Ohio: Budget bill enacts major tax law changes

David M. Kall | Monday, July 29, 2019

The Ohio General Assembly finally passed its biennial operating budget for fiscal years 2020 and 2021 on July 17, 2019, following delays that included a 17-day extension budget beyond the usual June 30 deadline. The budget bill, House Bill 166, passed both legislative chambers despite contentious debates on tax issues including the Ohio business income deduction and personal income tax rates. Let's review some of the major tax law changes included in the bill.

- **Business Income Deduction Now Excludes Lawyers & Lobbyists:** Perhaps the most contentious issue that the budget bill presented was whether to change the Ohio small business deduction. 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% 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 The House budget reduced the deduction to the first $100,000 of business income and repealed the preferential 3% tax rate on income above that threshold. The Senate's version proposed maintaining the $250,000 deduction threshold but removed the preferential 3% tax rate above that amount. In the end, the General Assembly elected to keep both the $250,000 deduction threshold and the 3% rate, but exclude lawyers and lobbyists from taking the deduction.
- **Personal Income Tax Rates:** The enacted 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 4%.

- **Sales and Use Tax:**
  - Economic Nexus: The enacted budget adopts an economic nexus standard effective August 1, 2019 for sales and use taxes. The new nexus rules are codified as O.R.C. 5741.01(I)(2)(g)-(h) and follow the standard in a South Dakota law that the U.S. Supreme Court recently upheld in *South Dakota v. Wayfair* (2018). The duty to collect, report, and remit Ohio use tax is imposed on remote sellers if "in the current or preceding calendar year" they have at least $100,000 in gross receipts from sales to Ohio consumers or at least 200 transactions with Ohio consumers.
  - Marketplace Facilitators: Also included in the budget bill is a provision codified as O.R.C. 5741.01(I)(4) that requires marketplace facilitators such as Amazon or eBay to collect, report, and remit Ohio use tax for all taxable retail sales that are facilitated on their platform. Effective August 1, 2019, the duty to collect, report, and remit use tax is imposed on marketplace facilitators if "in the current or preceding calendar year" they facilitate at least $100,000 in sales to Ohio consumers or at least 200 transactions with Ohio consumers. New O.R.C. 5741.071 also allows marketplace sellers meeting certain conditions to apply for waivers from the Tax Commissioner that waive the facilitator's responsibility for collecting, reporting, and remitting use tax. For more information on marketplace collection laws, see our blog post available here.
- **Partnership Audit Rules and Reporting for Federal Adjustments:** The biennial budget also adopts model language to address state tax reporting for federal audit adjustments as well as the new the centralized audit regime for IRS audits of partnerships. More information on the new partnership audit rules and what your business can do to prepare is available here.
- **Opportunity Zone Tax Credit**: The budget bill enacts 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 Ohio Opportunity Fund. The credit would be nonrefundable but may be carried forward for up to five years. Investors should carefully review the nuanced rules addressing qualifying investments and how to apply for the credit**.**

- **Financial Institutions Tax:** The enacted budget bill limits the tax base for the financial institutions tax such that total equity capital in excess of 14% of total assets would not be included in the tax base.

Overall, these provisions in the biennial budget bill, among others, make relatively significant changes to Ohio tax law. Feel free to contact one of the attorneys listed below with question or to obtain additional information.

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Team member bio