

Ohio Budget Enacted

The Ohio Budget bill was signed July 17, 2009 by Governor Strickland. There are new credits, changes to existing credits, a focus on health care, numerous amendments to the commercial activity tax and an update of federal conformity. (L. 2009, H1, generally eff. 10/16/2009 .)

Federal conformity. Ohio has updated federal conformity from the current December 30, 2008 date. Ohio tax law will now incorporate all references to the IRC or United States Code all changes to the IRC or United States Code between December 30, 2008, and October 16, 2009. The principle federal act whose tax law changes are incorporated is The American Recovery and Reinvestment Act of 2009 (the stimulus bill). This incorporation does not apply to references to the IRC or federal laws as of a date certain specifying the day, month, and year. Current law authorizes a taxpayer whose taxable year ended after December 21, 2007, and before December 30, 2008, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. The election was available to taxpayers subject to the corporation franchise tax or personal income tax and to electric companies subject to municipal income tax. This election may now be made for a taxpayer's taxable year ending after December 30, 2008, but before the budget effective date. Previous elections remain valid.

CAT highlights. The Budget bill, as signed by Governor Strickland, makes numerous clarifying and substantive changes to the commercial activity tax (CAT). Groups of affiliated companies that have elected to be treated as a consolidated group may change the ownership test (50 or 80% ownership) on which the initial election was made. It may do so if, when the initial election was made, the group did not include any person satisfying the 50% ownership test; if one or more of the initial members subsequently acquired an ownership interest satisfying the 50% ownership test but not the 80% ownership test, and the acquired person satisfies the criteria that would require it to be included in a combined taxpayer group; and if the group has not previously changed its election.

The CAT annual return filing date for all filers is postponed from February 9 to May 10. The quarterly return filing due date is changed from the 40th day after the quarter's end to the tenth day of the second month after the quarter's end. Taxpayers with taxable gross receipts of less than \$1 million must report and pay the tax on a calendar year basis, and register as calendar year taxpayers, rather than "electing" that status as under current law. Taxpayers that anticipate taxable gross receipts of more than \$1 million must notify the Tax Commissioner on the taxpayer's initial registration form, and file and pay on a quarterly basis. The Act eliminates the initial CAT registration fee exemption for new companies starting business after November 30 or generating more than \$150,000 for the year but not before December 1. The Act specifies that the \$150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated group. The \$150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated elected taxpayer group. Like members of a consolidated elected taxpayer, each member of a combined taxpayer group remains jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment

Other CAT changes include a new base exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party; an exclusion from the CAT gross receipts base the proceeds from any insurance policy, not just life insurance, unless the insurance reimburses for business revenue losses; a narrowing of the CAT base exclusion for membership dues so that such dues are excluded only if they are for membership in a trade, professional, homeowners', or condominium association, a reorganization of certain CAT base exclusions regarding bad debts, discounts, returns, and accounts receivable to make them exclusions rather than deductions; and a recharacterization of charitable and public entities as "excluded persons" (i.e., nontaxpayers) instead of nonpersons. Companies that registered for or paid the CAT for 2005 or 2006 in error to may have their registrations cancelled

and their tax payment refunded. This applies if the company was not subject to the tax either because they did not have nexus with the state or did not have \$150,000 of taxable gross receipts; failed to cancel their registration before May 10, 2006; cancelled registration before February 10, 2007; and were not required to file returns or pay the minimum tax due February 9 of 2007, 2008, or 2009. Possibly some of these changes should be read in light of constitutional challenges to CAT.

Credits. Ohio joins other states that have a New Markets Credit and a Motion Picture Production Credit. The budget bill amended the jobs creation, jobs retention, venture capital, technology investment and historic preservation tax credits.

New Markets Credit: The nonrefundable New Markets Credit with a 4-year carryforward is available to insurance companies and financial institutions to offset corporate franchise tax and insurance tax. Up to \$10 million of tax credits are authorized annually for insurance companies and financial institutions for purchasing and holding securities issued by low-income community organizations, in accordance with the federal New Markets Tax Credit law as of the effective date of the revised Code sections authorizing the credits. Among the rules: there is a cap of \$1 million for any one business; investments in long-term debt securities are not qualified investments and the generally applicable 3-year statute of limitations on assessing unpaid taxes does not apply to recapture. For qualified equity investments made after the effective date but before January 1, 2010, the initial credit allowance date is January 1, 2010, and each of the six anniversary dates thereafter is on the first day of January of each year. Beginning January 1, 2010, credits must be applied over a 7-year period. For the first two years no credit may be applied, 7.0% may be applied for the third year and 8.0% for each of the last four years. The amount of qualified low income community investments is the total amount of investments that are invested in qualified active low income community businesses, not exceeding \$2,564,000 per business, for a maximum credit of \$1 million.

Motion Picture Production Tax Credit: The motion picture credit is a refundable credit against the corporation franchise tax and the personal income tax. If a corporation is not required to pay tax because of the phase-out rules, the corporation may file an annual report and claim the credit. The credit is for pictures that are at least partly produced in Ohio and the picture must be certified as tax-credit eligible by the Director of Development. If a motion picture company's production has been certified as a tax-credit eligible production, the company may apply for a tax credit certificate on or after July 1, 2009.

