



MULTISTATE TAX

Ohio enacts budget bill impacting income and indirect taxes

Tax Alert

Overview

On June 30, 2021, Ohio's governor signed the fiscal years 2022 and 2023 budget bill, [House Bill 110](#) (HB 110), into law. This bill impacts withholding, income, sales and use, and commercial activity taxes, among others, and includes several tax credit and incentive law changes.

This Tax Alert summarizes some of the relevant provisions of HB 110.

Income tax provisions

Temporary COVID-19 municipal income tax withholding (HB 110 Section 757.40)

On March 9, 2020, the Ohio governor issued [Executive Order 2020-01D](#) that temporarily allowed businesses to continue withholding municipal income taxes based on their employees' principal place of work, rather than the location from which they actually worked during the pandemic. This executive order was effective for the period of emergency declared beginning on March 9, 2020 and for thirty days after the period of emergency ended. The governor ended the emergency period on June 18, 2021.

HB 110 extends the temporary withholding rule until December 31, 2021 to allow companies to continue withholding as they have under Executive Order 2020-01D, but on a voluntary basis. An employer that withholds and remits taxes based on an employee's principal place of work for wages earned between March 9, 2020 and December 31, 2021 cannot be assessed tax, penalty, and interest by any other municipality.

If an employee requests a refund of taxes withheld under the temporary withholding rule, the municipality must approve the request and cannot require any documentation from the employer, other than a statement verifying the number of days an employee worked at the employee's principal place of work and a confirmation that the employer did not refund any withholding to the employee. HB 110 clarifies that the personal income tax refund provisions apply to 2021.

Individual income tax rate change (R.C. Section 5747.02(A)(3))

For tax years beginning on or after January 1, 2021, HB 110 changes the number of individual income tax brackets from five to four, lowers the highest individual income tax rate from 4.797% to 3.99%, and reduces the tax rate for each of the three lower tax brackets by 3%. It also suspends annual inflation of the personal exemption for the 2021 tax year.

The new law also increases the income threshold of the lowest bracket from \$22,150 to \$25,000, so that taxpayers with less than \$25,000 of income are not subject to Ohio income tax.

Credits and incentives provisions

HB 110 includes several changes to various tax credits and incentives, including but not limited to the following:

Ohio opportunity zones

HB 110 increases from \$1,000,000 to \$2,000,000 the maximum credit a taxpayer may be awarded for the Ohio Opportunity Zone Tax Credit during a fiscal biennium. (R.C. Section 122.84 (C)(2))

Job creation tax credit (“JCTC”)

HB 110 provides that businesses that receive the JCTC may include payroll for their work-from-home employees in the credit computation. (R.C. 122.17)

Venture capital investments

HB 110 provides that investors in certain Ohio-based venture capital operating companies (“VCOC”) are entitled to a deduction of capital gains from certified VCOC investments for tax years beginning in or after 2026. The deduction is equal to 100% of capital gains from VCOC investments in Ohio businesses and 50% of capital gains from other VCOC investments. (R.C. 5747.01(A)(35))

For tax years beginning in or after 2026, a taxpayer with capital gain from the sale of an ownership interest in an Ohio business will be allowed a tax deduction equal to the lesser of the capital gain or a percentage of the business’s payroll, if the taxpayer either materially participated in the business for five years prior to the sale or invested at least \$1,000,000 of capital in the business. (R.C. 5747.79)

Megaproject investments

HB 110 provides certain tax incentives to companies that bring megaprojects to Ohio and to megaproject suppliers. A megaproject is defined as a development project that satisfies certain requirements, including that it invests at least \$1 billion in the state or creates payroll of at least \$75 million.

- Qualifying megaproject suppliers can exclude receipts from tangible personal property sales to megaproject operators when computing gross receipts subject to the Commercial Activity Tax. (R.C. 5752(F)(2)(oo))
- The term of the JCTC generally may not exceed 15 years, but when awarded to qualifying megaproject operators or suppliers, the term shall not exceed 30 years. (R.C. 122.17(D)(2)(c))

Sales and use tax provisions

HB 110 modifies various sales tax provisions by repealing or exempting the following from sales and use tax, effective October 1, 2021:

- Employment services and employment placement services. (R.C. 5739.01 and 5739.02)
- Sale of investment in gold, silver, platinum, or palladium bullion and coins. (R.C. 5739.02)

Commercial Activity Tax (CAT) provisions

- The bill requires the CAT minimum tax to be based on preceding year Ohio taxable gross receipts, rather than the current year. (R.C. 5751.02)
- The bill permanently exempts from the CAT dividends paid from the Bureau of Workers' Compensation. (R.C. 5751.02)

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