THE OHIO SOCIETY OF CPAs
ADVANCING THE STATE OF BUSINESS

OSCPA 2021-2022 LEGISLATIVE AND REGULATORY PRIORITIES

Top issues that are on OSCPA's legislative and regulatory agenda – both those already enacted and those now pending or soon to be introduced are outlined below:

OSCPA priorities already enacted this session

1) **Biennial Budget Bill**. Governor DeWine signed House Bill 110 into law just before midnight on June 30 after using his pen to exercise 14 line-item vetoes. By a vote of 82-13 in the House and 32-1 in the Senate, both legislative chambers overwhelmingly adopted the conference committee report on June 28. Here are some of the new tax policies, many of which OSCPA actively advocated to enact.

   Municipal Income Tax: OSCPA successfully secured language that extended through the end of 2021 the application of the temporary municipal income tax withholding provision for employers enacted last year in House Bill 197 (133rd GA) as Section 29. The bill allows employers to continue (but does not require) withholding municipal income taxes based on where the employer is located through the end of 2021 but beginning in calendar year 2022 the normal 20-day withholding rule will apply at the location where the employee is working. Without passage of HB 197, this temporary withholding provision would have expired on July 18.
   • On the refund issue, OSCPA supported clarifying language that Section 29 was not intended to apply to the taxability of the employee's wages. Although OSCPA preferred the Senate's original language that would have granted refunds for both tax years 2020 and 2021, the final version of H.B. 110 only clarified 2021 – the House Bill 157 approach. At least for tax year 2021, this change allows qualified employees to receive a refund of taxes withheld to a municipality where they neither lived nor physically performed services. The courts will need to decide the refund issue for 2020, and OSCPA will be supporting taxpayers in that effort as we believe taxing persons who neither work nor live in a jurisdiction is unconstitutional.
   • House Bill 110 also provides that the net profit tax payroll factor should be calculated at the principal place of work location through the end of 2021.
   • House Bill 228: OSCPA successfully worked with the Ohio Department of Taxation to refine the centralized collection process for the municipal net profits tax. Two provisions of H.B. 228 are especially helpful to taxpayers: (1) extending the date that a taxpayer may opt in or out of the state-administered tax from the first day of the third month after the beginning of the taxpayer's fiscal year to the 15th day of the fourth month of that year (April 15 for calendar year-end businesses); (2) requiring ODT – rather than the taxpayer – to notify cities when a taxpayer has opted in or out. H.B. 228 unanimously passed the House and Senate on Oct. 27, was signed into law by Gov. DeWine on Nov. 8 and takes effect Feb. 6, 2022.

   State Income Tax: House Bill 110 enacted a 3% across-the-board income tax rate cut for taxable years beginning in 2021 (there is no additional reduction in tax year 2022), and further consolidated the income tax brackets from the current five to four by bringing Ohio's top rate down to 3.99% on 2021 income greater than $110,650. The new law also increases the income level at which the first tax bracket begins, from $22,150 to $25,000 in 2021. The language only suspends the annual inflation indexing adjustments for tax brackets for 2021 (not for 2022) but does suspend the indexing for exemption amounts for both 2021 and 2022.

• Due to the administrative burden placed on our members when it was first enacted in Senate Bill 26 (133rd GA), OSCPA also successfully advocated to eliminate the NAICS code requirement when taxpayers claim the business income deduction (BID) on Ohio tax returns.

Sales/Use Tax: H.B. 110 eliminates from Ohio's sales and use tax employment services (providing personnel to perform work under the supervision and control of the purchaser) and employment placement services (locating employment for a job seeker or locating job candidates for an employer).
OSCPA has long sought this change, and initially recommended eliminating the taxability of these transactions in our 2016 Tax Reform Task Force report. STATUS: This repeal took effect October 1, 2021, and it is estimated to save employers $300 million just over the next two fiscal years alone. See the ODT tax alert issued August 30 for more information.

Commercial Activity Tax (CAT): OSCPA successfully advocated for a permanent Commercial Activity Tax (CAT) exemption for Bureau of Workers' Compensation (BWC) dividends paid to employers, beginning with dividends paid in 2022. Senate Bill 18 enacted earlier this year exempted BWC dividends paid in 2020 and 2021. Early in the budget bill process, OSCPA also successfully secured the removal of an attempt to codify an administrative rule providing a common ownership test for CAT taxpayer groups.

