

Summary of Legislation

A mended Substitute House Bill 168, 125th General Assembly (effective June 15, 2004). Revised Code Sections: Various.

The bill amends various sections of the Revised Code dealing with county investment authority and education for county treasurers. Many modifications regarding delinquent real property tax certificates were made as well. Revised Code section 4503.06(H) defines the specific point in time at which a foreclosure takes place for a manufactured home considered as tangible personal property. The bill also clarifies that manufactured homes treated as real property are entitled to the 10 percent reduction allowed for all real property.

Substitute H.B. 362, 125th General Assembly (effective December 30, 2004). Revised Code Sections: Various.

School District Levy Provisions (R.C. 3318.05, 3318.052, 3318.08, 3318.44, 5705.21, Section 4).

The term “general on-going permanent improvements” was changed to “general permanent improvements” for school districts levying a property tax levy. While the change means that the levy is not tied to one specific purpose, it does not expand the number of purposes for which the tax levy is imposed. The general permanent improvements levy may be imposed for a continuing period of time. The bill allows the proceeds from any permanent improvement levy to provide the school district funding portion for the Ohio School Facilities Commission costs.

Municipal Income Tax Changes (R.C. 718.02, Section 6).

The bill provides for the add-back of tax exempt stock options when apportioning business net profit among two or more municipal corporations. The add-back applies where the stock option is granted to an employee and the employee is not required to pay municipal income tax because the municipality exempted stock options from municipal income taxation. The business must add the amount exempted from taxation on the employee by the municipality to the amount of the employer’s net profit apportioned to that municipality. This provision went into effect immediately.

Prior law provided that a “taxpayer,” i.e. any person that is subject to a tax on income levied by a municipal corporation, does not include any person that is a disregarded entity for federal income tax purposes. In a provision that took effect immediately when H.B. 362 became law, the act provides that a single member (single owner) limited liability company (LLC) that is a disregarded entity for federal tax purposes may elect to be a taxpayer, separate from its single member, in all Ohio municipal corporations in which it does business and was either filing as a separate taxpayer or not filing at all. The election is contingent on five conditions being met by the LLC and its single owner.

Lottery Prize Awards (R.C. 3770.07, 3770.10, 3770.12, and 3770.121).

Under prior law, lottery prize awards were not assignable or subject to any of the procedures used under bankruptcy to collect assets. The bill permits lottery prize awards to be assigned to another pursuant to a bankruptcy court order.

The bill also expands the conditions for the transfer of lottery prizes that are paid in installments. The transfers are subject to withholding (including offsets for child support, state taxes, etc.) and the maximum permissible number of transfers is three, unless a greater number is allowed by the Lottery Commission by rule.

State Corporation Franchise Tax and Income Tax Laws Incorporate Federal Law Changes (R.C. 5733.04, 5747.01 and Sections 5 and 6).

Under a 1992 Ohio Supreme Court decision, state law that used the term “as amended” regarding a federal law did not constitute an unlawful delegation of state authority and was not unconstitutional because the General Assembly only intended to adopt the federal law as it existed at the time that the Ohio law that referenced federal law was amended. The Ohio law therefore did not automatically incorporate future changes to the federal law. In essence, Ohio law is “de-coupled” from federal law. Therefore, in order to incorporate federal law changes, the General Assembly must periodically amend the Ohio Revised Code sections that reference federal law. H.B. 362 did this in order to incorporate recent federal legislation (the Working Families Tax Relief Act of 2004 and the American Jobs Creation Act of 2004) into Ohio corporation franchise tax law and Ohio individual income tax law.

Employee Job Training Tax Credit (R.C. 5733.42).

The application for the Employee Job Training Tax Credit under prior law was on a first-come, first-served basis. That system proved unwieldy. This bill requires the Director of Job and Family Services to adopt rules for the criteria and distribution of the credits, after consultation with the Tax Commissioner and the Superintendent of Insurance.

