Bethany Boyd *Legislative Service Commission*

Am. Sub. H.B. 24

127th General Assembly
(As Passed by the General Assembly)

Reps. **Wagner, J. McGregor, Wagoner, Gibbs, Combs, Stebelton, Collier, Huffman, Blessing, Bubp, Latta, Schindel, J. Hagan, Wolpert, Adams, Aslanides, Bacon, Barrett, Batchelder, Boyd, Brown, Budish, Carmichael, Chandler, Coley, Core, Daniels, DeBose, Domenick, Dyer, Evans, Fende, Fessler, Flowers, Goodwin, Goyal, Harwood, Healy, Hite, Hottinger, Hughes, Jones, Letson, Luckie, Lundy, Mandel, Miller, Oelslager, Otterman, Patton, Raussen, Reinhard, Sayre, Schneider, Seitz, Setzer, Szollosi, Uecker, Wachtmann, Webster, S. Williams, Yuko, Zehringer**

Sens. **Amstutz, Harris, Schaffer**

Effective date: Emergency, December 21, 2007

ACT SUMMARY

- Gives municipal corporations the option of allowing sole proprietors to take a municipal income tax deduction for amounts they pay for medical care insurance for themselves and their family members.

- Gives municipal corporations the option of allowing individuals to take a municipal income tax deduction for cash contributions to health savings accounts.

- Modifies who may file a complaint to receive payment from the Real Estate Appraiser Recovery Fund for losses incurred due to an illegal act or transaction by a real estate appraiser or real estate appraiser assistant.

- Authorizes certain property owners whose property is located in a conservancy district that includes all or parts of more than 16 counties to have the Supreme Court review denials of their exceptions to an assessment, so long as a notice of appeal is filed in the Supreme Court not later than 30 days after the act's effective date.

- Prohibits the board of directors of a conservancy district that includes all or parts of more than 16 counties from levying or collecting an assessment and prohibits a county treasurer from collecting an assessment levied by that conservancy district, beginning on the act's effective date and until January 1, 2009.

- Declares that a parcel of land on which such an assessment is levied is not liable for such an assessment beginning on the act's effective date and until January 1, 2009.

- Authorizes the Governor, by executive order, to extend the enhanced motor vehicle inspection and maintenance program through June 30, 2008, and to extend the terms of the contract that expired on December 31, 2007, with the contractor that conducted inspections under that program.

- Authorizes the Governor, by executive order, to order the continuation of the enhanced motor vehicle inspection and maintenance program from July 1, 2008, through June 30, 2009, and requires the Director of Environmental Protection to select a vendor to perform inspections under the program via a competitive selection process.

- Declares an emergency.

- Declares that the act's moratorium and emergency clause imply the intent that the General Assembly will evaluate specified topics related to a conservancy district that includes all or parts of more than 16 counties in order to determine whether the General Assembly should enact legislation by June 30, 2008, to revise the statutes governing such a district.

CONTENT AND OPERATION

Municipal income taxation

Overview

Under the home rule powers granted by Article XVIII of the Ohio Constitution, municipal corporations may tax the incomes of individuals and businesses residing or doing business within their boundaries. But under Article XVIII, § 13, Ohio Constitution, municipal corporations' taxation powers are subject to limitations imposed by the General Assembly, which has established

uniform tax bases for municipal corporations to use in computing the municipal income tax liabilities of individuals and businesses. Prior law did not expressly permit municipal corporations to allow sole proprietors to claim a municipal income tax deduction for their medical care insurance premiums. Nor did the law expressly permit municipal corporations to allow an individual to deduct cash contributions to a health savings account.

Deduction for medical care insurance

(R.C. 718.01(A)(7) and (E)(3))

The municipal income tax liabilities of sole proprietors are computed on the basis of the net profit reported by a sole proprietor on Internal Revenue Service Schedule C, which is the form used by sole proprietors to report their profits and losses for federal income tax purposes. In calculating net profit on Schedule C, sole proprietors are permitted to deduct expenses they incur for health insurance for their employees; however, sole proprietors do not deduct on Schedule C health insurance expenses incurred on their own behalf. As a result, amounts that a sole proprietor pays for health insurance on the sole proprietor's own behalf or on behalf of the sole proprietor's family do not operate to reduce the sole proprietor's municipal income tax base.

The act expressly permits a municipal corporation to adopt an ordinance or a resolution that allows sole proprietors to deduct from the net profit reported on Schedule C the amount the sole proprietor paid during the taxable year for medical care insurance premiums for the sole proprietor, a spouse, and dependents. The deduction is allowed to the same extent health insurance premiums are deductible for federal income tax purposes.

The municipal income tax deduction must be reduced by the amount of any related premium refunds, related premium reimbursements, or related insurance premium dividends received by the sole proprietor during the taxable year. The exclusion of those amounts ensures that the deduction reflects the taxpayer's actual out-of-pocket insurance premium expenses.

