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Bill Analysis

Legislative Service Commission

H.B. 322

126th General Assembly
(As Passed by the House)

Reps. Raussen, McGregor, Seitz, Webster, Setzer, Calvert, Gibbs, Seaver, Wagoner, Gilb, Peterson, Brinkman, Collier, Combs, Flowers, Hughes, Schneider, Uecker, Widowfield

BILL SUMMARY

- Requires each school district that levies an income tax to enter into an agreement for the collection and administration of that tax, on or before July 1, 2006, with: (1) the Department of Taxation (which currently administers all school district income taxes), (2) a municipal corporation located within the territorial boundaries of the school district, or (3) the Central Collection Agency, the Regional Income Tax Agency, or another similar entity.
- Requires each school district that enters into a school district income tax agreement to certify to the Tax Commissioner a copy of the agreement immediately upon its execution.
- Requires each school district that enters into a school district income tax agreement with an entity other than the Department of Taxation to establish a School District Income Tax Collection Fund.
- Authorizes only a school district's treasurer to withdraw funds from the School District Income Tax Collection Fund.
- Provides that information acquired by any municipal corporation in administering a school district's income tax is confidential, but permits a municipal corporation to compare this information against information pertaining to its municipal income tax to ensure compliance with both taxes.

- Specifies penalties for noncompliance that may be imposed by an entity other than the Department of Taxation in administering a school district income tax.
- Specifies that claims for unpaid school district income taxes administered by entities other than the Department of Taxation be filed in the municipal court of the municipal corporation in which the school district administrative offices are principally located or, if there is no such municipal court, in the court of common pleas of the county in which the school district offices are principally located.

CONTENT AND OPERATION

Background

The board of education of any school district, except a joint vocational school district, may propose an income tax levy to the district's voters. The proposal may be submitted separately or in combination with a property tax levy and bond issue for permanent improvements. A school district income tax is levied on either of the following, as adopted by resolution of the district board and approved by the district voters:

(1) Only earned income of individuals; or

(2) All taxable income of individuals and decedents' estates. "Taxable income" is an individual's or estate's "Ohio adjusted gross income," which consists of both: (a) "earned income" (wages, salaries, tips, self-employment net earnings, and other employee compensation that is reported as earned income on state and federal income tax returns), and (b) "unearned income" (investment income, such as interest, dividends, and capital gains, and retirement benefits).¹

All school district income taxes currently are administered by the Department of Taxation in conjunction with the state income tax. Taxpayers liable for a school district income tax generally remit their tax liability to the Department in the form of employer withholding and estimated payments, in a manner similar to the state income tax. Every taxpayer liable for a school district

¹ R.C. 5748.01, not in the bill. Prior to June 30, 2005, school districts did not have the option of limiting the income tax to individual earned income. Rather, prior law required that all school district income taxes be levied on earned and unearned income of individuals and estates. The change was enacted by Am. Sub. H.B. 66 of the 126th General Assembly, the 2005-2007 biennial budget act.

income tax annually must submit to the Department a state school district income tax return by April 15 of the following year. This return is currently the same form for taxpayers in all school districts that levy school district income taxes. The money collected by the state on behalf of school districts is distributed back to the districts quarterly, except that 1½% of the collections are retained by the state to defray the Department's costs of administering the districts' taxes.

Agreements for collection and administration of school district income taxes

(R.C. 5748.11 and 5748.16; Section 3; conforming changes in R.C. 5747.021, 5747.03, 5747.112, 5748.03, 5748.06, and 5748.08)

The bill requires the board of education of each school district that levies an income tax to enter into a written agreement for the collection and administration of that tax in taxable year 2006 and any subsequent taxable years specified in the agreement. Each affected district board must enter into the agreement on or before July 1, 2006, with one of the following:

- (1) The Department of Taxation;
- (2) A municipal corporation that levies an income tax and at least 51% of the territorial boundaries of which overlap with the territorial boundaries of the school district; or
- (3) The Central Collection Agency, the Regional Income Tax Agency, or another similar entity.²

A district board that adopts a resolution to enter into, or that enters into, an agreement with any authorized entity under the bill must certify to the Tax Commissioner a copy of the resolution or agreement immediately upon its adoption or execution. If an affected board of education fails to enter into the required agreement, the Department of Taxation must continue to administer that school district's income tax, until the board adopts a resolution entering into an agreement with another entity. (See **COMMENT**.)

