OLR Bill Analysis
sSB 11

AN ACT CONCERNING CONNECTICUT'S RESPONSE TO FEDERAL TAX REFORM.

SUMMARY

This bill makes various changes to state and local tax laws. Specifically, the bill:

1. imposes a new income tax on most pass-through businesses, levied at the top personal income tax rate (6.99%) and offset by a credit at the personal or corporate income tax level (§§ 1-8);

2. allows municipalities to provide a property tax credit to eligible taxpayers who make voluntary payments to municipally-approved "community supporting organizations"(§ 10);

3. requires individuals, for personal income tax purposes, to apportion the federal deduction for bonus depreciation over four tax years (§§ 11 & 12);

4. requires individuals and corporations, for personal income and corporation business tax purposes respectively, to apportion the federal asset expensing deduction over five years (§§ 11 & 12);

5. for purposes of calculating the dividends received deduction under the corporation business tax, specifies that expenses related to dividends equal 10% of all dividends received by a company during an income year and allows companies to petition the Department of Revenue Services (DRS) commissioner for an alternative percentage under certain conditions (§ 13);

6. extends, by three years, the phase-in of the state estate and gift tax threshold to the federal threshold (§§ 14-16);

7. authorizes the Connecticut Green Bank to secure its obligations under a lease-purchase agreement it entered into in December 2017 with a special capital reserve fund (SCRF) even though it did not receive the statutorily-required approvals before entering into the agreement (§ 17); and

8. requires the economic and community development commissioner to study and report on the best practices for marketing the benefits of qualified opportunity zones in order to increase investment in distressed census tracts and municipalities (§ 18).

The bill also moves up the deadline by which DRS must receive corporate income tax receipts in order for the comptroller to record them as revenue for a fiscal year, making it the same as the deadline that applies to other taxes (i.e., five business days after July 31, rather than after August 15, immediately following the fiscal year) (§9). The bill also applies this deadline to entity tax receipts.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, unless noted otherwise below.

§§ 1-8 — PASS-THROUGH ENTITY TAX

The bill imposes a new income tax on most pass-through businesses (i.e., "affected business entities") at the entity-level (i.e., entity tax). The tax is (1) levied at the top personal income tax rate of 6.99% and (2) offset by a credit at the personal or corporate income tax level.

Under current law, pass-through businesses doing business in the state do not pay income tax at the entity level; instead, their profits "pass-through" to their owners and are taxed as part of the owners' personal income tax returns. Paying taxes at the entity level as required under the bill, instead of at the personal income tax level, may provide pass-through income with favorable federal tax treatment, given recent tax changes that limit the amount of state and local taxes (SALT) that can be deducted for federal personal income tax purposes, (see BACKGROUND).

Under the bill, the entity tax applies to each pass-through business that is required by state law to file a return with DRS containing information about its finances and its resident and nonresident members (CGS § 12-726). Such businesses must file an entity tax return on or before the 15th day of the third month following the close of each entity's taxable year for federal income tax purposes (i.e., taxable year).

The bill requires pass-through businesses to make estimated entity tax payments and gives DRS authority to enforce the entity tax and the estimated payments.

The bill also incorporates entity tax revenue into the volatility cap that was passed in PA 17-2, June Special Session (JSS) (see BACKGROUND).

EFFECTIVE DATE: Upon passage, and applicable to taxable years beginning on or after January 1, 2018, except that the conforming change to the volatility cap bond covenant provision (§ 8) is effective May 15, 2018.

Affected Business Entities and Members

Under the bill, an "affected business entity" ("pass-through businesses") is (1) any entity, including a limited liability company (LLC), that is considered a partnership for federal income tax purposes or (2) any corporation treated as an S corporation for federal tax purposes. It does not include publicly-traded partnerships that have agreed to file an annual return reporting the name, address, Social Security or federal employer identification number, and other DRS-required information for each unitholder whose income from Connecticut sources was more than $500.

"Member" refers to (1) an S corporation shareholder; (2) a partner in a general partnership, limited partnership, or limited liability partnership; or (3) a member of an LLC treated as a partnership for federal tax purposes.

