Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 508 of the 129th G.A. **Date**: May 2, 2012

Status: As Passed by the House **Sponsor**: Rep. Beck

Local Impact Statement Procedure Required: Yes

Contents: Makes changes to the laws governing taxes in the state, and makes other changes

State Fiscal Highlights

- Changes to the calculation of public utility and general business tangible personal property tax reimbursements are estimated by the Executive to reduce net payments from the GRF by about $800,000 in FY 2013, and about $1.1 million in FY 2014.
- State assistance may increase to school districts identified as tangible personal property phase-out impacted.
- Commercial activity tax revenues may decrease $1.3 million per year as a result of exclusion of "unauthorized" insurance companies from that tax. These companies would remain subject to a 5% tax on insurance premiums.
- Including as a taxable sale the transfer of ownership interests in a pass-through entity if its sole assets are recreational property used primarily by the entity's owners may increase state sales tax revenue.
- A $1,000 penalty for unlicensed distribution of tobacco products may increase Department of Taxation fee revenue, which would be deposited into the Cigarette Tax Enforcement Fund.
- A $50 penalty for declined or dishonored electronic payments may increase revenue to the GRF and other funds by up to $800,000, based on an Executive estimate.
- Changes encouraging more electronic filing by tax professionals are expected to reduce Department of Taxation costs.
- Requiring corporations filing a certificate of voluntary dissolution to be current on taxes in addition to those in current law may increase tax receipts.
- Permitting the Tax Commissioner to cancel taxpayer liabilities that do not exceed $50 would reduce administrative costs as well as tax revenues; both reductions are expected to be minimal. The funds experiencing revenue losses would depend on the taxes for which the liabilities were cancelled.
- The bill prescribes the procedure for delivery of tax notices or orders electronically, which may reduce Department of Taxation costs.

- Permitting a "qualified financial institution" to elect a specified base for its corporate franchise tax may result in a loss of tax revenue.

Local Fiscal Highlights

- The Tax Commissioner is authorized to extend revaluation of real property in a county by not more than one year, which could result in loss or gain of local revenue.
- Changes in reimbursement for public utility and general business tangible personal property tax losses reduce net payments to local governments by an estimated $800,000 in FY 2013, and $1.1 million in FY 2014.
- School districts identified as tangible personal property phase-out impacted may receive more state aid.
- Property taxes to support major metropolitan zoos may be increased by an additional mill, with voter approval.
- Including as a taxable sale the transfer of ownership interests in a pass-through entity if its sole assets are recreational property used primarily by the entity's owners may increase sales tax revenue to counties and transit authorities.
- The bill delays a reimbursement payment to units of local government for business tangible personal property taxes from November 20 to November 30.
- Tax exemption for a convention facility in Youngstown will reduce tax revenues for units of local government.

Detailed Fiscal Analysis

The bill changes a number of tax laws and the Department of Taxation's administration of those laws, and makes other changes. Provisions expected to have fiscal effects, and selected changes expected to have minimal or no fiscal effects, are described below. The sections below describe changes affecting specific taxes indicated, followed by other provisions and various administrative changes.

Property taxes, including reimbursements for reductions in tangible personal property taxes

H.B. 508 authorizes the Tax Commissioner, beginning in 2014 and continuing for five years, to extend the revaluation of real property required in a county by not more than one year. The language of the section appears to give this decision to the Commissioner alone. This change may increase or decrease the property tax revenues of local jurisdictions depending on whether the delayed sexennial reappraisal or triennial update would increase or decrease aggregate taxable property values in the county.

The bill amends the formula for calculation of public utility tangible personal property tax reimbursement payments to local governments for fixed-rate levy losses. These payments were instituted by S.B. 3 and S.B. 287 of the 123rd G.A., to reimburse local governments for reductions in assessment rates on certain types of personal property of electric and natural gas utilities. The original legislation included a gradual phasing out of the payments, and Am. Sub. H.B. 153 of the 129th G.A. accelerated the schedule for phasing out the payments.

