



Behany Boyd

Bill Analysis
Legislative Service Commission

Sub. H.B. 260

125th General Assembly
(As Passed by the House)

Reps. Daniels, McGregor, Seitz, J. Stewart, Core, Webster, Gilb, Kilbane, Aslanides, Collier, Combs, Flowers, Hoops, Peterson, Schaffer, Schmidt, Slaby, Taylor, Wolpert

BILL SUMMARY

- Reduces the rate at which interest accrues on estate tax and personal property tax overpayments and underpayments.
- Changes the penalty for late estate tax payments and filings.
- Authorizes county auditors, rather than the Tax Commissioner, to waive estate tax penalties for reasonable cause.
- Authorizes boards of county commissioners to levy, with voter approval, a sales and use tax specifically for emergency medical services.
- Requires a mayor's court to collect certain fees and costs for special projects, programs, and services or for computerization, if the fees and costs previously were collected by a municipal court.
- Makes a technical correction in existing estate tax law.

CONTENT AND OPERATION

Estate taxes: interest and penalties

(R.C. 5703.47, 5731.22, and 5731.23)

Ohio imposes taxes on the estates of some individuals; generally, an estate is taxable if its taxable value is more than \$338,333. Eighty percent of estate tax revenue is distributed to the city, village, or township where the estate property is located; the remainder is credited to the state's general revenue fund.

The tax must be paid and the return must be filed within nine months following the decedent's death. If the tax is not paid on time, a penalty may be imposed and interest accrues on the unpaid balance. If the tax paid is more than the amount of tax ultimately found to be due, the estate is entitled to interest on the overpayment. The overpayment and interest must be refunded by the cities, villages, or townships that received the overpayment, as well as from the state's general revenue fund, on a pro rata basis. Interest accrues from nine months from the date of the decedent's death or the date the tax was paid, whichever is later, to the date the overpayment is refunded.

Interest

Under current law, the rate of interest accruing on unpaid taxes, and paid on estate tax overpayments, is equal to three percentage points above the "federal short-term rate," which is a rate computed on the basis of an index of yields on short-term U.S. government securities. (The rate for 2004 is 4%.)

The bill reduces the rate of interest that accrues on unpaid estate taxes and on estate tax overpayments. Instead of accruing at the "statutory" rate equal to the federal short-term rate plus 3%, interest will accrue at the federal short-term rate rounded to the nearest whole number per cent. Since the statutory rate for 2004 is 4%, the federal short-term rate for 2004 is 1% by implication.

Penalties

Current law imposes a penalty for not paying or filing estate taxes on time equal to 5% of the tax due if the payment or filing is made within one month of the due date. If the payment or filing is more than one month late, an additional 5% is added for each additional month for up to four months, so the cumulative penalty cannot exceed 25% of the tax due. The penalty does not apply if the estate's representative shows that the late payment or filing is due to reasonable cause and not willful neglect. Also, in cases of fraud, current law requires the Tax Commissioner to impose an additional penalty of up to \$10,000.

The bill changes the estate tax penalty so that it equals 10% of the unpaid tax regardless of how late the payment or filing occurs. The bill also eliminates the up-to-\$10,000 additional penalty in cases of fraud.

Waiving penalties

Current law authorizes the Tax Commissioner to waive or "remit" the 5%-per-month penalty if an estate's representative shows that the late payment or filing is due to reasonable cause and not willful neglect.

The bill removes this remission authority from the Tax Commissioner and instead vests it in county auditors. Specifically, a county auditor may remit a penalty if the estate's representative applies for remission and shows that the lateness of the payment or filing is due to reasonable cause and not willful neglect. A county auditor may remit a penalty only after consulting with the county treasurer. Once the county auditor decides whether to remit a penalty, the auditor must notify the estate's representative of the decision by mail. If remission is denied, the representative may appeal the decision by applying to the Tax Commissioner, either in person or by certified mail, within 60 days after the auditor mails notice of the decision. Once the Tax Commissioner decides on the appeal, the Commissioner must notify the representative, the county auditor, and the county treasurer. If the Commissioner's decision necessitates any correction in the county estate tax records, the county auditor and treasurer must correct the records accordingly. An estate's representative who appealed to the Commissioner may appeal the Commissioner's decision by filing an exception with the probate court having jurisdiction over the estate in the same manner in which exceptions may be filed under current law from other determinations by the Commissioner regarding the tax on the estate (see R.C. 5731.30).

The bill authorizes the Tax Commissioner to issue orders and instructions for implementing the bill's remission provision, and requires county auditors and treasurers to follow those orders and instructions.

Technical correction

(R.C. 5731.23)

The bill corrects a longstanding error in a statute governing estate tax payments. In 1971, Am. Sub. 413 of the 109th General Assembly (134 Ohio Laws 821, 822-823), removed language regarding discounts for early estate tax payments, but failed to remove related language stating that early payments should be paid on an estimated basis regardless of whether a return has been filed. The bill removes this related language to correct the error.

