Ohio Legislative Service Commission

Bill Analysis

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S.B. 115

129th General Assembly
(As Introduced)

Sen. Kearney

BILL SUMMARY

- Allows an income tax deduction for gains from the sale, exchange, or involuntary conversion of business or other income-producing property, purchased in 2011 or 2012, and held for at least two years.

CONTENT AND OPERATION

Deduction for gain realized from the disposition of depreciable property

The bill authorizes an income tax deduction for the amount of gain realized from the sale or other disposition of business or income-producing property. To qualify, property must satisfy all of the following criteria:

(1) The property qualifies as section 1245 property or section 1250 property as defined in the Internal Revenue Code (I.R.C.);

(2) The taxpayer purchased the property in 2011 or 2012;

(3) The taxpayer held the property for at least two years.

Individuals may claim the deduction against Ohio adjusted gross income, while trusts and estates may claim the deduction against Ohio taxable income. Owners of a pass-through entity (e.g., limited liability companies, partnerships, and S corporations) who are taxed on their distributive or proportionate shares of the pass-through entity's income may deduct their distributive share of the gain. The deduction may be taken only to the extent that the gain is allocable or apportionable to Ohio for the purpose of computing the resident or nonresident income tax credits. The effect is generally to require that the property be located in Ohio at the time of sale or other disposition (for

real and tangible property) or, in the case of intangible property, that the taxpayer be a resident at the time of disposition.[1]

Section 1245 and 1250 property

Under federal tax law, "section 1245 property" and "section 1250 property" include various types of property that are subject to a deduction for depreciation under I.R.C. section 167.[2] Section 167 allows taxpayers to take a deduction for the wear and tear of property used in a trade or business or held for the production of income.[3] The taxpayer may deduct a percentage of the property's value over the life of the property based on depreciation schedules published by the Internal Revenue Service.

Sections 1245 and 1250 of the I.R.C. are used to calculate the amount of "depreciation recapture" required when a taxpayer realizes a gain from selling section 1245 or 1250 property after taking depreciation deductions for the property. Because the taxpayer may take the depreciation deductions from ordinary income, "depreciation recapture" requires the taxpayer to report any gain from the sale of that property as ordinary income instead of as capital gain.[4] This distinction is significant for federal income tax purposes because long-term capital gains (gains from assets held longer than one year) are taxed at a lower federal income tax rate than a taxpayer's ordinary income. (Ohio's income tax rates do not distinguish between forms of income such as ordinary income and capital gains.)

Types of section 1245 property

Section 1245 property includes all of the following property (provided that it is depreciable or amortizable):

(1) Tangible or intangible personal property;

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[1] R.C. 5747.01(A)(30) and (S)(15).

[2] 26 U.S.C. 1245 and 26 U.S.C. 1250.

[3] 26 U.S.C. 167.

[4] Generally, gain from the sale of depreciable property is only taxed as ordinary income to the extent that depreciation deductions were allowed or allowable for the property. Any amount of gain that exceeds the total amount of depreciation deductions that the taxpayer claimed against ordinary income may be taxed as a capital gain for federal income tax purposes.

(2) Other tangible property (except buildings and their structural components) used under certain circumstances in manufacturing, production, or extraction, or as part of transportation, communications, electricity, gas, water, or sewage disposal services.[5]

(3) Any part of real property that is subject to other depreciation or amortization deductions or allowances, such as the section 179 expensing deduction.[6]

(4) Single purpose agricultural or horticultural structures;

(5) Storage facilities (except buildings and their structural components) used in distributing petroleum products;

(6) Any railroad grading or tunnel bore.

Types of section 1250 property

Section 1250 property is any real property that does not qualify as section 1245 property and that is subject to the section 167 depreciation deduction.

HISTORY

ACTION	DATE
Introduced	03-09-11

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[5] The property must be used in a research facility, in a bulk storage facility of certain commodities, or as part of the provision of services related to any of the specified industries.

[6] The real property must be subject to one of the following allowances: (1) amortization of certified pollution control facilities, (2) the section 179 expensing deduction, (3) the deduction for clean-fuel vehicles and certain refueling property, (4) the deduction for capital costs incurred in complying with sulfur regulations, (5) the deduction for certain qualified refinery property, (6) the deduction for qualified energy efficient commercial building property, (7) the deduction for electing to expense qualified advance mine safety equipment, (8) the deduction for expenditures to remove architectural and transportation barriers to the handicapped and elderly, (9) the deduction for qualified tertiary injectant expenses, or (10) the deduction for certain reforestation expenditures.