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Final Analysis
Legislative Service Commission

Am. Sub. H.B. 122
126th General Assembly
(As Passed by the General Assembly)

Reps. Wagoner, McGregor, Martin, Wagner, T. Patton, Hoops, Uecker, Seitz, Combs, Gibbs, Flowers, Collier, D. Evans, Calvert, Reidelbach, Setzer, Strahorn, Garrison, Latta, C. Evans, Kearns, Blasdel, Law, Gilb, Webster, Ujvagi, Harwood, Daniels, Carmichael, Walcher, Hartnett, D. Stewart, Book, Allen, Barrett, Brinkman, Brown, Cassell, Chandler, Coley, DeBose, Distel, Dolan, Domenick, Faber, Hughes, Key, Miller, Sayre, Schaffer, Schneider, J. Stewart, Yuko

Sens. Mumper, Niehaus, Zurz, Mallory, Clancy

Effective date: *

ACT SUMMARY

- Prohibits any person from claiming or receiving payment of a lottery prize award with a value in excess of \$599 until each beneficial owner's name, address, and Social Security number are disclosed to the State Lottery Commission.
- Specifies the Commission may share that information with certain government agencies under specified provisions of law, but if the prize award winner is a beneficial owner using a trust, it remains confidential and cannot be subject to inspection or copying under the Public Records Law as a public record unless that prize award winner otherwise provides written consent.
- Changes the procedure for the deduction from lottery prize awards of child or spousal support in default by requiring child support enforcement agencies to issue intercept directives if they determine a prize winner is

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

subject to a "final and enforceable determination of default" under the Support Order Default Law.

- Increases the tax withholding percentage on lottery winnings from 3.5% to 6%.
- Requires tax withholding on secondary transfers of lottery winnings to be based on the gain or income that the transferor recognizes instead of the entire amount of payments the transferee makes to the transferor.
- Authorizes a lottery prize award with an unpaid balance of \$100,000 or more to be subject to garnishment, attachment, execution, withholding, or deduction pursuant to an Ohio court order in a proceeding in which the Commission is a named party, but makes these payments subordinate to child and spousal support payments, and payments for specified debts owed to the state, as the act and continuing law require them to be deducted from lottery prize awards.
- Authorizes the Commission to adopt rules in accordance with the Administrative Procedure Act as necessary to provide for payments from lottery prize awards subject to garnishment, attachment, execution, withholding, or deduction, and to comply with any applicable federal law requirements.
- Adds to the list of debts owed to the state that must be deducted from a lottery prize award of \$5,000 or more, lottery sales receipts that a lottery sales agent holds in trust on the Commission's behalf.
- Provides methods for distributing installment payments of lottery prize awards.

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CONTENT AND OPERATION

Required provision of information about the beneficial owner of a lottery prize award to the State Lottery Commission

(R.C. 3770.07(A)(1), (4), and (5)(c))

Continuing law requires lottery prize awards to be claimed by the holder of the winning lottery ticket, or by the executor or administrator, or the trustee of a trust, of the estate of a deceased holder of a winning lottery ticket, in a manner determined by the State Lottery Commission within specified time periods. The act prohibits any lottery prize award with a value that exceeds \$599 from being claimed by or paid to any *person* until the name, address, and Social Security number (SSN) of *each beneficial owner* of the prize award are disclosed to the Commission. For this prohibition, "person" means a "person" as generally defined for purposes of the entire Revised Code as well as a "person" as defined by Commission rule or order, and "each beneficial owner" means the ultimate recipient or, if there is more than one, each ultimate recipient of a lottery prize award.¹

Except when the beneficial owner otherwise consents in writing, in the case of a claim for a lottery prize award made by one or more beneficial owners *using a trust*, the name, address, and SSN of each such beneficial owner in the Commission's records *as a result of disclosure under the act's implicit requirement* are confidential and cannot be subject to inspection or copying under the Public Records Law as a public record. However, subject to that exception or another exception provided by law, the name and address of an *individual claiming* a lottery prize award are subject to inspection and copying under the Public Records Law as a public record.

