



Sub. H.B. 362

125th General Assembly
(As Passed by the General Assembly)

Reps. Hoops, Allen, Calvert, C. Evans, D. Evans, Flowers, Hartnett, Jerse, Martin, Miller, T. Patton, Peterson, Schmidt, Strahorn, Aslanides, Barrett, Brown, Callender, Chandler, Cirelli, Collier, DeBose, Domenick, Gilb, Hollister, McGregor, Niehaus, Olman, Otterman, Price, Schlichter, Seaver, Seitz, Slaby, D. Stewart, J. Stewart, Walcher

Sens. Amstutz, Blessing, Harris

Effective date: March 31, 2005; Sections 3, 5, and 6 effective December 30, 2004; certain provisions effective December 30, 2004

ACT SUMMARY

- Changes a term that describes a type of permanent improvement for which a school district may pass a property tax levy, from "general on-going permanent improvements" to "general permanent improvements."
- Defines "general permanent improvements" and specifies that the change of the term does not change the purpose for which such levies are or may be imposed.
- If a school district imposes a levy for a specific permanent improvement or class of improvements for a specific period of time, provides that the district may propose to replace the levy for the same purpose or for the purpose of general permanent improvements and that the maximum term of that levy may be for a continuing period of time.
- Provides that if a school district imposes one or more existing levies for a specific permanent improvement or class of improvements for a specific period of time, it may propose to renew one or more of those existing levies, or to increase or decrease a single such existing levy, for the purpose of general permanent improvements.
- Requires that a business operating in several municipalities add back certain amounts associated with tax exempt stock options granted to

employees, when apportioning the business's net profits among those municipalities.

- Allows certain single member limited liability companies to elect to be separate taxpayers from their single members for purposes of municipal income taxation.
- Requires the State Lottery Commission to allow a prize winner who is being paid in installments to transfer all or a portion of the remainder of the prize award to multiple transferees, if certain conditions are met.
- Permits the assignability of a person's right to a lottery prize award when a person is awarded a prize award to which another has claimed title, pursuant to the order of a federal bankruptcy court under Title 11 of the United States Code.
- Revises references to federal laws in state corporation franchise tax and income tax provisions so that those tax provisions generally incorporate any federal tax legislation changes that have been made since the last time those provisions were amended.
- Makes changes to the application prioritization procedure for job training tax credits.
- Until July 1, 2005, creates an amnesty period for re-filing applications for exemption of real property that were dismissed due to case law.

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CONTENT AND OPERATION

Permanent improvement levies

Change of term

(R.C. 3318.05(C), 3318.052, 3318.08(C)(1) and (2), 3318.44(B), and 5705.21(A); Section 4)

Under prior law, a board of education of a school district could levy property taxes with voter approval for, among other things, the construction or acquisition of any specific permanent improvement or class of improvements¹ that the district was authorized to include in a single bond issue (even though bonds are not issued in connection with this kind of levy). Such a levy could be in effect for a period not to exceed five years (that is, "for a specific period of time"). In addition, a board of education could levy property taxes for "general on-going permanent improvements" for either a period not to exceed five years or on a continuing basis (that is, "for a continuing period of time").

The act eliminates the word "*on-going*" and instead refers only to "general permanent improvements" as the purpose for this latter kind of levy. The act defines the term "general permanent improvements" to mean permanent improvements that are not limited to a specific improvement or class of improvements that may be included in a single bond issue. Finally, the act specifies that the change of the term does not change the purpose for which such levies are imposed or may be imposed and is intended only to change the name by which those levies are referred to in law and in resolutions, election notices, and ballot forms.

¹ For property tax purposes, "*permanent improvement*" or "*improvement*" means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more (R.C. 5705.01, not in the act).

Replacement and renewal of permanent improvement levies

(R.C. 5705.192(B) and 5705.21(B); Section 4)

Continuing law establishes procedures for the voter-approved *replacement* of school district property tax levies. With respect to a replacement levy, a board of education of a school district may (1) propose to replace a levy in its entirety at the rate at which it is authorized to be levied, (2) propose to replace a portion of the existing levy at a lesser rate, or (3) propose to replace the existing levy in its entirety and increase the rate at which it is levied. Under prior law, a replacement levy was required to be limited to the purpose of the existing levy, and was subject to the same limitation on its maximum term as the existing levy. The act creates an exception to these requirements by specifying that if a school district imposes a levy for a specific permanent improvement or class of improvements for a specific period of time, the district may propose a replacement levy for the same purpose or for the purpose of general permanent improvements. Further, the act specifies that such a replacement levy for general permanent improvements is not limited to the term of the existing levy and may be levied for a continuing period of time.

