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Bill Analysis
Legislative Service Commission

H.B. 117

127th General Assembly
(As Introduced)

**Reps. Raussen, J. McGregor, Webster, Seitz, Peterson, Collier, Combs,
Wolpert, Stebelton**

BILL SUMMARY

- Requires each school district that levies an income tax to enter into an agreement for the collection and administration of that tax, on or before July 1, 2008, with: (1) the Department of Taxation (which currently administers all school district income taxes), (2) a municipal corporation that levies an income tax and is located within the territorial boundaries of the school district, or (3) the Central Collection Agency, the Regional Income Tax Agency, or another similar entity.
- Forbids disclosure of information acquired by any municipal corporation in administering a school district's income tax except as required by law, but permits a municipal corporation to compare this information against information pertaining to its municipal income tax to ensure compliance with both taxes.
- Authorizes entities other than the Department of Taxation administering a school district income tax to impose specified penalties.
- Requires claims for unpaid school district income taxes administered by entities other than the Department of Taxation to be filed in the municipal court of the municipal corporation in which the school district administrative offices are principally located or, if there is no such municipal court, in the court of common pleas of the county in which the school district offices are principally located.

CONTENT AND OPERATION

Current law

The board of education of any school district, except a joint vocational school district, may propose an income tax levy to the district's voters. The proposal may be submitted separately or in combination with a property tax levy and bond issue for permanent improvements. A school district income tax is levied on either of the following:

(1) Only earned income of resident individuals; or

(2) All school district income of resident individuals and resident decedents' estates. "School district income" is derived from an individual's or estate's "Ohio adjusted gross income," which is the state income tax base.

All school district income taxes currently are administered by the Department of Taxation in conjunction with the state income tax. School district income are remitted to the Department primarily in the form of employer withholding and estimated payments, in a manner similar to the state income tax. Every taxpayer liable for a school district income tax must submit to the Department a school district income tax return. This return is currently the same form for taxpayers in all school districts that levy school district income taxes. The money collected by the state on behalf of school districts is distributed back to the districts quarterly, except that 1.5% of the collections are retained by the state to defray the Department's costs of administering the districts' taxes.

Agreements for collection and administration of school district income taxes

(R.C. 5748.11 and 5748.16; conforming changes in R.C. 5747.021, 5747.03, 5747.112, 5748.03, 5748.06, and 5748.08)

The bill requires the board of education of each school district that levies an income tax to enter into a written agreement for the collection and administration of that tax for taxable years beginning in 2008 and any subsequent taxable years specified in the agreement. Each affected district board must enter into the agreement on or before July 1, 2008, with one of the following:

(1) The Department of Taxation;

(2) A municipal corporation that levies an income tax and at least 51% of the territorial boundaries of which overlap with the territorial boundaries of the school district; or

(3) The Central Collection Agency, the Regional Income Tax Agency, or another similar entity.¹

When a district board adopts a resolution to enter into, and when it actually enters into, an agreement with any authorized entity under the bill, it must certify to the Tax Commissioner a copy of the resolution or agreement immediately upon adoption or execution. If an affected board of education fails to enter into an agreement, the Department of Taxation is required to administer that school district's income tax until the board adopts a resolution entering into an agreement with another entity. (See **COMMENT**.)

Terms of the agreement

The agreement must specify all of the following:

(1) The entity designated to collect and administer the school district's income tax;

(2) That the entity must collect and administer the tax for taxable years beginning in 2008 and any additional taxable years for which the entity must collect and administer the tax, or that the responsibility is for "an ongoing period";

(3) The amount of fees to be charged by the entity that administers the tax. If the Department of Taxation administers the tax, the specified fees must be the amount prescribed under continuing law for the Department's administration of school district income tax collections: currently, 1.5% of the collections. The fee charged by other entities may not exceed the amount prescribed for the Department of Taxation.

Amendments; expiration

An agreement may be amended as mutually agreed to by the board of education and the entity with which the board contracts. In addition, either party may terminate the agreement with 90 days' notice to the other party. If an agreement is terminated or if it expires under its own terms, and the school district continues to levy a school district income tax, the district board must enter into a new agreement with one of the authorized entities.

¹ The Central Collection Agency is a cooperative tax collection and administration service operated by the City of Cleveland on behalf of 50 municipalities in Ohio (see www.ccatax.ci.cleveland.oh.us). Similarly, the Regional Income Tax Agency (R.I.T.A.) provides services to collect income taxes for 130 municipalities (see www.rita.to).

Powers of contractor

The bill specifies that an entity other than the Department of Taxation, with which a district board has entered into an agreement, will administer and collect that school district income tax as if the entity were the Tax Commissioner acting under the state income tax law (R.C. Chapter 5747.), except for the following:

(1) Administrative fees charged by the entity must be those specified in the agreement (but cannot exceed the percentage prescribed by law for the Department of Taxation);

(2) Taxes collected by the entity must be deposited directly in the School District Income Tax Collection Fund created by the district board (see below), instead of in the state treasury for quarterly distributions to school districts;²

(3) The entity has no authority to issue an "assessment" against an employer, taxpayer, or other party for failure to make school district income tax payments; and

(4) Unpaid taxes, penalties, and interest must be collected as prescribed in the bill, rather than as prescribed in the state income tax law (see "**Penalties for noncompliance**" and "**Claims for unpaid taxes**" below).³

School District Income Tax Collection Fund

(R.C. 5748.12)

The bill requires each school district board that enters into an agreement with an entity other than the Department of Taxation to establish a School District Income Tax Collection Fund to receive collections. The collecting entity must deposit the collections (less fees allowed to the entity under the agreement) in the fund within 24 hours of collecting them. Only the school district treasurer may withdraw moneys from the fund.