Tax Calculation

Under the bill, a business's entity tax liability equals (1) its taxable income, or the alternative tax base (see below), (2) multiplied by 6.99% (i.e., the top marginal personal income tax rate). The business's taxable income equals:

1. the pass-through business's net income, for federal income tax purposes, that is derived from or connected to Connecticut sources,

2. as increased or decreased by any adjustments that currently apply to the personal income tax and are related to the business's income, gain, loss, or deduction, to the extent derived or connected to Connecticut sources.

In determining their taxable income, pass-through businesses must use sourcing rules that currently apply to the personal income tax to determine whether their income, gains, losses, or deductions are derived from, or are connected to, Connecticut sources. If the business's net income results in a net loss, the business may carry the loss forward until it is fully used.

Tiered Business Entities. The bill requires pass-through businesses to adjust their income to account for instances where one business is a member of another business. Specifically, if a pass-through business (which the bill calls the lower-tier entity) is a member of another pass-through business (which the bill calls the upper-tier entity), the lower-tier entity must subtract or add, as applicable, its distributive share of the upper tier entity's loss or income from Connecticut sources when calculating its taxable income.

Alternative Tax Base. The bill allows businesses to calculate their tax on an alternative basis. The alternative tax base equals a business's "resident portion of unsourced income" plus its "modified Connecticut source income."

Each taxable year, any business electing to calculate entity tax on the alternative basis must notify the DRS commissioner, in writing, by the tax's due date or extended due date (if applicable). The bill specifies that the election does not affect the calculation of any other state taxes due, except for the calculation of the tax credits the bill authorizes (see "offsetting credits" below).

The bill defines "modified Connecticut source income" as the business's taxable (i.e., Connecticut-sourced) income, calculated as described above, multiplied by a percentage equal to the sum of ownership interests in the business that are held by members that are (1) subject to personal income tax or (2) pass-through businesses subject to the entity tax, to the extent such businesses are directly or indirectly owned by people subject to the income tax. Members that are pass-through businesses are assumed to be directly or indirectly owned as such, unless the business can establish otherwise through clear and convincing evidence satisfactory to the DRS commissioner.

Under the bill, the "resident portion of unsourced income" equals "unsourced income" multiplied by a percentage equal to the sum of the ownership interests in the pass-through business that belong to Connecticut residents. "Unsourced income" equals:

1. the business's net income for federal income tax purposes, as increased or decreased by any adjustments that currently apply to the personal income tax under state law, regardless of the location from which the income and adjustments are derived or connected;

2. minus the business's taxable (i.e., Connecticut-sourced) income, calculated as described above but without any adjustments for tiered business entities; and

3. minus the business's net income, for federal income tax purposes, that is derived from or connected to sources in another state with jurisdiction to tax the entity, as increased or decreased by any adjustments that currently apply to the personal income tax under state law, to the extent that the adjustments are derived from, or connected to, sources in another state with jurisdiction to tax the entity.

Nonresidents

Under the bill, nonresident members of pass-through businesses are generally not required to file a Connecticut personal income tax return for taxable years in which (1) the pass-through business is the only source of Connecticut income for the member or the member's spouse and (2) the pass-through business has paid the entity tax. However, nonresident members must still file a return if (1) the pass-through entity of which they are a member chooses to file on a combined basis (see below) and (2) the member's personal income tax liability would not be entirely satisfied by the offsetting credit the member earns for the business's entity tax payment (see below).

Under current law, a pass-through business is generally required to file an income tax return and pay the tax on behalf of any nonresident member for whom the business is the only source of Connecticut income. For taxable years beginning on or after January 1, 2018, the bill eliminates these requirements.

Offsetting Credits

The bill authorizes offsetting corporate and personal income tax credits for individuals and companies that are members of pass-through businesses that pay the entity tax or a substantially similar tax in another state.

