Multistate Tax Update -- June 11, 2015

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OHIO: SENATE PREVIEWS ITS BUDGET PROPOSAL

Although Ohio’s final budget must be approved by June 30, 2015, there are now three competing versions: Gov. John Kasich’s version, the House version, and the Senate Finance Committee’s proposal, the details of which were released this week.

According to the Senate’s Majority Caucus blog, the Senate plan includes “more than $1.7 billion in tax relief for hardworking Ohioans and small business owners.” The plan also includes $1 billion in new school funding, and one of the largest-ever state investments in higher education.

The Senate Finance Committee is conducting its hearings on the new budget bill, but the blog highlighted several elements of the proposal:

- Reduces Ohio’s income tax rate by 6.3 percent, saving taxpayers $1.26 billion over the next two years. *The Plain Dealer* reported that this is $1.7 billion less than what the House proposed and about $1 billion less than what Gov. Kasich proposed;
- Eliminates the entire state tax burden on small businesses with income up to $250,000 and creates an innovative, new flat tax for small businesses above that income level;
- Protects senior citizens by removing a proposed $264 million tax on Social Security benefits;
- Boosts Ohio’s rainy day fund, which will set aside nearly $2 billion for emergencies;
- Reduces proposed overall Medicaid spending by more than $1 billion;
- Spends less than any previous state budget plan introduced this year ($1.7 billion below the House plan and $1.1 billion below the governor’s plan);
- Invests more than $935 million new dollars into students and schools over the next two years ($351.5 million in fiscal year 2016 and maintains that additional funding in fiscal year 2017 and adds $233 million more);
- Keeps college affordable by freezing tuition over the biennium for two- and four-year institutions, while making the largest state investment in state share of instruction for higher education in eight years; and
- Restores funding for essential services, such as pregnancy care and breast and cervical cancer screenings for women.

The Plain Dealer detailed other provisions, including the following:

- Effectively placing a moratorium on the Ohio Historic Tax Credits for projects beginning July 1, 2015, and replacing the credits with grants beginning July 1, 2017;
- Giving judges, prosecutors, and sheriffs a five percent pay raise each year for four years, starting in 2017;
- Eliminating a state law requiring people who purchase fireworks in Ohio to sign a form pledging to take the fireworks to another state within 48 hours (this would not affect Ohio's ban on setting off fireworks in the state);
- Appropriating $100,000 per year for the Ohio Department of Health to grant wishes of children with life threatening medical conditions;
- Allowing active-duty military members 18 years or older to carry a concealed handgun as long as they have a military ID and a small arms qualification certificate;
- Allowing temporary license tags to be good for 45 days instead of 30 days;
- Eliminating the requirement that state university students living within 40 miles of their school live on campus;
- Creating a $1 million "Lakes in Economic Distress Revolving Loan Fund" to assist businesses that are hurt when a lake is found to be in economic distress because of environmental or safety issues; and
- Eliminating February special elections.

Before any of these particulars become part of an actual budget, the full Senate must pass the proposal, and it must be reconciled with the House version, which then will require Gov. Kasich’s signature.

REPERCUSSIONS OF THE U.S. SUPREME COURT’S RECENT DECISION IN *COMPTROLLER V. WYNNE*

We recently **wrote** about the Supreme Court’s May 18, 2015, decision in *Comptroller v. Wynne*, in which the Court concluded that Maryland’s tax scheme was unconstitutional because it amounts to double taxation of out-of-state income. This amounts to the unlawful discrimination of interstate commerce, according to both the Supreme Court and the Maryland Court of Appeals, from which the case was appealed.

The Maryland arrangement that the Court struck down gave residents a credit for the state tax assessed on income earned outside the state, but did not allow the credit on county tax liability. As a result, *The Baltimore Sun* reported, the state may end up refunding payments to about 55,000 taxpayers. Even before the decision came out, the comptroller had received claims for $200 million in refunds from 8,000 filings. Going forward, the combined loss from the counties is estimated to be $42 million. Considering both the cost of the lost revenue and the cost of refunds, the projected loss for 2017 could exceed $50 million.

Maryland will likely not suffer alone. A Supreme Court decision impacts all states, and other states that have similar tax schemes will also be required to provide refunds and withstand revenue losses.

