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*Multiple Ohio tax bills advance -
Changes affect financial
institutions, commercial activity
tax, sales and use taxes, and
more*

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In brief

Update: [House Bill 508](#) was enacted on June 6, 2012.

On March 14, Ohio Republican Governor John Kasich announced his "Mid-Biennium Budget Review" ("MBR"). Governor Kasich's MBR reflects changes affecting three primary subjects: education, energy, and taxation. Shortly after his announcement, Governor Kasich caused to be introduced in the General Assembly three separate bills, one addressing each subject. The tax changes appeared in H.B. 487.

Shortly after H.B. 487's introduction, the House Finance and Appropriations Committee removed most of the tax provisions and split them into four additional and separate bills. The provisions were separated to allow them to move on separate timelines, with an underlying objective of passing some before the General Assembly recesses for its summer break at the end of June. Several tax provisions remained in, or were amended into, H.B. 487 dealing with tax levies, dealers in intangibles, and sales and use tax exemptions. The four additional bills covered other issues,



including the Board of Tax Appeals (H.B. 505), assessments and collections (H.B. 508), a new financial institutions tax (H.B. 510), and credits and incentives (H.B. 511). Governor Kasich's proposed severance tax increase and corresponding personal income tax decrease were tabled due to industry pressures.

Each additional bill was referred to the House Ways & Means Committee for hearings. H.B. 487 remained in the House Finance & Appropriations Committee. H.B. 487 and H.B. 508 passed the General Assembly on May 23 and are expected to be enacted soon. Additionally, H.B. 511 passed the House on May 23 and is expected to be enacted before the summer break.

H.B. 505 has not received any hearings, and is expected not to move. H.B. 510 was passed by the House on May 16 and has been referred to the Senate Ways & Means Committee where deliberations are expected to prevent that bill from being acted upon before the summer break. It is expected to be enacted after the November elections.

The following summarizes key tax provisions of those bills - H.B. 487, H.B. 508, and H.B. 511 - that are expected to be enacted by the end of June.

In detail

H.B. 508 General Tax Provisions

[H.B. 508](#) (enrolled 5/23/12) provides the following changes to Ohio's Corporation Franchise Tax, Commercial Activity Tax ("CAT"), Sales and Use Tax, and Motor Fuel Tax to be enacted near the end of May:

CORPORATION FRANCHISE TAX - FINANCIAL INSTITUTIONS

- Authorizes certain financial institutions to elect to use a single sales factor, instead of the currently required three factors, to calculate taxable net worth for the Corporation Franchise Tax, for tax years starting in 2012 and thereafter. To qualify to use the single sales factor, a financial institution must be at least 80% owned by a "grandfathered" unitary savings and loan holding company.

COMMERCIAL ACTIVITY TAX ("CAT")

- Requires calendar quarter taxpayers to subtract the full \$1 million exclusion amount on their first quarterly return of the year (the current law requires a calendar quarter taxpayer to subtract \$250,000 per quarter). The proposed provisions allow unused exclusion amounts to be carried forward to the three subsequent quarters, but not beyond. The provisions take effect January 1, 2013.
- Exempts from the CAT, "unauthorized" insurance companies (i.e., "surplus lines") whose gross premiums are subject to the unauthorized insurance tax.
- Requires CAT registration fees to be deducted from the first tax payment, and modifies the required registration information.

SALES & USE TAX

- Eliminates the vendor license categories of "service vendor" and "delivery vendor" but authorizes the Tax Commissioner to create specific classes of vendor licenses.
- Requires all vendors, not just transient vendors, to display their vendor licenses.
- Requires the Tax Commissioner to notify a vendor making certain sales from a printed catalog of certain sales tax rate changes regardless of whether the vendor is registered through the Streamlined Sales Tax Electronic Registration System.
- Permits the Tax Commissioner to cancel a vendor's license if the vendor fails to notify the commissioner of an address change or if ordinary mail sent to the address on the vendor's license is returned as undeliverable.
- Includes as a taxable sale, the transfer of any ownership interests in a pass-through entity if the entity's sole assets are boats, planes, motor vehicles, or other recreational property used primarily by the entity's owners.
- Specifies that all vendors (regardless of whether the vendor is registered through the Streamlined Sales Tax Electronic Registration System) making sales from a printed catalog do not have to apply changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change.

CREDITS

- Increases the maximum total amount of refundable tax credits allowed for completion of motion pictures certified as tax credit-eligible productions from \$20 million to \$40 million per fiscal biennium.