Under H.B. 153, these payments are calculated by comparing a taxing unit's 2010 "S.B. 3 allocation" with its "total resources," where the 2010 S.B. 3 allocation is the sum of payments received by the local taxing unit during calendar year 2010 to reimburse for fixed-rate levy losses, and the taxing unit's total resources are total receipts from certain state and local resources during specified time periods. H.B. 508 modifies the eligibility determination such that the taxing unit is to receive reimbursement if the full amount of its S.B. 3 allocation exceeds the threshold percentage multiplied by total resources.[1] The amount of each reimbursement is modified to equal half of the difference between the full amount of the S.B. 3 allocation and the product of the threshold per cent multiplied by total resources. Under current law the amount of each reimbursement, two per year, is to equal half of the unit's S.B. 3 allocation minus the product of the threshold per cent multiplied by total resources. Also, the bill amends calculation of payments (two per

[1] The threshold percentages, unchanged by H.B. 508, are 2% in FY 2012 and 4% in FY 2013 and thereafter for school districts and joint vocational school districts, and 2% in calendar year (CY) 2011, 4% in CY 2012, and 6% in CY 2013 and thereafter for other units of local government.

year) for fixed-sum levy losses on tangible personal property taxes on general business[2] to provide that each payment is to be for 50% of the annual fixed-sum levy loss, rather than 100%. The Executive estimates that the net fiscal effect of these changes is a reduction in state expenditures of $0.8 million in FY 2013, and $1.1 million in FY 2014. Payments of public utility tangible personal property tax reimbursements are funded from the School District Property Tax Replacement Fund (Fund 7053) and the Local Government Property Tax Replacement Fund (Fund 7054), and payment of reimbursements for losses on taxation of tangible personal property of general business are funded from the School District Tangible Property Tax Replacement Fund (Fund 7047) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081).[3] Amounts in the replacement funds in excess of those needed for the required payments are transferred to the GRF, and any insufficiencies are transferred from the GRF.

The bill amends the calculation of reimbursements to municipal corporations to provide that, when calculating the municipal corporation's reimbursement for current expense levy losses, the municipal corporation's "total resources" (its total receipts from certain state and local sources during specified periods) include reimbursements received in 2010 for current expense levy losses only, rather than for all levy losses. It amends the calculation of reimbursements for tangible personal property tax losses for a tax levied on behalf of a public library under R.C. 5705.23 to require that such losses be considered separately from other levy losses of a taxing unit. Specifically, payments a library received for levy losses from such a tax are excluded from a taxing unit's "total resources," "TPP allocation," and "S.B. 3 allocation." Instead, such payments, defined as "TPP allocation for library purposes," must exceed a threshold percentage of "total resources" of the public library in order to qualify for a separate reimbursement amount. Also, the bill specifies that the separate reimbursement is made directly to the public library, rather than through the taxing unit that levied the tax on the library's behalf. The Office of Budget and Management indicated that it and the Department of Taxation assumed the law change was in effect when calculating and budgeting the reimbursements.

For purposes of reimbursing units of local government for revenue losses resulting from reductions in tangible personal property taxes on general business and in public utility personal property taxes, the bill clarifies that a fixed-rate levy will continue to be reimbursed only to the extent that the levy continues to be charged and payable. A reduction in a levy will lead to a corresponding reduction in state

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[2] These reimbursements are separate from those described above related to electric and natural gas utility property. These reimbursements are due to the phase-out of the personal property tax on general business property under Am. Sub. H.B. 66 of the 126th G.A. As with the reimbursements for losses due to utility property taxes, the original schedule for phasing out reimbursements was accelerated by H.B. 153.

[3] Funds 7053 and 7054 currently receive revenue from the kilowatt-hour tax, while Funds 7047 and 7081 receive revenue from the CAT.

reimbursement. H.B. 153 of the 129th G.A. required that, if a fixed-rate levy comprising a portion of a taxing unit's reimbursement is no longer imposed, its value is subtracted from the taxing unit's total reimbursement. The bill provides that the amount of public utility personal property tax reimbursement payable for a tax levied within the 10-mill limit for debt purposes depends on whether the tax is "charged and payable" (rather than "imposed") for debt purposes after the 2010 tax year. These changes clarify tax treatment and are consistent with current practice.

The bill defines a tangible personal property (TPP) phase-out impacted school district as a district for which general business TPP valuation made up 18% or more of total taxable valuation for tax year 2005. For such a district, the bill specifies that its three-year "average taxable value" used for computing wealth percentile rankings of school districts for School Facilities Commission (SFC) assistance be calculated excluding general business TPP value. The bill also specifies that the local share of a Classroom Facilities Assistance Program (CFAP) project for a TPP phase-out impacted school district participating in SFC's Expedited Local Partnership Program (ELPP) be the lesser of (1) the percentage locked in when the district signed the ELPP agreement or (2) the percentage computed using its current wealth rankings. As a result of these provisions, TPP phase-out impacted school districts may be eligible for CFAP funding sooner and may have a lower local share of their CFAP project cost than under current law. The state share of the cost of these projects will, consequently, increase.

