Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 58 of the 129th G.A.

Date: March 2, 2011

Status: As Enacted

Sponsor: Rep. Beck

Local Impact Statement Procedure Required: Yes

Contents: Incorporates into Ohio income tax law changes to the Internal Revenue Code since December 15, 2010, creates a new, refundable job retention tax credit, temporarily extends the look-back period for purposes of state extended unemployment benefits, and declares an emergency

State Fiscal Highlights

STATE FUND	FY 2011	FY 2012	FUTURE YEARS
General Revenue Fund			
Revenues	$21.9 million loss	$30.8 million loss	$18.4 million loss in FY 2013; diminishing annual losses after FY 2013
Expenditures	Potential increase due to the reduction in CAT receipts; potential increase from extended unemployment benefits	Potential increase due to the reduction in CAT receipts; potential increase from extended unemployment benefits	Potential increase due to the reduction in CAT receipts; - 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- Conforming Ohio income tax law to recent federal income tax changes reduces Ohio Adjusted Gross Income and decreases revenue from the personal income tax (PIT).
- The job retention tax credits are likely to decrease revenue from the personal income tax, the corporate franchise tax (CFT), the insurance premiums tax, and the commercial activity tax (CAT).
- Revenue from GRF taxes is distributed to the GRF (94.35% in FY 2011 under H.B. 1, and 94.1% under permanent law). Starting in FY 2012, revenue from the CAT will be distributed, in various percentages, to the GRF.
- Revenues from the CAT are earmarked mostly for reimbursing school districts and other local governments for the reductions and phase-out of local taxes on most tangible personal property. If CAT receipts are insufficient, the GRF is required to subsidize the required reimbursements.
- The bill could increase GRF and non-GRF expenditures for state agencies to issue state extended unemployment benefits to eligible unemployed individuals from March 2011 to the first week of January 2012.

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Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011	FY 2012	FUTURE YEARS
Counties, Municipalities, Townships, and Libraries			
Revenues	$1.3 million loss from tax changes	$1.9 million loss from tax changes	$1.2 million loss in FY 2013 from tax changes; diminishing annual losses after FY 2013
Expenditures	Potential increase from extended unemployment benefits	Potential increase from extended unemployment benefits	- 0 -
School Districts			
Revenues	Loss of up to $0.6 million in income taxes	Loss of up to $1.0 million in income taxes	Loss of up to $0.5 million in income taxes
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Receipts from GRF taxes are distributed in part to the Local Government Fund (3.68%) and the Public Library Fund (1.97% in FY 2011 under H.B. 1, and 2.22% under permanent law). Thus, the reduction in GRF tax receipts from the job retention tax credit and from conforming Ohio income tax law to federal law would decrease distributions to the two funds.
- The bill reduces Ohio taxable income, which reduces receipts from the school district income tax.
- The bill could increase expenditures for local government entities to issue state extended unemployment benefits to eligible unemployed individuals from March 2011 to the first week of January 2012.

Detailed Fiscal Analysis

Incorporation into Ohio law of changes in the Internal Revenue Code since December 15, 2010

The bill incorporates changes to the Internal Revenue Code (IRC) since December 15, 2010 to Ohio income tax law. Conforming Ohio law to the IRC is expected to reduce state income tax revenue, on an all-funds basis, by $15.2 million in FY 2011, $24.7 million in FY 2012, and $11.6 million in FY 2013. Revenue losses will gradually diminish in years after 2013. The estimates are from the Department of Taxation. Under permanent law, GRF tax revenue is distributed to the GRF at 94.1% (94.35% in FY 2011),[1] the Local Government Fund at 3.68%, and the Public Library Fund at 2.22% (1.97% in FY 2011). Thus, GRF losses, based on distribution of state tax revenue, would be $14.3 million in FY 2011, $23.2 million in FY 2012, and $10.9 million in FY 2013. Losses to the two local government funds would total, respectively, $0.9 million, $1.5 million, and $0.7 million.

