



Tax Law Alert

A Corporate Department Publication

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Ohio's Two-Year Budget Contains A Number of Important Tax Provisions

Ohio's two-year budget for fiscal years 2012 and 2013 contains a number of important Ohio tax benefits. The budget contains no tax increases or major new revenue raisers.

Eventual Death of the Ohio Estate Tax

The Ohio estate tax will be repealed for estates of individuals dying on or after January 1, 2013. Until that time, Ohio will continue to impose a graduated estate tax on estates valued at more than \$338,333, which is the lowest value threshold for estate taxes in the nation. Once the estate tax is repealed, Ohio will join the majority of other states that do not have an estate tax.

Ohio Tax Amnesty Programs

A brief tax amnesty program will be offered for most taxes administered by the Ohio Department of Taxation from May 1 to June 15, 2012. Under the amnesty program, taxpayers with certain unpaid and unreported Ohio taxes – including personal income tax, corporate franchise tax, commercial activity tax, vendor's sales tax, dealers in intangibles tax, natural gas company excise tax, motor fuel tax, cigarette tax, school district income tax, and estate tax—will generally be able to pay back taxes and one-half of the interest owed and avoid the other half of interest and penalties. This amnesty applies only to such taxes that were due, unpaid, and unreported as of May 1, 2011 and does not apply to taxpayers who have received tax bills, tax assessments, are under audit, or have been notified of selection for audit. Other benefits of participating in the amnesty program include avoiding criminal penalties. The taxpayer must make the required payments within the May 1, 2012 to June 15, 2012 amnesty period in order to qualify for the benefits of the tax amnesty program. Details regarding other timing requirements, admission into the program, and tax return filing obligations have yet to be released.

A separate tax amnesty program will be available from October 1, 2011 through May 1, 2013 for Ohio consumer's use tax (which is a corollary to the sales tax and is paid for purchases made for which no Ohio sales tax was collected). This amnesty program applies to use taxes owed on and after January 1, 2009. Participants must pay all use tax due from January 1, 2009 to the filing date.



Abatement of past taxes, interest and penalties will depend on when, if ever, the consumer established a use tax account. It may be possible for taxpayers to pay unpaid Ohio consumer use taxes disclosed through the amnesty program through an installment plan. A previous Porter Wright Law Alert titled "[Ohio Department of Taxation to Focus on Use Tax Compliance](#)" discussed the Use Tax Educational Program currently underway in Ohio.

Taxpayers should note that in some situations, a voluntary disclosure agreement under longstanding Department policies could be more advantageous than the tax amnesty programs.

New Tax Credit for Certain Ohio Investments

The budget bill contains a new Ohio tax credit program for investing in certain small Ohio companies. Under the "InvestOhio" program, Ohio individual taxpayers will receive a tax credit for qualified investments in Ohio "small business enterprises." An individual's investment may be made through a pass-through entity. The maximum tax credit an individual may obtain in any fiscal biennium is \$1 million (\$2 million per couple if married filing jointly and if both spouses hold qualified investments) and the program is capped at \$100 million in total expenditures to the state in each fiscal biennium. For tax credits to be available, the investment must be made on or after July 1, 2011 and held for at least two years if made before June 30, 2013 or for five years if made after that date. The credit, equal to 10 percent of the qualified investment, is not received until after the end of the holding period. The tax credit is nonrefundable and nontransferable but any unused portion of the credit may be carried forward for up to seven tax years.

For an investment to be eligible for the InvestOhio tax credit, it must be an equity investment made in a corporation, partnership, LLC, or other business entity that has at least 50 employees in Ohio or a majority of its employees in Ohio, and the company must have either assets of \$50 million or less at the time of investment, or sales of less than \$10 million at the time of the investment.

The recipient business must invest an amount at least equal to the taxpayer's investment within six months of receiving it in order for the tax credit to be available to the investor. Qualified purchases or investments by the recipient company include: (i) tangible personal property used in business in Ohio; (ii) real property located and used in business in Ohio; (iii) intangible personal property used in business primarily in Ohio; or (iv) compensation for newly-hired or retained rank-and-file employees in Ohio who are subject to Ohio personal income tax withholding.

The Ohio Department of Development will initially administer the program and issue the tax credits. Because the tax credits are limited, earlier investments and requests for certification are suggested. Details regarding how companies will be certified and the timing of investments have not been released, although we expect additional guidance in the future.

Renewal and Expansion of Ohio Historic Rehabilitation Tax Credit

The Ohio tax credit for the rehabilitation of historic buildings, previously set to expire July 1, 2011, was made permanent under the budget bill. Sixty million dollars of Ohio historic tax credits, in total for all selected projects, will be available during each fiscal year. Under the renewed program, insurance company investors will be eligible for the credit. New requirements will apply regarding user fees, deadlines for obtaining financing, and tax credit repayment if projects are not timely completed. The Department of Development will continue to administer the program.

Other Tax Credits and Extensions

The exemption for qualified alternative energy projects has been extended for two years. To obtain the credit, taxpayers must meet application and construction commencement deadlines and the facility must be in operation by January 1, 2015.

Up to \$25 million of new refundable job retention tax credits will be available to certain businesses with large payrolls in Ohio. The credits will be usable against the commercial activity tax, the corporate franchise tax (which now applies only to certain types of corporations), and the personal income tax.

New sales tax exemptions have been implemented for certain computer data center businesses and for certain gift certificates and gift cards issued in connection with customer loyalty or promotional programs.

Personal Income Tax Rate Reduction

The budget bill did not further delay the last step in the gradual reduction of the Ohio personal income tax rate. A decrease of the top rate from 6.24 percent to 5.925 percent will therefore be effective for 2011 and later years.