The bill increases the cap on levies submitted to electors of a park district from two mills to three mills, if the purpose of the levy includes providing operating revenues for one of Ohio's major metropolitan zoos. This change may increase tax revenues to such districts.

The bill provides for a tax exemption for real and personal property comprising a convention center or arena owned by the largest city in a county with a population between 235,000 and 300,000 in the most recent decennial census. Based on the 2010 census, this identifies Youngstown in Mahoning County. The convention center or arena is to be tax-exempt regardless of whether the property is leased to or otherwise operated or managed by a person other than the city. The exemption applies to tax years at issue in any application for tax exemption or related appeal pending when the bill becomes effective. On March 22 of this year, the Tax Commissioner made a final determination denying two applications for exemption of real property from taxation, for the $42 million Covelli Centre in Youngstown and adjacent parking areas, access, and grounds. The county auditor's web site on April 25 showed the property with a market value of about $18.6 million, annual taxes owed of about $497,600, and delinquent taxes of nearly $4.8 million. This provision of the bill will reduce tax revenues owed to units of local government.

Commercial activity tax

The bill requires that, instead of being remitted separately, commercial activity tax (CAT) registration fees ($20) will be deducted from the first tax payment the taxpayer makes after registering. Under current practices, the fee is credited against the first tax payment the taxpayer files. This provision has no fiscal effect. The bill renames both the Tax Reform System Implementation Fund (Fund 2280) and the Commercial Activity Tax Administrative Fund (Fund 5BQ0), changing the names to the Revenue Enhancement Fund. The combined fund is the fund to which registration fees and 0.85% of CAT receipts are credited, and is used to help defray CAT administrative costs.

The bill repeals the law that required the Tax Commissioner to reduce the CAT rate if, during any of the three "test" periods, the revenue actually collected exceeded projected receipts by more than 10%. This provision will have no fiscal effect. The final test period ended on June 30, 2011, and no adjustments were made to the rate.

The bill provides that CAT quarterly taxpayers may apply the full $1 million exclusion from gross receipts in current law to the first quarter of a calendar year, and permits the taxpayer to then carry forward unused exclusion amounts to subsequent quarters within the same year. (Under current law, such taxpayers apply $250,000 of the exclusion amount to each calendar quarter and may carry forward unused amounts to three subsequent quarters, regardless of whether subsequent quarter is in the same calendar year). This provision will have no fiscal effect.

The bill amends law pertaining to the CAT to exclude from that tax an "unauthorized" insurance company whose gross premiums are subject to the insurance tax. Unauthorized insurance companies are generally surplus lines insurance companies that under current law pay both the CAT and a 5% tax on insurance premiums. This provision will decrease CAT revenues by up to $1.3 million per year.

Other taxes

Sales and use taxes

The bill expressly includes, as a taxable sale under the sales tax, the transfer of ownership interests in a pass-through entity if its sole assets are boats, planes, motor vehicles, or other recreational property used primarily by the entity's owners. Under current law, the transfer of all the shares of a corporation whose sole assets are such property is a taxable sale. This provision is likely to limit revenue losses from Ohio buyers/owners that set up pass-through entities in states that do not have a sales tax with the intent to purchase the described items and avoid the Ohio use tax. Thus, this provision has the potential to result in a gain in sales tax revenue to the state, to counties, and to transit authorities.

The bill harmonizes the existing sales tax exemption for water bought for "residential use" with the definition of sales tax-exempt "food." Under current law, water purchased for residential use is tax-exempt unless it is bottled water, distilled water, mineral water, carbonated water, or ice. The amendment removes specific reference to ice and bottled, distilled, mineral, or carbonated water. However,

according to the Department of Taxation, sales of those forms of water are currently tax-exempt as sales of "food." Consequently, this provision will have no fiscal effect, as it codifies current practice.

Cigarette tax

H.B. 508 imposes a penalty of up to $1,000 for distributing tobacco products without having a distributor's license, and requires any person doing so to obtain a distributor's license and to pay the annual $1,000 license fee for each location where the person acts as a distributor. This change may potentially increase fee revenue. This revenue is deposited in the Cigarette Tax Enforcement Fund (Fund 6390).

The bill eliminates references to "brokers" in the statutes governing the persons that must report and pay the cigarette and tobacco products excise taxes. Manufacturers, dealers, distributors, importers, and wholesalers remain subject to those statutes and, unlike "brokers," are defined by law. This change will have no fiscal effect.