Although it does not explicitly state this, the bill's intent seems to be to require the Department to administer the tax by default whenever the district does not have in force an agreement for another entity to administer the tax.

² *The Central Collection Agency is a cooperative tax collection and administration service operated by the City of Cleveland on behalf of 42 municipalities in Ohio (see www.ccatax.ci.cleveland.oh.us). Similarly, the Regional Income Tax Agency (R.I.T.A.) provides services to collect income taxes for 115 municipalities (see www.rita.to/).*

Terms of the agreement

The agreement must specify at least all of the following:

- (1) The entity designated to collect and administer the school district's income tax;
- (2) That the entity must collect and administer the tax for taxable year 2006;
- (3) Any additional taxable years for which the entity must collect and administer the tax, or that the responsibility is for "an ongoing period";
- (4) The amount of fees to be charged by the entity that administers the tax. If the Department of Taxation administers the tax, the specified fees must be the amount prescribed under continuing law for the Department's administration of school district income tax collections: currently, 1½% of the collections. The fee charged by other entities may not exceed the amount prescribed for the Department of Taxation.

Amendments; expiration

An agreement may be amended as mutually agreed to by the board of education and the entity with which the board contracts. In addition, either party may terminate the agreement with 90 days' notice to the other party. If an agreement is terminated or if it expires under its own terms, and the school district continues to levy a school district income tax, the district board must enter into a new agreement with one of the authorized entities.

Powers of contractor

The bill specifies that an entity other than the Department of Taxation, with which a district board has entered into an agreement, will administer and collect that school district income tax as if the entity were the Tax Commissioner acting under the state income tax law (R.C. Chapter 5747.), except for the following:

- (1) Administrative fees charged by the entity must be those specified in the agreement (but cannot exceed the percentage prescribed by law for the Department of Taxation);

(2) Taxes collected by the entity must be deposited directly in the School District Income Tax Collection Fund created by the district board (see below), instead of in the state treasury for quarterly distributions to school districts;³

(3) The entity has no authority to issue an "assessment" against an employer, taxpayer, or other party for failure to make school district income tax payments; and

(4) Unpaid taxes, penalties, and interest must be collected as prescribed in the bill, rather than as prescribed in the state income tax law (see **Penalties for noncompliance**" and **Claims for unpaid taxes**" below).⁴

School District Income Tax Collection Fund

(R.C. 5748.12)

The bill requires each school district board that enters into an agreement with an entity other than the Department of Taxation to establish a School District Income Tax Collection Fund to receive collections. The collecting entity must deposit the collections (less fees allowed to the entity under the agreement) in the fund within 24 hours of collecting them. Only the school district treasurer may withdraw moneys from the fund.

Confidentiality of tax information

(R.C. 5748.13)

The bill provides that the information acquired by any municipal corporation as a result of school district income tax returns received or investigations, hearings, or verifications conducted in administering a school district's income tax is confidential. Accordingly, it prohibits any person (presumably meaning a person employed or engaged by the municipal corporation to collect and administer taxes) from disclosing such information, except in

³ Under continuing law, the Tax Commissioner deposits all school district income tax collections into a single fund in the state treasury, from which the Director of Budget and Management makes the required quarterly payments to each district (R.C. 5747.03(C) and (D)).

⁴ R.C. 5747.13 and 5747.14 (neither section in the bill) authorize the Tax Commissioner to make an "assessment" against any taxpayer, employer, or qualifying entity that is responsible to pay, collect, or otherwise remit state or school district income tax proceeds. The Tax Commissioner through the Attorney General may then take actions to collect the amounts due, including bringing a lawsuit in the appropriate court of common pleas and entering into a settlement agreement.

accordance with a proper judicial order or in connection with the performance of that person's duties.⁵ On the other hand, the bill also permits a municipal corporation to compare school district income tax information against information pertaining to its own municipal income tax to ensure that income is reported properly with respect to both taxes, and that municipal and school district income tax liabilities are paid in full.

