Bethany Boyd *Legislative Service Commission*

H.B. 612*

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

Reps. Jolivette, Mottley, Schuring, Amstutz, Hartnett, Perry, Mettler, Hollister, Grendell, Tiberi, Olman, Terwilleger, Harris, Peterson, Goodman, Austria, Cates, Metelsky, Buehrer, Barrett, Hoops, Evans, Widener, Winkler, Verich, Stevens, J. Beatty, Damschroder, Myers, Schuler, O'Brien, Britton, Salerno

BILL SUMMARY

General

- Makes the imposition of certain tax and tax-related penalties discretionary rather than mandatory.
- Lengthens the deadline for taxpayers to file administrative appeals from 30 to 60 days after a notice of assessment is issued.
- Eliminates the requirement (and in effect, "penalty only" appeals) that certain taxpayers pay any penalties they owe on an assessment when they file a petition for reassessment for personal income, corporation franchise, or qualifying entity taxes.
- Authorizes the Tax Commissioner to permit alternative forms for filing tax-related documents, including electronic forms.
- Requires the Tax Commissioner to prescribe the form of any signature or declaration required to be made by certain taxpayers.
- Authorizes the Tax Commissioner to permit persons to send tax-related documents by delivery services other than the United States Postal Service.

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

- Permits taxpayers to round amounts entered on all returns and other tax-related documents, in addition to the personal income tax return.

- Authorizes the Tax Commissioner to designate up to two deputy tax commissioners to serve in case of the Tax Commissioner's absence, disability, or recusal, or a vacancy in the office.

- Eliminates references to "sessions" and "proceedings" of the Department of Taxation.

- Makes various nonsubstantive changes.

Property taxes

- Precludes prospective changes in the methods of determining the true value of certain personal property from being introduced in proceedings as evidence of value for past years.

Personal income tax

- Requires taxpayers to make quarterly estimated tax payments only if estimated unwithheld tax liability is $500 or more per year, instead of $300.

- Lowers the threshold for determining whether employers must electronically remit income taxes withheld from employees' pay, from $180,000 to $84,000 per year.

Sales and use taxes

- Expands the six-day sales tax exemption for sales by charitable organizations and the exemption for building materials used to build property of a charitable organization to include all federally tax-exempt religious, charitable, educational, and scientific organizations.

- Expands the sales tax exemption for casual sales by including those sales that have been subject to any state's sales or use tax, rather than just Ohio's.

- Extends the amount of time allowed for consumers and sellers to demonstrate that a sale is tax-exempt when an exemption certificate has not been supplied.

- Extends the exemption certificate requirement to the use taxes.
- Lowers the threshold for determining whether sellers, consumers, and direct payers must electronically pay sales or use taxes to the state, from $600,000 to $60,000 per year.
- Eliminates the vendor's license annual renewal requirement and the renewal fee.
- Eliminates a class of vendor's license ("limited vendor") for persons who sell items at temporary flea markets, fairs, shows, and exhibitions in a county but who have no fixed place of business in that county, and incorporates those sales within the transient vendor's license.
- Reduces the transient vendor's license fee from $100 to $25.
- Eliminates the authority to revoke a vendor's license for noncompliance with the sales tax laws.
- Allows sellers to move from one place of business to another within the same county without having to obtain a new vendor's license.
- Requires licensed vendors who also hold a liquor permit to have the vendor's license held in the same name as the liquor permit is held.

Fuel excise tax

- Exempts from the motor fuel excise tax any diesel fuel used in certain vessels that currently qualify for a refund of that tax.
- Lengthens the deadline for filing motor fuel excise tax refund claims.
- Exempts from the fuel use tax commercial tandems (trucks and trailers), if the truck has only two axles and the tandem weighs 26,000 pounds or less.
- Specifically subjects commercial tractors to the fuel use tax even when they are not pulling a trailer or semi-trailer.
- Allows less frequent filing of highway use tax permits, and eliminates the permit filing fee.

