

Ohio Legislative and Budget Process Update

OHIO BUSINESS TAX SEMINAR

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Taft/

Presented by



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Agenda

- Ohio budget process overview.
- Why the budget is (usually) the most important tax policy document.
- Tax provisions in the house-passed version of the budget.
- Some other pending tax legislation.
- Review impact of two bills enacted by the last general assembly.

Ohio Budget Process Overview

- Executive Budget Proposal (February 1, later if new Governor).
- Budget bill introduced in the House (February 15, 2023).
- House Finance Committee consideration and report.
- House floor vote (April 26, 2023).
- Senate Finance Committee consideration and report (May).
- Senate Floor vote (late May/early June).
- House rejects Senate amendments and asks for Conference Committee.
- Conference Committee consideration and report.
- Conference report approved by House and Senate (before June 30).
- Governor signs, with line-item vetoes (before June 30).

Why the Budget Bill is Usually the Most Important Tax Policy Document

- The budget bill has to pass by June 30 of odd numbered years.
- Most of the focus of the General Assembly in odd numbered years is on the budget bill, so only a few other bills pass in odd numbered years.
- Most major tax changes have budget impacts and thus the budget must be adjusted to reflect the revenue change (usually a revenue loss in recent tax proposals). It is easier to resolve these trade-offs in the budget process.
- Often, other tax bills pending during budget deliberations are included in the budget in some form.

Major Business Tax Provisions in HB 33, House-Passed Version

- **Income tax**

- Combine two lowest brackets at a rate of 2.75% effective 1/1/2023.
- Re-couple with Federal bonus depreciation.
- Suspends bracket and exemption indexing in 2023 and 2024.

- **CAT**

- “Clarifies” situsing provisions for motor carrier -> common or contract carrier, retroactively for pending cases.
- Excludes from taxable gross receipts grants or debt forgiveness to expand Ohio broadband service.

Major Business Tax Provisions in HB 33, House-Passed Version (Cont'd)

- **Property tax**
 - Index homestead exemption to inflation.
 - No more “replacement levies” on the ballot beginning in 2025.
 - Exemption for increased value of subdivided land for up to eight years, until construction begins of the land is sold.
 - Changes to Qualified Energy Project property tax exemption.
 - Allows certain brownfield development land to receive property tax abatement or refund for 2020 and 2021 taxes.
 - Property tax study committee.
 - Limit PPT value reduction for electric power plants to 7.5%/year, beginning in 2024.
- **FIT**
 - Includes entities that are or could be consolidated on the call report to be included in the FIT return.

Major Business Tax Provisions in HB 33, House-Passed Version (Cont'd)

- **Municipal Net Profits and Income tax**
 - Discussed in this afternoon's presentation.
- **Sales and use taxes**
 - Exemption for certain baby products (diapers, creams, car seats, strollers etc.)
- **TIF changes**
 - Allows property to be transferred between TIF districts, as long as the property owner has not yet made PILOT payments to the prior district.
 - Allows 15 year extension of certain TIF districts.
- **Lodging tax**
 - Allows repurposing of lodging tax revenue usage, specifically to help with Cincinnati stadium improvements and with public safety improvements in resort area.

Some Other Pending Tax Legislation

- **HB 1**

- Would have reduced all existing non-zero income tax brackets to a 2.75% rate.
- Massive restructuring of property tax, including homestead exemptions and the forms 10% and 2.5% rollbacks.
- Result: income tax bracket changes and property tax study committee in the budget bill.

- **HB 116 Recoupling with Federal bonus depreciation**

- Reported out of House Ways & Means on May 2.
- Incorporated into the House-passed budget bill.

Impact of Two Bills From Prior General Assembly

- **HB 126**

- Made various changes intended to limit the ability of school boards and other local governments to file Board of Revision complaints seeking to increase property assessed values and also to limit their appeal rights from the Boards of Revision.

- **HB 515**

- Provides a bright-line test for certain sales of an equity in a business to be treated as “business income.”
- Previously, the Department of Taxation often denied business income treatment to capital gains from sale of an equity interest in a business, unless the gain was apportioned to Ohio under O.R.C. 5747.212.
- Temporary language applied to pending cases (in appeal or audit) even if the tax year was closed when HB 515 took effect.

HB 515: A Double Edged Sword

- The good news: Many taxpayers who had pending appeals, refund claims, or audits where the Department was resisting business income treatment (BID deduction and lower tax rate).
- The bad news: Some taxpayers who would have had \$0 Ohio tax liability on their gain from sale of a business are now having the Department assert liability.
 - Non-Ohio resident.
 - Not covered by ORC 5747.212.
 - Generally for tax years prior to 2023, when the law took effect.
 - Does this violate the *Corrigan* case if the taxpayer is not in a unitary business?
 - Does this violate the Ohio Constitution's prohibition against retroactive laws if applies to a closed tax year?

HB 126: Not Working As Intended

- Intent: limit the authority of local governments (mostly school boards) to challenge property tax values in several ways:
 - Removing right of a local government to appeal a Board of Revision decision to the Board of Tax Appeals (effective in 2022).
 - Requiring the governing board to adopt a resolution authorizing a valuation complaint, after notice to the property owner.
 - Limiting 3rd party and local government valuation complaints to situations in which there was an arm's length sale, prior to the tax lien date, for a certain amount above the Auditor's current assessed value.
 - Since Boards of Revision do not have subpoena powers and limited ability to enforce discovery, this also meant that many sales transactions (ex. Equity sales) could not be proven before the Board of Revision and thus would not result in property value increases.