While there are hundreds of changes included in the bill, other issues of interest enacted in H.B. 110 include making Juneteenth a state holiday (it was recently made a federal holiday by President Biden); passing significant funding reforms for K-12 education; dedicated $250 million in funding for broadband development in underserved areas; and appropriated significant financing for cleanup of industrial sites and other projects.

2) **Easing Licensure Requirements for CPAs.** OSCPA-driven legislation (H.B. 442, 133rd GA) was enacted last session and took effect April 12, 2021. This law change allows candidates the option to accelerate when they can take the CPA Exam. Ohio joined 37 other states plus Washington DC in allowing candidates to start the exam process as soon as they have secured a bachelor's degree or its equivalent (120 semester hours). STATUS: The Accountancy Board of Ohio also approved revised rules at OSCPA's urging, enabling students to have completed 24 accounting hours and 30 business hours (within the 120-hour threshold) to take the Exam. Candidates must still complete all 150 hours of education to be licensed, as is the case in all states.

   This change puts Ohio candidates on even footing with most other states by allowing candidates to start the exam process sooner in their college journey, potentially speeding up when they ultimately can be licensed and giving them another incentive to stay in Ohio.

3) **State/Federal Tax Conformity Legislation**. Senate Bill 18 incorporates into Ohio law the Internal Revenue Code changes made since March 27, 2020, when H.B. 197 (133rd GA) originally brought Ohio into conformity with the CARES Act (H.R. 748) and its applicability to Ohio's income taxes. Senate Bill 18 incorporates federal tax provisions that were enacted as part of the Dec. 27, 2020 Consolidated Appropriations Act (H.R. 133), including deductibility of forgiven loan expenses from the Paycheck Protection Program, and the more recent March 11 American Rescue Plan Act (H.R. 1319) that excluded from taxpayers' income tax the first $10,200 of unemployment benefits received in 2020 if their modified adjusted gross income was less than $150,000. OSCPA testified in support of S.B. 18 on several occasions and made its passage a top priority of its advocacy efforts. STATUS: Enacted on March 31, 2021.

Notable Ohio-specific provisions in Senate Bill 18: (1) OSCPA spearheaded an effort to ensure Ohio businesses will not have to add Bureau of Workers' Compensation (BWC) refunds/dividends received in 2020 (and any in 2021) as gross receipts for purposes of calculating Commercial Activity Tax (CAT) liability. This issue arose in late December 2020 when the BWC shared that they were required by the IRS to issue 1099-G forms to recipients of the nearly $8 billion in 2020 refund/dividend checks. Without this specific legislative exclusion, ODT's interpretation would have required businesses to include these dollars as taxable gross receipts for CAT purposes. (2) OSCPA also worked to secure an amendment to ensure that second-draw PPP forgiven loans would not be subject to the CAT. Original PPP forgiven loans had already been excluded from the CAT in H.B. 481 (133rd GA) in June 2020.

4) **Pass-Through Entity Reform.** OSCPA supported a rate reduction to Ohio's withholding on income generated from pass-through entities, such as partnerships and S-corporations. The new law equalizes Ohio's PTE withholding rates on nonresident investors in Ohio-operating PTEs with the Ohio income tax rate, currently 3% on business income above $250,000. Current law requires these entities to withhold on behalf of nonresident individuals at 5% and other PTEs (nonindividuals) at 8.5%. STATUS: OSCPA originally secured the introduction of House Bill 124, which was later amended into Senate Bill 18 and signed by Governor DeWine on March 31. The effective date of the withholding rate change to 3% applies to PTE's taxable years beginning on or after Jan. 1, 2023.

5) **Tort Reform.** Senate Bill 13 shortens the statute of limitations for actions upon a contract from eight to six years for written contracts and from six to four years on contracts not in writing; and makes changes to the borrowing statute pertaining to applicable periods of limitations. OSCPA supported S.B. 13 as part of the Ohio Alliance for Civil Justice, and its passing will help improve Ohio's civil litigation climate. The Ohio Alliance for Civil Justice – which is comprised of representatives of dozens of Ohio trade and professional associations – was founded to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. STATUS: S.B. 13 became law on June 16, 2021.

6) **Ohio Unemployment Debt.** The Ohio House and Senate quickly passed OSCPA-supported legislation (H.B. 168) that will use American Rescue Plan Act dollars to pay off Ohio's pandemic-related federal unemployment loan that was nearing $1.5 billion. This use of one-time funds prevented Ohio employers from facing a huge increase in their 2022 unemployment payroll tax, and over three years will save Ohio businesses approximately $658 million. The federal unemployment debt accrued during the Great Recession took Ohio businesses almost eight years and hundreds of millions of dollars to pay off.

