

## Ohio: State Senate considering tax proposals included in House budget bill



David M. Kall | Thursday, May 23, 2019

The [biennial budget bill](#) that the Ohio House of Representatives passed on May 9, 2019, contains a number of tax provisions that are now headed to the Ohio Senate for their review. As part of this process last week, on May 15, 2019, Ohio Tax Commissioner Jeff McClain testified before the Senate General Government and Agency Review Committee about the House law changes and other legislative priorities. Let's take a look at some of the House-passed tax provisions discussed in Tax Commissioner McClain's [testimony](#) to the Committee:

- **Business Income Deduction:** The House budget bill pared back benefits for small business owners that the General Assembly adopted a few years ago. For tax years 2016 and onward, business owners [could deduct](#) the first \$250,000 of "business income" earned in the ordinary course of business and pay a flat 3 percent tax rate on income earned above that amount. The House budget reduced the deduction to the first \$100,000 of business income and repealed the preferential 3 percent tax rate on income above that threshold. These provisions continue to be a controversial topic as Senate deliberations on the biennial budget bill proceed.
- **Personal Income Tax Rates:** The House budget also reduces personal income tax rates. The bottom two brackets have been reduced to zero and marginal rates for all other brackets have been reduced by 6.6 percent.
- **Non-resident Pass-through Entity Withholding:** The House budget sets a uniform 3% withholding tax

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rate for non-resident investor distributive share income from pass-through entities. Non-resident pass-through entity investors may avoid the withholding tax by submitting a statement to the entity, under penalty of perjury, affirming that they intend to pay the Ohio tax.

- **Sales and Use Tax:** The House budget adopts an economic nexus standard for sales and use taxes that follows the standard in a South Dakota law that the U.S. Supreme Court recently upheld in *South Dakota v. Wayfair* (2018). If passed into law, the nexus standard would impose a use tax collection duty on remote sellers with \$100,000 in sales to Ohio consumers or 200 transactions with Ohio consumers.
- **Other Sales and Use Tax Items:** There are a number of other sales and use tax provisions in the House budget bill that would affect: transportation network companies (e.g. Uber and Lyft); hotel intermediaries; the aviation industry; the investment bullion and coin industry; and the manufacturing exemption for equipment used in cleaning processing equipment used in a continuous manufacturing operation.
- **Financial Institutions Tax:** According to Tax Commissioner McClain, “language [in the House budget bill] limits the tax base [for the FIT] such that total equity capital in excess of 14% of total assets would not be included in the tax base.”
- **Opportunity Zone Tax Credit:** The House version of the budget bill would provide a tax credit for investments in designated low-income areas called “Opportunity Zones.” The Ohio credit would piggyback on a new [federal program](#) enacted as part of federal tax reform in 2017. The Ohio income tax is equal to 10% of the qualifying investment in a qualifying Opportunity Fund. [As proposed](#), the credit would be nonrefundable but may be carried forward for up to five years. The credit mirrors language in [Senate Bill 8](#), which the Ohio Senate passed in April 2019

We are following the Ohio biennial budget bill process and we will keep you posted with developments as they occur.

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