Continuing law also establishes procedures for the *renewal* by school districts of levies for permanent improvements. Subject to voter approval, one or more existing levies may be renewed, or a single levy may be increased or decreased. Under prior law, if two or more existing levies were renewed, the levies had to be levied for the same purpose. The act instead specifies that if a board of education imposes one or more existing levies for a specific permanent improvement or class of improvements for a specific period of time, the board may propose to renew one or more of those existing levies, or to increase or decrease a single such existing levy, for the purpose of general permanent improvements.²

The act specifies that an existing levy for "general, ongoing permanent improvements" that is renewed or replaced for the purpose of "general permanent improvements" must be considered to be a levy for the purpose as the existing levy.

² *The act is not clear regarding whether the levy also may be renewed for a continuing period of time, as for replacement levies under the act. Failing to address this may conflict with R.C. 5705.21, which allows general permanent improvement levies to be levied for up to five years, or for a continuing period of time.*

Issuance of anticipation notes for "general permanent improvements"

(R.C. 5705.21(C)(2) and (3))

Current law authorizes a board of education to issue anticipation notes after approval of a levy for a specific permanent improvement or class of improvements for a specific period of time. The notes may be issued in a principal amount not exceeding 50% of the total estimated proceeds of the levy remaining to be collected in each year over a five-year period after the issuance of the notes. The act specifies that a board of education also may issue such anticipation notes after approval of a levy for general permanent improvements for a specified number of years.

Under prior law, anticipation notes also could be issued by a board of education after approval of a levy for general on-going permanent improvements in a principal amount not to exceed 50% of the total estimated proceeds of the levy over a specified number of years not to exceed ten. The act eliminates the word "on-going" and provides that those anticipation notes may be issued after approval of a levy for general permanent improvements for a continuing period of time.

Use of permanent improvement levy proceeds for Ohio School Facilities Commission program

(R.C. 3318.052)

Under prior law, proceeds from school district levies for general on-going permanent improvements could be applied to certain costs related to financing or maintaining projects for classroom facilities for which funding was provided by the Ohio School Facilities Commission. The act authorizes a school district to apply the proceeds from any permanent improvement levy to pay for such costs, not just proceeds from levies for general permanent improvements.

Add-back of tax exempt stock options in the apportionment of business net profit among municipal corporations

(R.C. 718.02(E); Section 6)

A business that operates both inside and outside the boundaries of several municipalities that levy income taxes must apportion its income among the several municipalities in which it operates. Generally, a business apportions its net profit on the basis of a three-part statutory formula that examines the payroll, sales, and real and tangible personal property (whether owned or rented) within and outside the municipality to determine the portion of the net profit of the business that is attributable to the municipality.

Under continuing law, a municipality, by resolution or ordinance, may exempt from taxation compensation arising from the sale, exchange, or other disposition of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. If a municipality has exempted such compensation from taxation, the compensation is excluded from the withholding tax base for that municipality.

The act provides that if, in computing its net profit subject to municipal taxation, a business has deducted any amount with respect to a stock option granted to an employee, and the employee is not required to pay municipal income tax on the stock option because of a resolution or ordinance exempting it from taxation, the business must add the amount that is exempted from taxation by the municipality to the amount of business net profit that it apportioned to that municipality. The act specifies that in no case can a business be required to apportion any amount of the stock option other than the amount that the municipality exempted from taxation.

This provision takes effect immediately when the act becomes law.

