



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 492 of the 130th G.A.](#)

Date: May 21, 2014

Status: As Reported by Senate Finance

Sponsor: Rep. Scherer

Local Impact Statement Procedure Required: Yes

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

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.
- The bill would decrease PAT revenue by approximately \$6.2 million per year, beginning in FY 2016, based on the price difference between the average wholesale price of a gallon of all grades of gasoline and the average wholesale price of a gallon of unleaded regular gasoline. Any revenue loss would affect the funds mentioned above. The changes apply to tax periods beginning on or after July 1, 2015. Under the bill, the PAT rate is 0.65% of the "calculated gross receipts," instead of "gross receipts" under current law.
- 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 PAT, instead of the CAT. The increase in revenue from the CAT would go to the GRF (50%), the

School District Tangible Property Tax Replacement Fund (Fund 7047, 35%), and the Local Government Tangible 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) 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.
- Requiring the Tax Commissioner to review taxpayers' accounts and notify taxpayers of credit balances identified and to issue 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. 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.

- The bill increases the amount appropriated for Department of Taxation 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.

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.
- Property in an enterprise zone qualified for tax exemption except for failure of the owner to comply with filing requirements may be exempted following application. The exemption is limited to property in Montgomery or Summit counties.
- 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) beginning on or after July 1, 2014. 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 – the School District Tangible Property Tax Replacement Fund (35%) and the Local Government Tangible Property Tax Replacement Fund (15%). The deposits in non-GRF funds are used by the state to reimburse school districts and other local governments for the reductions and phase-out of local taxes on tangible personal property. 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 sell the cigarette tax stamps and that returns be made and filed directly to the Commissioner, and eliminates reporting requirements regarding the sale of cigarette tax stamps for the Treasurer of State. 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). The bill authorizes the Commissioner to require motor fuel dealers to remit tax payments electronically under rules adopted by the Treasurer of State or through the Department of Taxation's website. 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, 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 changes the current penalty for a dealer that is required to make tax payments by electronic funds transfer, but fails to do so. Under the bill, the penalty is up to \$25 or 5% of the payment for the first reporting period the dealer fails to pay tax electronically, and up to \$50 or 10% of the payment for each subsequent period of noncompliance.

The bill also makes a number of changes to administrative law involving the tax, including 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 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.

Petroleum Activity Tax (PAT)

The bill changes the motor fuel receipts tax to be imposed on gross receipts to a petroleum activity tax (PAT) to be imposed on calculated gross receipts. Under the bill, PAT is levied based on the following "calculated gross receipts": (1) with respect to sales of gasoline, the product obtained by multiplying the total number of gallons by the average wholesale price of a gallon of unleaded regular gasoline, six months prior to the tax period, (2) with respect to sales of motor fuel that is not gasoline, the product obtained by multiplying the total number of gallons of motor fuel first sold within this state by a supplier during the tax period by the average wholesale price of a gallon of diesel fuel, six months prior to the tax period. The changes apply to tax periods beginning on or after July 1, 2015.

The bill requires the Commissioner to determine and publish, on its website, the statewide average wholesale prices of a gallon of unleaded regular gasoline and of a gallon of diesel fuel for each calendar quarter. The figures must be published at least 15 days before the beginning of the calendar quarter. The bill requires the Commissioner to use the average price on pricing information available from the United States Energy Information Administration (EIA) or, if such information is not available from that agency, the Commissioner may use another publicly available source. The price data must not include any federal or state excise taxes and must be rounded up to the nearest one-tenth of one cent.

The bill does not prohibit a person from separately or proportionately billing or invoicing the PAT to a purchaser of motor fuel. The bill requires any person that knowingly receives motor fuel from a supplier that is not licensed as a motor fuel dealer to include in the calculation of the person's calculated gross receipts the number of gallons of motor fuel the person received in this state or transported into this state from the unlicensed supplier.

Fiscal effect

The bill would decrease PAT revenue by millions of dollars per year. Under the bill, the PAT rate is 0.65% of the "calculated gross receipts." Under current law, MFRT is levied based on the amount of "gross receipts" derived from motor fuels (the number of gallons of motor fuel multiplied by various prices (i.e., retail or wholesale prices of various types of motor fuels).

According to EIA data, Ohio Gasoline and Diesel Retail Prices, between August 2013 and January 2014, the average wholesale price of a gallon of all grades of gasoline during the six-month period was \$2.77 while the average wholesale price of a gallon of unleaded regular gasoline during the same period was \$2.62. According to Department of Taxation data, in FY 2012 about 5 billion gallons of gasoline and 1.5 billion gallons of special fuels were taxed in FY 2012.¹ Using the price difference between the average wholesale price of a gallon of all grades of gasoline and the average wholesale price of a gallon of unleaded regular gasoline above, the estimated PAT revenue loss would be about \$6.2 million per year. This revenue loss would ultimately affect primarily the Highway Operating Fund (Fund 7002), counties, municipalities, and townships.

Notifications and refunds of tax overpayments

The bill requires the Tax Commissioner to review taxpayers' accounts and notify them of any overpayments of taxes or fees. 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.

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

¹ Source: Ohio Department of Taxation, *Motor Fuel Tax Collections and Gallons Taxed Fiscal Year 2012*.

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.

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.

Fiscal effect

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. As explained above, any reduction in GRF revenues resulting from the bill would reduce funding to units of local government and to public libraries.

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.

The bill consolidates two types of "exporter" license into one "exporter" license for purposes of the motor fuel tax. The bill creates a new "transporter" license for purposes of the motor fuel tax for a person that transports motor fuel by any manner into Ohio, including a railroad company, a pipeline company, or water transportation company; and the bill requires each transporter to register with the Commissioner and report all deliveries of motor fuel made anywhere in the state on forms prescribed by the Commissioner.

The bill requires the Commissioner to prepare a list of suppliers holding an active PAT license each month, including certain information about each supplier.

Fiscal effect

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

Property tax abatement

The bill allows a tax exemption for real property eligible for exemption under a qualifying enterprise zone agreement, except for failure of the property owner to comply with the filing requirements to obtain the exemption. The exemption is limited to counties with populations over 500,000 but less than 600,000 in the 2010 decennial census, which limits the exemption to Montgomery and Summit counties, with the consent of a municipal corporation with a population over 15,000 and less than 20,000, which could include Tallmadge or Twinsburg in Summit County, or Springboro or Vandalia in Montgomery County. The owner may obtain abatement of unpaid taxes, penalties, and interest, and may receive a refund of any amount paid that would have qualified for exemption. To obtain the exemption, the property owner must apply within three months after the effective date of this part of the bill.

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.