Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 263 of the 130th G.A.

Date: May 21, 2014

Status: As Reported by House Finance and Appropriations

Sponsor: Sens. Peterson and Beagle

Local Impact Statement Procedure Required: Yes

Contents: Requires the Tax Commissioner to notify taxpayers of tax or fee overpayments, and permits the Commissioner to credit the excess against future obligations or issue refunds; modifies current law regarding vendor sales or use tax deductions or refund claims for bad debts

State Fiscal Highlights

STATE FUND	FY 2014	FY 2015	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Possible loss	Possible loss
Expenditures	- 0 -	Increase of $682,000	Possible increase
Local Government Fund (Fund 7069), Public Library Fund (Fund 7065)			
Revenues	- 0 -	Possible loss	Possible loss
Expenditures	- 0 -	Decrease equal to revenue loss	Decrease equal to revenue loss

Note: The state fiscal year is July 1 through June 30. For example, FY 2014 is July 1, 2013 – June 30, 2014.

- The bill requires the Tax Commissioner to review taxpayers' accounts and notify taxpayers of credit balances identified.
- Refunds or credits against future taxes or fees owed would reduce net revenues to the GRF and other funds to less than would have been retained under prior Department of Taxation policy.
- The Department has implemented reviews and notifications of overpayments administratively; hence the bill may not entail loss of revenue relative to current policy.
- The bill increases the amount appropriated for Department operating expenses by $682,000 in FY 2015 to cover one-time costs of the bill, and the Department would incur ongoing costs for reviews and notifications.
- Changes to vendor calculations of sales or use tax deductions or refund claims for bad debts may reduce tax receipts, possibly by millions of dollars.
- Any loss of GRF revenue would reduce transfers to the Local Government Fund (LGF) and Public Library Fund (PLF), distributed to local governments and libraries in the month received.

Local Fiscal Highlights

- Any reduction in LGF and PLF revenue would reduce revenues to counties and municipal governments from those funds. Counties further distribute revenues from the LGF to other units of local government and revenues from the PLF mainly to libraries.

Detailed Fiscal Analysis

S.B. 263 requires the Tax Commissioner to review taxpayers' accounts and notify them of any overpayments of taxes or fees. It also changes provisions pertaining to vendor sales or use tax deductions or refund claims for bad debts.

Taxpayer notifications and refunds

The review and notification are to be done at least 60 days before each deadline for a taxpayer to file a refund application for the tax or fee. The Tax Commissioner may either apply the amount of any credit balance owed to the taxpayer's liability in the next reporting period for that tax or fee, or issue a refund, net of any tax debt of that taxpayer certified to the Attorney General for collection or any other outstanding tax or fee liability.

The Department of Taxation will incur costs for these reviews and notifications. The bill includes a supplemental appropriation to GRF line item 110321, Operating Expenses, of $682,000 in FY 2015, to allow one-time outlays on computer systems. Costs for reviews and notifications would continue in future years.

Reviews required by the bill would identify overpayments for which taxpayers had not filed refund applications or amended returns, and might not timely file to recover these overpayments in the absence of such reviews. The Department administers numerous taxes and fees. Revenues are deposited into a number of funds, with the largest share paid into the GRF.

The Tax Commissioner testified on February 11 in Senate Finance Committee that the Department began informing business taxpayers more than a year ago of credit balances in their accounts. Prior policy had generally been not to inform business taxpayers of credit balances in their accounts but to require them to file for a refund on the proper form within the statute of limitations for doing so, or forfeit the overpayment to the state. The Commissioner said that this former policy applied to business taxpayers, and that individual taxpayers received their refunds expeditiously. The Department changed the policy for business taxpayers, and has since refunded more than $11 million of overpayments on commercial activity tax obligations, out of a total of $13 million owed to the taxpayers. It has refunded more than $8 million of overpayments on corporate franchise, sales and use, and employer and school district withholding taxes, out of a total of $34 million.

Refunding overpayments has been slowed by low response rates of taxpayers who are sent notices of their overpayments. The bill gives the Tax Commissioner authority to issue a refund unilaterally and to apply overpayments in one tax period to the next period. The administrative change in Department policy on tax overpayments by business implies the bill may not result in loss of revenue relative to the net revenues retained under the current policy.

A November 2013 Report of Investigation from the Office of the Inspector General indicates overpayment balances totaled over $234 million, on taxpayer accounts that each had an overpayment of more than $5,000, as of July 2012. Overpayment balances regardless of the amount of the overpayment on the individual account totaled over $294 million, though in many of the individual accounts the overpayment was less than $1. The Department indicated that these amounts include credit balances back to the 1990s for which the statute of limitations for requesting refunds has expired, and includes credit balances for a payment period, such as a month, that are not netted against underpayments by the same taxpayers in other payment periods.

The Inspector General's report notes that accounts may show overpayments because of advance payments by taxpayers, or because of mathematical or data entry errors by the taxpayer or the Department that are later corrected. That report indicates that a review of overpayments conducted by the Department found, for four types of taxes (corporate franchise, employer withholding, school district withholding, and sales and use) with overpayments totaling about $74 million, that overpayments of $31 million were refundable, overpayments of $19 million were nonrefundable, and more information would be needed to determine the status of overpayments totaling $24 million. Taxpayers must request refunds within a three- or four-year statute of limitations, depending on the tax, or the state retains the money.

Each month, 1.66% of total tax revenue credited to the GRF in the previous month is credited to each of the Local Government Fund (LGF) and Public Library Fund (PLF). All amounts credited to these funds are paid in the month received to counties and municipal corporations. Counties further distribute part of revenues from the LGF to other units of local government, primarily municipalities and townships, and retain part. Counties distribute the vast majority of revenue from the PLF to libraries, and pay the rest to municipal corporations in a few counties. Thus any reduction in GRF revenues resulting from the bill would reduce funding to units of local government and to public libraries.

In addition, the Department administers the school district income tax. Only a small amount of school district withholding was overpaid, based on the figures reported in the Inspector General's report.

Sales or use tax vendor deductions or refunds

The bill modifies provisions that allow a vendor, in calculating the amount of taxable receipts from the sales or use tax, to deduct or claim as a refund amounts charged off as uncollectible bad debts on the vendor's books. It allows the deduction or refund on the basis of accounts or receivables bad debt from purchases from the vendor whose name or logo appears on a private label credit card or from purchases from any of the vendor's affiliates or franchisees. The change may reduce sales tax receipts, by an undetermined amount, possibly in the millions of dollars. Any revenue reductions would reduce distributions to the LGF and the PLF (1.66% each, as noted above) with the GRF retaining the rest (96.68%).

A vendor taking this deduction or claiming this refund must include all credit sale transactions outstanding in the account or receivable at the time the bad debt is charged off, regardless of the date of the credit sale transaction. If the vendor collects in whole or part any accounts or receivables bad debt for which the vendor previously took a deduction or received a refund, the vendor must include the amount collected in the vendor's first return filed after the collection, and pay tax on the portion of that amount with respect to which the vendor took the deduction or received a refund. In calculating the amount of tax to remit, the vendor is to allocate payments made by the holder of a private label credit card on the holder's accounts based on the agreement between the account holder and the vendor or lender.

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