Municipal income taxation of single member limited liability companies

(R.C. 718.01(A)(8) and (J); Section 6)

Prior law provided that a "taxpayer," i.e., any person that is subject to a tax on income levied by a municipal corporation, does not include any person that is a disregarded entity for federal income tax purposes. In a provision that takes effect immediately when the act becomes law, the act provides that a single member limited liability company that is a disregarded entity for federal tax purposes may elect to be a taxpayer, separate from its single member, in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

- (1) The limited liability company's single member is also a limited liability company;
- (2) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004;
- (3) Not later than December 31, 2004, the limited liability company and its single member each make an election to be treated as a separate taxpayer under the act;

(4) The limited liability company was not formed for the purpose of evading or reducing the Ohio municipal corporation income tax liability of the limited liability company or its single member; and

(5) The Ohio municipal corporation that is the primary place of business of the sole member of the limited liability company consents to the election.

For purposes of (5), a municipal corporation is the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least \$400,000.

Limitations on the assignability of lottery prize awards

Under the continuing State Lottery Law, the right of any prize winner to a prize award is not assignable, or subject to garnishment, attachment, execution, withholding, or deduction, *except* as expressly provided in that law. The act provides an additional exception when an award is made pursuant to the order of a bankruptcy court, and expands upon the current exception allowing the transfer of a lottery prize award under certain circumstances.

Bankruptcy exception

(R.C. 3770.07(D)(1) and 3770.10(D)(3))

The act permits a lottery prize award to be assigned when a person is awarded a prize award to which another has claimed title pursuant to the order of a federal bankruptcy court under Title 11 of the United States Code. The act conformably expands the definition of "prize winner" to include a person who was awarded a prize award to which another has claimed title by a federal bankruptcy court order.

Transfer exception

(R.C. 3770.12 and 3770.121; R.C. 3770.13, not in the act)

Continuing law permits the transfer of a lottery prize award if a court of competent jurisdiction finds that certain conditions are met.³ One of those conditions is that the transferor's interest in each and all of the future payments

³ "Transfer" is defined as any form of sale, assignment, or redirection of payment of all or any part of a lottery prize award for consideration (R.C. 3770.10(E)).

from a particular lottery prize award is to be paid to a single transferee, *or*, if the payments are to be directed from the State Lottery Commission to multiple transferees, the Commission has adopted rules permitting such transfers.

The act provides that any Commission rules allowing lottery prize awards to be paid in installments also must allow a prize winner who is being paid a prize award in that manner to transfer all or a portion of the remainder of the prize award, subject to the following conditions:

(1) If each transfer is for less than 100% of the remainder of the prize award, the remainder of the prize award for each transfer must be \$500,000 or greater at the time of the transfer. If the lottery prize award is a lifetime prize, for each transfer the remainder of the minimum guaranteed prize to which the prize winner is entitled must be \$500,000 or greater at the time of the transfer.

(2) Payments of the prize award transferred must be subject to the withholding or deduction of any amounts that are required by law to be withheld or deducted for such things as child support and state income taxes.

(3) The maximum number of transfers with respect to any single prize award cannot exceed three, unless a greater number has been specified by the Commission in the rules.

Another one of the conditions that must be met in order for a court of competent jurisdiction to approve the transfer of a lottery prize award is that, if the award has been transferred within 12 months immediately preceding the effective date of the proposed transfer, the Commission has not objected to the proposed transfer. The act specifies that, for purposes of this provision, any of a series of transfers of a lottery prize award that occur simultaneously as part of a single transaction are not to be considered to be a prior transfer of the award within that previous 12-month period *if* the transferee (1) has given written notice of the transferee's name, address, and taxpayer identification number to the Commission and (2) has filed a copy of that notice with the court in which the application for approval of the transfer was filed.

Definition of "court of competent jurisdiction"

(R.C. 3770.10(A))

For purposes of the provisions of the State Lottery Law regulating the assignability and transfer of lottery prize awards (R.C. 3770.07 and 3770.10 to 3770.14), "court of competent jurisdiction" was defined as either (1) the general division or probate division of the court of common pleas of the county in which the *prize winner* resides or (2) if the *prize winner* is not a resident of Ohio, either

the general division or probate division of the Court of Common Pleas of Franklin County or a federal court having jurisdiction over the lottery prize award. Under the act, the definition applies with respect to "transferors" as well as prize winners.

