



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 508 of the 129th G.A.](#)

Date: April 18, 2012

Status: As Introduced

Sponsor: Rep. Beck

Local Impact Statement Procedure Required: Yes

Contents: Makes changes to the laws governing the assessment, levy, and collection of taxes in the state

State Fiscal Highlights

- The bill makes numerous changes to tax law and administration.
- 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.
- Changes in law pertaining to phase-in-recovery property are projected to increase annual commercial activity tax (CAT) revenue by \$1 million to \$2 million. Half of any revenue gain would be credited to the GRF, with the remainder credited to the School District Tangible Property Tax Replacement Fund (35%) and the Local Government Tangible Property Tax Replacement Fund (15%).
- 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 \$800,000 (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 all state taxes may increase tax receipts.
- Permitting the Tax Commissioner to cancel taxpayer liabilities that do not exceed \$50 would reduce both departmental administrative costs and 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.

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.
- The bill delays a reimbursement payment to units of local government for business tangible personal property taxes from November 20 to November 30.

Detailed Fiscal Analysis

The bill changes a number of tax laws and the Department of Taxation's administration of those laws. Changes 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 the taxes indicated, followed by 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 business² 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

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.

payable. A reduction in a levy will lead to a corresponding reduction in state 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.

Commercial activity tax

H.B. 508 specifies that the existing state and local tax exemption for the transfer and ownership of phase-in-recovery property as well as the imposition, charging, collection, and receipt of phase-in-recovery revenues do not prohibit the levy of the commercial activity tax (CAT). It also specifies that tangible personal property of an electric distribution utility that is used to generate, transmit, or distribute electricity is not "phase-in-recovery property," which means a utility (or its assignee to which its phase-in-recovery property is sold, assigned, transferred, or conveyed) cannot pledge tangible personal property to secure the payment of bonds issued under a securitization order authorizing the recovery of uncollected utility costs. This change is projected to result in an annual revenue gain between \$1 million and \$2 million for the CAT, which increases revenues to the GRF, Fund 7047, and Fund 7081. For FY 2013 and thereafter, 50% of CAT receipts will be deposited to the GRF, and the remaining amount will be allocated to Fund 7047 (35%), and Fund 7081 (15%).

The bill requires that, instead of being remitted separately, 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 removes the reference to gross income within the definition of gross receipts for purposes of the CAT. This provision will have no fiscal effect.

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.

Other taxes

Sales and Use Taxes

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.

Motor Fuel Tax

The bill extends to all kinds of business organizational forms the current provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax. (Current law refers only to such individuals relative to corporations and business trusts). This change is expected to have a minimal 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.

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). The Executive estimates that this change will 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.

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 corporations be current on all state taxes when filing a certificate of voluntary dissolution. 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. This change 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 by 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 makes several changes pertaining to interest. It provides that interest does not accrue on any portion of a taxpayer's income, corporation franchise, or commercial activity tax refund if the refund results from a refundable credit. It specifies that, when an income or pass-through entity withholding tax refund arises from the filing of an amended return, interest on the tax refund will be allowed from the date the amended return is filed to the date the refund is paid. It removes a provision of current law that specifies that, when an income taxpayer is allowed interest on a refund of

amounts overpaid as the result of an illegal or erroneous Department of Taxation assessment, the interest accumulates from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. It removes a provision of current law that provides that, when an income taxpayer is allowed interest on a refund of amounts overpaid on a tax return (not as the result of an illegal or erroneous assessment), the interest accumulates during the period beginning 90 days after the return was filed and ending the date the refund is paid. Another provision of the same law, retained under the amendment, provides that the interest on a refund of any income tax overpayment not resulting from a refundable tax credit will accumulate from the date of overpayment until the date the refund is paid, unless the refund is paid within 90 days after the last date for filing a tax return, in which case no interest is allowed. These changes may result in a minimal revenue gain.

The bill reduces the statutory interest rate charged for tax underpayments and payable on some tax refunds from the federal short-term rate plus three per cent to the federal short-term rate plus one per cent. It increases, by one percentage point, the interest rate for estate tax underpayments and refunds and for any remaining business tangible personal property tax underpayments or refunds. Currently, the rate for those taxes equals the federal short-term rate. The interest rate change affects the interest charged for many other sums due to the state and affects the discount rate used to value oil and gas reserves for property tax purposes. The bill eliminates the requirement that notification of the interest rate to county auditors be in writing. These changes are expected to have a minimal effect on revenues to the state and local governments. The reduced revenue received from interest on tax underpayments is expected to be approximately offset by reduced interest payments made on eligible refunds.

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. This change is 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 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.