Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 492 of the 130th G.A.

Date: March 26, 2014

Status: As Introduced

Sponsor: Rep. Scherer

Local Impact Statement Procedure Required: No

Contents: To provide authorization and conditions for the levy and administration of taxes in this state

State Fiscal Highlights

- Shortening the minimum holding period of investments, from five to two years, necessary for an investment to qualify for the small business investment income tax credit, would accelerate the realization of these credits and the resulting reduction in state personal income tax (PIT) revenue. Losses will occur mainly in the taxable years that include the period from July 1, 2015, through June 30, 2018, thereby affecting the timing of up to about $150 million in tax credits. The GRF will bear 96.68% of the total revenue loss, with the Local Government Fund (LGF; Fund 7069) and the Public Library Fund (PLF; Fund 7065) each bearing losses equal to 1.66% of the total.
- Allowing job creation and retention tax credits to be claimed against the motor fuel receipts tax (MFRT, which would be renamed the petroleum activity tax, or PAT, under the bill), may decrease revenue to the Motor Fuel Receipts Tax Fund (Fund 5NX0, renamed the Petroleum Activity Tax Fund by the bill). Revenue to that fund is subsequently transferred to other state funds. Ultimately, any revenue loss due to the tax credits would affect, most notably, the Highway Operating Fund (Fund 7002) in the budget of the Department of Transportation.
- Allowing the recipient of a nonrefundable job retention tax credit initially awarded against the commercial activity tax (CAT) to claim the credit against the PAT would shift any decrease in tax receipts attributable to such tax credits to MFRT, instead of the CAT. The increase in revenue from the CAT would go to the GRF (50%), the School District Property Tax Replacement Fund (Fund 7047, 35%), and the Local Government Property Tax Replacement Fund (Fund 7081, 15%). Gains to Fund 7047 and Fund 7081 would subsequently be transferred to the GRF.
- Eliminating the part-year computation of the base used to compute the increase in an employer's Ohio income tax withholdings for the purpose of the job creation tax credit is likely to reduce such credits in the first year of agreements. The credits are refundable and may be taken against the domestic and foreign insurance taxes, the

financial institutions tax, the PIT, or the CAT. However, LSC does not have an estimate of the amount of any increase in tax revenue that may result from this change. Any revenue gains would be experienced by the GRF, except in the case of revenue gains under the CAT, which would be split between the GRF, Fund 7047, and Fund 7081 (as explained in the preceding bullet).

- Allowing the Director of Development Services to reduce the amount, percentage, or term of a research and development loan tax credit, if the loan recipient fails to comply with requirements specified in the loan agreement, may result in reduced credits taken against the PIT or the CAT, and increased state revenue from these taxes. The amount of any revenue gains appears indeterminate.
- Shifting the responsibility to sell cigarette tax stamps and receive cigarette tax returns from the Treasurer of State to the Tax Commissioner would shift related administrative costs from the Office of the Treasurer of State to the Department of Taxation. Under the bill, revenue resulting from any charges to licensed dealers will be deposited into the Cigarette Tax Enforcement Fund (Fund 6390), a fund in the Department of Taxation's budget.
- Requiring the Tax Commissioner to include interest when refunding any overpayments of natural gas distribution tax, kilowatt hour tax, and tire fees may minimally decrease receipts from such taxes and fees. Currently, revenue from the natural gas distribution tax, and 88% of revenue from the kilowatt hour tax, is deposited into the GRF.
- Changes related to the motor fuel tax (MFT) for compliance with federal guidelines may minimally reduce the Treasurer's administrative costs, but may minimally increase the Department of Taxation's administrative costs. In addition, it may minimally increase revenue from penalties related to MFT. Such revenue would benefit various state funds, primarily Fund 7002, and counties, municipalities, and townships.