MOTOR FUEL TAX

- Authorizes the Tax Commissioner to exempt a motor fuel dealer from a current law requirement that all motor fuel dealers provide a surety bond securing payment of the motor fuel tax if the dealer only sells or distributes fuel for which the tax has already been paid.
- Expressly extends to all kinds of business organizational forms the current provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax.

ADMINISTRATION

- Requires that a corporation filing a certificate of dissolution demonstrate that it is current on all state taxes, rather than on only the personal property, franchise, sales, use, and highway use taxes.

- Prescribes the method by which the Tax commissioner may deliver tax notices or orders by secure electronic means.

ACCOUNTANCY BOARD

- Makes various changes to the Board's Peer Review Program for public accounting firms relating to remedial orders, disciplinary actions, peer review exemptions, and other matters, including authorizing the Board to hire an agent to administer the program, authorizing the Board to unilaterally decide on actions based on a firm's history, and specifying circumstances under which a firm may qualify and utilize a peer review exemption.

H.B. 487 Main MBR Miscellaneous Tax Provisions

[H.B. 487](#) (enrolled 5/23/12) provides the following changes to Ohio's Sales and Use Tax, Property Tax, and Dealers in Intangibles Tax:

SALES & USE TAX

- The sales tax provision related to telecommunications equipment used in direct marketing has been enhanced. The amendment removes the requirement that certain telecommunications equipment used in direct marketing must be purchased by a direct marketing vendor in order for the equipment to be exempt from the sales tax thus broadening the exemption availability.
- The bill exempts from sales and use tax the purchase of property or services used in research and development activities related to aerospace vehicles. Aerospace vehicles are defined to include, but not limited to, aircraft, airplanes, helicopters, missiles, rockets, and space vehicles. Aircraft continues to retain its current law takeoff weight and usage criteria for exemption.

PROPERTY TAX

- Extends the time during which the local governments may enter into enterprise zone agreements to October 15, 2013.

DEALERS IN INTANGIBLES TAX

- Requires businesses that pay the dealers in intangibles tax to remit the tax to the Tax Commissioner instead of the Treasurer of State, and provides that taxpayers may claim a refund of overpaid dealers in intangibles taxes by filing an application for final assessment, instead of applying for a certificate of abatement.

H.B. 511 - Credits & Incentives

[H.B. 511](#) (approved in House 5/23/12) focuses primarily on the Venture Capital Loan Loss Tax Credit Program ("Venture Capital Credit Program").

The existing Venture Capital Credit Program permits individuals, financial institutions, insurance companies, dealers in intangibles, and natural gas companies to lend money to the program for investment by a program administrator in venture capital funds and to have some or all of any losses the lender incurs on the invested money to be compensated by a refundable tax credit. Interestingly, no credits have

ever been claimed. The eligible venture capital funds are required to support a certain percentage of Ohio ventures. H.B. 511 amends the Venture Capital Fund credits in the following manner:

- Increases the annual limit from \$20 million to \$26.5 million on venture capital loan loss tax credits available to lenders, increases the principal and interest payments that may be paid to taxpayers lending to the investment fund by the same amounts, and increases the all-year tax credit limit from \$380 million to \$550 million.
- Relaxes limits on the extent to which the program's investments may be concentrated in two or more venture capital funds that are under common management.
- Requires agreements for administering the program to specify that the investment fund administering the program and any fund managers employed by the administrator to have a "significant presence" in Ohio as defined in the agreement.
- Requires the selection criteria for investment fund administrators to include similar experience and a history of positive investments returns.
- Adds additional reporting requirements and recipients for the Ohio Venture Capital Authority's annual report.

The bill makes other credit and incentive changes including increasing the maximum amount of investment tax credits approved or awarded by the Third Frontier Commission from \$45 million to \$51 million and allowing four versus three weeks to review initial tax credit applications. The bill also terminates the Industrial Technology and Enterprise Advisory Council and transfers its duties to the Third Frontier Commission and eliminates the Edison Center's involvement in reviewing and making recommendations on investment tax credit applications and transfers those responsibilities to the Director of Development.

PwC Observes

"The legislature is strategically managing the Governor's original tax reform plan by separating his MBR tax package into component parts, and it appears the legislature will meet its objective of passing some tax reform measures by the June-end summer break," explains Ray Turk, PwC SALT Partner in Cleveland.

"Passing the original package in its entirety would have been a daunting task given the significant changes planned for the financial institutions and severance taxes. To determine how these additional changes can further reform Ohio's tax laws and make it a more attractive state to do business, the legislature will need additional time to fully understand its long term implications," says Turk. "I think we will see some version of both tax proposals enacted later this fall. For now, we have three bills that, when considered in combination, show that Ohio continues to make a strong effort to attract new, quality businesses."

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