Motion picture company means an individual, corporation, partnership, limited liability company, or other form of business association producing a motion picture. Eligible production expenditures means expenditures made after June 30, 2009, for goods or services purchased and consumed in Ohio by a motion picture company directly for the production of a tax credit-eligible production. Eligible expenditures includes expenditures for resident and nonresident cast and crew wages, accommodations, costs of set construction and operations, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories, film processing, transfer, sound mixing, special and visual effects, music, location fees, and the purchase or rental of facilities and equipment.

The credit is based on a percentage of total payroll expenditures on behalf of resident cast and crew wages. The minimum production expenditure is \$300,000. No tax credit certificate may be issued before the completion of the tax credit-eligible production. For the fiscal biennium beginning July 1 2009, and ending June 30, 2011, not more than \$30 million of tax credit may be allowed, of which not more than \$10 million of tax credit may be allowed in the first year of the biennium. In succeeding fiscal biennia, not more than \$20 million of tax credit may be allowed per fiscal biennium, and not more than \$10 million may be allowed in the first year of the biennium. At any time, not more than \$5 million of tax credit may be allowed per tax credit-eligible production.

Jobs Creation Tax Credit: The jobs creation tax credit requirements were somewhat relaxed primarily benefiting commercial activity tax and insurance tax taxpayers. Now the jobs creation tax credit may be based on annual aggregate payroll withholdings (which includes both full-time and part-time employees) and payroll growth. Income tax revenue excludes amounts withheld before the day the taxpayer becomes eligible for the credit. A taxpayer is required to maintain operations at a project site for the greater of 7 years or the term of credit plus 3 years (instead of twice the term of the credit), and may relocate Ohio jobs to a project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed. However, a business may now be required to refund 75% of a credit allowed rather than 50% if credit conditions are not fulfilled.

Jobs Retention Tax Credit: The tax credit is expanded to domestic and foreign insurance companies but is eliminated for call centers. The credit is based on annual aggregate payroll income tax withholdings (which include both full-time and part-time employees) and the minimum qualifying employment is reduced. The minimum qualifying employment is reduced to at least 500 full-time employees (down from 1,000) and investment thresholds are reduced to \$50 million for manufacturing activity, and \$20 million for corporate administrative activity over 3 years (down from \$200 million). The total credit that may be granted annually for projects approved after July 1, 2009 is \$13 million in 2010 and \$26 million in 2011. The annual limit increases by \$13 million each year through 2024. There is also an increase in the annual limit for 2024 and thereafter to \$195 million. As with the jobs creation credit, the relocation rule is relaxed and the recapture rule toughened.

Technology Investment Tax Credit: The Technology Investment Tax Credit limit was increased from \$30 million to \$45 million. This is the total amount of technology investment tax credits that may be issued to small businesses engaged in research and development or technology development.

Historic Preservation Credit: The historic preservation tax credit has been amended with respect to the allocation of the credit among partners. The credit can now be allocated among partners or other equity owners in proportions other than according to ownership interest proportions.

Health-related provisions. The Budget Bill made a number of health-related tax changes. These include significant changes in the taxation of Medicaid health insurance companies. Sales tax applies to services for Medicaid enrollees, the franchise permit fee is eliminated and Medicaid premiums received by both domestic and foreign insurance companies are included within the companies' insurance tax base. These changes take effect October 1, 2009. Other health related tax changes include a new personal income tax deduction and increases in the Nursing Home Franchise Permit fees and ICF/MR permit fees.

Beginning October 1, 2009, health care services provided or arranged by a Medicaid health insuring corporation for Medicaid enrollees residing in Ohio are subject to sales and use tax unless the federal authorities determine that subjecting those services to taxation constitutes an impermissible "healthcare related tax," that reduces the state's federal financial assistance for Medicaid services. The corporations are designated by statute as the consumers of the services, rather than the individual receiving the services. As the consumer, the corporation is liable for and must pay the tax on services it provides or arranges for Medicaid enrollees residing in Ohio. The corporations would be issued direct payment permits allowing them to remit the tax directly to Ohio. The purchase of services by a Medicaid health insuring corporation is not subject to the exception for resale or to the drug, medical equipment, government or charitable exemptions. The price is the amount of managed care premiums received each month by a Medicaid health insuring corporation and payment must be made monthly.

Sales are sourced at the location of the enrollee for whom the corporation receives premium payments. Sales are sourced to the locations of the enrollees in the same proportion as the managed care premiums received by the Medicaid health insuring corporation on behalf of

enrollees located in a particular taxing jurisdiction in Ohio as compared to all managed care premiums received by the Medicaid health insuring corporation.

Medicaid health insuring corporation means a health insuring corporation that holds a certificate of authority under Chapter 1751 and is under contract with the Department of Job and Family Services. Managed care premium means any premium, capitation, or other payment a Medicaid health insuring corporation receives for providing or arranging for the provision of health care services to its members or enrollees residing in Ohio.