The bill is silent as to the confidentiality of information acquired by the Department of Taxation or other tax collection entities. However, it appears that under a provision of continuing tax law, all entities collecting a school district income tax are required to hold confidential information acquired as a result of administering the tax. That provision specifies that any information the Tax Commissioner gains as the result of returns, investigations, hearings, or verifications required or authorized by R.C. Chapter 5747. is confidential, and that no person may disclose the information except for statutorily prescribed purposes, including, among others, "a proper judicial order" (R.C. 5747.18(C), not in the bill). Because the bill specifies that entities administer the school district income tax under Chapter 5747. in the same manner as the Tax Commissioner, except as otherwise provided, it appears that the confidentiality provisions of that chapter would apply to them. It further appears that the bill's specific provisions regarding a municipal corporation's use of the information only modify the existing, broader confidentiality provisions for the limited purpose described in the bill. Another provision of continuing law generally prohibits, except in specific statutorily described instances, agents of the Department of Taxation from divulging information as to the transactions, property, or business of any person acquired while acting or claiming to act under orders of the Department (R.C. 5703.21, not in the bill).

Penalties for noncompliance

(R.C. 5748.14)

The bill specifies civil penalties that an entity other than the Department of Taxation may impose in the collection and administration of a school district income tax.

Under the bill, if a taxpayer fails to pay any required amount of tax on or before the prescribed due date, except for estimated taxes, the entity may impose a penalty of the same amount that the Department of Taxation may impose for failure to timely pay school district income taxes, state income taxes, or corporate

⁵ A similar provision of continuing law applies to information gained as a result of administering a municipal income tax (R.C. 718.13, not in the bill).

franchise taxes on qualifying pass-through entities. That amount may not exceed twice the rate per annum prescribed by the Tax Commissioner under continuing law (the "federal short-term rate" rounded to the nearest whole number per cent + 3 percentage points). The rate per annum for 2006 is 6%, so the penalty may not exceed 12% under the bill.

Furthermore, if a taxpayer or employer files a substantially incorrect return, due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of the school district income tax, the entity may impose a penalty of up to \$500. Again, this is the same amount that may be imposed by the Department of Taxation for the same infraction relative to a tax return for school district income taxes, state income taxes, or corporate franchise taxes on qualifying pass-through entities.

Finally, if any person makes a false or fraudulent claim for a refund of school district income tax, the entity may impose a penalty of up to the greater of \$1,000 or 100% of the claim.

The bill provides that all or part of any penalty imposed by an entity may be abated if the taxpayer shows that the failure to comply was due to reasonable cause and not willful neglect.

Claims for unpaid taxes

(R.C. 5748.15)

The bill provides that claims for unpaid school district income taxes, including penalties and interest on those unpaid taxes, administered by entities other than the Department of Taxation must be filed in the municipal court of the municipal corporation in which the administrative offices of the school district levying the tax are principally located. If there is no such municipal court, the claim must be filed in the court of common pleas of the county in which the school district offices are principally located. The bill grants those courts exclusive, original jurisdiction over actions to collect unpaid school district income taxes administered by an entity other than the Department of Taxation.

COMMENT

Taxable year 2006 begins on January 1, 2006, but agreements under the bill may be entered into as late as July 1, 2006. Therefore, taxable year 2006 collections (such as withholding of taxes on payroll and periodic estimated payments) for a school district income tax might be administered during the first part of the year by the Department of Taxation and the remainder of the year by another entity with whom the district has entered into an agreement.

All collections for taxable year 2005, including the processing of returns from January 1 through April 15, 2006, would be administered by the Department.

HISTORY

ACTION	DATE
Introduced	08-02-05
Reported, H. Education	01-18-06
Passed House (88-6)	03-14-06

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