OSCPA priorities now pending or soon to be introduced this session

1) **Responding to the COVID-19 Crisis and related business impact.** Since March 16, 2020 OSCPA has worked closely with the DeWine Administration and Ohio General Assembly at the state level and the Ohio Congressional Delegation and AICPA at the federal level to secure needed relief for struggling business owners and other Ohioans. With the help of member experts, early on OSCPA shared recommendations with the DeWine Administration on how state government could quickly make changes to aid the Ohio business community in continuing operations and keeping employees on the payroll. STATUS: We continue to work on additional state and federal issues – including successful efforts in March 2021 to exempt federal and state pandemic business relief from Ohio's Commercial Activity Tax (CAT) and forgiven PPP loans from being added as personal income on state tax returns.

Several bills are now pending that seek to limit or expand the ability of business owners to respond to COVID-related threats. OSCPA's position is that Ohio businesses and business owners should have the ability to run their operations in the way they believe will best protect the health and safety of their employees and customers/clients/patients – a significant concern in light of the Sept. 30, 2021 end of COVID-related immunity from civil lawsuits. The legislation with the best (though slim) , chance of passage is HB 218, which was voted out of the Ohio House and is now pending before an Ohio Senate committee. This bill allows vaccine mandates but only with significant exemptions: medical, religious, natural immunity and conscience. The bill also bans the requirement of vaccine passports by public and private entities, and extends the qualified immunity protections for businesses, hospitals, etc. To June 2023. In Dec. 2021, Gov. DeWine stated he will veto this bill if it reaches his desk as he believes business owners (including hospitals, schools, etc.) should be free to set their own policies on vaccines, masks, etc. President Biden's Executive Order mandating vaccines for employees of employers of 100+ was stayed by the U.S. Supreme Court for businesses, though healthcare workers of these employers must still comply.

2) **BID and Business Sales.** The Ohio Department of Taxation began auditing resident business sales in 2019 because of the Ohio Supreme Court's decision in *Corrigan v. Testa* (2016), which is only helpful to non-residents. OSCPA is working to clarify that gains from the sale of an ownership interest in a business is considered business income for Ohio income tax purposes (BID), provided the sale satisfies either of the following: 1) the sale is treated for federal income tax purposes as the sale of assets; or 2) the seller was involved in the day-to-day management of the business during the taxable year in which the sale occurred or during any of the five preceding years. The goal is to secure a remedial measure intended to clarify existing law so it can be applied to current audits. STATUS: Senate Bill 247 was introduced on Oct. 5 and OSCPA provided proponent testimony to the Senate Ways and Means Committee in support on Oct. 26. S.B. 247's third hearing was held on Dec. 14. Companion legislation was introduced in the House on Dec. 16, 2021 as House Bill 515.

3) **SALT Deduction Parity.** Pursuant to IRS Notice 2020-75 issued in November 2020, states are permitted to enact legislation to clarify that taxes paid by a pass-through entity do not count towards an owner's $10,000 state and local tax limitation deduction for federal income tax purposes. As a result, OSCPA supports legislation to authorize a PTE owner to claim a refundable credit against the owner's Ohio income tax liability equal to the owner's proportionate share of the tax paid by the PTE. STATUS: Senate Bill 246 was introduced on Oct. 5 and OSCPA provided proponent testimony to the Senate Ways and Means Committee on Oct. 26. S.B. 246's third hearing was held on Dec. 14, 2021.

4) **Diversity and Inclusion**. Over the past four years, OSCPA has formally supported legislation that would make Ohio a more welcoming and diverse state. Efforts include:
    a. Seeking to expand Ohio anti-discrimination laws by including gender preference and sexual orientation under the list of protected classes. OSCPA believes this change will help Ohio attract a more diverse population of CPAs, allow our state to better compete for top talent and enhance economic development efforts in our state. Legislation in past General Assemblies did not make it across the finish line; OSCPA will be working with other interested parties on a successful outcome this session. Legislation (SB 119 and HB 208) is currently pending. OSCPA serves on the steering committee of organizations supporting this issue and working to secure legislative support. Related, OSCPA is a member of OhioBusinessCompetes.com, a broad business coalition with over 1,200 member businesses across the state supporting DEI in the workplace.

b. OSCPA is also prioritizing efforts to end racism in our state through a multipronged approach: Board and CEO leadership, including reengaging OSCPA's Diversity and Inclusion Task Force; significant organizational financial support to mobilize and engage Ohio CPAs in this effort; and advancing public policy efforts that focus on ending racism. SCR 4, which declares racism a public health crisis, is now before the Senate Health Committee.

