

OHIO TAX LAWS CHANGED AT END OF 2016

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The 131st Ohio General Assembly enacted several legislative bills in the final days of the lame duck session. This SALT Buzz provides an overview of the tax changes enacted in three bills that contained important tax law changes, Sub. H.B. 384, Sub. S.B. 235 and Am. Sub. H.B. 9. The changes contained in Sub. H.B. 384 will be effective April 4, 2017; changes contained in Sub. S.B. 235, unless otherwise noted, will be effective March 27, 2017; and changes contained in Am. Sub H.B. 9 will be effective on March 19, 2017.

Zaino Hall & Farrin LLC also expects Governor Kasich to propose significant and perhaps fundamental changes to Ohio's tax system in the upcoming biennial budget bill, which is expected to be released in late January or early February of 2017. Please watch for a SALT Buzz explaining the proposals in the biennial budget bill in February 2017.

Commercial Activity Tax (CAT)

Taxation of Small Business Investment Companies – FIT/ CAT

Sub. S.B. 235 changes the definition of a "Bank Organization" in R.C. 5726.01(B) to remove "[a]n entity licensed as a small business investment company under the 'Small Business Investment Act of 1958'..." This change is intended to clarify the existing law and applies to tax years beginning on or after January 1, 2014. As a result, such entities are made subject to the commercial activity tax (CAT) instead of the

financial institutions tax (FIT).

Sales and Use Taxes

Exemption Certificate Protection Now Available for Employment Service Exclusions

R.C. 5739.03 (B)(1)(a) has required that a purchaser provide an exemption certificate for purchases that are exempt from Ohio sales and use tax. A vendor that obtains a fully completed exemption certificate is relieved of collecting and remitting tax on the sale. However, this requirement and the protections it provides the vendor have not been available for purposes of claiming the exclusions to the sales tax on employment services. The law change included in Sub. S.B. 235 extends the exemption certificate requirements and vendor protections to the exclusions from the sales tax on employment services and that change became effective on January 1, 2017.

Tax Credits Applicable to Several Ohio Tax Types

Rehabilitation Tax Credit for Catalytic Projects

Sub. S.B. 235 restricts the future availability of rehabilitation tax credits for a “catalytic project.” As a result, essentially no rehabilitation tax credits shall be available for future “catalytic project” applications, except in very limited situations.

Motion picture tax credit

Sub. S.B. 235 authorizes the Director of Development Services to certify a television program that was produced in Ohio for the first six months of 2017 as tax credit-eligible for fiscal year 2018, despite the fact that production started before fiscal year 2018. Additionally, the tax credit certificate may include eligible production expenditures from the first six months of 2017. The credit permitted under this section will not be counted as part of the annual cap in R.C. 122.85 for fiscal year 2017, but will be counted against the annual cap for fiscal year 2018.

Tangible Personal Property Tax

Water Works Tangible Personal Property Tax Assessment

Sub. H.B. 384 provides that the assessment rate for taxable property of water-works companies first subject to taxation in 2017 is 25%. Under prior law, the assessment rate for all taxable property of water-works companies was 88%. The assessment

rate for taxable property of water-works companies first subject to taxation before 2017 remains at 88%.

Real Estate Tax

Pre-Development Stage Property Tax Exemption

Municipal corporations, townships, and counties are authorized to approve a property tax exemption for increases in the value of a parcel while it is in the “pre-development stage.” The new authorization, contained in Sub. S.B. 235, allows for local discretion in approving the application filed by the owner of the property for which the exemption is requested.

Administrative / Procedural Issues

BTA Appeals to the Ohio Supreme Court

Sub. H.B. 384 amends R.C. 5717.04, regarding appeals from the Board of Tax Appeals to the Ohio Supreme Court or a Court of Appeals, to eliminate the requirement that the Tax Commissioner be made a party and be served with the notice of appeal to the court in all appeals from the Board, even where the Tax Commissioner was not a party in the Board case. The amendment specifies that the court shall not dismiss the appeal from the Board for failure to make the Tax Commissioner a party and serve the notice of appeal upon the Tax Commissioner. Under prior law, appeals were usually dismissed when a party unwittingly failed to make the Tax Commissioner a party and serve him with the notice of appeal, even if the Tax Commissioner had no interest in the appeal.

Tax Expenditure Review Committee

Am. Sub. H.B. 9 creates a permanent Tax Expenditure Review Committee, composed of six legislators and the Tax Commissioner (or designee) to review all current tax expenditures. Under the new law, only provisions that meet the following criteria will qualify for review by the committee: (1) the expenditure could reduce revenue to the state’s General Revenue Fund, (2) the expenditure can be legislatively changed or repealed, (3) the attribute exempted from the tax would be otherwise included as part of that tax’s defined base, and (4) the expenditure is not subject to an alternative tax.

The committee is required to establish a schedule for the review of each existing tax

expenditure, but must review each such expenditure at least once every eight years. After examining each tax expenditure, the committee must recommend to continue, modify, repeal or schedule the tax expenditure for later review. The new law sets forth various factors that the committee may consider in its review including, but not limited to, state and local fiscal impacts; public policy objectives and the success of the tax expenditure in meeting those objectives; negative effects on recipients; and feasibility of modifying a tax expenditure.

While the new law does not require the committee to review pending legislation that includes tax expenditures, it does require any legislation introduced that proposes to enact or modify a tax expenditure to include a statement explaining its objectives and the sponsor's intent. The bill will be effective March 19, 2017.

Vetoed Language

The General Assembly enacted several tax items on which Governor John Kasich exercised his line item veto authority in order to eliminate language that would have reduced tax revenues. Two provisions that were vetoed included the following:

Musical Entertainment Device Exemption

Provisions in both Sub. H.B. 384 and Sub. S.B. 235 exempted from the sales and use tax specified digital products purchased and delivered electronically through an amusement or entertainment device that accepts direct payments. An amusement or entertainment device would have included a juke box, music machine, arcade game, or other similar machine.

Oil and Gas Production Equipment Exemption

Sub. S.B. 235 contained language that would have clarified that tanks and other storage devices for holding solutions used in hydraulic fracturing, equipment used for earth moving and reclamation at a well site, or property used to transport, deliver, or remove other equipment to or from a well site or to store such equipment before using it at a well site are exempt from sales and use tax because they are used in production.

Observations

You should contact your tax preparer or us to further discuss these issues if you think you may be impacted. Zaino Hall & Farrin LLC professionals have advised

many individuals and businesses regarding Ohio tax issues and Ohio legislative matters. We would be happy to further discuss your particular facts and circumstances and how these developments may impact your tax situation.

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