H.R. 4853, the federal "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" (TRUIRaJCA), was signed into law December 17, 2010. This federal law was enacted after Ohio Revised Code section 5701.11 was last amended (H.B. 495, signed December 15, 2010). Ohio income tax returns start with the federal adjusted gross income (FAGI). The new federal income tax law contains numerous individual and business provisions that reduce FAGI. The bill allows those changes amending FAGI in the TRUIRaJCA to be incorporated into the definition of Ohio adjusted gross income (OAGI) as defined in Ohio Revised Code section 5747.01. The effective date for certain provisions is for taxable years starting after December 31, 2009. Those provisions are expected to reduce FY 2011 receipts. The effective date of other provisions is for taxable years starting after December 31, 2010, thus affecting receipts in FY 2012 and later fiscal years. Also, some of the provisions have a sunset date while others do not.

The reduction of OAGI also reduces Ohio taxable income, which is the starting point for the school district income tax for most of the school districts.[2] Based on a ratio of statewide school district income tax receipts to state individual income tax receipts, the reduction in school district income tax receipts may be up to $0.6 million in FY 2011, $1.0 million in FY 2012, and $0.5 million in FY 2013.

[1] H.B. 1 of the 128th General Assembly changed the statutory distribution of tax revenues for FYs 2010-2011.

[2] Alternatively, certain school districts use earned income as the tax base for their income tax.

The revenue loss estimates above are primarily based on nationwide estimates of the fiscal impact of the various provisions of the federal law. Those federal revenue losses were projected by the Joint Committee on Taxation of the U.S. Congress on December 10, 2010. Ohio revenue losses were calculated based on Ohio's share of federal taxable income, and income tax rates.

Please note that the revenue loss estimates above do not include the impact of the expansion of the "bonus depreciation" and enhanced expensing in the TRUIRaJCA. Under current rules for "bonus depreciation" in Ohio, only 1/6th of any deduction taken in the federal return is allowed in the Ohio return, for the first applicable taxable year, *i.e.*, 5/6th of the deduction is added back into OAGI before the computation of the state tax liability. Then, in each of the five subsequent taxable years, the taxpayer deducts one-fifth of the amount previously added back. The estimates assume the "1/6th deduction and 5/6th add back" mechanism continues. Taxpayers are allowed the full federal depreciation deduction, but the mechanism ensures that revenue losses to Ohio from "bonus depreciation" are spread out over several years. The impact of the "bonus depreciation" is assumed to fall largely on corporations. However, Ohio does not have a corporate income tax; and, due to the "1/6th deduction and 5/6th add back" mechanism, the fiscal impact of the "bonus depreciation" is generally deemed minimal on an annual basis, though it might increase overall revenue loss estimates for the bill.

Refundable job retention credit

Under current law, eligible businesses may claim a nonrefundable job retention tax credit (JRTC) against the personal income tax (PIT), commercial activity tax (CAT), insurance company premiums tax, or corporate franchise tax (CFT). The tax credit is measured as a percentage of the state income taxes withheld from full-time employees working at the project site. The percentage is determined by the Ohio Tax Credit Authority, up to a maximum of 75%.

The bill allows a business that meets existing JRTC requirements to claim a new, refundable tax credit if the firm also meets various additional criteria. They include making an investment of at least $25 million at a project site over a period of three years that includes the year for which the credit is granted.[3] In addition, in 2010, the business must have received a written offer of financial incentives from another state, and the Director of Development must have determined that the offer is sufficient inducement for the business to relocate to that other state. And for a business to be eligible, the Director of Development, the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance (in the case of an insurance company) must have recommended the granting of the credit to the Tax Credit Authority before July 1, 2011.

[3] The capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment.

A business that qualifies for a refundable JRTC may claim the full amount of the credit in one year, regardless of tax liability. If the credit exceeds the tax liability, the business is entitled to a refund. The bill requires that a recipient of a refundable JRTC employ and retain at least 1,000 employees. Also, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports. If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit. For a complete list of eligibility criteria and comparison of the new refundable JRTC with the existing nonrefundable JRTC, please see the LSC bill analysis.