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CONTENT AND OPERATION

GENERAL

Discretionary imposition of penalties

(secs. 3734.904, 3734.907(C), 3769.088(A), 4301.422(B), 4303.33(A) and (C), 4305.131(A), 5727.26(A), 5727.89(A), 5728.09, 5728.10(A), 5733.28, 5735.12(A), 5735.121(D), 5739.12, 5739.133, 5743.03, 5743.081, 5743.082(B) and (D), 5743.52(B), 5743.56(C), 5747.15, and 5749.15)

When taxpayers or other persons fail to pay taxes or assessments by the due date, current law requires the Tax Commissioner to impose a penalty and prescribes the amount of the penalty. The Tax Commissioner usually lacks discretion over whether a penalty is imposed and the amount of the penalty.

The bill grants the Tax Commissioner discretion over whether to impose a penalty and how much the penalty shall be. The current mandatory penalty amounts become maximum penalty amounts. The bill also permits the Tax Commissioner to adopt rules governing the imposition of penalties and the remission (forgiveness) of penalties to the extent that the Commissioner currently lacks this authority.

The discretionary penalties apply under almost all taxes administered by the Tax Commissioner (the estate tax is the exception):

- The personal income tax and the "qualifying entity" tax (a tax on pass-through entities--S corporations, limited liability companies, partnerships, certain trusts--to ensure payment of personal income and corporation franchise taxes by the entities' nonresident owners) (sec. 5747.15).

- The corporation franchise tax (sec. 5733.28).

- The sales and use taxes (secs. 5739.12 and 5739.133).

- Business tangible personal property taxes (secs. 5711.25, 5711.28, and 5711.31).
- The natural gas company excise (gross receipts) tax (sec. 5727.26).
- The public utility excise (gross receipts) tax (sec. 5727.47).
- The kilowatt-hour tax (sec. 5727.89(B)).
- The fuel and fuel use taxes (secs. 5728.10(B), 5735.12(A), and 5735.121(D)).
- The taxes on alcoholic beverages (secs. 4301.422(B), 4305.13(B), and 4305.131(B) and (C)).
- The taxes on cigarettes and tobacco products (secs. 5743.03, 5743.081, 5743.082(B) and (D), 5743.52(B), and 5743.56(C)).
- The severance tax on the extraction of coal, oil, minerals, ores, and other natural resources (sec. 5749.15).
- The tax on horse racing wagering (sec. 3769.088(B) and (C)).
- The tax on tires to fund disposal of used tires (secs. 3734.904(B) and 3734.907(A) and (E)).

Longer deadlines for filing tax appeals

Filing administrative appeals

(secs. 3734.907(A) and (E), 3769.088(B) and (C), 4305.13(B), 4305.131(B) and (C), 5711.25, 5711.28, 5711.31, 5727.26(B), 5727.47, 5727.89(B) and (D), 5728.10(B) and (C), 5733.11(C), 5735.12(B), 5735.121(B), 5739.13(B) and (C), 5739.15(B), 5743.081(B) and (C), 5743.082(B), 5743.56(D), 5747.13(B) and (C), and 5749.07(B) and (C))

Currently, when the Tax Commissioner issues an assessment against a taxpayer, the taxpayer, in order to appeal the assessment, must file a petition for reassessment with the Tax Commissioner within 30 days after the assessment was issued. In the case of many taxes, interest accrues on the amount of the assessment that the taxpayer has not paid within that period of time. (An assessment is a formal notice of an outstanding liability for taxes, interest, and penalty.)

In the case of business and public utility tangible personal property taxes, taxpayers are entitled to appeal the state's valuation of their property as this valuation is reflected on the preliminary assessment certificate, an amended preliminary assessment certificate, or notice of assessment. To appeal an assessment certificate or notice, current law generally requires taxpayers to file a petition for reassessment within 30 days after the second Monday of August (with respect to property tax returns filed two years earlier), or within 30 days after the notice is sent to the taxpayer. Also, if a taxpayer does not file a return, files a late return, or files an incomplete return that does not list all of the taxpayer's taxable property, a penalty may be assessed. A taxpayer is entitled to appeal this penalty by filing a petition for abatement of the penalty within 30 days after the notice of the penalty is sent to the taxpayer.

The bill extends the period for filing petitions for reassessments from 30 days to 60 days. Accordingly, interest will not begin to accrue on the unpaid portion of an assessment until 60 days after the assessment is issued. The 30-day period for filing petitions for abatement of penalties for business tangible personal property assessments likewise is lengthened to 60 days.