² Under continuing law, the Tax Commissioner deposits all school district income tax collections into a single fund in the state treasury (excepting fees for administration), from which the Director of Budget and Management makes the required quarterly payments to each district (R.C. 5747.03(C) and (D)).

³ R.C. 5747.13 and 5747.14 (neither section in the bill) authorize the Tax Commissioner to make an "assessment" against any taxpayer, employer, or qualifying entity that is responsible to pay, collect, or otherwise remit state or school district income tax proceeds. The Tax Commissioner through the Attorney General may then take actions to collect the amounts due, including bringing a lawsuit in the appropriate court of common pleas and entering into a settlement agreement.

Confidentiality of tax information

(R.C. 5748.13)

If the school district board enters into an agreement with a municipal corporation, the bill provides that the information acquired by the municipal corporation as a result of school district income tax returns or investigations, hearings, or verifications conducted in administering a school district's income tax is confidential. It prohibits any person from disclosing such information, except in accordance with a proper judicial order or in connection with the performance of that person's duties.⁴ On the other hand, the bill permits the municipal corporation to compare school district income tax information against information pertaining to its own municipal income tax to ensure that income is reported properly with respect to both taxes, and that municipal and school district income tax liabilities are paid in full.

The bill is silent as to the confidentiality of information acquired by tax collection entities. However, it appears that under a provision of continuing tax law, all entities collecting a school district income tax are required to hold confidential information acquired as a result of administering the tax. That provision specifies that any information the Tax Commissioner gains as the result of returns, investigations, hearings, or verifications required or authorized by R.C. Chapter 5747. is confidential, and that no person may disclose the information except for statutorily prescribed purposes, including, among others, "a proper judicial order" (R.C. 5747.18(C), not in the bill). Because the bill specifies that entities administer the school district income tax under Chapter 5747. in the same manner as the Tax Commissioner, except as otherwise provided, the confidentiality provisions of that chapter might apply to them. It further appears that the bill's specific provisions regarding a municipal corporation's use of the information only modify the existing, broader confidentiality provisions for the limited purpose described in the bill. Another provision of continuing law generally prohibits, except in specific statutorily described instances, agents of the Department of Taxation from divulging information as to the transactions, property, or business of any person acquired while acting or claiming to act under orders of the Department (R.C. 5703.21, not in the bill).

⁴ A similar provision of continuing law applies to information gained as a result of administering a municipal income tax (R.C. 718.13, not in the bill).

Penalties for noncompliance

(R.C. 5748.14)

The bill specifies civil penalties that an entity other than the Department of Taxation may impose in the collection and administration of a school district income tax.

Under the bill, if a taxpayer fails to pay any required amount of tax on or before the prescribed due date, except for estimated taxes, the entity may impose a penalty of the same amount that the Department of Taxation may impose for failure to timely pay school district income taxes. That amount may not exceed twice the rate per annum prescribed by the Tax Commissioner under continuing law--i.e., the "federal short-term rate" rounded to the nearest whole number per cent + 3 percentage points. (R.C. 5703.47 and 5747.08(G), neither in the bill.) The rate per annum for 2007 is 8%, so the penalty for 2007 would not exceed 16%.

Furthermore, if a taxpayer or employer files a substantially incorrect return, due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of the school district income tax, the entity may impose a penalty of up to \$500. Again, this is the same amount that may be imposed by the Department of Taxation for the same infraction relative to a tax return for school district income taxes.

Finally, if any person makes a false or fraudulent claim for a refund of school district income tax, the entity may impose a penalty of up to the greater of \$1,000 or 100% of the claim.

The bill provides that all or part of any penalty imposed by an entity may be abated if the taxpayer shows that the failure to comply was due to reasonable cause and not willful neglect.

Claims for unpaid taxes

(R.C. 5748.15)

The bill provides that claims for unpaid school district income taxes, including penalties and interest on those unpaid taxes, administered by entities other than the Department of Taxation must be filed in the municipal court of the municipal corporation in which the administrative offices of the school district levying the tax are principally located. If there is no such municipal court, the claim must be filed in the court of common pleas of the county in which the school district offices are principally located. The bill grants those courts exclusive,

original jurisdiction over actions to collect unpaid school district income taxes administered by an entity other than the Department of Taxation.

COMMENT

Agreements under the bill may be entered into as late as July 1, 2008. Therefore, collections (such as withholding of taxes on payroll and periodic estimated payments) for a school district income tax might be administered during the first part of 2008 by the Department of Taxation and the remainder of 2008 by another entity with which the district has entered into an agreement.

All collections for taxable years ending in 2007, including the processing of returns from January 1 through April 15, 2008, would be administered by the Department.

HISTORY

ACTION	DATE
Introduced	03-20-07

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