Update of state corporation franchise tax and income tax laws to incorporate changes in federal law

(R.C. 5733.04(J) and 5747.01; Sections 5 and 6)

State v. Gill, 63 Ohio St.3d 53, an Ohio Supreme Court case decided in 1992, held that a state food stamp trafficking statute that used the language "as amended" in referring to the federal food stamp law did not constitute an unlawful delegation of state legislative authority in violation of Ohio Constitution, Article II, Section I. The Court stated that the General Assembly, by using "as amended," did not intend to adopt amendments to the federal law **after** the effective date of the state statute, but instead simply intended to incorporate the federal food stamp law as it existed on the date the state statute was enacted. The Court concluded that the General Assembly may adopt provisions of federal statutes that are in effect at the time state legislation is enacted, by updating and revising the state statute to incorporate amended versions of the federal food stamp law. In the Court's eyes, this would not be an unlawful delegation of state legislative authority.

The definition statutes for the corporation franchise tax and income tax generally state that terms used in those respective laws have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes. The act revises these two definition statutes to make the statements identical, with the intent to create a new effective date for the statutes. (They were last amended June 26, 2003.) The result of this revision is that terms used in federal income tax laws that recently have been amended or enacted (since the last time either of the state definition statutes have been amended) are incorporated into the state statutes. In effect therefore, federal laws that have been enacted or amended between June 26, 2003, and the date the act becomes law are incorporated into the state corporation franchise tax and income tax laws.

The act further provides that updating references to federal income tax laws in these state laws, which thereby incorporates recent changes in the federal laws, first applies to taxable years ending on or after the effective date of the changes, which take immediate effect when the act becomes law. But a taxpayer may irrevocably elect to apply the updated laws to the taxpayer's taxable year ending in 2004. The filing of a tax return or report by the taxpayer for that taxable year that incorporates the updated laws without adjustments to reverse the effects of those updated laws constitutes the making of an irrevocable election under the act.

Prioritization of applications for the employee job training tax credit

(R.C. 5733.42(H))

Under continuing law, corporations, dealers in intangibles, income tax taxpayers who invest in pass-through entities, domestic insurance companies, and foreign insurance companies are permitted to take a nonrefundable tax credit against their tax liability for employee job training costs they incur. Prior law required that the Director of Job and Family Services authorize the tax credit for employers who conduct job training programs for eligible employees in the order in which applications for the credit were received by the Director. The act removes that requirement and instead requires that the Director adopt a rule that establishes criteria and procedures for distribution of the credits. The rule must be adopted under the Administrative Procedure Act (APA) after consultation with the Tax Commissioner and the Superintendent of Insurance, and as proposed for adoption must be submitted to the legislative committees that customarily consider economic development matters. (The APA requires public notice of and a public hearing on proposed rule making, and also subjects proposed rules to legislative review.)

Amnesty period for re-filing applications for exemption of real property

(Sections 3 and 6)

Effective immediately when the act becomes law, the act enacts in temporary law a provision that is intended to mitigate the unintended consequences of *Cleveland Clinic Foundation v. Wilkins*, 103 Ohio St.3d 382, 816 N.E. 2d 224 (2004), by providing remedial legislation to address the large volume of applications for exemption of real property that the Tax Commissioner dismissed because of the decision in that case. In *Cleveland Clinic*, the Tax Commissioner considered an application for exemption of real property filed by the Cleveland Clinic Foundation. The treasurer's certificate attached to the application showed that taxes, special assessments, penalties, and interest were not paid on the property. The Commissioner denied the application. The Ohio Supreme Court held that since the law provided that the Commissioner "shall not consider an application for exemption of property" unless the certificate executed by the county treasurer certifies that all taxes, assessments, interest, and penalties charged against the property have been paid in full, or that the applicant has entered into a written undertaking with the treasurer to pay any delinquencies charged against the property, the Tax Commissioner could not consider the exemption application because the certificate showed that taxes, special assessments, penalties, and interest were not paid on the property. The decision resulted in the Commissioner having to dismiss other exemption applications under similar circumstances.