5) **Bonus Depreciation.** With the enactment of several pro-taxpayer provisions in the federal CARES Act, there's currently the potential for unintended tax increases at the state level. To address this issue, OSCPA worked to secure the introduction of legislation, House Bill 86 (formerly H.B. 749, 133rd GA), to temporarily suspend, for taxable years 2020 and 2021, and for taxable years with a federal net operating loss (NOL) carryback from taxable years 2020 and 2021, special provisions relating to Ohio's "bonus depreciation" adjustments in years when a taxpayer has an NOL. The legislation clarifies that taxpayers who would normally be affected by these provisions are still required to make the adjustments without regard to the special NOL rules. Those taxpayers with a federal NOL in taxable years 2020 and 2021 will add back the depreciation expense allowed by Internal Revenue Code sec. 168(k) and of qualifying sec. 179 depreciation expense as they would without regard to Ohio law. STATUS: OSCPA testified in support of H.B. 86 in the House Ways & Means Committee at its second hearing on May 25, 2021.

6) **Protect Municipal Income Tax Reform Laws.** OSCPA spearheaded efforts to pass H.B. 5 (130th GA), and the option of centralized filing of net profits taxes by businesses and the elimination of the sales factor throwback rule in H.B. 49 (132nd GA). These pro-business changes were supported by a large coalition representing over 350,000 Ohio businesses and professionals. OSCPA is addressing this issue from two fronts:
   a. The constitutionality of these changes was challenged by some cities. OSCPA filed a Supreme Court amicus brief in support of the State in November 2019, and oral arguments were held virtually on May 13, 2020. On Nov. 5, 2020 in a significant win for the business community the Ohio Supreme Court upheld by 6-1 the State of Ohio's ability to require uniformity of municipal tax processes and to centrally collect municipal net profits taxes at the state level. The Court only rejected by 5-2 the State's authority to charge a 0.5% administrative fee to do so.
   b. Closely watching for any legislation impacting municipal income tax laws – positive or negative – introduced in Ohio's 134th General Assembly. For example, OSCPA worked closely with Rep. Bill Roemer, CPA (R-Richfield) to secure the introduction of House Bill 519 to place limits on late filing penalties under R.C. 718.27. In some cases, taxpayers currently can be charged up to $150 in late filing fees even if they owe no tax. H.B. 519 will end this practice by limiting late filing penalties to the lesser of 50% of the taxpayer's liability or $150, ensuring that taxpayers with low tax liabilities are not punished in such an excessive manner. Additionally, for taxpayers who have a filing extension, H.B. 519 will prohibit tax administrators from sending inquiries or notices prior to the taxpayer filing the return or prior to the extended due date, whichever comes first. Further, if this prohibition is violated, tax administrators would be required to reimburse the taxpayer for any costs incurred to respond to that inquiry. H.B. 519 was introduced on Dec. 16.

Pending Litigation of Note

Two priority areas of concern to Ohio CPAs have pending lawsuits:

1) **Municipal Income Withholding and Refunds**. Several cases were filed in Ohio questioning the constitutionality of requiring individual taxpayers to pay income tax to municipalities where they neither live nor physically worked. These cases arose from a law change early in the pandemic that addressed the significant withholding challenges faced by employers of workers who suddenly were working remotely – often outside of the city where the business itself was located. Two cases have reached the appellate

court level, and one was decided against plaintiffs (taxpayers). OSCPA agrees with the constitutionality concerns and plans to file an amicus brief should the Ohio Supreme Court accept the case.

2) **Caps on Non-Economic Damages in Civil Lawsuits.** Almost 20 years ago, OSCPA and the broader business community were successful in passing a package of strong tort reform bills, placing Ohio at the top of states with positive civil justice climates. One of those crucial enacted tenets, a cap on non-economic damages, is under attack and now before the Ohio Supreme Court in *Brandt v. Pompa*. OSCPA, as a leader of the Ohio Alliance for Civil Justice, is filing an amicus brief in support of the defendants. Erosion of caps on damages will result in rising insurance costs and increased filing of frivolous lawsuits.

For more information on any of these issues, please reach out to OSCPA's Government Relations Team:

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Updated Jan. 18, 2022