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State and Local Tax Alert: Ohio Budget Bill Tax Provisions – Business Community Dodges A Bullet But More Battles to Come In 2016

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On June 30th Governor Kasich signed Ohio's 2016-2017 biennial budget. Amended Substitute House Bill 64 (HB 64) contains a few noteworthy tax reforms. That said, HB 64 is more noteworthy for the tax reforms the General Assembly considered but ultimately discarded -- a commercial activity tax (CAT) rate increase, severance tax reform, sales tax rate increase, and sales tax base expansion. Unfortunately we anticipate the discarded reform ideas are not going away. In fact, HB 64 sets these issues up for future consideration. Thus the message coming out of this budget season is: stay tuned and be ready.

2020 Tax Review Commission

HB 64 created the "Ohio 2020 Tax Policy Study Commission" which is to be comprised of six legislators and one governor appointee. HB 64 tasks the Commission with reviewing the state's tax structure and tax policies, including every tax credit, for the purpose of making the following recommendations:

1. How to maximize Ohio's competitiveness by the year 2020.
2. How to transition Ohio's personal income tax to a flat tax of 3.5% or 3.75% by the year 2018.
3. How to make the Historic Rehabilitation Tax Credit more efficient and effective. *The Commission must submit its recommendations regarding the credit to the General Assembly by October 31, 2016.*
4. How to reform Ohio's severance tax in a way that maximizes competitiveness and enhances the general welfare of the state. *The Commission must submit its severance tax recommendations to the General Assembly by October 1, 2015.*

Relative to maximizing Ohio's competitiveness we anticipate the Commission will focus on changes to "modernize" the CAT tax by considering (i) increasing the tax rate for certain industries; (ii) lowering the tax rate for certain industries; and (iii) exempting certain industries from CAT and creating a new tax for such industries (i.e., similar to what the General Assembly did in 2013 for the petroleum industry in

connection with enacting the petroleum activity tax). We also anticipate the Commission will evaluate the merits associated with (i) adding/modifying/repealing certain sales tax exemptions; (ii) identifying additional services that should be subject to sales tax; (iii) increasing the sales tax rate; (iv) reforming the pass-through entity withholding tax; and (v) adding/modifying/repealing tax credits and incentives. Except as otherwise noted, the Commission is required to publish its findings and recommendations and submit its report to the General Assembly by October 1, 2017.

Job Creation Tax Credit and Job Retention Tax Credit

As more fully discussed in another [Alert](#), HB 64 changed the base of these credits from Ohio income tax withheld to payroll associated with the project. HB 64 will provide relief going forward for taxpayers who have seen the value of their credits diminished by personal income tax cuts enacted by the General Assembly since 2013. On the other hand, HB 64 broadened the state's clawback authority as to taxpayers who do not meet all the benchmark commitments in their agreement.

Individual Income Tax Reforms

HB 64 made two changes that will lower individual income tax burdens. **First**, HB 64 reformed the small business deduction. All business income will no longer be subject to the normal marginal rates. For 2015, 75% of an individual's first \$250,000 of business income (up to \$93,750 for each spouse if married filing separately) will not be subject to tax and the remaining business income will be subject to a flat tax rate of 3.0%. In 2016 and thereafter, 100% of an individual's first \$250,000 of business income (\$125,000 for each spouse if married filing separately) will not be subject to tax and the remaining business income will continue to be subject to a flat tax rate of 3.0%. **Second**, HB 64 reduced all marginal income tax rates by 6.3%, placing the top marginal rate at 4.997%.

Ohio Sales/Use Tax Reforms -- Ohio Adopts "Click-Through Nexus"

Following the lead of other states, HB 64 adopted "click-through nexus." Click-through nexus attaches when a person enters into an agreement with an Ohio resident under which the resident refers potential customers to the person (i.e., seller) by a link on the resident's website. Correspondingly the resident has to receive a commission or other compensation for such referral and the cumulative gross receipts from the person's sales to consumers that resulted from the referral must exceed \$10,000 for the preceding 12 months. Interestingly, Governor Kasich vetoed virtually the exact same language from the 2014-2015 biennial budget yet did not do so again.

Cigarette Tax

HB 64 increased the cigarette tax from \$1.25 per pack to \$1.60 per pack effective July 1, 2015.

Vetoed

Governor Kasich vetoed several notable tax provisions, including a proposed tax amnesty program, a proposed exemption of electric generation property, a proposal to tax gross receipts from the sale of dyed diesel fuel used by railroad companies at the CAT rate of 0.26% rather than the PAT rate of 0.65%, and a

proposal to incorporate published industry definitions for use in real property appraisals.

To be sure, this Alert does not cover every tax change and there may be additional tax reforms in HB 64 that affect your business. If you would like to discuss any tax provision in HB 64 please contact your Vorys attorney or Tony Ehler, (614) 464-8282, alehler@vorys.com; Scott Ziance, (614) 464-8287, sjziance@vorys.com; Dave Froling, (614) 464-3022, dafroling@vorys.com; or John Petzinger, (614) 464-5696, jspetzinger@vorys.com.