Appeals to the Board of Tax Appeals

(sec. 5717.02)

Once a final administrative decision has been issued, a taxpayer may appeal the decision to the Ohio Board of Tax Appeals (BTA) within 30 days after notice of the decision has been given to the taxpayer. (This applies not only to the Tax Commissioner's final decisions regarding assessments, but to any final orders, valuations, findings, or computations issued by the Tax Commissioner, and to determinations made by the Director of Development regarding a business' qualification for enterprise zone tax incentives.)

The bill extends the 30-day BTA appeal filing period to 60 days.

Payment of penalty waived when filing administrative appeal

(secs. 5733.11(E) and 5747.13(E))

Currently, if a corporation objects to an assessment for corporation franchise taxes, and a penalty is due, the corporation, when filing the administrative appeal ("petition for reassessment") with the Tax Commissioner, must pay the entire amount of the assessment, including all tax, interest, and penalty due. Similarly, if a person or "qualifying entity" subject to the personal income tax objects to an assessment for that tax, the person or entity must pay the

entire assessment, including all tax, interest, and penalty, when filing a petition for reassessment.*

The bill permits a corporation or personal income taxpayer that files a petition for reassessment to pay only the tax assessed, plus any associated interest, but not the penalty.

Electronic document filing

(sec. 5703.054)

The bill authorizes the Tax Commissioner to prescribe the form in which any required signatures and declarations must be made by taxpayers and other persons making filings with the Tax Commissioner or Treasurer of State. The Tax Commissioner also may permit certain tax-related documents to be filed in an electronic format or other alternative form.

Filing documents and paying taxes by nonpostal delivery services

(secs. 5703.056, 5705.37, 5717.01, and 5717.02)

The bill expressly authorizes the Tax Commissioner to permit taxpayers to send documents or tax payments by means other than United States mail. The provision applies to tax-related documents filed with, and payments made to, the Tax Commissioner, the Treasurer of State, or the Ohio Board of Tax Appeals.

The Tax Commissioner may permit alternative delivery services if the service is available to the general public; the service is "at least as timely and reliable on a regular basis" as the United States Postal Service; the date the document or payment was given to the delivery service is electronically recorded in a database kept by the service in the regular course of its business; the service marks that date on the envelope or cover in which the document or payment is enclosed; the service electronically records in such a database the date the document or payment was given by the delivery service to the receiver; and the service satisfies any other criteria prescribed by the Tax Commissioner in rules.

For the purposes of provisions throughout the Revised Code governing the filing of documents and the payment of taxes, references to "certified mail," "United States mail," and "United States Postal Service" will include a delivery

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* *The personal income tax applies to individuals and estates; employers required to withhold income taxes from employees also are liable for remitting those taxes to the state, and may be assessed and penalized if they fail to do so as required by law.*

service satisfying the foregoing requirements. References to postmark dates will include the date marked on the envelope or cover by the delivery service.

The bill also authorizes some parties to mail documents by "express mail" instead of certified or ordinary mail.

Serving notices on taxpayers

(secs. 3734.907(A) and (F), 3769.088(A), 4305.13(B) and (D), 4305.131(A), 5703.37, 5705.37, 5717.02, 5727.26, 5728.10(A), 5733.11(A), 5735.12(A), 5735.121(B), 5739.13(A), 5739.15(B), 5743.081(A), 5743.082(B), 5743.56(A) and (F), 5747.13(A), and 5749.07(A))

The bill clarifies a general provision (sec. 5703.37) regarding how notices and orders issued by the Department of Taxation are to be served upon taxpayers and other persons. With a few exceptions, service must be provided by personal delivery or certified mail, as under current law, but if personal delivery is used, a certified copy of the order or notice will no longer be required. Also, references to registered mail are replaced by references to certified mail. (Registered mail provides the sender with confirmation, through a system of receipts, of the sent item's movement through the postal system; it is usually used to send items with intrinsic monetary value. Certified mail provides a receipt of delivery to the post office from which the mail originated and, if requested by the sender, a receipt to the sender. But under section 1.02, either term is defined to include the other for the purposes of the Revised Code.) References to corporations, as distinct from "persons," are removed in the general law, since "person" normally includes corporations for the purposes of the Revised Code and Title 57.

