

OHIO HOUSE PASSES BUDGET PROPOSAL ON TO THE SENATE

INCOME TAX CUTS WITH NO BUSINESS TAX INCREASES

Last week, the Ohio House of Representatives, led by Speaker Cliff Rosenberger, passed its version of the biennial budget, Substitute House Bill 64 ("the House Budget Bill"). The Budget Bill was passed on a bipartisan basis, by a vote of 63-36. Governor John Kasich released his framework for the biennial budget in February. The House made sweeping changes to the proposed state budget by eliminating nearly all of Governor Kasich's proposed tax increases, while still providing an across-the-board personal income tax (PIT) cut for everyone and an increased personal income tax deduction for small business owners.

Background

In mid-February, Governor John Kasich unveiled his *Blueprint for a New Ohio*. The Governor's proposal included major tax law changes which decreased taxes for some and increased taxes for others. The tax proposal would have reduced the income tax burden of individuals and small business owners, while increasing the tax burden of all other businesses, especially C corporations.

The House Tax Plan

Personal Income Tax: The House's Budget Bill provides for a 6.3% across-the-board cut in personal income tax rates, which would lower the top rate from 5.333% to 4.997%. Governor Kasich has been pushing hard for a top rate below 5% since he took office. The House proposal would be effective for taxable years beginning in 2015 (i.e., retroactive back to January 1st of this year).

The House Budget Bill also permanently increases the Small Business Income Deduction percentage from 50% to 75%. The Small Business Income Deduction allows individual owners of pass-through entities to deduct 75% of up to \$250,000 (i.e., \$187,500 for single and married filing joint, or \$93,750 married filing separate) of small business income earned in Ohio.

To pay for these tax cuts, the House takes a number of steps. For instance, the House Budget Bill retains the Governor's plan to "means test" various personal income tax credits and deductions including the following:

- \$50 Credit for those that are 65 years of age and older
- Lump Sum Distribution Credit
- Retirement Income Credit

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Other funding sources for the income tax cuts include the natural growth in tax revenues and proposed cuts of state spending equal to about \$750 million.

Business Tax Increases: **Eliminated!**

The House Budget Bill removes every business tax increase included in Governor Kasich's original proposal (see our *SALT Buzz* dated February 13, 2015 for more details).

For example, all of the following tax increases have been eliminated by the House:

- ∅ The 23% commercial activity tax (CAT) rate increase
- ∅ The 8.7% state sales and use tax rate increase
- ∅ The expansion of the sales and use tax to services primarily purchased by businesses and some individuals
- ∅ The increased severance tax on oil and gas
- ∅ The \$1.00/pack tobacco tax increase
- ∅ The new tax on vapor products

Job Creation and Job Retention Tax Credit Adjustments

Ohio often makes financial commitments to businesses through the use of Job Creation and Job Retention Tax Credits. These commitments help businesses finance new investments and job creation/retention over several years. Because the job creation and job retention tax credits are measured by state tax withholding, across-the-board personal income tax cuts correspondingly decrease the amount of these credits. Without corrective language, such cuts allow the state to effectively back out of its original financial commitments to these businesses--however, these businesses are still expected to keep their original investment and job commitments. The substitute bill provides language that strives to avoid this negative impact on job creation and job retention.

Study Committees

The House Budget Bill creates the *Ohio 2020 Tax Policy Study Commission* to review the state's tax structure and policies and to make recommendation to the General Assembly on how to maximize Ohio's competitiveness by the year 2020. This bi-partisan committee would be comprised of three legislators from each branch of the General Assembly. The Commission is required to publish its findings and recommendations by October 1, 2017.

The House removed language from the bill related to two tax expenditure committees, one proposed by Governor Kasich and the other proposed by the House. The removal of these provisions was done pending further development of H.B. 9, a separate tax expenditure bill sponsored by Rep. Terry Boose. H.B. 9 proposes a structured tax expenditure review process. Interested parties have been meeting with Rep. Boose and other legislators over the last several weeks to discuss improvements to the bill and

a substitute version of the bill is expected soon. We expect that the H.B. 9 language will be added back to the budget bill during the Senate or Conference Committee process.

Municipal Tax

The House Budget Bill also includes several technical corrections related to Am. Sub. H.B. 5, last year's municipal income tax uniformity law. The changes include the following:

- Allows the two municipalities that use Ohio Adjusted Gross Income as the base of their income tax to allow deviations from that base and to request that the resident's Ohio 1040 form be included with the municipal tax return (i.e., the village of Indian Hills and city of Wyoming).
- Eliminates personal liability of tax administrators for violations of taxpayer rights regarding municipal income tax. The municipality remains liable.
- Makes consistent with federal, state and current municipal law the tax return due date for entities with a fiscal year-end other than a calendar year end.
- Specifies that taxpayers that do not request an automatic federal extension may request an automatic municipal tax return extension. This extension does not extend the due date for remitting tax.
- Requires municipal corporations to publish a summary of the taxpayers' bill of rights and responsibilities online, as well as publish its municipal tax ordinances and regulations. This language was inadvertently deleted in Am. Sub. H.B. 5.

Tax Incentive Financing Arrangements

The House Budget Bill also allows township trustees of a township of over 15,000 to extend a tax incentive financing agreement that was in place before 1995 for an additional 15 years.

Hope for a Smile Program ☺

The House Budget Bill creates the Hope for a Smile Program, which has the primary objective of improving the oral health of school-age children, which the statutory language "declares to be one of the most unmet health care needs of this state." While services are to be targeted at school-age children who are indigent and uninsured, other children may be served by the program. One aspect of the program is a new personal income tax deduction for dentists and dental hygienists who provide services free of charge under the program. The deduction equals the fair market value of those services.

Historic Rehabilitation Tax Credit

The House Budget Bill allows a holder of certain Rehabilitation Tax Credit certificates to claim a credit against the Commercial Activity Tax ("CAT"). The credit may be claimed against the CAT for tax periods

ending on or before June 30, 2017 only if the taxpayer is unable to claim the credit under any some other tax, such as the Financial Institutions Tax, the Dealer in Intangibles Tax, the Corporation Franchise Tax, one of the Premium Taxes, or the Personal Income Tax. Also, the rehabilitation tax credit certificate must have an effective date of after December 31, 2013 and before June 30, 2017.

Next Steps

The Senate Finance Committee started hearings on the House Budget Bill last week, even though it had yet to be officially passed out of the House. Subcommittees of the Senate Finance Committee will hold hearings over the following three weeks. The Senate Ways and Means Committee will act as a subcommittee and hold hearings related to all tax provisions, including the Governor's original proposals that have been rejected by the House.

With regard to how the Senate will approach the Budget Bill's tax provisions, Senate President Faber was quoted by Gongwer New Service as saying that he has instructed Ways and Means Chairman Senator Bob Peterson "to put everything on the table - all of the governor's proposals, all of the tax expenditures, all the changes we'd like to see, and let's see what we can do."

As a result, all businesses that are interested in potential tax provisions of the budget bill will need to continue their advocacy efforts in the Senate, including any views they may have with regard to Governor Kasich's tax proposals.

The Senate is expected to complete their deliberations by the middle of June. Then, a conference committee will negotiate the final version of the budget bill.

If you would like to discuss the budget bill tax provisions, please contact any of the following Zaino Hall & Farrin professionals.

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