The act further provides that the Commission may share with certain other governmental agencies the name, address, and SSN of a beneficial owner

¹ R.C. 1.59(C) defines "person" generally for the entire Revised Code to include an individual, corporation, business trust, estate, trust, partnership, and association (not in the act).

disclosed to the Commission under the act's implicit requirement, as authorized under specified provisions of law pertaining to (1) the deduction of child or spousal support in default from lottery prize awards (see below) and (2) the deduction of taxes and certain other debts owed to the state from those awards (see below). Any shared information as disclosed under those provisions of law that the act makes confidential (see the preceding paragraph) remains confidential and cannot be subject to inspection or copying under the Public Records Law unless the beneficial owner otherwise provides written consent.

Deduction of support in default from lottery prize awards

(R.C. 3123.89 and 3770.071)

Continuing and former law

If the amount or value of a lottery prize award is \$600 or more, continuing law requires the Director of the State Lottery Commission or the Director's designee to require *the prize winner* to affirm in writing, under oath, whether or not he or she is in default under a child or spousal support order. The Director or the Director's designee may take additional steps to determine if the prize winner is in default under such a support order.

Under former law, if the prize winner affirmed that he or she was in default, or if the Director or the Director's designee otherwise determined the prize winner was in default, the Director or the Director's designee had to (1) temporarily withhold payment of the prize award (unaffected by the act) and (2) notify the *court that issued the support order* (a) that the person was a prize winner, (b) of the amount of the prize award, and (c) if the prize would be paid in installments, of the number of installments. Upon receipt of this notice, the court had to inform the prize winner of the Director's notice, schedule a hearing to determine if the prize winner was in default and the amount of the default, and give the prize winner notice of the date, time, and location of the hearing.

Changes made by the act

The act generally retains the provisions of law summarized above, but requires that the Director's notice instead be sent to *the child support enforcement agency* (CSEA) that administers the support order involved and requires the CSEA to conduct an investigation to determine whether the prize winner is subject to a *final and enforceable determination of default* under the Support Order Default Law. Thus, the act removes the court that issued the support order from being the recipient of the Director's notice and from having to conduct a hearing to determine whether the prize winner is in default and the amount of the default.



If the CSEA determines that the prize winner is subject to a final and enforceable determination of default, it must issue *an intercept directive* (see below for its content) to the Director requiring the Director or the Director's designee to deduct from any unpaid prize award, or any annual installment of any unpaid prize award, a specified amount for support in satisfaction of the support order under which the prize winner is in default. A copy of this intercept directive must be sent to the "obligor" prize winner.

The intercept directive must require the Director or the Director's designee to transmit the specified amount or amounts from the proceeds of the specified lottery prize award to the Office of Child Support in the Department of Job and Family Services. It also must contain all of the following information: (1) the name, address, and SSN or taxpayer identification number of the "obligor" prize winner, (2) a statement that the "obligor" prize winner has been determined to be in default under a support order, and (3) the amount of arrearage owed by the "obligor" prize winner as determined by the CSEA.

A CSEA must issue an intercept directive within 30 days from the date of the Director or Director's designee notice to the CSEA of the prize winner's acknowledgement of the default or the Director's or Director's designee's determination otherwise of the prize winner's default under the support order in question. Correspondingly, the Director or the Director's designee must pay the amount specified in the intercept directive to the Office of Child Support within 30 days after the directive's issuance, or, in the case of an annual installments prize award, on the date the next installment payment is due, after deducting that amount from the proceeds of the prize award.

Tax withholding on lottery winnings

(R.C. 3770.072 and 5747.062)

Overview

The act changes the income tax withholding requirements on Ohio lottery winnings in two respects: the percentage withheld against all prize awards is increased, and the withholding base is reduced for prize awards that have been transferred to another person two or more times.

