State and Local Tax Alert: Governor Kasich Signs Mid Biennium Budget Bill and Legislation with Additional Tax Changes

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On June 16, 2014, Governor Kasich signed Substitute House Bill 483 (HB 483), the primary mid-biennial review bill for the current State biennium, and amended Substitute House Bill 492 (HB 492), which includes several tax law changes. The most significant tax law changes contained in HB 483 and HB 492 are described in this Alert.

HB 483

Among the procedural and substantive tax provisions in HB 483 are:

Real Property Tax. HB 483 contains amendments that:

1. Exempt property that is owned by a federally tax-exempt charitable organization, provided such property is used exclusively for receiving, processing or distributing human blood, tissue, eyes, or organs or for related research and development.
2. Include in the definition of "public infrastructure improvements" for tax increment financing purposes "the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes."

A prior version of HB 483 contained an additional exemption for certain owners of certified historic buildings and contained limitations on the filing of board of revision complaints by certain entities, but that language was removed from the final version of HB 483.

Public Utility Personal Property Tax. A prior version of HB 483 contained language that proposed to tax property owned by a water-works company that was first subject to tax in 2014 or thereafter at 25% of true value rather than 88% as current law would otherwise require, but that language was vetoed by Governor Kasich.

Sales Tax. HB 483 contains amendments that modify the conditions under which a vendor and the Tax Commissioner can enter into a prearranged agreement for remitting sales tax. The agreement will be based on proportions and ratios determined by a test check conducted by the Tax Commissioner or by any other method agreed to by the vendor and the Tax Commissioner. A prior version of HB 483 contained language that authorized the Ohio Department of Taxation to disclose certain sales and use tax information to counties, but that language was vetoed by Governor Kasich.

Municipal Income Taxation. A prior version of HB 483 would have required municipal corporations to annually report to the Ohio Tax Commissioner the amount of taxes paid by resident individuals and nonresident individuals, but that language was removed from the version of HB 483 that was enacted.

Income Tax. HB 483 contains amendments that:

1. Make the 2015 marginal income tax rate reductions that were enacted in last year's budget bill effective as of January 1, 2014.
2. For 2014 only, increase the amount of the small business investor deduction from 50% to 75% of an individual's Ohio-sourced business income.
3. Increase the deduction for personal and dependent exemptions for individuals with adjusted gross income that is less than or equal to $80,000. These amounts would be indexed for inflation annually beginning in 2016.

Historic Rehabilitation Tax Credit. HB 483 contains amendments that:

1. Authorize the Director of Development Services to issue one tax credit certificate per state fiscal biennium to an applicant owning a "catalytic project," defined as the rehabilitation of a historic building that will foster economic development within 2,500 feet of the building. The total tax credit could be up to $25 million although the certificate owner would be limited to claiming tax credits of $5 million per year.
2. Temporarily allow C corporations receiving a tax credit certificate after December 31, 2013 but before June 30, 2015 to claim the tax credit against the commercial activity tax.

With the exception of the above-described sales and use tax amendment, which takes effect November 3, 2014, the remaining tax-related amendments contained in HB 483 take effect 90 days after the bill is filed with the Secretary of State – approximately late September 2014.

<u>HB 492</u>

HB 492 also contains procedural and substantive tax provisions, including:

Petroleum Activity Tax. HB 492 made a host of changes to this new tax that takes effect on July 1, 2014. In particular, HB 492 contains amendments that:

1. Change the tax base from actual gross receipts to "calculated gross receipts." The new tax base is equal to the product of the supplier's total gallons sold during the calendar quarter and the average wholesale price of a gallon of unleaded regular gasoline (or diesel as the case may be) for the calendar quarter as published by the Tax Commissioner.

2. Clarify that the taxable “first sale” of motor fuel occurs when sold to a point outside a distribution system without regard to where title transfers or other conditions of sale, for delivery to a location in Ohio as shown on a bill of lading or other similar document issued by the terminal, refinery, or supplier.
3. Exclude from a “first sale” receipts realized from motor fuel exchanges between two or more suppliers or dealers occurring at a refinery, terminal, pipeline, or marine vessel for no monetary compensation other than for differences in product location, grade, or handling.
4. Clarify that the petroleum activity tax statutes do not prohibit a taxpayer from billing or invoicing the tax to motor fuel purchasers.
5. Subject to the tax only those businesses with a “substantial nexus” to Ohio. This is the same standard Ohio law uses to determine businesses subject to the commercial activity tax.

Motor Fuel Excise Tax. HB 492 contains amendments allowing the Tax Commissioner to require electronic payment and penalties for noncompliance therewith, and allowing the Tax Commissioner to provide retail dealers with a wholesale dealer’s FEIN or motor fuel tax account number to assist the retailer dealer with receiving a refund for fuel lost through shrinkage and evaporation.

Tax Credits. HB 492 contains amendments that:

1. Allow the state job creation and job retention tax credits to be claimed against the petroleum activity tax.
2. Permit municipal corporations to award job creation or retention tax credits to taxpayers even if such taxpayers are not recipients of a corresponding state tax credit.
3. Permit municipal corporations to offer refundable job retention tax credits.
4. Reduce the required holding period for investments qualifying for “InvestOhio” tax credits from five years to two years.
5. Allow the Director of Development Services to reduce the amount, percentage, or term of a research and development loan tax credit if the Director determines the borrower is in default under the loan agreement, lease, or other instrument governing repayment of the loan.

Tax Overpayments. A prior version of HB 492 would have imposed a new duty on the Tax Commissioner to review taxpayer accounts and inform taxpayers of credit account balances at least 60 days prior to the date the statute of limitations for requesting a refund would expire. Furthermore, the Tax Commissioner would have been authorized to apply credit account balances to the taxpayer’s future tax periods with respect to the tax in question or simply issue the taxpayer a refund notwithstanding the normal processes by which taxpayers are required to request a refund. Those provisions were removed from HB 492, but were enacted in amended Substitute Senate Bill 263.

HB 492 makes a host of changes that generally apply to tax periods beginning on or after July 1, 2014. There are some amendments in HB 492, however, that do not take effect until July 1, 2015 (e.g., the change to “calculated gross receipts” for purposes of the petroleum activity tax). All of the other above-described amendments take effect 90 days after the bill is filed with the Secretary of State – approximately late September 2014.

HB 483 and HB 492 would make other less significant law changes to the taxes and topics discussed above. In this regard, our Alert is detailed but not comprehensive. If you have questions about HB 483 and HB 492 and how these proposed law changes might affect your business, please contact your Vorys attorney or Anthony L. Ehler at (614) 464-8282, David A. Froling at (614) 464-3022, Chris L. Connelly at (614) 464-8244, or John S. Petzinger at (614) 464-5696.