Rate of interest paid on property tax overpayments reduced

(R.C. 5703.47 and 5719.041)

Tangible personal property located and used in business in Ohio is subject to taxation by local taxing units. If the taxes are not paid on time, a 10% penalty is charged and interest accrues on the unpaid balance (including any unpaid penalty) at the statutory rate, which equals the federal short-term rate (explained above in "Interest") plus 3% annually. If taxes are overpaid, interest accrues at the same rate on the overpayment until a refund is issued. Most of the interest on late

payments is credited to the funds of local taxing units; interest on refunded overpayments is payable from the funds of local taxing units.

The bill reduces the interest rate that accrues on late personal property tax payments and on tax overpayments. Interest will accrue at the federal short-term rate, without the additional 3% per year. For example, if the bill had been in effect during 2004, the interest rate would have been 1% instead of 4%.

County sales tax for emergency medical services

(R.C. 5739.026(A)(10))

Under current law, boards of county commissioners may levy a sales and use tax of 1/4% or 1/2% throughout the county for one or a combination of nine different purposes: general revenue, convention facilities, transit systems, permanent improvements, community improvement board improvements, 9-1-1 systems, jails and other detention facilities, sports facilities, and agricultural easements. If the tax is for anything other than general revenue, the tax must be approved by voters before going into effect. (In addition to the 1/4% or 1/2% tax, the boards also have authority to levy a sales and use tax of up to 1% for either general revenue or "criminal and administrative justice" services, but the bill does not affect this authority.)

The bill authorizes boards of county commissioners to propose the 1/4% or 1/2% sales and use tax specifically for providing ambulance, paramedic, or other emergency medical services (hereafter referred to collectively as EMS). Such a tax may be proposed only for EMS, or for EMS in combination with any of the nine other purposes for which the 1/4% or 1/2% tax may be levied. Therefore, by combining EMS with any of those other purposes, the rate of the tax devoted to EMS can be less than 1/4%. As under current law when a tax is levied for a combination of purposes, the board of county commissioners must state what share of the revenue will be allocated to each purpose. This allocation must be stated in the resolution proposing the tax. A tax levied in whole or in part for EMS must be submitted for voter approval.

Collection of certain municipal court fees by a mayor's court

(R.C. 733.40, 1905.06, and 1905.21)

The bill requires certain mayor's courts to continue collecting certain court fees and costs that were being charged by a municipal court when the mayor's court began operating. Currently, among the several fees municipal courts are authorized or required to charge, municipal courts may charge a fee to pay for "special projects" whenever a criminal cause, civil action or proceeding, or

judgment by confession is filed with the court.¹ Municipal courts also may charge a fee of up to \$3 to pay for computerization or computerized legal research services when certain causes of action or appeals are filed,² and a fee of up to \$10 to pay for computerization of the clerk of the court when any cause of action is filed, when certain judgment certificates are filed, when certain aids of execution are docketed and indexed, or when a petition is docketed to vacate, revive, or modify certain kinds of judgments.³ (See R.C. 1901.26 and 1901.261.)

Under the bill, the mayor's court of a municipal corporation within the jurisdiction of a municipal court that was charging any of the foregoing fees immediately before the mayor's court began operating must continue charging and collecting the fees. However, the mayor's court must continue charging the special projects fee only when a criminal cause is filed with the mayor's court, and must continue charging the computerization fees only when a criminal cause or appeal is filed with the mayor's court. The mayor's court must continue to collect the fees only for as long as the fees remain in effect in the municipal court. The fees collected by the mayor's court must be paid and disbursed as they would have been if the municipal court had collected them; that is, the fee must be paid to the county treasurer or city treasurer (depending on whether the municipal court is county-operated or not), credited to the appropriate special fund in the treasury, and disbursed upon the order of the municipal court. (In the case of a fee for clerk of court computerization, the disbursement also is subject to appropriation by the board of county commissioners or the municipal legislative authority.) The bill specifies that the requirement to continue collecting municipal court fees does not apply to municipal court fees charged specifically to pay for providing mediation and other dispute resolution procedures (under R.C. 1901.262) or to additional fees charged by a county court that are the equivalents of the special projects, computerization, and dispute resolution fees a municipal court may charge.

¹ *The special projects include, but are not limited to, acquiring or rehabilitating court facilities, purchasing equipment, hiring and training staff, "community service programs," mediation or other dispute resolution services, employing magistrates, training and educating judges and magistrates, and "other related services."* (R.C. 1901.26(B).)

² *The causes of action or appeals must be the equivalents of those enumerated in R.C. 2303.20(A), (Q), and (U).*

³ *The various filings and actions must be the equivalents of those enumerated in R.C. 2303.20(A), (P), (Q), (T), and (U).*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-12-03	p. 1027
Reported, H. Ways & Means	09-16-04	p. 2159
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