Rounding of dollar amounts on tax documents

(sec. 5703.055)

Currently, taxpayers may round dollar amounts entered on their personal income tax returns. Amounts may be rounded upward to the next higher whole dollar if the amount includes a fraction of 50 cents or more, and rounded downward to the next lower whole dollar if the amount includes a fraction of less than 50 cents. A taxpayer who rounds fractional amounts is required to round all fractional amounts on the return.

The bill extends this authority to round fractional dollars to all tax returns or other reports, vouchers, or other tax-related documents filed for any tax.

Deputy tax commissioners

(sec. 5703.05(I))

Currently, the Tax Commissioner is authorized to appoint up to five persons as deputy tax commissioners. The deputies are authorized to act for the Tax Commissioner as prescribed under rules adopted by the Tax Commissioner.

The bill authorizes the Tax Commissioner to designate no more than two of the deputies to act as the Tax Commissioner in case the Tax Commissioner is absent, disabled, or recused, or if the office of Tax Commissioner is vacant. The Tax Commissioner may adopt rules governing the order of precedence of the designation, and governing these deputies' assumption and administration of the Tax Commissioner's office in the event of such absence, disability, recusal, or vacancy.

Departmental sessions and proceedings; operating hours

(sec. 5703.11)

Current law calls for the Department of Taxation to be "in continuous session," to make its sessions open to the public, and for the Department's proceedings to be recorded as a public record. The Department also is to remain open for business on all days, except Sundays and legal holidays.

The bill eliminates all references to the Department's "sessions" and "proceedings," and permits the Department to be closed for business on Saturdays, as well as Sundays and legal holidays.

Nonsubstantive amendments

The following amendments in the bill change or reorganize language, but do not make substantive changes in the law:

- Due dates for tangible personal property returns for existing businesses and new businesses are expressed separately (sec. 5711.04).

- Language regarding the filing of petitions for the abatement of business tangible personal property penalties that was inadvertently removed in prior legislation is restored (sec. 5711.28).

- Eliminates obsolete language regarding a sales and use tax exemption for solar, wind, and hydrothermal energy systems (sec. 5739.02(B)(27)).

- Eliminates obsolete language regarding qualifying interstate bus operators and the motor fuel tax law. They are not subject to the fuel tax when they purchase fuel in Ohio (sec. 5735.12).

PROPERTY TAXES

Method of determining value of personal property

(secs. 5711.18 and 5727.11)

Current law (unchanged by the bill) requires owners of business tangible personal property and accounts receivable (a form of intangible personal property) to list the value of the property at its true value in money. In the case of business tangible personal property, true value in money is book value minus book depreciation; in the case of accounts receivable, true value in money is the book value minus book reserves. Current law also provides that the value of most kinds of public utility personal property must be based on the cost of the property as capitalized on the utility's books minus "composite annual allowances as prescribed by the Tax Commissioner."

The bill specifies that any change in the method of determining true value or composite annual allowances that is prescribed by the Tax Commissioner "on a prospective basis" is not admissible in any judicial or administrative action or proceeding as evidence of the property's value for any prior tax year. Moreover, any information about a taxpayer's business, property, or transactions that is acquired by the Tax Commissioner for the purpose of adopting or modifying the method of determining true value or composite annual allowances is not subject to discovery or disclosure. Apparently, then, if the Tax Commissioner prescribes a new manner of determining composite annual allowances for a tax year, then that manner may not be applied to valuing the property for a prior year in any administrative appeal before the Tax Commissioner or in any appeal to the Ohio Board of Tax Appeals or a court, whether introduced by the utility or the Tax Commissioner or sought by a party to such an appeal.

PERSONAL INCOME TAXES

Estimated tax payments, reports required only if estimated tax exceeds $500

(sec. 5747.09)

Currently, any taxpayer whose estimated taxes for a year (minus any taxes withheld by the taxpayer's employer) exceed $300 must file a quarterly estimated tax report ("declaration of estimated taxes"). With each quarterly report, the

taxpayer must pay 22-1/2% of the estimated tax liability (after accounting for taxes paid through employer withholding).

The bill increases the $300 threshold to $500, so fewer taxpayers would be required to pay estimated taxes than under current law.