All prize awards

Under former law, the State Lottery Commission, when paying a lottery prize award exceeding \$5,000, is required to withhold 3.5% of the payment to cover the recipient's Ohio income tax on the prize award. The withheld amount is

remitted to the Tax Commissioner and credited toward the recipient's Ohio income tax liability. The act increases the tax withholding percentage from 3.5% to 6%.

Transfers and withholding base

Under continuing law, the right to receive lottery prize award payments may be sold or otherwise transferred. The original prize winner may sell or otherwise transfer the right to receive the payments to a transferee, who may in turn sell or otherwise transfer that right to a third person, who also may sell or otherwise transfer the right, and so on.² Ohio law governs such transactions by requiring various conditions to be satisfied which, if satisfied, create the presumption that the transfer is fair and reasonable. A court must determine whether those conditions are satisfied and must approve a transfer agreement if they are satisfied.³ Two of the conditions that must be satisfied are: (1) each of the parties must agree in writing that gain or income from the transaction is subject to the Ohio income tax or corporation franchise tax, and (2) the purchaser (or "transferee") is subject to withholding requirements on amounts paid to the seller (or "transferor"). Former law required, to ensure that Ohio income taxes were paid on the payments the transferor received from the transferee, that the transferee withhold 3.5% of the total amount paid to the transferor.

In addition to increasing the withholding percentage from 3.5% to 6%, the act applies the percentage to a narrower base in those cases where the right to receive lottery prize award payments has been sold or otherwise transferred a second, third, or subsequent time. Instead of the transferee withholding 6% of the total amount payable to the transferor, the transferee must withhold 6% of the part of each payment that represents gain or income the transferor must recognize for federal income tax purposes. The transferor must prepare a written statement setting forth the recognized gain or income and deliver the statement to the transferee and a copy of the statement to the Tax Commissioner within five days before the date the transferee is to make the payment to the transferor. The transferor must sign the statement, subject to the penalty of perjury.

If the transferee does not receive the statement by the time the payment is to be made, the transferee must withhold 6% of the entire payment instead of 6% of the transferor's gain or income from the payment. And, if the Tax Commissioner notifies the transferee that the transferor's computation of gain or income is erroneous, the transferee must henceforth withhold 6% of the entire

² *Under some circumstances, the number of times a prize award may be transferred is limited. See R.C. 3770.121.*

³ *See R.C. 3770.10 to 3770.14.*

payment instead of 6% of the transferor's gain or income. Further, if the transferor does not provide a copy of the statement to the Tax Commissioner within the prescribed time, the Tax Commissioner may impose a penalty of up to \$1,000; proceeds from the penalty are considered as either income tax or corporation franchise tax revenue, depending on which tax the transferor is subject to.

The narrowing of the withholding base and the requirement that a statement be prepared applies even if the transferor and transferee are "related members"-- i.e., persons having certain family relationships, or legal entities related in ways specified in the Corporation Franchise Tax Law, generally through common ownership or control.

Deductions from lottery prize awards, including the deduction of certain judgments from prize awards with an unpaid balance of \$100,000 or more

(R.C. 3770.07(D) and (G) and 3770.10(D)(3) and (4))

Former law

Former law provided that no right of any lottery prize award winner to a prize award was assignable, or subject to garnishment, attachment, execution, withholding, or deduction, except (1) as provided in the laws governing the payment of child or spousal support, (2) when the payment was to be made to the executor or administrator, or the trustee of a trust, of the estate of a winning ticket holder, (3) when the award of a prize was disputed, any person was awarded a prize award to which another had claimed title pursuant to a court order, (4) when a person was awarded a prize award to which another claimed title pursuant to a federal bankruptcy court order under Title 11 of the United States Code, (5) when the Director of the State Lottery Commission was required to make a payment pursuant to laws requiring the deduction of child or spousal support in default or the deduction of taxes and certain other debts owed to the state, or (6) when the right to receive lottery prize award payments was sold or otherwise transferred as authorized by continuing law.