Deduction for payments to health savings accounts

(R.C. 718.01(A)(7) and (E)(2))

The act expressly permits a municipal corporation to adopt an ordinance or resolution allowing an individual to claim the same tax preferences for municipal income tax purposes that federal law allows for "health savings accounts" or "HSAs." Under federal law, individuals who open and hold an HSA may deduct cash contributions to the account, up to specified annual limits. Also, investment

earnings on account balances are exempt from taxation unless account withdrawals are spent for something other than medical expenses. Health savings accounts may be held by any person, whether or not employed, as long as the person is covered by a "high deductible" health plan and is not covered by Medicare or another general health plan.[1]

An individual subject to the income tax of a municipal corporation that adopts an ordinance or resolution authorizing an HSA deduction would be able to deduct cash contributions to the HSA to the same extent contributions are deductible for federal income tax purposes. The federal tax-deductible amount is equal to the deductible under the high-deductible health plan, but is limited to a maximum annual dollar amount. The maximum annual dollar limit depends on whether the health plan covers only one person or covers two or more persons. The annual limits for 2007 are as follows:

Annual tax-deductible contribution limits for health savings accounts

Health plan coverage	**Age under 55**	**Age 55 or over**
Individual	$2,850	$3,650
Multiple	$5,650	$6,450

Note: Limits are adjusted annually for inflation and the limits for ages 55 and over increase by $100 per year until 2009.

Application date

(Section 3)

The earliest taxable year for which the deductions authorized by the act may be taken (if they are authorized by a municipal corporation) are taxable years beginning in 2008.

[1] To qualify as a high deductible health plan, a plan must have an annual deductible of at least $1,100 (individual coverage) or $2,200 (multiple coverage), and the sum of the deductible and other out-of-pocket expenses must be no more than $5,500 (individual) or $11,000 (multiple). Special rules apply to some plans.

Real Estate Recovery Fund payments

(R.C. 4763.16)

Former law permitted a person that obtained a final judgment against a real estate appraiser or real estate appraiser assistant, based upon conduct that violated the real estate appraisers licensing law, to file a complaint in a court of common pleas and seek an order for the payment of up to $10,000 of any portion of the judgment that remained unpaid and that represented the actual and direct loss of the person for an illegal act or transaction upon which the judgment was based. Upon filing the complaint, the court ordered the Superintendent of Real Estate to make the payment from the Real Estate Appraiser Recovery Fund, if the complainant presented proof of obtaining the judgment and of other facts pertinent to the case. The Superintendent could defend the action and move the court to dismiss the complaint, provided the Superintendent gave written notice to the complainant at least ten days before such a motion was made. A bonding or insurance company or a partnership, corporation, or association employing a person licensed, registered, or certified under Ohio's real estate appraiser law as part of its usual or occasional operations was excluded from recovering payments from the Fund.

The act provides that a bonding or insurance company or any partnership, corporation, or association that uses any tool to develop a valuation of real property for purposes of a loan, or that employs, retains, or engages as an independent contractor a person licensed, registered, or certified as a real estate appraiser in its usual or occasional operations may not seek an order directing, and is not eligible for, payment out of the Fund. The act requires that complaints seeking money from the Fund be filed in the Franklin County Court of Common Pleas, not in just any common pleas court. Further, the act eliminates the requirement that the Superintendent provide written notice of a motion to dismiss at least ten days before the motion is filed (regardless, under the Rules of Civil Procedure, a copy of any motion must be sent to the complainant).

Conservancy districts

Review in Supreme Court of exceptions to conservancy district appraisals

(Section 4)

The Conservancy Districts Law authorizes a property owner to file with a conservancy court exceptions to the report of a board of appraisers of a conservancy district or to any appraisal of benefits, damages, or land to be taken that may be appropriated under that Law (R.C. 6101.33, not in the act). If it appears to the satisfaction of the conservancy court, after having heard and

determined all of the exceptions filed, that the estimated cost of constructing the improvement contemplated in the conservancy district's official plan is less than the benefits appraised, the court must approve and confirm the board of appraisers' report; generally, such findings and appraisals are final and incontestable (R.C. 6101.34, not in the act).

The act provides that notwithstanding the above provision of the Conservancy Districts Law (hereinafter "the Law"), the owner of a parcel of land that is located in a conservancy district that includes all or parts of more than 16 counties, on which parcel an assessment was levied under the Law after January 1, 2007 (see "***Moratorium on certain conservancy district assessments***," below), who filed an exception to the assessment, which exception was denied, may have the denial reviewed in the Ohio Supreme Court so long as a notice of appeal is filed in that Court not later than 30 days after the act's effective date.

Moratorium on certain conservancy district assessments

(Section 5)

The Conservancy Districts Law authorizes the board of directors of a conservancy district to levy the following two types of assessments: (1) general assessments, to pay the cost of the execution of the district's official plan, and (2) an annual maintenance assessment, to maintain, operate, and preserve the reservoirs, ditches, drains, dams, levies, canals, sewers, pumping stations, treatment and disposal works, or other properties or improvements of the district; to strengthen, repair, and restore those improvements as necessary; and to defray the current expenses of the district. The act prohibits the board of directors of a conservancy district that includes all or parts of more than 16 counties from levying or collecting either type of assessment beginning on the act's effective date and until January 1, 2009, notwithstanding the Law. (R.C. 6101.48 and 6101.53, not in the act.)