Lower electronic payment threshold for employers

(sec. 5747.08(I))

Many employers must withhold state and school district income taxes from employees' compensation and remit the taxes to the state. Currently, an employer must remit those taxes electronically if the amount of payments it made during the 12 months ending June 30 of the prior year exceeded $180,000. Employers must continue making payments electronically until the amount collected falls below this threshold for two consecutive years. The manner in which electronic payments are made is prescribed by law and rules of the Treasurer of State (see sec. 113.061).

The bill lowers this threshold to $84,000 beginning with 2001. Thus, if an employer's tax payments exceed $84,000 during the July 1, 1999, to June 30, 2000, or during any later July 1 to June 30 period, the employer must remit the taxes electronically in subsequent calendar years until the amount withheld for two consecutive 12-month periods falls below $84,000.

SALES AND USE TAXES

Expand exemptions for sales by and to charitable organizations

Six-day exemption for sales by organizations

(sec. 5739.02(B)(9))

Currently, nonprofit organizations that are operated exclusively for charitable purposes may sell goods and services for up to six days per year without the purchaser being liable for state or county sales taxes (unless it is a motor vehicle or manufactured or mobile home being sold). Sales made on a seventh or subsequent day in the year are subject to taxation. But the definition of "charitable purpose" does not include all of the activities and purposes that qualify nonprofit organizations for federal income tax exemption under section 501(c)(3) of the Internal Revenue Code. By comparison, current law provides a sales and use tax exemption for purchases *by* organizations satisfying section 501(c)(3) and any other nonprofit organization organized for "charitable purposes" as that term is defined under the sales tax law.

The bill extends the six-day sales tax exemption to all nonprofit organizations that are exempt from federal income taxation under section 501(c)(3). This includes organizations that are organized and operated exclusively for charitable or religious, scientific, educational, literary, or testing for public safety purposes; for the prevention of cruelty to children or animals; or to foster national or international sports competition. The organization's net income may not inure to the benefit of any individual or private shareholder, and the organization must not devote a substantial amount of its activities to political activities or campaigns.

Exemption for building materials

(sec. 5739.02(B)(13))

Currently, sales of building and construction materials to a construction contractor are exempted from the sales and use taxes if the materials are incorporated into a building used exclusively for "charitable purposes" as defined under the sales tax law. (Contractors are liable for the sales or use tax on materials they incorporate into real property as part of a construction contract, unless the contractee--usually the property owner--specifies that the materials will be considered an item of tangible personal property rather than part of the real property.) As with the six-day exemption rule, this definition does not include all of the purposes for which organizations may be operated in order to qualify for federal tax exemption under section 501(c)(3).

The bill expands the exemption for building and construction materials to include materials sold to a construction contractor for incorporation into a building under a construction contract with an organization that is exempted from federal income taxation under section 501(c)(3), as long as the building is used exclusively for the organization's tax-exempt purposes.

Expanded casual sale exemption

(sec. 5739.01(L))

Under current law, most so-called "casual" sales are exempt from state and county sales and use taxes. The sale of an item is considered a casual sale if the person selling the item already acquired the item for that person's own use in Ohio, and the Ohio sales or use tax has already been paid (for example, personal items sold at a garage sale). Sales of used cars and other motor vehicles and certain watercraft are not included within the casual sale exemption.

The bill expands the casual sale exemption to include items acquired for a person's own use in Ohio and for which *any* state's sales or use tax has been paid.

Thus, "casual sale" would include sales of personal property made by a person who moves to Ohio with that property from another state and who already had paid that state's sales or use tax for that property. The current definition of "casual sale" does not include such a sale, so such a sale technically is subject to Ohio sales or use tax. Sales of used motor vehicles and certain watercraft continue to be subject to Ohio sales and use tax under the bill, regardless of whether the sale otherwise satisfies the criteria for casual sales and whether a previous sale of the vehicle or watercraft was taxed by another state.

Extension of time to document qualification for sales tax exemption

(sec. 5739.03(B) and (E))

For most sales that qualify for exemption from the sales and use tax, consumers must document their claim for the exemption by giving an exemption certificate to the seller; the seller also has a legal duty to obtain a certificate from the consumer. If the consumer does not provide such a certificate to the seller, or the seller does not obtain a certificate from the consumer, and the Tax Commissioner notifies the consumer or seller that an assessment may be issued for the failure to supply the certificate, the consumer or seller is given 60 days to show why the sale is tax-exempt.

The bill extends this 60-day period to 120 days.