Local Fiscal Highlights

- Several provisions of the bill have the potential to affect GRF revenue, as explained above. The Local Government Fund (LGF) and the Public Library Fund (PLF) would each bear 1.66% of any revenue loss (or gain) experienced by the GRF. Any revenue losses to the LGF and PLF would result in reduced distributions to counties, municipalities, townships, and public libraries. Conversely, any revenue gains to the funds would result in increased distributions to those political subdivisions.
- A portion of any gain in revenue, likely minimal, under the motor fuel tax due to penalties, would be distributed to counties, municipalities, and townships.
- Specifying that municipal corporations may award job creation and retention municipal income tax credits to taxpayers not awarded a corresponding state credit clarifies existing law but does not seem to change it. It therefore appears to have no fiscal effect.

Detailed Fiscal Analysis

The bill changes requirements related to certain existing tax credits. It requires the Tax Commissioner to include interest when refunding any overpayments of natural gas distribution tax, kilowatt hour tax, and tire fees. It shifts the responsibility to sell cigarette tax stamps and receive cigarette tax returns, and it requires certain motor fuel dealers to remit motor fuel tax (MFT) payments electronically. The bill also revises law governing for-hire motor carriers. And the bill contains administrative changes related to certain taxes administered by the state.

Several of the provisions have no fiscal effect on the state or local governments; only two or three of the tax credit provisions seem likely to have a significant fiscal effect. The following are provisions that may have fiscal effects on the state and/or local governments. Please note that revenue changes to the GRF affect local governments, since 1.66% of GRF revenue received in a month is transferred the next month to the Local Government Fund (LGF); similarly, another 1.66% of GRF revenue in a month is transferred the next month to the Public Library Fund (PLF). These transfers dilute the ultimate effect on the GRF of a change in GRF revenue; the ultimate change in GRF revenue is 96.68% of the initial change.

Tax credits

"Invest Ohio" income tax credit investment holding period

The bill shortens the minimum holding period of investments in smaller businesses, from five to two years, necessary for the investment to qualify for an income tax credit. Continuing law grants income tax credits for investors in businesses having specified minimum employment in Ohio and having not more than $50 million in assets or $10 million in annual sales. Within six months after an investment, a business must spend at least the amount of the investment to purchase or acquire assets or to pay employees, new or existing, in Ohio. Currently, investments made on or after July 1, 2013, must be held for at least five years. The shortened holding period also shortens the period during which the business must hold any assets it must acquire after receiving a qualifying investment.

Fiscal effect

A taxpayer may claim the nonrefundable credit against the taxpayer's income tax liability in the taxable year that includes the last day of the holding period, and may carry forward any unused portion of the credit for up to seven years. Shortening the holding period accelerates the realization of these credits and the resulting reduction in state personal income tax revenue. The total value of tax credits granted is limited in continuing law to $100 million per biennium. Losses will occur mainly in the taxable years that include the period from July 1, 2015, through June 30, 2018, thereby affecting the timing of tax credits worth approximately $150 million. Personal income tax (PIT) revenue is deposited into the GRF. Because this provision simply accelerates the claiming of the credits, there would be a corresponding revenue increase in the future (though it could be many years in the future).

Job creation and retention credits against motor fuel receipts tax

The bill authorizes job creation and retention tax credits to be claimed against the tax levied on a supplier with gross receipts from the first sale of motor fuel in the state (i.e., the motor fuel receipts tax, which would be renamed the petroleum activity tax, or PAT, under the bill). The bill also allows the recipient of a nonrefundable job retention tax credit to claim a credit initially awarded against the commercial activity tax (CAT) against the PAT.

Fiscal effect

This provision would shift any decrease in tax receipts attributable to nonrefundable job creation and retention tax credits to the PAT, instead of the CAT. It may decrease revenue to the Motor Fuel Receipts Tax Fund (Fund 5NX0, renamed the Petroleum Activity Tax Fund under the bill). Revenue to that fund is subsequently transferred to other state funds. Ultimately, any revenue loss would affect, most notably, the Highway Operating Fund (Fund 7002) in the budget of the Department of Transportation.

Computation of job creation tax credits

The bill eliminates the part-year computation of the base used to compute the increase in an employer's Ohio income tax withholdings for the purpose of the job creation tax credit. Currently, an employer's credit amount depends on how much its annual Ohio income tax withholdings for employees exceed those withholdings for a 12-month base period ending when the credit agreement is approved, or in some cases, recommended for approval; but if the credit is approved after the beginning of the employer's annual tax period, the amount included in the base period for the first year's credit is reduced proportionately. This provision eliminates the part-year computation.