Insurers: Because of the change to the insurance base, domestic insurance companies, including health insuring corporations, receiving payments pursuant to the medical assistance program during the period beginning October 1, 2009, and ending December 31, 2009, have to file a schedule that reflects those payments received pursuant to the medical assistance program for that period with the 2009 annual statement to the Superintendent. The payments reflected in the schedule, plus all other taxable premiums, are subject to the annual franchise tax due to be paid in 2010. Foreign insurance companies have similar obligations.

Franchise permit fees: The franchise permit fee on nursing home beds and hospitals' long-term care beds which is currently \$6.25 per day will change to a formula that is based in part on 5.5% of net patient revenues of nursing homes and hospital long-term care units and a base of \$11.95. The Ohio Department of Jobs and Family Services must recalculate the franchise permit fee if the amount assessed for a fiscal year exceeds 5.5% of the actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year and to credit nursing homes' and hospitals' franchise permit fees for the following fiscal year

The ICF/MR franchise permit fee increases to \$14.75 from \$11.98 for the period between August 1, 2009, and June 30, 2010. The fee is set at \$13.55 for fiscal year 2011, and for each successive fiscal year, the fee is at amount set for the previous fiscal year as adjusted by a composite inflation factor. As with the other franchise permit fee, the Ohio Department of Jobs and Family Services must recalculate the franchise permit fee if the amount assessed by the fee for a fiscal year exceeds 5.5% of the actual net patient revenue for all ICFs/MR for that fiscal year and it must credit the franchise permit fees to ICFs/MR for the following fiscal year. Starting August 1, 2009, the fee is imposed on facilities operated by the Department of Mental Retardation and Developmental Disabilities

Dependent deduction: Effective for taxable years beginning on or after January 1, 2010, taxpayers will be able to deduct (in calculating the personal income tax) the income imputed to a taxpayer on the basis of an employer-paid plan covering a child who, although not a dependent nevertheless meets requirements for being a "qualifying relative" under Internal Revenue Code Sec. 152(d), except for the income and support requirements. This definition includes the taxpayer's child or descendent of a child, brother, sister, stepbrother, stepsister, father, mother, ancestor of father or mother, stepfather, stepmother, nephew, niece, uncle, aunt, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, or any other individual who has the same principal place of abode as the taxpayer and is a member of the taxpayer's household. Taxpayers may claim the medical care insurance deduction for coverage of the same qualifying relatives without requiring that those relatives meet any income or support requirements.

Lottery. Ohio's budget plan this year relied heavily on specifically authorizing the State Lottery Commission to operate video lottery terminal Games. The controversial nature of this is somewhat reflected in the statutory amendments. These specify that Chapter 2915 of the Revised Code (generally gambling laws), among many other changes, prohibits any license or excise tax or fee from being assessed upon or collected from a video lottery terminal licensee by any political subdivision that has authority to assess or collect a tax or fee, by reason of video lottery related conduct, except for municipal income taxes and horse racing taxes

Other tax changes. The following items are among other tax-related changes:

Procedure: The prepayment rules for personal income taxpayers who file a petition for reassessment are relaxed. The Department of Taxation can disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation in order to enable them to identify employers that misclassify employees as independent contractors or that do not properly report and pay employer taxes.

Port authorities: The Budget Bill authorizes the exemption and remittance of taxes paid on airport property leased by a port authority that was precluded from exemption because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption.

Lodging tax: Local authorities are authorized to modify the definition of which hotels are subject to local lodging taxes by specifying that "hotel" includes establishments at which rooms are used for the accommodation of guests regardless of whether each room is accessible through the same keyed entry; and, in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located, if the structures are under the same ownership and not advertised as distinct establishments.

Kilowatt hour tax: The computation for determining the tax liability of a commercial or industrial purchaser electing to self-assess the Kilowatt Hour Tax changes beginning January 1, 2011, from one based on both a per-kilowatt hour rate and a percentage of the price paid, to one based solely on a per-kilowatt hour rate

Natural gas distributors: Natural gas distributors with 70,000 or fewer customers will have the authority currently held by natural gas distributors with 50,000 or fewer customers to aggregate all of the natural gas distributed by the company in the state when determining the tax rate.

Judges' municipal income taxation: Effective January 1, 2010, only the City of Columbus and the Municipal corporation of residence may levy an income tax on the income of the Justices of the Ohio Supreme Court. Only the Municipal corporation of residence may levy a tax on the income of a Judge sitting in assignment of the Chief Justice, or a Judge of a District Court of Appeals sitting in multiple locations within the district, received as a result of services rendered as a Justice or a Judge.

Grape industries: The extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund is extended through June 30, 2011.

Budget process. In light of the difficulty of the budget process and the speed of its final resolution, it is presumably more likely than usual that the unofficial version of the enrolled bill may not entirely reflect the final official version.

This summary is provided for informational purposes only and is not to be used otherwise.

The reader should investigate and review the tax law changes and effects of those tax law changes and not rely on this summary.

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