

OHIO ENACTS TAX RELATED
COVID-19 LEGISLATION

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The Ohio General Assembly passed HB 197 on March 25, 2020 and Governor DeWine signed the Bill on March 27, 2020. The Bill was enacted as emergency legislation, so it goes into effect immediately. The Bill addresses many issues related to the COVID-19 pandemic, including numerous provisions authorizing the Tax Commissioner to extend the filing dates for any report required by law to be filed with the Commissioner and the time within which to make any estimated or accelerated payment that would otherwise be due pursuant to Chapter 718., 3734., 3769., 4303., or 4305., or Title LVII of the Revised Code. The Bill also authorizes the Tax Commissioner to waive the payment of interest during the extended period for filing the return.

Tax Provisions: While Section 28 of the Bill does not order but only authorizes the Tax Commissioner to extend the filing dates and waive interest during the extended period, the Tax Commissioner has already announced that the date for filing individual, school district, and pass through entity income tax returns is extended to July 15, 2020 to conform to the extended date for filing federal returns. The Tax Commissioner has also waived penalties and interest during that extended period. The Tax Commissioner issued guidance in the form of a FAQ on April 3, 2020. [[Click here for a link to the FAQ](#)] In the FAQ, the Tax Commissioner states that the filing dates for returns for other taxes such as the commercial activity tax and sales and use taxes are not extended.

HB 197 also provides that if the Tax Commissioner extends the time for filing state income tax returns, the due date for filing municipal net profits tax returns that a business has opted

to file with the Tax Commissioner is automatically extended for a like period. Pursuant to R.C. 718.05(G)(3), the Tax Commissioner's extension of the time for filing state income tax returns should automatically extend individual municipal income tax returns for the same period as the state return extension. However, because this is not clear, we recommend that taxpayers check with their respective municipalities. Additionally, the Tax Commissioner's authority to waive interest during that extension period also applies to municipal income taxes. However, the Tax Commissioner's announcement does not state whether he is going to waive interest on municipal income taxes during the extension period.

Tolling of Statutes of Limitation: Section 22 of HB 197 contains provisions that toll statutes of limitation and other administrative time limitations¹ under the Revised Code that are set to expire between March 9, 2020, and July 30, 2020². Pertinent to state taxation, the Bill tolls statutes of limitation for performing an act in any administrative action or proceeding and any administrative time limitations under the Revised Code. The Bill states that the tolling provisions apply retroactively to March 9, 2020, the date of the emergency declared by the Governor's Executive Order.

An initial review of these provisions might indicate they are very broad and straightforward. However, because they were drafted to cover all administrative matters and do not address any specific statutes of limitation or other administrative time limitations, there could be disputes as to their application in specific situations. Additionally, any attempt by the Tax Commissioner to retroactively apply the tolling provision to a limitation period for that officer's time for performing an act, e.g., issuing an assessment, that had already expired before the effective date of the Bill would likely violate the Retroactivity Clause of the Ohio Constitution.

An initial question is the scope of the tolling provisions. For example, does it apply to all levels of administrative appeals including appeals to the courts from administrative agencies or administrative tribunals. It is clear they apply to petitions for reassessments from assessments issued by the Tax Commissioner, but do they also apply to appeals from final determinations of the Tax Commissioner to the Ohio Board of Tax Appeals ("BTA")? Because the BTA is an administrative board whose jurisdiction is conferred by the General Assembly we believe the answer should be "yes." Whether the tolling provisions apply to direct appeals from the BTA to the courts of appeal or the Ohio Supreme Court is a closer question. However, because the jurisdiction of the appellate courts, including the Supreme Court, to hear direct appeals from administrative bodies is conferred by the General Assembly there is a strong argument that the tolling provisions apply to limitation periods in R.C. 5717.04 for filing appeals from the BTA to the courts of appeal or the Ohio Supreme Court.

¹As passed by the General Assembly, HB 197 tolled "[a]ny other criminal, civil, or administrative time limitation or deadline under the Revised Code." Governor DeWine vetoed the "or deadline" language.

² Tolling means that a statutory period for performing an act, i.e., a statute of limitations, is suspended or stops running during the tolling period. Generally, the statute is extended for the period of the tolling. For example, if a limitation period for filing a refund claim is four years but during that four-year period the period is tolled for a certain number of days, that same number of days is added to the four-year period. Thus, if the limitation is tolled for thirty days, the statute of limitations is extended to four years and thirty days.

There is also some ambiguity in how the tolling provisions apply in certain situations. For example, the statute of limitations for filing consumers' use tax refund claims is four years from the date of payment. For these types of statutes of limitation, it appears clear that the tolling provisions of HB 197 extends the limitation period by the number of days between March 9, 2020 and the end of the emergency order or July 30, 2020, whichever is earlier. The same should be true regarding limitation periods for filing petitions for reassessment and appeals to the BTA or the courts. For example, R.C. 5739.13 prescribes a sixty-day limitation period for filing a petition for reassessment of a sales tax assessment. Under the tolling provisions of HB 197, if the sixty-day period for filing the petition would expire between March 9, 2020 and July 30, 2020, the sixty-day period would be tolled (suspended) during that period and would commence running the end of the emergency order or July 30, 2020, whichever is earlier. If twenty days had run prior to March 9, 2020, the taxpayer would have the remainder of the sixty-day period for filing the petition, forty days, after the end of the emergency order or July 30, 2020, whichever is earlier. The definition of "tolling" in the Tax Commissioner's FAQ appears to agree that this is how the tolling provisions of HB 197 apply. Similarly, the sixty-day period for filing appeals to the BTA from final determinations of the Tax Commissioner prescribed by R.C. 5717.02 would be tolled if the sixty-day period expired between March 9, 2020 and July 30, 2020. Although less clear, the thirty-day period for filing direct appeals from the BTA to the courts of appeal or the Ohio Supreme Court would also be tolled if the thirty-day period expired between March 9, 2020 and July 30, 2020.

The above discussion is not an opinion of Zaino Hall & Farrin, LLC and should not be relied upon as an opinion. It simply presents the Firm's observations on the potential readings of HB 197. Until guidance is issued by the appropriate governmental entity, we suggest taking the most conservative view of the tolling provisions and, if at all possible, filing or submitting documents within the original limitation period.

If you would like to further discuss HB 197 or any other state and local tax matter, please contact Tom Zaino, Richard Farrin or one of our other ZHF professionals.

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