



Ohio Legislative Service Commission

Bill Analysis

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S.B. 177

128th General Assembly
(As Introduced)

Sens. Seitz and Cates, Grendell, Hughes, Patton, Goodman, Niehaus, Smith, Turner, Sawyer

BILL SUMMARY

- Requires individuals whose 2009 unemployment compensation is excluded from gross income for federal tax purposes to report the income for Ohio tax purposes.
- Requires a pass-through entity owner who, for federal tax purposes, defers income resulting from the entity's repurchase of debt at a discount in 2009 or 2010, to recognize that income on a nondeferred basis for Ohio income tax purposes.
- Requires a sole proprietor or pass-through entity owner to add to adjusted gross income any amount by which that figure is reduced as a result of an election to carry back a taxable year 2008 loss to taxable years 2005, 2004, or 2003.
- Redirects a certain portion of the OVI fines and the fines imposed for violations of the Seat Belt Law to the GRF in both fiscal years 2010 and 2011.
- Transfers the cash balances in the OMVI Enforcement/Education Fund, the Elementary School Seat Belt Program Fund, and the Seat Belt Education Program Fund to the GRF.
- Makes appropriations.

CONTENT AND OPERATION

Unemployment income exclusion

(R.C. 5747.01(A)(28))

In H.B. 1, the 128th General Assembly expressly incorporated into the Ohio personal income tax provisions of the American Recovery and Reinvestment Act of

2009 (ARRA). One ARRA provision excludes up to \$2,400 of an individual's unemployment compensation from federal gross income for taxable years beginning in 2009.

The bill requires an individual to report the excluded unemployment compensation for Ohio tax purposes. On the individual's 2009 Ohio tax return, the individual is required to add the amount excluded to the individual's federal adjusted gross income, which is the starting point for determining Ohio adjusted gross income.

Deferred forgiven debt income

(R.C. 5747.01(A)(30) and (S)(16))

A second ARRA provision creates an exception to the general requirement that a taxpayer report as income debt forgiven by the taxpayer's creditor. (26 U.S.C. 61(a)(12) and 108(i).) Forgiven debt income is subject to the Ohio income tax, as the starting point for computing an individual's Ohio adjusted gross income is the individual's federal adjusted gross income. (R.C. 5747.01(A).)

The exception created in the ARRA, in general, allows corporations and pass-through entity owners to defer income resulting from the corporation's or entity's reacquisition in 2009 or 2010 of its issued debt for less than the full amount owed, with the balance cancelled or forgiven by the creditor. (26 U.S.C. 108(i).) If the corporation or owner elects to defer the income, the income must be recognized in five equal increments over five taxable years. The recognition begins with the fifth taxable year after the taxable year in which the debt was reacquired if the reacquisition occurred in 2009, or fourth taxable year if the reacquisition occurred in 2010.

The bill requires a pass-through entity owner who elects to defer the income for federal tax purposes (including an estate or trust) to add the income back for purposes of determining the owner's Ohio adjusted gross income or taxable income for the taxable year in which the debt reacquisition occurred. Likewise, when the owner recognizes the deferred income for federal tax purposes, the owner must subtract the recognized income when determining Ohio adjusted gross income.

Extended net operating loss carryback

(R.C. 5747.01(A)(29) and (S)(15))

The ARRA amended federal tax law to authorize a small business that experiences a net operating loss for its taxable year 2008 to elect to apply that loss against an operating profit experienced in its preceding three, four, or five taxable years. (26 U.S.C. 172(b)(1)(H).) ("Small business" means a business whose annual gross

receipts for the preceding three taxable years averaged \$15 million or less.) Prior to the ARRA, a small business would have been permitted to apply a taxable year 2008 operating loss against operating profits in only the preceding two taxable years. A business electing to carry back a loss to, for example, the fifth preceding taxable year (2003) may prepare and file amended returns for taxable years 2003 through 2007 and receive a refund for each of those taxable years.¹

The bill requires taxpayers claiming the extended carryback to add to their current year's taxable income the amount carried back more than two years under the ARRA provision. The adjustment applies to individuals, estates, and trusts that are owners of a pass-through entity or sole proprietorship that makes the federal carryback election. (In its current form, the bill does not allow a subsequent deduction to reflect the fact that the additional carryback reduces the total amount of a taxpayer's potential loss carryforwards for later years. Therefore, the net effect could be to permanently reduce the amount of operating loss deductions that some taxpayers may claim for Ohio tax purposes, which probably is not intended. Corrective amendments may be forthcoming.)

Transfers to the General Revenue Fund (GRF)

(Sections 8 to 10)

The bill redirects certain fines that may be imposed for operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance (hereinafter referred to as "OVI"). Currently, a specified amount of those fines must be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency that primarily was responsible for the arrest of the offender. The agency is to use the money to pay only those costs it incurs in enforcing the state OVI Law or a municipal OVI ordinance and in informing the public of the dangers of, and the laws governing, the operation of a vehicle while under the influence of alcohol. (See R.C. 4511.19(G)(5)(a), not in the bill.) The bill provides that, in both fiscal years 2010 and 2011, those amounts are instead to be paid to the GRF.

The bill also redirects a certain portion of the fines imposed for operating or occupying an automobile without wearing the required occupant restraining device or

¹ R.C. 5747.10 provides that, if an adjustment to a taxpayer's federal income tax return necessitates an adjustment to the taxpayer's Ohio income tax return, the taxpayer must file the amended Ohio return not later than 60 days after the adjustment has been agreed to or finally determined or any federal income tax refund has been paid, whichever occurs first.

for violating any comparable ordinance of a political subdivision. Currently, 8% of the fines collected must be deposited into the Seat Belt Education Program Fund, which is used by the Department of Public Safety to establish a seat belt education program. An additional 8% must be deposited into the Elementary School Program Fund used by the Department to administer elementary school programs that encourage seat safety belt use. (See R.C. 4513.263(E)(1) and (2), not in the bill.) Under the bill, that 16% of the fines must instead be deposited into the GRF in both fiscal years 2010 and 2011.

Additionally, on the effective date of the bill, the Director of Budget and Management is required to transfer the cash balances in the OMVI Enforcement/Education Fund, the Seat Belt Education Program Fund, and the Elementary School Seat Belt Program Fund to the GRF.

Effective date

(Section 11)

The bill has an immediate effective date.

COMMENT

R.C. 5747.01 was amended by H.B. 1 of the 128th General Assembly. The current version of R.C. 5747.01 is effective until January 1, 2010. The bill amends both the current version of R.C. 5747.01 and the version that takes effect January 1, 2010. (Sections 3 to 5.)

HISTORY

ACTION	DATE
Introduced	09-29-09

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