Exemption certificate requirements under the use tax

(sec. 5741.02(E) and (F); Section 3)

The bill expressly extends to the use tax the requirement that taxpayers file exemption certificates, as currently required under the sales tax (as described above). Thus, if a person makes a purchase that is subject to use taxes rather than sales taxes (generally, out-of-state purchases on which the other state's sales tax is not paid), and the purchase may qualify for exemption from taxation (e.g., the purchaser is a church), the bill requires the person to provide an exemption certificate to the seller; the seller also has a legal duty to obtain a certificate from the purchaser.

The bill also permits purchasers or sellers who do not supply use tax exemption certificates to show why a purchase is tax-exempt, as under the sales tax. Consumers and sellers have 120 days after being notified of the possibility of an assessment. Sellers that are assessed for failure to supply an exemption certificate and who do not show that a sale is tax-exempt within that 120-day period still may provide additional evidence that the purchase is exempt within 90

days after receiving the notice of assessment. This 90-day period may be extended for an additional 30 days if the seller can show reasonable cause for the extension.

Lower electronic payment threshold

(secs. 5739.032, 5739.122, and 5741.121)

Generally, sales taxes must be paid by the consumer to the seller, and the seller forwards the tax collections to the state treasury. Sellers must begin forwarding collections to the state treasury by electronic funds transfer if, for any calendar year, the collections amount to $600,000 or more. If a seller files sales tax returns for two or more vendor licenses, the seller must pay electronically if the total of the collections for those licenses is at least $600,000. Sellers must continue making payments electronically until the amount collected falls below this threshold for two consecutive years. The manner in which electronic payments are made is prescribed by law and by rules of the Treasurer of State (see sec. 113.061).

The bill lowers this threshold to $60,000 per year, beginning in 2000. So, if a seller forwards at least $60,000 in collections to the state in 2000 or thereafter, the seller must begin transmitting the payments electronically in the following year, and continue to do so until collections fall below $60,000 for each of two consecutive years. The bill makes the same change for consumers who make significant out-of-state purchases or motor vehicle purchases that are subject to the use tax, and for so-called "direct payment permit holders." Direct payment permit holders are consumers that pay sales taxes directly to the state rather than to the seller. In order to pay directly to the state, the consumer must obtain a direct payment permit (sec. 5739.031). To obtain the permit, a consumer must purchase items "under circumstances that normally make it impossible at the time of the purchase to determine" whether the purchase of the items is tax-exempt. (For example, many items that may be used by a manufacturer may be tax-exempt because they are incorporated into something else in the course of the manufacturing process, but also may be taxable if used in some other fashion by the manufacturer.) Once the taxable status of items is determined, the consumer must pay the sales tax directly to the state.

The bill also removes the requirement that a seller making returns for more than one vendor license must total the amount of tax collections to determine whether it must pay the taxes electronically.

Assessment penalties under sales and use taxes

(sec. 5739.133(A))

When the Tax Commissioner issues assessments against consumers or sellers that do not properly pay or report sales or use taxes, penalties are imposed (as described under "***Discretionary imposition of penalties***," above, the penalties would become discretionary under the bill). The amount of the penalty depends on the nature of the seller's or consumer's failure. Currently, if a person fails to file a sales tax return as required by law, the penalty is 50% of the amount of the assessment.

Under the bill, the penalty for failing to file a sales tax return is replaced by a penalty for failing to collect and remit (pay) the tax as required by law. A seller may still be penalized under continuing law for failing to file a return by having its vendor's license suspended (sec. 5739.30).

The bill also adds language specifying that failure to collect and remit the use tax, including the remission of taxes collected from consumers, is penalized to the same extent that failure to collect and remit the sales tax is penalized.

Changes in vendor licensing

In order to legally make any sales that are subject to sales taxation, the seller must obtain a vendor's license. Vendor's licenses may be obtained by applying to the county auditor of the county where the sales are to be made. A separate vendor's license must be obtained for each fixed place of business in the county, and a fee of $25 is charged for each of those licenses. If a person does not have a fixed place of business in a county where the person makes taxable sales, the person must obtain a transient vendor's license or a limited vendor's license (explained below).

