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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 18\*  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for S.B. 18's Fiscal Note](#)

**Version:** As Reported by Senate Ways and Means

**Primary Sponsor:** Sens. Roegner and Schaffer

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### SUMMARY

- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 27, 2020.
- Exempts “second draw” paycheck protection program (PPP) loan amounts forgiven under the Consolidated Appropriations Act, 2021 from the commercial activity tax (CAT).
- Authorizes a CAT exemption for Bureau of Workers’ Compensation (BWC) dividends paid to employers, beginning with dividends paid in 2020.
- Declares an emergency.

### DETAILED ANALYSIS

#### Incorporation of Internal Revenue Code changes

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 27, 2020.<sup>1</sup>

Several changes to federal law are incorporated, including several changes made by the “Consolidated Appropriations Act, 2021,” H.R. 133 of the 116<sup>th</sup> Congress, in December of 2020 (referred to in this analysis as “CAA 2021”). Several of these changes directly affect the tax base of many Ohio income tax taxpayers by increasing or decreasing federal adjusted gross income

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\* This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

<sup>1</sup> R.C. 5701.11(A).

(FAGI), the starting number for determining a taxpayer's Ohio taxable income.<sup>2</sup> The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI.<sup>3</sup>

The following is a list of some of the most significant of the federal law changes affecting Ohio law:

### **Changes affecting individuals**

- A temporary look-back rule for determination of earned income for purposes for the earned income tax credit (EITC). (Ohio allows a piggy-back credit based on a taxpayer's federal EITC.)
- The extension of an exclusion from gross income for the discharge of indebtedness of a qualified principal residence.
- An extension of the temporary allowance of a deduction for charitable contributions by nonitemizers.
- A clarification that the educator expense tax deduction includes expenses for personal protective equipment and other supplies related to the prevention of the spread of COVID-19.
- An exclusion for emergency financial aid grants.
- The transition from a deduction for qualified tuition and related expenses to an increased phase-out threshold of the Lifetime Learning Credit.
- Temporary special rules for health and dependent care flexible spending arrangements.

### **Changes affecting businesses**

- The allowance of a 30-year depreciation period for certain residential rental property.
- The temporary allowance of a full deduction for business meals (generally, business meals are only 50% deductible).
- A clarification of the tax treatment of Paycheck Protection Program loan forgiveness, including a clarification that expenses paid with covered loans can be deductible.
- An extension of the payment deadline for certain deferred payroll taxes (including certain self-employment taxes).
- The extension of the work opportunity tax credit. (Ohio allows a deduction for employee wages that could not be deducted from the business owners' FAGI due to the work opportunity credit.)

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<sup>2</sup> R.C. 5747.01(A), not in the bill.

<sup>3</sup> R.C. 5748.01(E), not in the bill.

- The extension of an exclusion for certain employer payments of student loans.

### **Reason for incorporation**

Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.<sup>4</sup> The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

If federal tax law amendments are not incorporated, an affected taxpayer would have to adjust the taxpayer's federal adjusted gross income or taxable income, either by adding or subtracting the relevant amounts, in order to compute the taxpayer's Ohio tax liability.

### **Alternative tax law election**

The bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after March 30, 2018, and before March 27, 2020, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The two March dates are the dates of the two most recent incorporations.) The election was available to taxpayers who were subject to the personal income tax and to electric and telephone companies that are subject to municipal income taxes.

The bill allows this election to be made for a taxpayer's taxable year ending after March 27, 2020, but before the incorporation provision's effective date. The bill retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.<sup>5</sup>

## **Commercial activity tax (CAT) exclusions**

### **Exemption for forgiven PPP loan amounts**

The bill exempts "second draw" paycheck protection program (PPP) loan amounts forgiven under the CAA 2021 from the commercial activity tax (CAT). A similar exemption already exists for "first draw" PPP loan amounts forgiven under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>6</sup> Under continuing law, similar to federal income tax law, forgiven debt is generally considered to be taxable gross receipts for purposes of the CAT.

The CARES Act allowed businesses affected by the coronavirus pandemic to apply for PPP loans. In December of 2020, the CAA 2021 expanded the program to allow some businesses that received a PPP loan under the CARES Act to apply for a "second draw" loan. For both types of loans, the debt will be forgiven if the loan is used for payroll costs or mortgage, rent, or utility payments during an 8- or 24-week period beginning with the loan's origination. Such

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<sup>4</sup> See *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

<sup>5</sup> R.C. 5701.11(B).

<sup>6</sup> Section 36 of H.B. 481 of the 133<sup>rd</sup> General Assembly.

canceled debt is not taxable for federal income tax purposes, whereas most forgiven debt is considered taxable income.<sup>7</sup>

### **Exemption for BWC dividends**

The bill authorizes a CAT exemption for Bureau of Workers' Compensation (BWC) dividends paid to employers, beginning with dividends paid in 2020.<sup>8</sup>

Under continuing law, the BWC is required to develop a procedure for the return of excess workers' compensation premiums to employers if the board of directors determines that the surplus of earned premiums over losses is larger than needed to maintain solvency. Currently, such payments, referred to as "dividends," are considered to be taxable gross receipts for purposes of the CAT.<sup>9</sup>

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## **HISTORY**

Action	Date
Introduced	01-26-21
Reported, S. Ways & Means	---

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<sup>7</sup> Section 276 of the CAA 2021 and Section 1106(i) of the CARES Act.

<sup>8</sup> R.C. 5751.01(F)(2)(nn) and Section 5.

<sup>9</sup> R.C. 4123.321, not in the bill.