

Ohio Fiscal Year 2018-2019 Budget Bill Enacted

Overview

On June 30, 2017, Ohio Governor John Kasich signed into law Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017)¹, Ohio's fiscal year 2018-2019 operating budget bill ("Budget Bill"), and exercised his authority to veto certain provisions.²

This Tax Alert summarizes some of the more notable Ohio tax law changes that were contained in the approved sections of the Budget Bill, including a tax amnesty program; a reduction in personal income tax rates and brackets; remote seller nexus provisions and other sales and use tax changes; and various municipal income tax revisions.

Tax Amnesty Program

Abatement of Penalties and Half of Interest on Delinquent Taxes

The Budget Bill provides for a temporary tax amnesty program beginning January 1, 2018 and ending February 15, 2018.³ Delinquent taxes eligible for this program include Ohio's commercial activity tax, personal income tax, financial institutions tax, state and local sales and use taxes, school district income taxes, and alcohol, tobacco, and cigarette excise taxes.⁴ This program generally applies only to eligible delinquent taxes that were due and payable as of May 1, 2017, and which remain unpaid on the date the tax amnesty program begins.⁵ Excluded from this amnesty program are Ohio's resort area excise taxes.⁶ Additionally, taxes excluded from the amnesty program include taxes for which: a notice of assessment or audit has been issued; a bill has been issued, which relates to a tax period that ends after the effective date of § 757.110; or an audit has been conducted or is currently being conducted.⁷ Taxpayers enrolled in the amnesty program that pay the full amount of eligible taxes owed and half of any interest accrued on such taxes generally will receive a waiver of all applicable penalties and half of any interest that accrued on the delinquent taxes waived or abated by the Ohio Tax Commissioner.⁸

Personal Income Tax

Reduction in Tax Rates and Tax Brackets

The Budget Bill eliminates the bottom two tax brackets applicable to nonbusiness income tax (\$5,000 or less, and more than \$5,000 but not more than \$10,000).⁹ Additionally, the new law clarifies that individuals with Ohio adjusted gross income less taxable business income less exemptions for the taxpayer, spouse and each dependent totaling \$10,500 or less will not owe any Ohio personal income tax.¹⁰

Sales and Use Tax

Use Tax Collections by Certain Out-of-State Retailers

Beginning January 1, 2018, the Budget Bill presumes "substantial nexus" with Ohio exists for out-of-state sellers that use in-state software to sell or lease taxable tangible personal property or services to consumers to collect and remit use tax, provided the seller has gross receipts over \$500,000 in the current or preceding calendar year from the sale of tangible personal property for storage, use, or consumption in Ohio or from providing services, the benefit of which is realized in

¹ A copy of the budget bill can be accessed [here](#).

² The Ohio Legislature has indicated that it may reconvene to override certain provisions that Governor Kasich vetoed; an updated Multistate Tax Alert will be released if the Ohio Legislature overrides certain tax provisions vetoed by Governor Kasich.

³ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(B).

⁴ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(A)(1).

⁵ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(A)(1).

⁶ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(A)(1).

⁷ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(A)(2).

⁸ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.110(C).

⁹ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5747.02(A)(3).

¹⁰ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5747.02(A)(3).

Ohio.¹¹ "In-state software" is defined as computer software that is stored on property in Ohio or is distributed within Ohio for the purpose of facilitating a seller's sales.¹²

Direct Mail Sourcing

For Ohio sales and use tax purposes, the Budget Bill modifies the situsing rule applicable to "other direct mail," which is now sitused to the location of the direct mail consumer.¹³ This new situsing provision distinguishes between "advertising and promotional direct mail" and "other direct mail."¹⁴ The situsing rule applicable to advertising and promotional direct mail remains unchanged. "Advertising and promotional direct mail" is generally defined as direct mail, the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.¹⁵ "Other direct mail" generally means direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing.¹⁶

Sales Tax Exemption for Amusement Device Transactions

Beginning October 1, 2017, sales of digital music transferred electronically for delivery through use of a machine, such as a digital juke box, are exempt from state sales and use tax provided the machine accepts direct payments to operate, plays the selected digital music for a single play, and operates exclusively in a commercial establishment.¹⁷

Sales Tax Exemption for Prescription Optical Aids

Governor Kasich vetoed a proposal to exempt the first \$650 of the sales price of prescription optical aids or components, such as eyeglasses and contact lenses from state sales and use tax. Accordingly, these sales continue to be subject to Ohio sales and use tax.

Sales Tax on Electronic Services

Governor Kasich also vetoed a provision that would have created a new exemption from the state sales tax by "clarifying" that sales of automatic data processing, computer services, electronic information services and electronic publishing generally are not considered the true object of a sales transaction, and accordingly are not subject to sales tax when they are provided primarily for the delivery, receipt or use of another nontaxable service. Accordingly, the current law remains in effect where automatic data processing, computer services, electronic information services and electronic publishing are not taxable if they are incidental or supplemental to another nontaxable service.

Municipal Income Tax

Throwback Rule

Beginning in taxable year 2018, the sales factor "throwback rule" is removed for all taxpayers.¹⁸ Under the Budget Bill, sales of property are required to be sourced to a municipality if the goods are either: (1) both shipped from and delivered within the municipality; or (2) delivered within the municipality, but shipped from elsewhere, if employees of the business regularly solicit sales within the municipality.¹⁹

Business Profits

Effective January 1, 2018, businesses may elect, but are not required, to file a single annual or estimated tax return through the Ohio Business Gateway where the business could report and pay tax to all of the Ohio municipalities where tax is due. If chosen, this election would renew automatically every year until terminated by the taxpayer.

Centralized Filing

The Budget Bill instructs the Ohio Department of Taxation to conduct a feasibility study of allowing taxpayers to file municipal income tax returns through the joint federal and state Modernized e-File (MeF) program.²⁰

¹¹ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5741.01(I)(2)(h).

¹² Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5741.01(I)(6)(d).

¹³ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5739.033(F)(1).

¹⁴ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5739.033(F)(1).

¹⁵ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5739.033(F)(2)(b).

¹⁶ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5739.033(F)(2)(c).

¹⁷ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 5739.02(B)(55).

¹⁸ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 718.02(D).

¹⁹ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 718.02(D).

²⁰ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 757.60.

Estimated Payments

For taxable years beginning in 2018, individuals are allowed to pay fourth-quarter estimated municipal income tax payments until the 15th day of the first month of the subsequent taxable year, which for calendar year taxpayers would be January 15.²¹ The requirement that businesses file fourth-quarter estimated payments on December 15 for calendar year taxpayers remains unchanged.²²

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²¹ Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 718.08(C)(1)(d).

²² Oh. Am. Sub. H.B. 49, 132nd General Assembly (2017), § 718.08(C)(1)(d).