Ohio Legislative Service Commission

Bill Analysis

Mackenzie Damon

Am. H.B. 54

130th General Assembly
(As Passed by the House)

Reps. Beck, Becker, Terhar, Blair, Grossman, Hayes, J. Adams, Brenner, Boose, Thompson, McGregor, Sprague, Amstutz, Barnes, Brown, Burkley, Curtin, Fedor, Gerberry, Green, Hackett, Henne, Letson, McClain, O'Brien, Rogers, Slaby, Winburn, Batchelder

BILL SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since December 20, 2012.
- Declares an emergency.

CONTENT AND OPERATION

Incorporation of Internal Revenue Code changes

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after December 20, 2012.[1] The changes being incorporated are those enacted by the "American Taxpayer Relief Act of 2012," which took effect January 2, 2013. The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.[2]

The principal amendments to the IRC that the bill incorporates are the following income tax provisions:

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[1] R.C. 5701.11.

[2] *Cf. State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

- Elementary and Secondary School Teacher Deduction
- Qualified Tuition Expenses Deduction
- Student Loan Interest Deduction
- Exclusion of IRA Distributions for Charitable Purposes
- Exclusion for Employer-Provided Educational Assistance
- Exclusion of National Health Service Corps and Armed Forces Scholarships
- Increased Depreciation for Certain Qualified Leasehold Improvements, Restaurant Property, and Retail Improvement Property
- Bonus Depreciation Deductions and Enhanced Expensing (Ohio departs from federal income tax law and generally requires taxpayers to spread the immediate tax reductions from Bonus Depreciation and Enhanced Expensing in equal parts across six years)
- Exclusion of 100% of Gain on Certain Small Business Stock
- Exclusion of Discharge of Principal Residence Indebtedness for Individuals
- Parity for Exclusion for Employer-Provided Mass Transit and Parking Benefits
- Dependent Care Credit

Most of the foregoing provisions are extensions of pre-2013 federal provisions. Many of them are extended only for a limited period of time. (For more information about the federal amendments, see the "Estimated Revenue Effects Of the Revenue Provisions Contained In An Amendment In The Nature Of A Substitute To H.R. 8, The 'American Taxpayer Relief Act Of 2012,' As Passed By The Senate On January 1, 2013," January 3, 2013 by The Joint Committee on Taxation, available at www.jct.gov).

Effect of incorporation

All but one of the federal amendments relate to exclusions or deductions affecting a taxpayer's federal adjusted gross income (or taxable income for trusts and estates), the starting number for determining the taxpayer's Ohio adjusted gross income or Ohio taxable income. If these amendments were not incorporated, a taxpayer would have to add these exclusions or deductions to the taxpayer's federal adjusted gross income or taxable income for purposes of computing the taxpayer's Ohio tax liability for taxable years beginning in 2013 and thereafter. (For 2012, taxpayers who applied the adjustments in computing their federal tax would have to add these amounts back to compute Ohio taxes if the adjustments were not incorporated.)

The bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after March 7, 2011, and before December 20, 2012, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The March and December dates are the dates of the two most recent incorporations.) The election was available to taxpayers who were subject to the corporation franchise tax or personal income tax and to electric companies that are subject to municipal income taxes.

The bill updates this election so that it may be made for a taxpayer's taxable year ending after December 20, 2012, but before the bill's effective date. The bill retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.

Repeal of Ohio federal estate tax credit "pick-up" taxes

The bill would also have the effect of conclusively repealing Ohio's federal estate tax credit "pick-up" taxes, often referred to as "sponge" taxes. Ohio enacted, as supplements to its general estate tax, an additional estate "sponge" tax and a generation-skipping "sponge" tax, which provided revenues to state and local governments drawn from federal estate tax credits for amounts paid by estates for state estate taxes that until 2005 had been allowed against federal estate and generation-skipping taxes.[3] Both federal credits were phased out by Congress, and the General Assembly subsequently incorporated the federal phase-out. The federal credits were scheduled to revive in 2013 and possibly with them Ohio's "sponge" taxes, but Congress permanently eliminated the credits in the American Taxpayer Relief Act, effective January 2, 2013. The bill would conform state law to reflect the permanent elimination of the federal credits and would thus conclusively repeal both of Ohio's "sponge" taxes.

Emergency clause

The bill declares an emergency, causing the bill to become effective immediately and exempting it from the referendum.

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[3] R.C. 5731.18 and 5731.181.

HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, H. Ways & Means	02-28-13
Passed House (95-0)	03-06-13

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