Amnesty for Re-filing Applications for Exemption of Real Property (Sections 3 and 6).

The bill enacts a provision that intends to mitigate the effects of *Cleveland Clinic Foundation v. Wilkins*, 103 Ohio St.3d 382, 816 N.E. 2d 224 (2004). That decision determined that providing a statement from a county treasurer certifying that all taxes, special assessments, penalties and interest had been paid in full (or were subject to a valid delinquent tax contract with the county treasurer) was a jurisdictional requirement. This means that all taxes, interest, etc. had to be paid in full and certified as such at the time that the exemption application was filed, or the Tax Commissioner would dismiss the application. A large number of exemption applications were dismissed as a result. The bill provides an amnesty for those taxpayers whose applications for exemption were dismissed. New applications with the county treasurer’s certification could be filed until July 1, 2005. The new applications were reviewed and a final determination was issued as though the application were complete and timely filed the first time. The bill also provided specific instructions regarding refunds, distribution, and other administrative issues.

Substitute H.B. 425, 125th General Assembly (effective April 27, 2005).

Revised Code Sections: Various Sections under Chapters 3901, 3905, 3929, 3951, Section 3.

Most of the bill deals with mine subsidence insurance, coverage, reinsurance, and other issues relating to mines. The nonrefundable coal tax credit, used by electric companies for their coal-fired electric generating plants, was extended from December 31, 2004 to December 31, 2007 in the bill. The prior \$3.0 per ton credit, however, will be reduced to \$1.0 per ton in tax years 2006-2008 (credits earned in the 2005-2007 years).

Am. Sub. Senate Bill 189, 125th General Assembly (effective June 29, 2004; Section 75 and certain other sections effective March 30, 2004). Revised Code Sections: Budget Corrections Bill/Various Sections. The bill addresses numerous changes throughout the various Ohio departments. The tax related changes are enumerated below:

Administration Fees for Estate Tax (R.C. 5731.47, 5731.48). The bill modifies the way the administrative fees for the estate tax are paid to county sheriffs and other officers who provide services, as well as county auditors who perform estate tax administrative functions. The local governments now pay 80 percent of the fees and the state pays 20 percent, commensurate with the distribution of the tax.

State Racing Commission (R.C. 3769.087). Under former law, horse racing permit holders had to retain ½ of 1.0 percent of the monies wagered for each day of racing other than the monies for win, place or show. The Tax Commissioner received ¼ of this money as a tax, which was paid into the State Racing Commission Operating Fund. The remaining ¼ percent was used by the permit holder for specified purposes. Am. Sub. H.B. 95 changed the distribution so that the Tax Commissioner received the entire ½ of 1.0 percent which was to be deposited into the State Racing Commission Operating Fund for the July 1, 2003 through June 30, 2004 period. Am. Sub. S.B. 189 extends the period to June 30, 2005.

Lottery Awards (R.C. 3770.07). The act extends the time within which active duty military personnel may claim a lottery prize award. Normally, that time period is 180 days. For active duty military personnel, the act extends the number of days to 540.

Sub. S.B. 218, 125th General Assembly (effective April 29, 2005; certain sections effective January 28, 2005). Revised Code Sections: 5703.70, 5739.033, 5739.034, 5739.17, 5740.05, 5740.08, 5741.05; enacts 5739.035, 5739.123, 5739.24, 5740.09 and 5740.10. The act addresses the transition from origin-based sourcing of sales to destination-based sourcing of sales in order to comply with the Streamlined Sales Tax Agreement (SSTA), commonly referred to as the Streamlined Sales Tax Project (SSTP). The act requires the Tax Commissioner to work with other states that are SSTP compliant to adopt an amendment that allows smaller vendors to continue origin-based sales. The act also established a six-month compensation mechanism for vendors who incurred expenses in order to switch to destination sourcing (see also further changes to destination sourcing in the discussion of S.B. 26, below).