The act provides that, notwithstanding existing law that limits to once every three tax years how often applications for exemption of property may be filed, a current owner of "qualified property," at any time on or before July 1, 2005, may file with the Tax Commissioner an application requesting that the property be placed on the tax exempt list and that all paid or unpaid taxes, penalties, and interest on the property be abated or remitted for the "eligible years" when that property did not receive a tax exemption, remission, or abatement because of failure to comply with the law regarding the assessment of real estate or the filing of applications for exemption. Under the act, "qualified property" means real property that satisfies the qualifications for tax exemption under any section of the Revised Code and for which an application for exemption of property was dismissed by the Tax Commissioner because of *Cleveland Clinic*. The "eligible years" for which an application may be filed are those tax years for which taxes, penalties, and interest could have been properly remitted or abated and the property placed on the tax exempt list under a previous application for exemption of property that was dismissed because of *Cleveland Clinic*.

The act requires that the application be filed on the form prescribed by the Commissioner under existing law. The owner must attach to the application a copy of the Commissioner's final determination dismissing the previous application for exemption of the qualified property, along with the county treasurer's certificate that states whether all taxes, penalties, and interest that were levied for all tax years that are not eligible years and all special assessments charged against the property have been paid in full. If that is not so, the county treasurer is required to issue a certificate to that effect listing the tax years for which taxes, penalties, interest, and special assessments remain unpaid. Failure to attach the Commissioner's final determination dismissing the previous application for exemption and the treasurer's certificate will result in dismissal of the application.

The county auditor must notify the county treasurer to hold any tax payments for eligible years in a special fund, pending a decision by the Commissioner on an application filed under the act. While the application is pending, no subdivision or other taxing unit is entitled to an advance payment of those moneys. After the Commissioner issues a decision, the county auditor must either refund the taxes, penalties, and interest to the applicant if remission is granted, or distribute the taxes, penalties, and interest to the proper taxing authorities if the remission is denied.

Upon receipt of the application, the Tax Commissioner must determine if the applicant and the applicant's qualified property meets the qualifications for tax exemption and the qualifications set forth in the act. If these qualifications are met, the Commissioner must issue an order directing that the property be placed



on the tax exempt list of the county and that all paid or unpaid taxes, penalties, and interest for every year the property met the qualifications for exemption be abated. If the Commissioner finds that the property is not entitled to tax exemption and to the abatement of paid or unpaid taxes, penalties, and interest for any of the years for which the current owner claims an exemption or abatement, the Commissioner must order the county treasurer of the county in which the property is located to collect all taxes, penalties, and interest due on the property for those years in accordance with law. If the Commissioner finds that the property is now being used for a purpose that would foreclose its right to tax exemption, the Commissioner must issue an order denying the application.

If the Tax Commissioner determines the qualified property satisfies the requirements for exemption, the Commissioner must remit such taxes, penalties, and interest for the eligible years, but only with the consent of the taxing authority of the subdivision or other taxing unit to which such taxes, penalties, and interest are owed. A taxing authority has given consent if the taxing authority has not passed a resolution, on a form prescribed by the Commissioner, and filed it with the county auditor on or before February 15, 2005, stating its objection to the remission of such taxes, penalties, and interest. On or before January 15, 2005, the county auditor of each county must notify each subdivision or taxing unit in the county of the enactment of this provision and of the requirement that a taxing authority may file an objection to the remission of taxes, penalties, and interest with the county auditor on or before February 15, 2005. If the taxing authority of a subdivision or taxing unit withholds its consent, the applicant must pay all the outstanding taxes, penalties, and interest owed to that subdivision or taxing unit, except for those taxes, penalties, and interest that are included in the three-year remission period. Tax payments for eligible years for which consent has not been obtained are not considered unpaid taxes for purposes of establishing jurisdiction to consider an application.

Any consent given by a taxing authority does not apply to the year an application is filed under the act and to the three-year remission period. The applicant retains the right to apply for those years under the existing exemption application procedure with or without the consent of the applicable subdivisions or taxing units.

The act requires that the county auditor maintain a record of all taxing authorities that have withheld consent. After the Tax Commissioner's decision is issued for each of the eligible years for which exemption and remission or abatement was requested, the county auditor must either refund, remit, or abate taxes for which consent has been given, and must distribute to the appropriate subdivision or other taxing unit those taxes for which consent was withheld.



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-30-03	p. 1345
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Reported, S. Ways & Means & Economic Development	12-08-04	p. 2431
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