Reduce transient vendor's license fee

(sec. 5739.17(B))

Vendors that make taxable sales in a county, but do not have a fixed place of business there, may obtain a transient vendor's license. The license entitles the vendor to make sales in any county where the vendor does not have a fixed place of business. The fee for a transient vendor's license is $100.

The bill reduces the transient vendor's license fee from $100 to $25.

Eliminate limited vendor license class

(secs. 5739.033(C), 5739.13(A), and 5739.17)

Currently, persons that make taxable sales at temporary events (such as flea markets, fairs, exhibitions) must obtain a limited vendor's license unless they have

a vendor's license for a fixed place of business in the same county where the temporary event is held, or hold a transient vendor's license. The license is valid for as long as the event lasts, up to 20 days. The fee for a limited vendor's license is $5.

The bill eliminates the limited vendor's license. Thus, persons who currently must obtain a limited vendor's license will have to obtain a transient or regular vendor's license.

Eliminate license renewal fee

(secs. 5739.13(A), 5739.17(E), and 5739.30(B))

Currently, vendor's licenses (other than limited vendor's licenses) must be renewed each year in order for the license holder to continue to lawfully make taxable sales. The fee for the renewal is $40 for transient vendor's licenses, and $10 for other licenses. Failure to pay the renewal fee may result in suspension or revocation of a vendor's license.

The bill eliminates the vendor's license renewal fees. Accordingly, personal liability of vendors who do not pay the renewal fee also is eliminated.

Revocation of licenses--only if vendor is inactive

(sec. 5739.19)

Under current law, the Tax Commissioner may revoke a vendor's license for two reasons: (1) the vendor has failed to comply with the sales tax laws (such as forwarding sales tax collections to the state and filing returns), or (2) the vendor no longer makes taxable sales.

The bill eliminates the first of these reasons, thus permitting the Tax Commissioner to revoke a vendor's license only if the Tax Commissioner finds that a vendor no longer makes taxable sales. A vendor whose license is revoked retains the right to appeal the revocation to the Tax Commissioner and the Board of Tax Appeals.

The Tax Commissioner retains existing authority (sec. 5739.30) to suspend a vendor's license or to require the vendor to provide security if the vendor does not file returns as required by law.

Transfer of vendor license if moving within county

(sec. 5739.17(A))

Under current law, a separate vendor's license generally is issued for each place a vendor has a fixed place of business. A vendor must obtain a new vendor's license whenever the vendor changes its identity or moves to a new place of business. The fee for a vendor's license is $25.

Under the bill, a vendor does not have to obtain a new vendor's license if it moves a fixed place of business within the same county. Instead, the vendor may apply to the Tax Commissioner to have the license transferred to the new place of business. (A vendor still may choose to apply for a new license for the new location.) Once it has been verified that the new location is in the same county as the existing location, the Tax Commissioner must notify the county auditor of the change in location.

Vendor license to be in same name, for same location as liquor permit

(sec. 5739.17(A))

If a vendor makes sales under a liquor permit, the seller must obtain a vendor's license in the same name and for the same address as the liquor permit is issued.

FUEL EXCISE TAXES

The motor fuel excise tax is levied on motor fuel (gasoline, diesel, and blends) used, distributed, or sold in Ohio. Generally, fuel dealers are liable for the tax. There are several separate levies, totaling 22 cents per gallon. There is also a fuel use tax levied on commercial truck owners for fuel used, but not purchased, in Ohio. The use tax replaces revenue from the former highway use ("axle-mile") tax (Chapter 5728.); which was repealed when Ohio entered into the International Registration Plan, under which taxes on commercial trucks are apportioned among participating states.

Refund claim deadline extended

(secs. 5735.14, 5735.141, 5735.142, and 5735.18)

Certain fuel users are entitled to claim a refund for motor fuel taxes paid on the fuel they use. (Since the tax usually is imposed on what is commonly known as the wholesale level, fuel users whose use is not taxable are permitted to claim a refund of the tax paid at the wholesale level on that fuel.) Transit bus operators and persons who purchase fuel that has been taxed and then sell the fuel for use outside Ohio (other than fuel dealers) also are entitled to refunds. Currently, such users or persons must file a claim for refund within 180 days after the fuel is purchased.

Under the bill, refund claims are due within one year of purchase.