Small counties that experience a loss of sales tax revenue from implementing of the SSTP also receive permanent compensation under the

act. Qualifying counties have a population of less than 75,000 and have sales tax losses of at least 4.0 percent due to destination sourcing.

Sub. H.B. 2, 126th General Assembly (effective June 2, 2005). Revised Code Sections: 5747.026, 5747.08.

The act expands the number of military personnel who qualify for an extension when filing and paying their income tax return. All active duty National Guard members and members of reserve units of the U.S. Armed Forces are eligible for the extension. (The extension is not limited to Operation Iraqi Freedom.) Additionally, the extension applies to the member's spouse if they file "married filing jointly." The extension also applies to the school district income tax, if applicable.

Am. Sub. H.B. 16, 126th General Assembly (effective May 6, 2005; tax provisions and sections 38.01 and 40.01 effective February 3, 2005). Revised Code Sections: Capital Appropriations Bill/Various Sections.

This bill addresses numerous issues. The relevant tax sections follow.

State Claims Against Lottery Awards and Tax Refunds (R.C. 3770.073, 5733.121, and 5747.12).

This act extends the list of state debts that may be collected from a lottery award prior to distribution to the award recipient and those that may be offset against various tax refunds (corporation franchise, state income, worker's compensation, etc.). The new addition is for certified claims to the Attorney General including any tax liability that is a pre-petition bankruptcy debt. The Tax Commissioner may charge other agencies for costs associated with offsetting the various debts, and is authorized to adopt rules to do so. The rules may also address situations where there is a joint income tax refund, but the tax liability is not jointly owed.

Delinquent Property Tax Collection Funds (Section 40.01). Under continuing law, a county treasurer and county prosecutor share in the use of the county's delinquent tax fund to pay for their delinquent property tax collection responsibilities. The act allows smaller counties a one-time opportunity to distribute excess funds from that account to the taxing units in the county. The act also provides the method of determination of excess funds and the amounts to be distributed.

Tax Increment Financing (R.C. 5709.75, 5709.91, 5715.70 and 5715.701).

Current law allows townships, counties and municipalities to exempt real property improvements from taxation through a mechanism known as Tax Increment Financing (TIF) and to accept payments in lieu of the tax that would have been paid absent the TIF. Those monies are used for public infrastructure improvements that benefit the exempted property. H.B. 16 allows certain townships to use money in a special TIF fund to pay for current public safety expenses under specified conditions.

For enforcement purposes, the act also creates a lien that can be filed against the property to guarantee minimum service payment obligations. This new lien has the same legal status as a lien for property taxes.

Additionally, the act contains provisions that allow a county board of revision to release a property tax lien where the lien is a result of the cost of environmental cleanup paid by the government and the amount of the lien is equal to or greater than 12 times the fair market value of the property at issue. Administrative procedures detail the release and transfer to a subsequent owner.

Sub. S.B. 26, 126th General Assembly (effective June 2, 2005). Revised Code Sections: 5739.033(A) and (B), 5739.035, section 3, 5740.10, 5739.24.

The act establishes a period during which vendors with total Ohio taxable sales of \$1.0 million or more must make the transition to destination-based sourcing of their sales. Prior to S.B. 26, all vendors had to switch to

destination sourcing by July 1, 2005. Under S.B. 26, vendors would instead be required to switch to destination sourcing according to a schedule based on the vendor's amount of calendar year delivery sales. Vendors with more than \$30 million in delivery sales in 2005 must switch by May 1, 2006; vendors with more than \$5.0 million but less than \$30 million in delivery sales in 2006 must switch by May 1, 2007; vendors with less than \$5.0 million in delivery sales in 2006 (all remaining vendors) must switch by January 1, 2008. As a result of these changes, Ohio is an associate member of the SSTP, not a full member, until January 1, 2008.

Due to the delay in switching to destination sourcing, there will also be a delay in the compensation paid to eligible counties (less than 75,000 in population, 4.0 percent or more reduction in sales tax revenue) and vendors.

