Multistate Tax
EXTERNAL ALERT

Ohio Enacts Midterm Tax Law Changes

June 18, 2014

Overview

On June 16, 2014, Ohio Governor John Kasich signed into law House Bills 492 ("H.B. 492")[1] and 483 ("H.B. 483"),[2] followed by his signature on June 17th of Senate Bill 263 ("S.B. 263").[3] The adopted bills make changes to the Motor Fuels Receipts Tax, the Individual Income Tax, and various administrative provisions. These changes include the following:

- Motor Fuels Receipts Tax – The new law renames the "Motor Fuel Receipts Tax" as the "Petroleum Activity Tax," repeals the currently applicable mandatory electronic tax payment statute (and with it the exclusion for dealers with an annual tax liability of $600,000 or less) and instead imposes electronic payment as the "[Ohio Tax] Commissioner so requires," changes the basis on which the tax is computed to that of "calculated gross receipts," imposes the tax at a rate of 0.65%, and authorizes job creation and retention tax credits to be claimed against the tax.
- Individual Income Tax – The new law reduces Individual Income Tax rates for the highest tax bracket from 5.421% to 5.333%, increases the individual income tax deduction for investors in closely held businesses, increases personal exemption amounts available to low and middle-income taxpayers, and increases the Ohio earned income tax credit.
- Administrative Provisions – The new law authorizes the Ohio Tax Commissioner, in his discretion, to either refund or apply a taxpayer's overpayment of tax or fees to a future period and changes the due date of the non-cigarette excise tax.

In this Tax Alert we summarize these changes, which are generally effective 90 days from the respective dates of the governor's signature of the various bills, unless otherwise specified in the discussion that follows.

H.B. 492 – Motor Fuels Receipts Tax / Petroleum Activity Tax

The "Motor Fuel Receipts Tax" is renamed as the "Petroleum Activity Tax" ("PAT").[4]

Also, current law requires a dealer to pay the tax using a monthly electronic funds transfer if tax remitted by that dealer exceeds $600,000 in a calendar year, thus effectively excluding from this requirement dealers with annual tax liability of $600,000 or less. H.B. 492 repeals this mandatory electronic funds transfer requirement and instead authorizes the Ohio Tax Commissioner ("Commissioner") to "notify each dealer required to remit taxes of the dealer's obligation to do so."[5] The amended statute provides further that the Commissioner's failure to provide such notice "does not relieve the dealer of its obligation to remit taxes electronically."[6]

Effective for tax periods beginning on or after July 1, 2015, the basis upon which the PAT is computed is changed from a taxpayer's actual gross receipts to a "calculated" gross receipts based on an average price-per-gallon index. The term calculated gross receipts means the product obtained by multiplying the total number of gallons of gasoline (or diesel, as applicable) first sold within Ohio by a supplier during the tax period by the average wholesale price of a gallon of unleaded regular gasoline (or diesel, as applicable) as published by the Commissioner.[7] For each calendar quarter, the Commissioner shall determine and publish on the Department of

[1] Ohio 130th General Assembly. A copy of the enacted law is accessible at: **http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_492.**
[2] Ohio 130th General Assembly. A copy of the enacted law is accessible at: **http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_483.**
[3] Ohio 130th General Assembly. A copy of the enacted law is accessible at: **http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_263.**
[4] H.B. 492, amending Ohio Revised Code §5736.13(A)(1-2).
[5] H.B. 492, amending Ohio Revised Code §5735.062(A).
[6] *Id*.
[7] H.B. 492, amending Ohio Revised Code §5736.01(E)(1).

Taxation's website the statewide average wholesale prices of a gallon of unleaded regular gasoline and of a gallon of diesel.[8]

For taxable periods beginning on or after July 1, 2015, the PAT shall be imposed on a supplier's calculated gross receipts at a rate of 0.65%.[9] The tax applies only to suppliers having "substantial nexus with this state," as defined in Ohio Revised Code §5751.01 (under the Commercial Activity Tax ("CAT") provisions).[10]

For tax periods beginning on or after July 1, 2014, H.B. 492 permits taxpayers granted a credit for job creation and retention to claim a refundable credit against the PAT in lieu of applying such credit against the CAT.[11]

H.B. 483 – Individual Income Tax

H.B. 483 accelerates the phase-in of a 10% income tax rate reduction previously not scheduled to be in full effect until the 2015 taxable year. The full 10% reduction will apply to tax years beginning in 2014 and thereafter.[12] The highest marginal tax rates will be reduced from 5.421% to 5.333%.

For tax years beginning in 2014, the new law increases the existing income tax deduction for Ohio small businesses from 50% to 75% of Ohio sourced "small business" income, with a maximum allowable deduction of $187,500 for married filing jointly taxpayers. No pass-through entity may claim this deduction.[13] Instead, the deduction is claimed by the pass-through entity's individual owners. "Small business" income is derived from a pass-through entity or directly owned entities that are typically reflected on the taxpayer's Federal Form 1040 Schedules C, E or F.[14]

Currently applicable Individual Income Tax law allows a taxpayer to claim a personal exemption for the taxpayer, the taxpayer's spouse (if the spouses do not file separately), and the taxpayer's dependents. Prior to H.B. 483, the personal exemption amount was $1,700. For tax years beginning in 2014 or 2015, H.B. 483 increases this amount to $2,200 for taxpayers whose Ohio Adjusted Gross Income ("OAGI") is $40,000 or less and to $1,950 for taxpayers whose OAGI exceeds $40,000 but is less than or equal to $80,000. The exemption amount will remain at $1,700 for taxpayers whose OAGI exceeds $80,000.[15]

H.B. 483 also increases the state earned income tax credit from a maximum of 5% of the federal earned income tax credit to a maximum of 10% of the federal credit for tax years beginning in 2014.[16] The state credit is nonrefundable.

S.B. 263 and H.B. 492 – Administrative Provisions

S.B. 263 authorizes the Commissioner, in his discretion, to either refund or apply to a future period a taxpayer's overpayment of tax or fees.[17]

The new law also changes the due date of the non-cigarette excise tax from the last day of the month to the 23rd day of the month.[18]

Contacts

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[8] H.B. 492, amending Ohio Revised Code §5736.01(E).
[9] H.B. 492, amending Ohio Revised Code §5736.02(C).
[10] H.B. 492, amending Ohio Revised Code §5736.02, effective with enactment of the law.
[11] H.B. 492, amending Ohio Revised Code §5736.50.
[12] H.B. 483, amending Ohio Revised Code §5747.02(A)(8-9).
[13] H.B. 483, amending Ohio Revised Code §5703.21(C)(16).
[14] H.B. 483, amending Ohio Revised Code §5747.01(A)(31).
[15] H.B. 483, amending Ohio Revised Code §5747.025(A). For 2016 and thereafter, the exemption amount shall be adjusted. *See*, Ohio Revised Code §5747.025(C).
[16] H.B. 483, amending Ohio Revised Code §5747.71.
[17] S.B. 263, amending Ohio Revised Code §5703.77.
[18] H.B. 492, amending Ohio Revised Code §5743.52.

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