Bill Analysis

Peter A. Cooper *Legislative Service Commission*

H.B. 396

124th General Assembly
(As Reported by H. Ways & Means)

Reps. Latta, Kearns, Hollister, Otterman, Seitz, Lendrum, Reidelbach, Schmidt, Willamowski, D. Miller, Fessler, Jones, Jolivette, Roman, Faber, Aslanides, Kilbane, Coates, Hoops, S. Smith

BILL SUMMARY

- Permits the Attorney General and state agencies to grant extensions for the payment of claims beyond one year.
- Changes the computation of interest accruing on overdue payments to the state.
- Prescribes standards governing when the Tax Commissioner and the Attorney General may compromise with a taxpayer on an unsettled tax claim.
- Specifies that a tax claim compromise may benefit only the parties to the compromise, and must be voided if it is not complied with or if it is obtained by fraud or material misrepresentation.

CONTENT AND OPERATION

Collecting overdue payments owed to the state--current law

(sec. 131.02)

Current law prescribes a procedure for collecting money owed to the state. Once a payment is past due for 45 days, the state agency responsible for collecting the payment must certify the overdue claim to the Attorney General's office and notify the Director of Budget and Management. The Attorney General's office then must notify the debtor of the claim and proceed to collect it--by civil action if necessary. The Attorney General and the chief officer of the state agency may adjust the claim in an "equitable" manner, and may extend the time in which the debtor may make the payment, but only for up to one year. An extension is available only if it serves the best interests of the state. The debtor also may be required to provide security for the payment.

Compromising general claims

(sec. 131.02)

The bill slightly modifies the state's authority to compromise claims for overdue payments to the state. The state may continue to adjust claims or extend the time for their payment, but in doing so the Attorney General and the state agency's chief officer must "act together," and they may extend the time allowed for the debtor to pay the claim in installments for a "reasonable time"--possibly longer than the current one-year limit. Moreover, the bill clarifies that, whether a claim is compromised or an extension is granted, the "best interests of the state" must be served; by contrast, current law may be read to require the best interests of the state to be served only in case an extension is being granted. The bill also changes the interest rate that may be charged on overdue claims, as explained under the following heading.

Interest on overdue claims

Interest accrues on overdue claims owed to the state. Currently, the rate of interest equals the so-called "discount rate"--i.e., the interest rate charged by Federal Reserve Banks to member financial institutions for overnight loans and advances. (Specifically, the rate on overdue claims is the base discount rate charged by the Federal Reserve Bank of New York.) Currently, this rate is about 2% per annum; the rate is subject to change daily.

The bill changes the interest rate charged for overdue claims to the rate charged for overdue taxes, unless the state and the debtor agree to a different rate or a specific law prescribes a different rate. The interest rate charged on overdue taxes is three percentage points above the yield on short-term marketable securities of the federal government. This rate currently is 9% per annum. The rate is subject to change annually.

Compromising tax-related claims

(secs. 131.02, 5703.06, and 5747.451)

In addition to the changes regarding compromises of general claims of the state, the bill prescribes some specific provisions with respect to tax-related claims (i.e., claims payable under laws administered by the Tax Commissioner), as explained below. The specific tax-related provisions appear to be supplemental to the provisions governing general claims.

Standards

As indicated above, a compromise or extension agreement regarding an overdue claim may be granted only if it serves the best interests of the state. The bill prescribes standards to be applied by the Attorney General and the Tax Commissioner when considering whether the state's best interests are served by a compromise or an extension agreement allowing installment payments ("payment-over-time" agreements).

The standards to be considered include the following:

- It is doubtful the claim can be collected.
- There is a "substantial probability" that the Tax Commissioner would refund the claim once the claim is paid and a refund request is filed by the debtor.
- An economic hardship exists, and the compromise or extension therefore "would facilitate effective tax administration."

In addition to these standards, the Attorney General and Tax Commissioner may jointly agree to other standards.

Compromises not appealable

If the Attorney General and the Tax Commissioner reject a compromise or payment-over-time agreement, the debtor may not appeal their decision.

Compromises binding on, and apply to, the parties to the agreement only

Compromises or payment-over-time agreements are binding upon only those persons that are parties to the compromise or agreement, and may inure to the benefit of them only. A compromise or agreement does not extinguish or affect the liability of any other person or governmental entity.

Compromises voided if obtained improperly

If a debtor obtains a compromise or payment-over-time agreement and then defaults, or if it is discovered that the debtor obtained the compromise or agreement by fraud or by misrepresentation of a material fact, then the compromise or agreement must be voided. Upon the compromise or agreement becoming void, the debtor must be required to pay the full amount that was due before the compromise or agreement was made, and all of the interest that would have accrued if the compromise or agreement had not been made.

Conforming statutory changes

Because the bill enacts the foregoing general provisions governing compromises and extensions of tax-related claims, the bill eliminates existing compromise provisions that are specific to certain taxes. Thus, the Attorney General's and Tax Commissioner's authority to compromise public utility tax-related claims (sec. 5727.59), corporation franchise tax-related claims (sec. 5733.25), and entity withholding tax-related claims (sec. 5747.451) is supplanted by the bill's general compromise provisions.[1]

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-09-01	p. 881
Reported, H. Ways & Means	10-23-01	pp. 969-970

h0396-rh.124/kl

---

[1] *The entity withholding tax is a tax on pass-through entities (e.g., partnerships, S corporations, limited liability companies) having nonresident investors. The purpose of the tax is to ensure compliance of those investors with their Ohio personal income or corporation franchise tax obligations by requiring the entity to report and pay the tax on behalf of the investors.*