Aggregate credit limits

The bill allows the issuance of up to $8 million in refundable tax credits in any calendar year. (Current law limits the total amount of nonrefundable tax credits issued in any calendar year. In 2010, the limit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million.) Assuming the allowable amount of refundable job retention tax credits is issued, the bill reduces GRF tax revenues by up to $8 million each year. The reduction in receipts from the PIT, CFT, CAT, and the insurance premiums tax will decrease distributions to the three funds. Under the prescribed distribution of GRF tax receipts, the revenue loss to the GRF will be up to $7.5 million each year. Revenue reductions to the LGF and the PLF will be up to $0.3 million and $0.2 million, respectively.

Revenues from the CAT are earmarked mostly for reimbursing school districts and other local governments for the reductions and phase-out of local taxes on most tangible personal property (TPP). Under current law, the GRF is required to subsidize the required reimbursements to the School District Tangible Property Tax Replacement Fund and the Local Government Tangible Property Tax Replacement Fund, if CAT receipts are insufficient. The share of CAT receipts to school districts is 70%. The share of CAT receipts to local governments other than school districts, which is variable, is currently 30% for FY 2011. That share will decrease to 24.7% in FY 2012, and to 19.4% in FY 2013. The GRF share will rise from 0% in FY 2011 to 5.3% in FY 2012 and 10.6% in FY 2013. The tax credit is likely to reduce receipts from the CAT and distributions to the three funds.

Changes to the formula used to trigger state extended unemployment benefits

The bill temporarily changes the formula used to trigger state extended unemployment benefits (EB) based on the total unemployment rate for the time period the federal government is fully paying for those benefits (until December 31, 2011) for claimants of most private employers.

While state EB are currently being fully funded by the federal government for most employers, federal funding for state EB is not available for governmental entities that are reimbursing employers.[4] Therefore, the bill could increase expenditures for state and local government entities to issue EB to eligible unemployed individuals from March 2011 to the first week of January 2012.[5] Affected employers may include state and local governments, public colleges and universities, school districts, public libraries, and public hospitals.

According to the Ohio Department of Job and Family Services (ODJFS), in 2010, state agencies (including state hospitals and higher educational facilities) expended $1.5 million for EB to about 485 beneficiaries and local government entities expended $4.3 million for EB to about 1,920 beneficiaries. State agencies may use GRF and non-GRF funds for these benefits. The amount state agencies and local government entities may expend over the next ten months under the bill could be more or less than the amounts expended in 2010, depending on the number of laid-off workers that are eligible for EB after exhausting regular benefits (up to 26 weeks) and other federally extended benefits (53 weeks). Eligibility for EB can only be established after exhausting these benefits. The last day an individual can establish eligibility is December 10, 2011. EB is payable for up to 20 weeks, though the last week of payment ends January 7, 2012, regardless of when eligibility was established.

The bill may also minimally increase the amount Ohio would need to borrow from the federal government to issue EB for claimants of reimbursing employers, which could increase the amount of state interest owed on borrowed amounts. EB are paid out of the state's Unemployment Compensation Trust Fund regardless of whether the employer is a contributory or reimbursing employer. Claims for contributory employers are reimbursed by the federal government within 24 hours. Reimbursing employers are billed once a month to reimburse the trust fund for benefits paid. It is possible that in some months of 2011 Ohio may need to borrow from the federal government to issue EB benefits on behalf of reimbursing employers. (Since January 2009 Ohio has been borrowing from the federal government to issue benefits.) As interest accrues on borrowed amounts on a daily basis, interest would accrue for any amounts borrowed to issue EB benefits to claimants of reimbursing employers. Though benefits would be reimbursed to the trust fund within a month, some interest would accrue in the meantime. As ODJFS estimates federal borrowing in the hundreds of millions in some months in 2011 to issue regular benefits, any interest accrual due to this bill would be minimal.

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[4] Reimbursing employers do not contribute to the Unemployment Compensation Trust Fund but instead reimburse the Trust Fund when benefits are chargeable to a reimbursing employer.

[5] Out of the 5,033 reimbursing employers, approximately 3,300 are governmental entities.

Ohio must make an interest payment to the federal government on September 30, 2011. The estimated payment is $73.1 million, and must be paid from state funds.

Emergency

The bill declares an emergency, meaning its provisions would go into immediate effect.

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