

TAX ALERT

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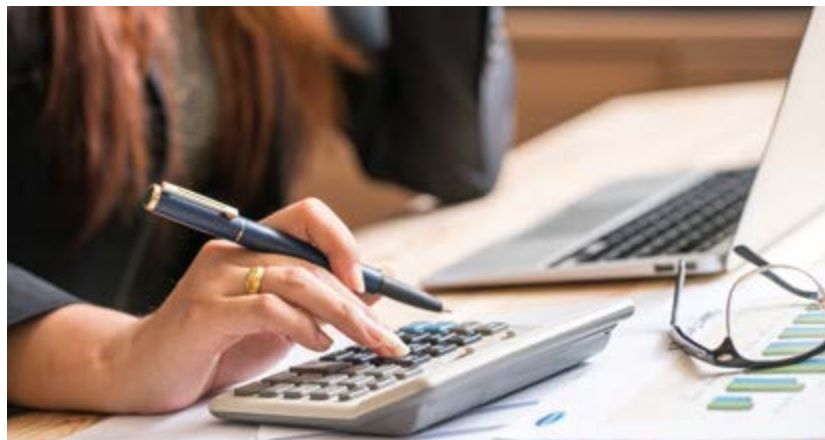
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Ohio budget bill contains some important tax changes



The 2017 through 2019 Ohio budget bill as enacted does not contain the significant sales tax increase and personal income tax decreases requested by the governor. It does, however, contain a few important tax-related provisions.

All Ohio taxes -- Elimination of direct appeal to Supreme Court

Previously, most Ohio tax cases could be appealed directly from the Ohio Board of Tax Appeals (BTA) to the Ohio Supreme Court. It has been widely believed that the Ohio Supreme Court did not like being required to hear a large number of fairly mundane property tax valuation cases. Under the new law, an appeal from a BTA decision—whether initiated by the taxpayer or a governmental entity—must be taken to the Court of Appeals for the county in which the taxpayer resides. The new law applies not only to property tax cases but to all BTA cases, which can include Ohio income tax, sales and use tax, public utility tax and commercial activity tax disputes. A party may petition the Supreme Court to have the case transferred to the Supreme Court if the case presents a constitutional issue or an issue of significant public interest. The Supreme Court has discretion whether to accept the case or not. Appeals from the Court of Appeals may continue to be made to the Supreme Court.

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Ohio sales tax

Under the new law, a non-Ohio-based seller is deemed to have “substantial nexus” with Ohio, thereby being required to collect sales tax on sales to customers in Ohio, if the seller has annual Ohio gross receipts in excess of \$500,000 and it either places “cookies” on its Ohio customers’ computers or it employs a system of network servers in Ohio.



Counting cookies and in-state network services as a “physical presence” means that Ohio is pushing the sales tax nexus envelope.

Counting cookies and in-state network services as a “physical presence” means that Ohio is pushing the sales tax nexus envelope. Some taxpayer is likely to challenge the new Ohio law as violating *Quill Corp. v. North Dakota*, a 1992 U.S. Supreme Court case that held that an in-state physical presence is necessary before an out-of-state taxpayer has nexus with a state for sales tax collection purposes. That said, cookies or in-state servers might satisfy *Quill’s* physical presence requirement. The Department of Taxation [recently argued](#) that those things are a physical presence in Ohio in support of Ohio’s commercial activity tax bright-line nexus standard in *Crutchfield Corp. v. Testa*. In *Crutchfield*, the Ohio Supreme Court held that Ohio’s statutory bright-line nexus standard for the CAT was sufficient to create substantial nexus, so the Ohio Supreme Court did not have to address the department’s cookies argument.

Ohio municipal income tax

The new law allows business taxpayers to elect centralized collection and administration of municipal income tax on business income through the Ohio Business Gateway and the Ohio Department of Taxation. The new law does not allow centralized collection or administration of business’s withholding tax obligations on their employees’ wages. Distributions of tax collected by the Department of Taxation will be made monthly to the municipalities. The new law also eliminates the so-called “throw-back”

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rule for the tangible personal property allocation factor of the municipal income tax.

Ohio CAUV real property tax

Changes were made to the manner in which agricultural property under the CAUV program is valued, including changes in the equity yield rate. These changes are anticipated to generally reduce taxable values.

Most Ohio taxes – Tax amnesty

The Ohio Department of Taxation will offer a temporary tax amnesty program from Jan. 1, 2018, to Feb. 15, 2018. The tax amnesty covers for all delinquent state taxes (e.g., commercial activity, sales and use, personal income) and local taxes administered by the state (transit authority taxes and school district income taxes) that were due and payable as of May 1, 2017. Under the amnesty program, the Department of Taxation will waive all penalties and half of the normal interest amount. The program does not apply if an assessment or audit has commenced.

For more information or assistance, please contact [Mark Snider](#), [Dave Tumen](#) or any member of Porter Wright's [Tax Practice Group](#).

