted to the Tax Commissioner. If any payment exceeds \$1,000, the company must remit the payment by electronic funds transfer in the same manner that several other state taxes are required to be paid.

Estimated payments in 2002

For the first year that estimated taxes are due (2002), a company must pay 20% of its 2002 liability at each of the quarterly due dates. The bill incorporates a "safe harbor" provision that precludes penalties and interest being charged if a company pays at least 80% of its actual liability for the year.

Distribution of estimated taxes

No later than March 1, June 1, September 1, and December 1 each year, the Tax Commissioner must distribute the estimated tax payments to municipal corporations.

Tax reports

(secs. 5745.03 and 5745.14)

Each electric light company subject to a municipal income tax must file an annual report with the Tax Commissioner by the 15th day of the fourth month of its taxable year. (If the company receives an extension for filing its Ohio corporation franchise tax report, the due date for the municipal report is extended for the same period.) The Tax Commissioner prescribes the form of the report; generally, it must elicit the same information as the corporation franchise tax report. The Tax Commissioner may require companies to file reports in an electronic format.

Municipal corporations are prohibited from requiring electric light companies to file tax returns in addition to the state report. But municipal corporations may require companies to file reports of employee compensation paid for personal services rendered in the municipal corporation.

If an electric light company's municipal income tax report must be altered as a result of a change in the company's federal income tax return or Ohio corporation franchise tax report, and that alteration affects the company's municipal income tax liability, the company must file with the Tax Commissioner an amended municipal income tax report within one year after the federal or state change is determined. The company must pay any tax underpayment resulting from the alteration (plus accrued interest), and may request a refund (plus interest) for any overpayment resulting from the alteration.

Credit for tiered companies

(sec. 5745.06)

The bill grants a credit against any municipal income taxes paid by certain "tiered" entities to negate any income from being taxed twice. If an electric light company subject to taxation in a municipal corporation owns a share of another electric light company organized as a pass-through entity (e.g., partnership, S corporation, limited liability company not taxed as a corporation) that also is taxed

by the same municipal corporation, then the owner of the entity may claim a nonrefundable credit for the taxes paid by the entity to that municipal corporation. Credits unused in one year may be carried over to later years until exhausted.

Administration and enforcement; penalties, interest, and refunds

(secs. 5745.07 to 5745.12 and 5745.15)

The Tax Commissioner is charged with administering and enforcing the bill's provisions. The Tax Commissioner must prescribe necessary forms, provide any required notices, and adopt any necessary rules.

Penalties and interest are charged in a similar manner and for the same reasons as penalty and interest are charged under the corporation franchise tax. Money collected in the form of penalties and interest is distributed to the municipal corporations entitled to receive taxes from the electric light company.

The Tax Commissioner has the same powers to make assessments against electric light companies for municipal income taxes as for any corporation under the corporation franchise tax. The same three-year statute of limitations on assessments that applies under the franchise tax applies to assessments issued against electric light companies for municipal income taxes (there is no statute of limitation in cases of fraud or failure to file, as under the franchise tax). Electric light companies have the same right to appeal assessments as corporations have to appeal corporation franchise tax assessments (beginning with administrative appeals before the Tax Commissioner, which are appealable to the Board of Tax Appeals).

Refunds must be requested and paid in a similar manner as refunds of corporation franchise taxes are, but municipal corporations, rather than the state, would be responsible for issuing refunds. Also, refunds may be credited against the company's future estimated tax payments rather than paid directly to the company. Interest would accrue on any refunds that are not paid within 90 days after a municipal corporation is notified by the Tax Commissioner that a refund is due. Refunds are charged pro rata against all municipal corporations that receive taxes from the electric light company, and deducted from the municipal corporation's next distribution of taxes.

The Tax Commissioner may adopt rules regarding the retention of records by companies, including federal income tax returns and Ohio corporation franchise tax reports. Companies must make those records available to the Tax Commissioner for inspection during normal business hours. Companies must retain records and other pertinent documents for three years after the applicable filing deadline (or the actual day it was filed, if later than the deadline), unless the Tax Commissioner allows the company to destroy the records earlier.

Confidentiality of taxpayer information

(secs. 5745.16 and 5703.21)

Under continuing law, taxpayer information gained by municipal officers and employees through the tax collection process is deemed to be confidential, and persons possessing such information are prohibited from disclosing it except under specified circumstances (such as in accordance with a court's order, or in performing an official act that is authorized by local law). There is no penalty prescribed by state law for violations.

Since the bill provides for electric light companies to file a single return that may cover its operations in several municipal corporations, the bill permits certain municipal representatives to gain access to annual reports and estimated tax reports filed with the state. For this purpose, the bill requires the Tax Commissioner, who keeps the reports, to adopt rules governing how the reports and related information are to be made available for inspection by municipal representatives. The rules must prohibit the disclosure of such reports or related information to anyone who is not specifically authorized by the municipal corporation to gain access to taxpayer information, and must allow disclosure of only as much information as is necessary for an authorized municipal representative to determine the share of a company's income that is to be apportioned to that municipal corporation.

The bill provides that the disclosure of taxpayer information by an agent of the Department of Taxation in accordance with the Tax Commissioner's rules is not a violation of an existing law that prohibits those agents from disclosing taxpayer information (sec. 5703.21).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-19-99	p. 1293
Reported, H. Ways & Means	02-01-00	p. 1581
Passed House (61-32)	03-22-00	pp. 1702-1703
Reported, S. Ways & Means	---	---

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