Alcoholic beverage tax

The bill specifies that S liquor permit holders must pay the alcoholic beverage tax. It provides that, similar to other permit holders liable for the bottled and canned beer excise tax, S liquor permit holders must submit monthly reports showing the amount of beer the permit holder sold in the state. This change will have no fiscal effect.

Corporate franchise tax

The bill provides that a "qualified financial institution" – one owned 80% or more by a grandfathered unitary savings and loan holding company – may elect to calculate the base for the corporate franchise tax by multiplying the value of its outstanding shares of stock by a sales factor, defined as receipts of the taxpayer in this state divided by receipts from all places. The fiscal effect of this provision is uncertain, but it will likely result in a loss of tax revenue.

New community districts

The bill amends law pertaining to new community districts, adding to the definition of community development charge. "New community" as defined in Chapter 349. of the Revised Code refers to a community or addition to an existing community planned to include facilities for industrial, commercial, residential, cultural, educational, and recreational activities. For new community authorities established within three years after March 22, 2012, "new community" may mean a community or a property development planned in relation to an existing community to include facilities for community activities. In both instances, the district is to be designed in accordance with planning concepts for placement of utility, open space, and other supportive facilities. New community authorities may impose a community development charge – based on real property values, income, profits, or a combination of these bases – to finance these improvements.

For new community authorities established within three years after March 22, 2012, the community development charge includes a charge determined on the basis of income of residents of the district, or profits, gross receipts, or other revenues of businesses operating in the district, including rentals received from leases of real property located in the district. Improvements to any real property located in a new community district and subject to the charge including that based on rentals are not eligible for tax exemption under the laws governing tax increment financing incentive districts.

Accountancy Board

The bill makes a number of changes to laws governing the Accountancy Board. These changes appear to have no fiscal effect. Authorization for the Board to appoint an agent to administer the Board's peer review program, and to assess a reasonable fee to cover the agent's costs, codifies a fee currently allowed by rule, and will have no fiscal effect.

Administrative changes

The bill moves the date of the second of the two semiannual reimbursement payments for business tangible personal property taxes to local taxing units from November 20 to November 30. This timing change resolves a cash flow problem affecting the GRF. H.B. 153 (the budget act of the current biennium) changed the reimbursement payment schedule from two CAT-related tangible personal property tax replacement funds, the School District Tangible Property Tax Replacement Fund and the Local Government Tangible Property Tax Replacement Fund. Under prior law, reimbursement payments were made in August, October, and May. H.B. 153 replaced the August and October payments with a payment on or before November 20. In November 2011, however, insufficient balances in the two replacement funds for the necessary payments required GRF transfers out, followed by reimbursements to the GRF from the replacement funds. Moving the payment date to November 30 should result in avoiding similar fund transfers in the future.

The bill authorizes the Department of Taxation to impose a $50 penalty on declined or dishonored electronic payments (the same penalty as for dishonored checks currently). Only one $50 penalty may be imposed for each dishonored check or declined or dishonored electronic payment. The Executive estimated that allowing a $50 penalty would result in a gain of $800,000 per year, primarily to the GRF but affecting other funds as well. The fund affected in any specific case depends on the underlying tax and the fund(s) into which its proceeds are deposited. Limiting the charge to only one $50 penalty per item may reduce, by an unknown amount, the estimated revenue gain.

The bill lowers the number of income tax returns that a tax professional may prepare in a year before being required to file all returns electronically, from 75 to 11, beginning in 2013. It imposes a $50 penalty for each return in excess of 11 per year not filed electronically, but exempts tax professionals who prepared 10 or fewer returns in

the previous calendar year. This change will reduce costs of the Department of Taxation to process returns, by an undetermined amount.

The bill allows the Tax Commissioner to cancel a taxpayer's liability for unpaid taxes, penalties, and interest if the total amount owed for a single tax period does not exceed $50. This change is expected to have a minimal fiscal effect. The provision will decrease both administrative costs and revenue.

The bill requires that a for-profit corporation be current on all taxes administered by and required to be paid to the Tax Commissioner when filing a certificate of voluntary dissolution, and that a nonprofit corporation be current on all taxes imposed under the laws of this state when filing such a certificate. Under current law, corporations filing a certificate of voluntary dissolution must show current payment of only the corporation franchise, sales, use, and highway use taxes. These changes may increase compliance with tax laws, possibly resulting in an increase, of an uncertain amount, in tax receipts.