In an **amicus brief**, the International Municipal Lawyers Association, the United States Conference of Mayors, the National Association of Counties, the International City/County

Management Association, and the Maryland Association of Counties all urged the Court to reverse the Maryland Court of Appeals' decision on the grounds that the scheme is lawful and conflicts with holdings in other states.

According to the amicus brief, Wisconsin and North Carolina are two such states that "*expressly disallow* credits for city, county, and other local income taxes paid out of state." Likewise, in the 2011 Tennessee Court of Appeals case ***Boone v. Chumley***, the court denied the Tennessee taxpayers the credit they sought for income taxes they paid in South Carolina on corporate income, because it would "only deprive Tennessee of revenue." It reasoned that it did "not believe that the General Assembly intended to enact a reciprocity agreement with a sister state *under which Tennessee could not receive a reciprocal benefit*."

The amicus brief named several other jurisdictions that also impose a tax on residents without allowing a credit for taxes paid out-of-state—Philadelphia, Cleveland, Detroit, Indiana's counties, Kansas City, St. Louis, and Wilmington.

Some, like *Bloomberg*, predict that other states will begin to change their tax laws in an effort to remove any discriminatory provisions. This could have the added benefit of avoiding litigation that could force the change anyway.

In the meantime, the Maryland Comptroller's Office has issued guidance in the form of **frequently asked questions** on how to request refunds pursuant to the decision, which will be updated regularly as additional information becomes available. The comptroller notes that it will not issue refunds automatically.

PROPOSED CONSTITUTIONAL AMENDMENT IN TEXAS ADDRESSES HIGHWAY FUNDING

In February 2013, *The Texas Tribune* reported that the state was just two years away from a severe drop in roadwork funding. At that time, the chairman of the Texas Department of Transportation (TXDOT) told the Senate Finance Committee that it was at a "crucial turning point," because large state bond programs were set to hit their limit by 2015. The state was "maxed out," meaning it was running out of capacity to issue debt to fund transportation infrastructure.

The Texas Tribune explained that the TXDOT had accrued close to $13 billion in debt after peak spending in 2009 reached $9 billion in highway contracts for that year. Without new revenue, the agency anticipated that funding would drop to less than $3 billion in highway projects in 2016, though the state requires approximately $4 billion annually—25 percent of the annual spending goes toward maintenance, and the rest toward the expansion of the transportation network. The natural gas drilling boom further exacerbates the need for adequate funding, because the truck traffic has caused unexpected damage to the roads and bridges, resulting in billions of dollars of repairs in recent years.

By the end of April 2015, annual spending increased to $5 billion, according to *The Dallas Morning News*. Beyond the ever-growing maintenance needs, the state gas tax has remained unchanged, at 20 cents per gallon, since 1991. And even though lawmakers approved a ballot measure that shifted $1.7 billion of tax revenue in 2015 from oil and gas production to transportation and eliminated the diversion of transportation funding to other agencies, there is still a shortfall.

The legislature has responded by passing **SJR 5**, a joint resolution that seeks voter approval, at the Nov. 3, 2015, election, to amend the Texas constitution to require a credit to the state highway fund of $2.5 billion of the net revenue derived from the sales and use tax on businesses and certain services, like certain amusement, entertainment, recreation, and cable television. If approved, this provision will take effect on Sept. 1, 2017, and expire on Sept. 1, 2020.

SJR 5 also calls for a credit to the state highway fund in the amount of 35 percent of the taxes above the first $5 billion that are imposed on the sale, rental, and use of motor vehicles. This provision would take effect on Sept. 1, 2019, and expire on Sept. 1, 2020.

Deposits from both of these provisions may only be put toward construction and maintenance of non-tolled public roads, and to repay the principal and interest on certain general obligation bonds.

SJR 5 establishes the ballot language requiring a yes or no vote as follows: "The constitutional amendment dedicating certain sales and use tax revenue and motor vehicle sales, use, and rental tax revenue to the state highway fund to provide funding for non-tolled roads and the reduction of certain transportation-related debt."

For additional information regarding these subjects, or any other multistate tax issues, please contact:

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