



Joseph W. Testa, Tax Commissioner

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Individual Income Tax / Pass-Through Entity Tax: HB 59 Modifications Impacting Taxpayers Subject to Ohio Income Tax

On June 30, 2013, Amended Substitute House Bill 59 (HB 59) of the 130th General Assembly (also known as the fiscal year 2014-2015 biennial budget bill) was signed into law. HB 59 contains the following modifications and additions to the law that impact taxpayers subject to Ohio income tax:

Income Tax Rate Reductions

HB 59 reduces income tax base amounts and rates by 8.5% in taxable year 2013, an additional .5% to total 9% in taxable year 2014, and an additional 1% to total 10% in taxable year 2015. *See ORC 5747.02.* More information regarding corresponding changes to employer income tax withholding tables will be forthcoming, as these changes will not occur until September 2013. Beginning September 2013, taxpayers will see a reduction in the Ohio income tax withholding from their paychecks.

New 50% Small Business Income Deduction

For taxable years beginning on or after January 1, 2013, an individual taxpayer filing the IT1040 is allowed a deduction amounting to 50% of the taxpayer's Ohio small business income of up to \$250,000. The deduction cannot exceed \$62,500 for each spouse filing separately or \$125,000 for all other taxpayers. Ohio small business investor income means the portion of a taxpayer's adjusted gross income that is business income reduced by deductions from business income and apportioned or allocated to Ohio under ORC 5747.21 and 5747.22 to the extent not otherwise deducted or excluded in computing federal or Ohio Adjusted Gross Income for the taxable year. As such, net business income as reported on the taxpayer's federal 1040 Schedules C, E and F will be used in calculating the deduction. The deduction will be available on Schedule A of the IT1040. Additional clarification regarding how this deduction is calculated will be forthcoming. Note that the deduction will not impact the calculation of a taxpayer's school district income tax liability. Instead, it will be added back to Ohio Taxable Income for school district income tax purposes. *See ORC 5747.01(A)(31), 5747.21, 5747.22 and 5748.01(E)(1)(a).*

Means Testing of \$20 Personal Exemption Credit

For taxable years beginning on or after January 1, 2013, the \$20 personal exemption credit is only available to taxpayers with Ohio Taxable Income of less than \$30,000 on either an individual or joint return. Ohio Taxable Income is defined as Ohio Adjusted Gross Income less exemptions. The credit will continue to be available to eligible taxpayers on line 9 of the IT1040. *See ORC 5747.022.*

Ability to Take Deduction for Same Dependent on Two Returns Eliminated

For taxable years beginning on or after January 1, 2014, taxpayers are prohibited from claiming either a personal exemption or a \$20 personal exemption credit on their returns if they are being claimed as a dependent on the federal income tax return of another taxpayer. *See ORC 5747.022 and 5747.025.*

New Ohio Earned Income Tax Credit

For taxable years beginning on or after January 1, 2013, a non-business non-refundable earned income tax credit is available for taxpayers who were eligible for the Federal Earned Income Credit (FEIC) on their federal 1040 returns. The Ohio Earned Income Tax Credit (OEITC) is equal to 5% of the taxpayer's FEIC. However, if the taxpayer's Ohio Taxable Income (Ohio Adjusted Gross Income less exemptions) exceeds \$20,000 on either an individual or joint return, then the credit is limited to 50% of the tax otherwise due after deducting all other credits that precede the credit except for the joint filing credit. For taxable years beginning on or after January 1, 2013, taxpayers must have earned income and Federal Adjusted Gross Income (FAGI) of less than the following amounts to be eligible for the FEIC:

- \$46,227 (\$51,567 married filing jointly) with three or more qualifying children
- \$43,038 (\$48,378 married filing jointly) with two qualifying children
- \$37,870 (\$43,210 married filing jointly) with one qualifying child
- \$14,340 (\$19,680 married filing jointly) with no qualifying children

Concurrently, the maximum FEIC amounts that these taxpayers can be allowed to take on their federal returns will be the following:

- \$6,044 with three or more qualifying children
- \$5,372 with two qualifying children
- \$3,250 with one qualifying child
- \$487 with no qualifying children

As such, the maximum OEITC amount allowable to taxpayers on their state returns in taxable year 2013 is \$302 (5% of \$6,044). The credit will be available to eligible taxpayers on the 2013 IT1040 Schedule B. More guidance on how taxpayers can calculate this credit will be forthcoming. *See new ORC 5747.71.*

Military Retirement Pay Deduction Expanded

Beginning in taxable year 2014, taxpayers who receive retirement income related to uniformed service in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS) are allowed a deduction for the entire amount of such pay to the extent it is included in FAGI. This deduction can be taken on Schedule A, line 37b of the IT1040. Prior to this change, the deduction was only available to former service members of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps receiving military retirement pay. *See ORC 5747.01(A)(26).*

Wagering Loss Deduction Repealed

The wagering loss deduction that was slated to be effective for taxable year 2013 is now repealed. The item would have allowed taxpayers to deduct losses from wagering transactions included in FAGI that were allowed as an itemized deduction for federal purposes under IRC 165 and that the taxpayer deducted in computing federal taxable income. Due to HB 59's repeal of the provision, no wagering loss deduction will be available for taxpayers in 2013 or thereafter. See *ORC 5747.01(A)(29)*.

Income Tax Apportionment for Non-Residents Clarified

Effective for taxable year 2013, HB 59 clarifies that non-resident taxpayers are allowed a credit equal to the amount of tax otherwise due on the portion of adjusted gross income not *apportionable* to Ohio. Prior to this change, the term "allocable" was used, but not "apportionable". This change makes the provision consistent with the income tax apportionment provisions in *ORC 5747.20 to 5747.23*. See *ORC 5747.05*.