Retail fuel dealers also are entitled to claim refunds for fuel stock "shrinkage" and evaporation. The refund is equal to 1% of the tax paid over each of two six-month periods. Currently, they must file a claim for refund by August 29 and by March 1 (or February 29 in leap years) for each six-month period ending 60 days before each of those dates.

The bill doubles the time allowed for shrinkage and evaporation refund claims, from 60 days to 120 days--that is, the refund claims are due by October 28 and April 30 (or April 29 in leap years) for the six-month period ending 120 days earlier.

Exemption for fuel used in certain vessels

(sec. 5735.05(A)(10))

The bill provides for an outright exemption from the motor fuel tax of any diesel fuel sold for use in certain vessels (boats, ships, and other watergoing vessels) if the fuel is sold from a bulk lot vehicle (i.e., railroad tanker cars and tank trucks capable of holding at least 1,400 gallons). The vessels qualifying for the exemption currently are entitled to a refund for taxes paid on fuel, and include vessels used entirely for a trade, business, or for commercial purposes, including commercial fishing vessels; vessels used by the Boy Scouts for training; government-owned vessels; and vessels owned by a railroad or railroad car ferry company.

Measuring fuel quantity

(secs. 5735.01(AA) and (BB) and 5735.012)

The bill specifies how motor fuel shall be measured for the purpose of the motor fuel tax. Fuel must be measured in gross gallons, unless it is being reported for transactions between terminals or between a terminal and a licensed Ohio fuel dealer. When reported for transactions between terminals, fuel must be measured in net gallons; when reported for transactions between a terminal and a licensed Ohio dealer, it must be measured in both gross gallons and net gallons. Gross gallons is U.S. gallons without any adjustment to account for temperature or barometric pressure; net gallons is U.S. gallons at 60 degrees Fahrenheit.

"Transmix"

(sec. 5735.01(D) and (E))

The definition of "diesel fuel" for the purposes of the motor fuel tax is expanded to include diesel when it is mixed with transmix.

"Waterclear" diesel

(secs. 5735.01(C), 5735.023, and 5735.05(A)(2))

References in the motor fuel tax statutes that describe K-1 kerosene as "waterclear" are removed.

Fuel use tax--apply only to heavier vehicle combinations

(secs. 5728.01, 5728.02, 5728.03, 5728.04, and 5728.06)

Currently, a fuel use tax is imposed on trucks for the fuel they consume, but do not purchase, in Ohio. The tax applies to trucks capable of carrying loads on their own chassis ("commercial cars") and having at least three axles; commercial cars and trailers used in combination ("commercial tandems"); and trucks, familiarly known as semis, consisting of a "tractor" that is not capable of carrying a load on its own chassis and a semi-trailer ("commercial tractor combinations"). A trailer or semi-trailer must weigh at least 3,000 pounds when empty in order to be considered part of a commercial tandem or commercial tractor combination that is subject to the fuel use tax. Current law does not specify that the tax applies to the tractor when it is not used to pull trailers or semi-trailers.

The bill exempts from the fuel use tax any commercial tandem having a gross vehicle weight or registered gross vehicle weight of 26,000 pounds or less and consisting of a commercial car that has only two axles. Accordingly, the bill strikes references to the weight of trailers and semi-trailers that are subject to the tax when used with a commercial car or tractor. The bill also specifically states that the fuel use tax applies to commercial tractors even when they are not being used to pull a semi-trailer or trailer.

Fuel use tax--less frequent filing; eliminate permit filing fee

(secs. 5728.03 and 5728.08)

Currently, all trucks subject to the fuel use tax (i.e., commercial cars and commercial tractors) other than those used as farm trucks must file a highway use tax return and pay the fuel use tax quarterly. Owners of farm trucks may file on an annual or quarterly basis, as they choose.

The bill authorizes the Tax Commissioner to permit taxpayers to file the returns and pay the tax annually if the Commissioner estimates that the amount of

tax due is not enough to warrant quarterly filing. The annual return and payment would be due on July 30 "for the preceding 12 months."

The bill also eliminates the current $2 filing fee for single-trip highway use permits, which must be held by trucks and trailers subject to the fuel use tax.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-00	pp. 1682-1683
Reported, H. Ways & Means	04-11-00	p. 1794
Passed House (95-0)	05-16-00	pp. 1954-1956
Reported, S. Ways & Means	---	---

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