Changes made by the act

Assignments. The act provides that no right of a lottery prize award winner to a prize award is assignable except as follows: (1) when the payment is to be made to the executor or administrator, or the trustee of a trust, of the estate of a winning ticket holder, (2) when the award of a prize is disputed, any person is awarded a prize award to which another claimed title pursuant to a court order, (3) when a person is awarded a prize award to which another claimed title pursuant to a federal bankruptcy court order under Title 11 of the United States Code, or (4)

when the right to receive lottery prize award payments is sold or otherwise transferred as authorized by continuing law.

Prize awards of less than \$100,000--other permissible deductions. The act further provides that no right of a lottery prize award winner to a prize award with a remaining balance of less than \$100,000 *is subject to garnishment, attachment, execution, withholding, or deduction* except (1) as provided in the laws governing the payment of child or spousal support or (2) when the Director of the Commission makes a payment pursuant to the laws (as revised by the act) that require the deduction of child or spousal support in default or the deduction of taxes and certain other debts owed to the state.

Prize awards of \$100,000 or more--other permissible deductions. The act also provides that no right of a lottery prize award winner to a prize award with an unpaid balance of \$100,000 or more *is subject to garnishment, attachment, execution, withholding, or deduction* except as follows: (1) as provided in the laws governing the payment of child or spousal support, (2) when the Director of the Commission makes a payment pursuant to the laws (as revised by the act) that require the deduction of child or spousal support in default or the deduction of taxes and certain other debts owed to the state, or (3) pursuant to an *order of a court of competent jurisdiction* located in Ohio *in a proceeding in which the State Lottery Commission is a named party* (the garnishment, attachment, execution, withholding, or deduction pursuant to the order is subordinate to any payments described in items (1) and (2)).

Rules. The act authorizes the Commission to adopt and amend rules pursuant to the Administrative Procedure Act to provide for payments from prize awards subject to garnishment, attachment, withholding, or deduction, and to comply with any applicable requirements of federal law.

Discharge from liability. Upon making payments from a prize award as described in this portion of the act's final analysis, the Director and the Commission are discharged from all further liability for those payments, whether they are made to an executor, administrator, trustee, judgment creditor, or another person, or to the lottery prize award winner.

Deduction of lottery sales receipts from lottery prize awards of \$5,000 or more

(R.C. 3770.073)

Continuing law requires the Director of the State Lottery Commission or the Director's designee to deduct from the amount of the money or the cost of goods or services awarded as a lottery prize award of \$5,000 or more the amount of any debt the prize award winner owes to the state for the payment of any tax,

workers' compensation premium, unemployment contribution, payment in lieu of an unemployment contribution, certified claim against the prize winner for money the prize winner owes the state, or charge, penalty, or interest arising from any of those items of debt.

The act adds to the list of debts owed to the state that must be deducted from a lottery prize award of \$5,000 or more any lottery sales receipts that a *lottery sales agent holds in trust* on the Commission's behalf.

Methods for distributing installment payments of lottery prize awards

(R.C. 3770.07(G))

The act requires that installment payments of lottery prize awards be paid by official check or warrant. They also generally must be sent by mail delivery to the prize winner's address within the United States or by electronic funds transfer to an established bank account within the United States, but the act authorizes a lottery prize award winner to pick up the payments at a Commission office.

HISTORY

ACTION	DATE
Introduced	03-10-05
Reported, H. State Gov't	05-17-05
Passed House (96-1)	05-18-05
Reported, S. State & Local Gov't & Veterans Affairs	06-15-05
Passed Senate (32-0)	06-21-05
House refused to concur in Senate amendments (2-89)	08-02-05
Senate requested conference committee	08-03-05
House acceded to request for conference committee	10-05-05
House agreed to conference committee report (96-0)	10-26-05
Senate agreed to conference committee report (31-0)	10-26-05

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