\$1 Minimum for Tax Payments and Refunds

Effective September 29, 2013, the Tax Commissioner is excused from issuing any tax refund if the amount of the refund is \$1 or less. Concurrently, taxpayers are excused from paying a tax if the total amount due with the taxpayer's return is \$1 or less. Currently, the \$1 minimum applies only to income tax, employer withholding, and pass-through entity income tax withholding. See *ORC 5703.75, 5747.08, 5747.10, and 5747.11*

Calculation of Interest on Refunds Upon Filings of Returns or Reports

With respect to income tax refunds upon filings of returns or reports, the law prior to HB 59 mandated the accrual of refund interest only if the Tax Commissioner does not refund the overpayment within 90 days after the due date of the taxpayer's return or the date the return was actually filed, whichever is later. If interest was allowed, it accrued from *90 days from the due date of the taxpayer's return or the date the return was actually filed, whichever is later*, until the refund payment date.

Effective September 29, 2013, HB 59 eliminates *ORC 5747.11(C)(1)*, which is repetitive in part of (C)(2) and makes other minor technical edits to *ORC 5747.11*. It continues to not require interest on refund payments made by the Commissioner within the aforementioned 90 day period. However, if interest is allowed, it now requires calculation of the interest to begin from *the date of the overpayment* until the refund payment date. The bill does not, however, modify the calculation of interest on payments of illegal or erroneous assessments. See *ORC 5747.11*.

Ability of Nonresident Pass-Through Entity Investors to File IT1040

For taxable years beginning on or after January 1, 2013, all nonresident investors in a pass-through entity on whose behalf the entity files an Ohio composite return (IT4708) and pays tax may now file an individual return (IT1040) and claim the refundable credit for taxes the entity paid on the investor's behalf. These include nonresident investors with no other Ohio-sourced income who currently are not

required or permitted to file an individual return if the entity files the composite. Note that in light of this change, the Department will be retracting the Business Tax Division Alert issued on August 10, 2011, which formerly precluded nonresident individual investors participating in a composite and having no other Ohio-sourced income from filing an IT1040 return. *See ORC 5747.08.*

Modification of Requests for Alternative Apportionment of Income

For taxable years beginning on or after January 1, 2013, individuals and pass-through entities who intend to submit requests for alternative apportionment are now required to submit such requests with a timely filed return or amended return. Prior to this change, the request was not required to be submitted by the return's due date. Also, HB 59 makes a technical correction to clarify that taxpayers may request the alternative to also effectuate equitable "apportionment" of business in Ohio and not only equitable "allocation". *See ORC 5747.21.*

Modification to the Job Creation Tax Credit

Continuing law authorizes the Tax Credit Authority (TCA) to grant job creation tax credits (JCTCs) against the income tax. Currently, a taxpayer that has entered into an agreement with the TCA for a JCTC on the basis of home-based employees must report to the development services agency the number of employees and home-based employees employed by the taxpayer in Ohio. Beginning in 2014, the reporting date is now modified from January 1 to March 1 of each year. The refundable JCTC is taken on forms IT1040 or IT4708. *See ORC 122.17 and 5747.058.*

Modification to the Job Retention Tax Credit

Continuing law authorizes the TCA to grant job retention tax credits (JRTCs) against the income tax. Qualifying businesses having a capital investment project and retaining a specified number of full-time equivalent employees or maintaining a certain payroll threshold can be entitled to the JRTC. Effective September 29, 2013, the JRTC is now extended to eligible businesses whose principal place of business is not located in the same political subdivision as the capital investment, as long as the business maintains a unit or division with at least 4,200 employees at the project site. Generally, JRTCs are nonrefundable. However, between July 1, 2011, and December 31, 2013, the TCA may grant refundable JRTCs to eligible businesses that meet certain additional criteria. The JRTC is taken on forms IT1040 or IT4708. *See ORC 122.171 and 5747.058.*

Technology Investment Tax Credit Eliminated

Effective September 29, 2013, the Technology Investment Tax Credit for Ohio taxpayers who invest in certain research and development or technology-oriented businesses is no longer available. However, taxpayers who are currently carrying forward an excess credit amount from prior years may continue to do so until the amount is exhausted within the 15 year carry forward period allowed by law. *See ORC 122.152 and 5747.33.*

Calculation of Post-Assessment Interest Modified

Effective September 29, 2013, interest that is charged after an assessment has been issued will be calculated based on the assessment tax liability only. The interest will no longer be calculated on the penalty and pre-assessment interest amounts. Therefore, the requirement of calculating interest on interest and penalties has now been removed until an assessment becomes certified to the Ohio Attorney General for collection. Interest after certification will continue to be calculated on the entire unpaid portion of the assessment. *See ORC 5747.13.*

Change in Electronic Notice or Order Delivery Requirement

Under current law, the Tax Commissioner may serve a tax notice or order upon a person through secure electronic means with the recipient's consent. If the recipient does not access the notice within ten business days after service, the Tax Commissioner is currently required to then serve it by certified mail, personal service, or delivery service. Effective September 29, 2013, the Commissioner may deliver the notice or order to the intended recipient by ordinary mail after a second attempt to deliver through electronic means is unsuccessful. *See ORC 5703.37(B)(2).*

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Should you have any questions concerning how HB 59 may affect your Ohio income tax liability or your business, contact your designated tax professional or visit tax.ohio.gov. You may also submit a question to the Ohio Department of Taxation using the "Contact Us" option on the website.

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