Fiscal effect

Job creation tax credits in the first year of agreements appear likely to be reduced by this change. The credits are refundable and may be taken against the domestic and foreign insurance taxes, the financial institutions tax, the PIT, or the CAT. LSC does not have an estimate of the amount of any increase in tax revenue that may result from this change. Revenue from all these taxes is deposited into the GRF, though in the case of the CAT, the GRF share is 50%, with the remaining share deposited into two property tax replacement funds. Changes in the CAT revenue ultimately affect only the GRF, though, since required amounts of property tax replacement payments each year are predetermined.

Research and development loan tax credit noncompliance

The bill allows the Director of Development Services to reduce the amount, percentage, or term of a research and development loan tax credit if the loan recipient fails to comply with job creation, job retention, or other requirements specified in the loan agreement.

Fiscal effect

The bill may result in reduced credits taken against the PIT or the CAT, and increased state revenue from these taxes. The amount of any such gains appears indeterminate. All revenue from the PIT and 50% of revenue from the CAT is deposited into the GRF.

Municipal job creation and retention tax credits

The bill replaces statutory language specifying that a municipal corporation may grant a credit to foster job creation or job retention to a taxpayer that also receives such a credit from the state, instead stating that a municipal corporation may grant such a credit without regard to whether the taxpayer was awarded a state job creation or retention tax credit. Nothing in current law limits or prohibits a municipal corporation from awarding a job creation or retention credit to a taxpayer not awarded a corresponding state credit, so there does not seem to be a fiscal effect from this provision.

Sale of cigarette tax stamps

The bill shifts the responsibility to sell cigarette tax stamps and receive cigarette tax returns from the Treasurer of State to the Tax Commissioner. Under current law, cigarette tax stamps are sold by the Treasurer of State and by county treasurers that are appointed as deputies of the Treasurer for that purpose. Wholesale dealers, persons with untaxed cigarettes, and distributors and importers of other tobacco products are required to file returns with the Treasurer of State who, after marking the date of receipt, is required to transmit the return to the Commissioner. The bill requires that the Commissioner and agents designated by the Commissioner sell the cigarette tax stamps and that returns be made and filed directly to the Commissioner. The bill also requires that amounts collected from charges for the costs of shipping cigarette tax stamps to wholesale dealers be credited to the Cigarette Tax Enforcement Fund (Fund 6390) rather than the Cigarette Administrative Fund (Fund 6050).

The bill eliminates provisions in current law authorizing the use of a metering device in lieu of tax stamps to show that the excise tax has been paid. The bill also changes the due date for reporting and paying the other tobacco product (OTP) tax from the last day of each month to the 23rd day of each month.

The bill eliminates the Tobacco Settlement Enforcement Fund (Fund T087), which was used by the Tax Commissioner to enforce provisions of Ohio tax law related to the sale of certain tobacco products.

Fiscal effect

The bill would shift costs related to sales of cigarette tax stamps and administration of cigarette tax returns from the Office of the Treasurer of State to the Department of Taxation. Under continuing law, such costs are charged to the licensed dealer. Revenue resulting from the charges is currently deposited into the Treasurer's Fund 6050; under the bill that revenue will instead be deposited into Fund 6390, a fund in the Department of Taxation's budget.

Use of Fund T087 was phased out in FY 2009. The Department of Taxation's costs to enforce cigarette tax laws have been paid from the GRF, appropriation item 110404, since that time. A de minimus cash balance (about $15,000) was retained in Fund T087 until July 2013, at which time this balance was transferred out.

Advancing the due date for paying the tax could create a one-time revenue gain in the first fiscal year the change takes effect, since some revenue due in June might not have been booked until July under current law.