School Board Strategies to Work Around HB 126

- Prohibition against appeals to the BTA
 - Dismissals of BTA appeals filed by school board have been appealed to various Courts of Appeal, challenging whether the changes, although effective in 2022, applied to cases that had been filed with the Board of Revision before the effective date of HB 126.
 - School board also are attempting to appeal BOR decision to Common Pleas Court under a statute that would not apply if there were other appeal option.
 - Since there is no doubt that the changes apply to 2023 and the 2022 tax year, school boards are filing BOR complaints with notices attached that they plan to challenge the constitutionality of HB 126 restriction.

School Board Strategies to Work Around HB 126 (Cont'd)

- Restrictions on school boards and other governments filing valuation complaints.
 - School boards are using 3rd party complaints (by a school district treasurer) and counter-complaints to evade restrictions on valuation complaints filed by local government.
 - Again, school boards are raising issues regarding the constitutionality of restrictions that apply to their appeal rights but that do not apply to a property owner's appeal rights.

HB 126 Prohibition Against Private Payment Settlement Agreements

- Both property owners and school boards generally liked the pre-HB 126 law that allowed school boards to settle with property owners on the basis of a direct payment to the school board in lieu of a property tax value increase.
- In effect, the school board's revenues went up based on a new sale or appraisal, but the revenues of other local governments did not.
- Legislators (especially the Chairman of the Senate Ways & Means Committee) thought that this was unfair to other local governments and is bad public policy, so they outlawed these agreement prospectively.

Questions?



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Don focuses his practice on state and local tax matters, tax issues involving non-profit organizations, tax controversies (federal, state, and local), and on public agency law. As a public agency lawyer, Don both represents public agency clients and represents other clients before public agencies. Don has been able to draw upon 25 years of experience as a public official and as an attorney and financial manager to the benefit of his clients. He is admitted to practice before Ohio courts as well as the Supreme Court of the United States, the U.S. District Court for the Southern District of Ohio, the U.S. Sixth Circuit Court of Appeals and the Internal Revenue Service. He is also a director of Focused Capitol Solutions LLC, a business affiliate of the law firm of Taft, which provides governmental relations and public policy services at its offices in Cincinnati and Columbus. In this role, Don represents clients before Ohio state government agencies and the Ohio General Assembly.

In 1993, Don began his eight years of service in the Ohio House of Representatives, where he represented part of Dayton and several suburban communities in Montgomery County. While in the state legislature, he chaired the House Ways and Means and Joint Agency Rule Review Committees and served on the Finance and Insurance Committees. He previously served in various positions for the Montgomery County Commissioners and County Auditor's Office. Don began his career in public service as a member of the West Carrollton Board of Education, a position he held for 12 years.

Prior to being admitted to the Ohio Bar in 1991, Don served as a financial manager with NCR Corporation for over 10 years, culminating in his appointment as Treasurer of NCR Credit Corporation (an equipment financing/leasing subsidiary).

Don holds a Bachelor of Arts degree in political science, *magna cum laude*, and a Master of Science degree in economics from Wright State University. He received his *Juris Doctor* degree from the Salmon P. Chase



Practices

Government Relations
State and Local Tax
Tax Controversy and Litigation
Property Tax Litigation and Appeals
Tax

Industries

Nonprofit and Tax-Exempt Organizations

Education

Salmon P. Chase College of Law - Northern Kentucky University (1991)
Wright State University (1976)
Wright State University (1975)

Admissions

Federal - Southern District of Ohio
Federal - U.S. Supreme Court
State - Ohio
Federal - U.S. Tax Court

College of Law at Northern Kentucky University, finishing first in his graduating class. Don also received a Certificate in Employee Benefits Taxation from Capital University's graduate law program. He is an active member of the Taxation Committees of the Ohio State Bar Association (where he is the former chair of the Taxation Committee and is the former chair of the Subcommittee on Municipal Income Taxation) and of the Ohio Chamber of Commerce. He is a frequent presenter on Ohio tax issues, including sales and use tax and municipal income tax. For many years, Don has been a keynote speaker and member of the planning committee for the MEC Annual Ohio Tax Conference, the largest business tax conference in the nation.

Don works in the Columbus office and resides in Worthington, Ohio.

Speeches and Publications

- Presenter, "Ohio Legislative and Regulatory Update, 2023 Ohio Business Tax Seminar, May 17, 2023.
- Co-Presenter, "Ohio Municipal Income Tax and Remote Workforce," 2023 Ohio Business Tax Seminar, May 17, 2023.

Professional Affiliations

- Ohio State Bar Association
 - Past Chair and Member, Taxation Committee
 - Past Chair, Municipal Income Taxation Subcommittee
- Ohio Tax Conference
 - Keynote Speaker
 - Member, Planning Committee
- 61st Annual Cleveland Tax Institute 2018
 - Keynote Speaker

Community Involvement

- Gambling Impact Review Commission
 - Past Member and Chairman
- Ohio Chamber of Commerce
 - Member, Taxation and Public Expenditure Committee
- Ohio House of Representatives
 - Past Member (1993 - 2000)
- Franklin County Republican Party Central Committee

Member

- Leadership Worthington
Board Member
- Worthington Citizens Police Academy Alumni Association
Member
- Dublin-Worthington Rotary Club
Member
Community Service Chair