The bill prescribes the procedure by which the Tax Commissioner may deliver tax notices or orders by secure electronic means, including electronic mail or posting on a secure web site accessible by the recipient. More extensive use of electronic means of notification may reduce Department of Taxation costs, by an uncertain amount.

The bill eliminates the requirement that notification, from the Department of Taxation to county auditors, be in writing of the statutory interest rate charged for tax underpayments and tax refunds. This change may reduce costs for the Department, by an uncertain amount.

The bill removes provisions of current law that refer to commercial activity taxpayers "electing" to file annual tax returns. This change is expected to have no fiscal effect. Prior to the enactment of H.B. 1 of the 128th G.A., taxpayers having annual taxable gross receipts of $1 million or less could pay the CAT on an annual rather than quarterly basis, but only if the taxpayers elected to do so.

The bill requires the Tax Commissioner to list on the Department's web site CAT taxpayers with cancelled CAT accounts by the effective date of the cancellation rather than the date on which the taxpayer cancelled the account. This change codifies existing departmental practice, and will have no fiscal effect.

H.B. 508 requires the Tax Commissioner to notify all vendors and sellers when local sales tax rates change. Under current law, only vendors and sellers registered through the Streamlined Sales Tax Central Registration System are required to be notified. All vendors making sales from a printed catalog, not just vendors registered under the registration system who make catalog sales, may delay applying changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change. These changes are expected to have minimal, if any, fiscal effect, as they codify current practice.

The bill eliminates the special sales tax vendor license categories of "service vendor" and "delivery vendor" but allows the Tax Commissioner to create specific classes of vendor licenses. It explicitly permits the Commissioner to cancel a vendor's license if the vendor fails to notify the Commissioner of a change of address and if ordinary mail sent to the address on the vendor's license is returned as undeliverable. It requires all vendors to display their vendor licenses, not just transient vendors. These changes are expected to have no fiscal effect.

The bill creates the Peace Officer Training Academy Fund (Fund 5LR0) and the Criminal Justice Services Casino Tax Revenue Fund (Fund 5LM0) to receive the portion of casino tax proceeds (2%) allocated for the purpose of supporting law enforcement training efforts of the Peace Officer Training Academy and the Department of Public Safety's Division of Criminal Justice Services. It stipulates that the portion of casino tax proceeds (3%) allocated to the Ohio State Racing Commission Fund (Fund 5JK0) is for use by the Commission to promote pari-mutuel horse racing. It specifies that the portion of casino tax proceeds (2%) allocated to the Problem Casino Gambling and Addictions Fund (Fund 5JL0) is for use by the Department of Alcohol and Drug Addiction Services. It provides that these amendments are exempt from the referendum and will take effect immediately when the act becomes law. These changes will have no fiscal effect. Current law already requires amounts credited to the Ohio Law Enforcement Training Fund (Fund 5JN0) to be allocated to the Ohio Peace Officer Training Academy (85%) and the Division of Criminal Justice Services (15%). This provision of the bill creates funds to receive the resulting monies and from which appropriations may be made.

The bill changes the distribution of a horse racing tax, requiring the Tax Commissioner to pay the tax directly to the municipal corporation or township in which a horse racing meeting took place and in which any facilities or "accessory uses therefor" were located. Currently the Tax Commissioner returns the amount of the tax to the permit holder for forwarding to the appropriate unit or units of local government. The bill also moves into permanent law a provision currently in administrative law providing for reporting by the permit holder the information required for administration of this tax. This change will have no fiscal effect.

Instead of requiring all applicants for a motor fuel dealer's license to file a surety bond with the license application as under current law, the bill provides the Tax Commissioner with discretion over whether to require a motor fuel dealer to file a surety bond with the motor fuel dealer's license application if the motor fuel dealer only sells or distributes motor fuel for which the motor fuel tax has already been paid or for which payment of the tax is not required. This change is expected to have no fiscal effect.

The bill excuses the Tax Commissioner from certifying certain property tax information that, under current law, is required to be certified to the Department of Education and Office of Budget and Management in May and June of 2012. This change

will have no fiscal effect; the school foundation funding formula for fiscal years 2012 and 2013 relies upon fiscal year 2011 information.

The bill eliminates the requirement that the Tax Commissioner give written permission for asset transfers with respect to decedents dying on or after January 1, 2013. This change will have no fiscal effect, since by prior legislation, the estate tax is to be terminated at the end of 2012.

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