The Law requires a county treasurer to collect an assessment levied under the Law and return it to the conservancy district that levied the assessment. The act prohibits a county treasurer from collecting either type of assessment levied by a conservancy district that includes all or parts of more than 16 counties, beginning on the act's effective date and until January 1, 2009, notwithstanding the Law. If necessary, a county treasurer must revise applicable tax bills. (R.C. 6101.48 and 6101.53, not in the act.) In addition, the act states that a parcel of land on which such an assessment is levied is not liable for the assessment, beginning on the act's effective date and until January 1, 2009, notwithstanding the Law. (R.C. 6101.48 and 6101.53, not in the act.)

Intent of moratorium and emergency clause

(Sections 6 and 8)

The act declares an emergency. It also provides that its provisions concerning the moratorium and the emergency clause imply the intent that the General Assembly will evaluate, with respect to a conservancy district that includes all or parts of more than 16 counties, the composition of the board of directors, the board's duties, the levying and collection of an assessment in the district, and the economic burden on the citizens in the district in order to determine whether the General Assembly should enact legislation by June 30, 2008, to revise the statutes governing such directors, such directors' duties, and the levying and collection of an assessment in such a district.

Extension of E-Check

(Section 7)

Prior to 2006, under contracts that were authorized by statute and that expired on December 31, 2005, the Ohio Environmental Protection Agency (OEPA) oversaw the implementation of an enhanced motor vehicle inspection and maintenance program in the Cincinnati area, the Dayton area, and the Cleveland-Akron area. The program operated under the name E-Check and was designed to comply with the federal Clean Air Act. Motor vehicle emissions inspections were conducted under the program by a contractor selected pursuant to requirements established in law enacted in 1993. There was a separate contract governing each metropolitan area in which the program was operating.

As indicated above, contracts for the original program expired at the end of 2005. At that time, it also became unnecessary to implement the E-Check program in the Cincinnati and Dayton areas for purposes of the federal Clean Air Act. However, E-Check was still necessary for the Cleveland-Akron area to achieve and maintain compliance with the Clean Air Act. Thus, with the enactment of Am. Sub. H.B. 66 of the 126th General Assembly, the General Assembly extended the E-Check program for that area. In providing for the continuation of the program, Am. Sub. H.B. 66 eliminated many of the specific statutory requirements related to the E-Check program, replacing those requirements in codified law with more general authority granted to OEPA. Under that authority, the Director was required to continue to implement an enhanced motor vehicle inspection and maintenance program in counties in which an enhanced program is federally mandated. The program was required to operate for a period of two years beginning on January 1, 2006, and ending on December 31, 2007, and was required to be substantially similar to the enhanced program

that was implemented in those counties under the contract that expired on December 31, 2005. (R.C. 3704.14, not in the act.)

Continuing law as enacted by Am. Sub. H.B. 66 also specifies that the Director of Environmental Protection is prohibited from implementing a motor vehicle inspection and maintenance program in any county other than a county in which the program is federally mandated. Further, the law states that the enhanced program established under the act expires on December 31, 2007, and cannot be continued beyond that date unless otherwise federally mandated. (R.C. 3704.14, not in the act.)

As indicated above, the E-Check program operating in the Cleveland-Akron area was scheduled to expire on December 31, 2007. In order to continue the authority to implement the program, the act establishes procedures under which the Governor may order the extension of the program beyond December 31, 2007. Under the act, the Governor, by executive order, may extend through June 30, 2008, the enhanced motor vehicle inspection and maintenance program that is operating on the effective date of the act in the counties comprising the Cleveland-Akron area. In addition, the Governor, by executive order, may extend the terms of any contract concerning that program in those counties through June 30, 2008. (Section 7.)

The act provides that if the Governor, in consultation with the Director of Environmental Protection, determines that the implementation of the enhanced motor vehicle inspection and maintenance program discussed above is necessary for the state to effectively comply with the requirements of the federal Clean Air Act after June 30, 2008, the Governor, by executive order, may order the program to be implemented from July 1, 2008, through June 30, 2009. The Director of Environmental Protection must select a vendor to operate the program during that time period via a competitive selection process established under continuing law. Upon the selection of a vendor by the Director, the Governor, by executive order, must authorize the Director to enter into a contract with that vendor to operate the enhanced program through June 30, 2009.

The act then provides that implementation of the E-Check extension goes into immediate effect because it depends on a previously made appropriation of money for current expenses of state government.

Emergency clause

(Section 8)

The act takes effect immediately under its emergency clause.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, H. Ways & Means	03-22-07
Passed House (99-0)	04-17-07
Reported, S. Ways & Means & Economic Development	12-12-07
Passed Senate (26-6)	12-12-07
House concurred in Senate amendments (71-21)	12-12-07

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