

## Ohio Budget Bill Contains Many Tax Goodies

Mark A. Engel, Esq.  
Bricker & Eckler LLP

On June 30, 2017, Governor Kasich signed Sub. H.B. 49, Ohio's budget bill for the 2018-2019 biennium. The bill passed and signed was the result of a conference committee of House and Senate members charged with reconciling differences between the versions of the bill passed by each chamber. While the final bill contained virtually none of the tax changes proposed by the Governor, a number of tax provisions of interest remain. The major provisions are outlined below.

### Elimination of Direct Appeal to Supreme Court

In a surprise, the conference committee added a provision eliminating the right of direct appeal from decisions of the Board of Tax Appeals to the Supreme Court. Instead, an appeal from the Board of Tax Appeals must be taken to the Court of Appeals for the county in which the taxpayer resides. Within 30 days after an appeal is filed, a party may petition the Supreme Court to have the case transferred to its docket if the case presents a constitutional issue or an issue of great and public interest. Acceptance of the case is discretionary with the Supreme Court.

### Personal Income Tax

The bill eliminates the bottom two income tax brackets and provides that Ohio adjusted gross income, less exemptions and taxable business income, less than \$10,500 is not taxed. This figure is to be adjusted annually for inflation. The low-income tax credit is eliminated.

The bill doubles the maximum deduction for contributions to a federal tax-advantaged college savings plan or disability expense savings account to \$4,000, effective for taxable years beginning in 2018.

The motion picture tax credit is tweaked.

The bill requires the Department to report to OMB certain information relating to the amount of income tax associated with the taxation of business income at the flat 3 percent rate and from nonbusiness income under the graduated rate schedule, as well as the total amount of claimed income tax credits.

### Municipal Income Tax

The sourcing rule for gross receipts from the sales of tangible personal property is revised with the elimination of the so-called "throw-back" rule. Under the bill, receipts are sourced to a municipal corporation if either (a) the goods are both shipped from and delivered within the municipal corporation; or (b) the goods are delivered within the municipal corporation, but shipped from outside the municipal corporation, if employees of the business regularly solicit sales within the municipal corporation. This provision applies to taxable years beginning in 2019.

The bill provides an election to business taxpayers for centralized collection and administration of municipal income taxes on business income, other than income of sole proprietors. Taxpayers exercising the election may file and pay through the Ohio Business Gateway instead and the Ohio Department of Taxation will administer those taxes. Distributions of tax collected by the Department are made monthly. The Department may retain a fee of 0.5 percent to defray the Department's administration costs.

The bill permits individual taxpayers to delay fourth quarter estimated payments from the 15<sup>th</sup> day of the 12<sup>th</sup> month to the 15<sup>th</sup> day of the first month in the ensuing taxable year. However, business taxpayers must still make their fourth quarter estimated payment by the 15<sup>th</sup> day of the 12<sup>th</sup> month.

Finally, the bill changes the penalty provision for unpaid amounts from a mandatory 50 percent to an amount not to exceed 50 percent.

These latter changes apply to tax years beginning on and after January 1, 2018.

### Sales & Use Tax

A three-day sales tax holiday is provided during August 2018 for the purchase of clothing, school supplies and instructional materials with specified price ranges. A similar holiday is already in place for 2017.

A remote seller is deemed to have "substantial nexus" with the state and required to collect sales tax on sales to customers in Ohio if the seller has annual Ohio gross receipts in excess of \$500,000 and either places "cookies" on the computers of customers in Ohio or employs a system of network servers to direct content to a user based on the location of the user.

Minor changes were made to the sourcing rules for direct mail distribution and a new exemption was provided for the purchase of digital media sold through a digital jukebox.

### Real Property Tax

Changes are made to the manner in which the value of agricultural property used exclusively for agricultural purposes, including changes in the equity yield rate. It appears these changes will lower the value of property included in the current agricultural use program.

The filing deadline for the homestead exemption is extended from June 30 of the year prior to the year for which exemption is sought until December 31 of the year for which exemption is sought.

In certain situations, the bill permits the term of a community reinvestment area that was established prior to 1994 to be extended without triggering the requirement that the CRA comply with various requirements and limitations that apply to CRAs created after 1994.

### Tax Amnesty

The bill provides for a tax amnesty for state taxes and tangible personal property, school district income, and county and transit authority sales taxes that are unpaid as of May 1, 2017. The program runs from January 1, 2018 through February 15, 2018. During the program, taxpayers may pay their delinquent taxes without penalty and with only one-half of the interest that would otherwise be owed. Taxpayers that have been contacted for an audit are not eligible for the amnesty.

### Economic Development

The bill makes the enterprise zone program, which was scheduled to expire in October 2017, permanent. In addition, wages and income tax withheld with respect to employees who work from home may be included for purposes of the jobs creation tax credit.

### Vetoed Provisions

The Governor exercised his line item veto authority over a few tax items. A sales tax exemption for prescription eyewear; changes to the exclusion for personal and professional services from the sales tax on automatic data processing, electronic information and computer services; and a clarification of the manner in which the value of oil and natural gas reserves was determined were all stricken from the bill. At this time, it is unclear whether the general assembly intends to attempt to override the veto of any of these items.