Motor fuel tax

The bill makes several changes to motor fuel tax (MFT) for compliance with federal guidelines. The bill consolidates two existing classes of motor fuel exporter licenses into a single exporter license and requires motor fuel exporters to file a surety bond of not less than $5,000 with the Tax Commissioner, similar to a surety bond required under continuing law for motor fuel dealers. The bill requires transporters of motor fuel to register with the Commissioner; under continuing law, transporters are required to report deliveries of motor fuel to Ohio monthly.

The bill authorizes the Commissioner to require motor fuel dealers to remit tax payments electronically through the Department of Taxation's website; it allows the Commissioner, rather than the Treasurer of State, to excuse a dealer from the requirement to remit payments electronically. The bill modifies the penalty the Commissioner may impose for a dealer's failure to remit payments electronically as required. The bill authorizes the Commissioner to impose a penalty, up to $50, for failure to file timely reports on persons, such as transporters and exporters, that are required to file motor fuel reports but are not required to remit motor fuel excise tax. In addition, the bill authorizes the Commissioner to formally assess such person if the person does not pay the full amount of the penalty. Under continuing law, the Commissioner may impose a similar penalty on motor fuel dealers for failing to timely file reports or remit motor fuel excise tax, but the penalty for motor fuel dealers equals up to the greater of $50 or 10% of the dealer's tax liability for that month.

The bill also makes a number of changes to administrative law involving the tax, including changes to the due date of monthly MFT payments and reports, modification of the content of a monthly report that the Tax Commissioner is required to issue, removal of a requirement that motor fuel dealers apply for a refund permit before being able to receive refunds, and information that the Commissioner is authorized to share with motor fuel retailers. For details on these provisions, please see the LSC Bill Analysis.

Fiscal effect

The changes related to MFT for compliance with federal guidelines may minimally reduce the Treasurer's administrative costs, but may minimally increase the Department of Taxation's administrative costs. In addition, they may minimally increase revenue from penalties related to MFT, which are generally considered to be revenue arising from the tax. Accordingly, any revenue gains from such penalties will go to various state funds, primarily the Highway Operating Fund (Fund 7002), and to counties, municipalities, and townships.

Interest on overpayments of natural gas distribution tax, kilowatt hour tax, and tire fees

The bill requires the Tax Commissioner to include interest when refunding any overpayments of natural gas distribution tax, kilowatt hour tax, and tire fees. Under current law, interest is included only when the overpayment is due to an illegal or erroneous assessment.

Fiscal effect

The requirement above may decrease minimally receipts from natural gas distribution tax, kilowatt hour tax, and tire fees. Revenue from the natural gas distribution tax, and 88% of revenue from the kilowatt hour tax, is deposited into the GRF.

Other administrative tax law changes

The bill authorizes the Tax Commissioner to adopt rules requiring returns for any tax or fee administered by the Commissioner to be filed electronically or filed using the telefile system (under current law, the Commissioner may adopt such rules only with respect to specified taxes, e.g., employer income tax withholding, motor fuel tax, CAT). The bill authorizes the Department of Taxation (TAX) to disclose information to the Development Services Agency (DSA) for specified purposes (currently, taxpayer information possessed by TAX may not be disclosed to anyone unless the law specifically permits disclosure). The bill prohibits disclosure of this information by officers and employees of DSA except for purposes of evaluating potential tax credits, grants, and loans. And the bill prescribes uniform standards for the date when the Tax Commissioner is considered to have received a document or payment by mail, in person, or electronically, including by fax, and it prescribes uniform standards for the date when a person is considered to have received a document or payment from the Tax Commissioner by mail.

Fiscal effect

The provision related to electronic filing may reduce the Department's administrative costs. The other provisions have no fiscal effect.

For-hire motor carrier tax receipts

The bill requires the Public Utilities Commission of Ohio (PUCO) to provide for-hire motor carriers, instead of a single receipt, a tax receipt for each of the carrier's motor vehicles for which a tax has been paid under the for-hire motor carrier law. The bill also requires that the appropriate tax receipt be kept in each motor vehicle operated by the carrier. Under the bill, the carrier must maintain records that track which tax receipt is assigned to each motor vehicle.

Fiscal effect

This provision codifies current practice, and has no fiscal effect.

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