Personal Income Tax. If the pass-through business member is an individual subject to the personal income tax, the bill allows the person to claim a credit equal to his or her direct and indirect pro rata share of the tax paid by the pass-through business of which he or she is a member, multiplied by 93.01%. The bill makes this credit refundable and requires the DRS commissioner to treat the amount by which the person's credit exceeds his or her personal income tax liability as a tax overpayment, unless the excess must be held for certain obligations (e.g., past due taxes).

The bill also authorizes a personal income tax credit for members of pass-through businesses that have paid taxes to other states or the District of Columbia that are substantially similar, in the DRS commissioner's determination, to the entity tax imposed under this bill. The credit is for the member's direct and indirect pro rata share of such taxes paid by the pass-through business and is calculated in a manner prescribed by the DRS commissioner, which must be consistent with the calculation for the credit for personal income taxes paid to another state.

Under the bill, neither of these tax credits may be applied against the withholding tax.

Corporation Business Tax. If a pass-through business member is a company subject to the corporation tax, the bill allows the company to claim a credit equal to its direct and indirect pro rata share of the tax paid by the pass-through business of which it is a member, multiplied by 93.01%.

The company must apply this credit after all other tax credits are applied, and the credit is not subject to the corporation business tax credit cap, which generally prohibits a business from using tax credits to reduce its corporation tax liability by more than a specified percentage (e.g., 65% for the 2018 income year) (CGS § 12-217zz). Unused credits must be carried forward, indefinitely, until fully used.

Tax Collection, Enforcement, and Penalties

Upon the failure of any pass-through business to pay the entity tax within 30 days of its due date, the bill allows the DRS commissioner to collect the entity tax by taking any action that he can currently take to collect money owed to the state. This means he (or another authorized agent) can levy on the property or sign a warrant to take control of the business, including operating it to secure its income for the state, forcing an end to its operations. Additionally, the attorney general may start civil proceedings to collect the tax.

From last day of the last month of a business's taxable year next preceding the tax's due date until the tax is paid, the tax plus the interest and penalty act as a lien against any real estate the taxpayer owns in the state. A lien certificate, signed by the commissioner, may be recorded on the land record in the town where the property is located. However, the lien is not effective against a bona fide purchaser or the interest of any qualified encumbrancer. And if any interested party asks, the commissioner must file a certificate discharging the lien on the same land record.

Under the bill, the attorney general can foreclose the lien by bringing an action in the Superior Court of the judicial district where the property is located. If located in two or more districts, the attorney general may file suit in any one. At the conclusion of any such action, the court can limit the redemption period, order the property sold, or issue any other equitable decree.

If entity taxes are not paid by their due date, the bill imposes an interest penalty of 1% per month or part of a month.

The bill additionally applies provisions related to tax collection and enforcement that apply to other taxes under current law (i.e., the admissions and dues tax). Under these provisions, the DRS commissioner can, among other things, (1) assess tax deficiencies where necessary; (2) require the businesses to keep certain records and examine all of their records; (3) administer oaths, subpoena witnesses, and receive testimony; and (4) extend the tax due date for reasonable cause. Businesses can file for a refund for tax overpayments, request a hearing on the amount of taxes they are required to pay, and appeal the hearing decision if aggrieved. Lastly, an additional penalty may be imposed on businesses for willful violations or filing fraudulent returns.

Combined Return Election

The bill allows pass-through businesses to file a combined return with one or more commonly-owned pass-through businesses that are subject to the entity tax. ("Commonly-owned" means that more than 80% of the voting control of a pass-through business is directly owned or indirectly owned, as determined under federal tax law, by a common owner or owners.) Each taxable year, any business that chooses to file in this manner must notify the DRS commissioner, in writing and along with the written consent of the other commonly-owned businesses, by the tax's due date or extended due date (if applicable).

The bill generally requires pass-through businesses filing a combined return to net their taxable incomes after such amounts are separately allocated by each business. If the combined group elects to calculate the tax due on the alternative basis (see above), the businesses must instead net their alternative tax bases.

Under the bill, each business electing to file a combined return is jointly and separately liable for the entity taxes due. The election does not affect the calculation of any other state taxes due, except for the calculation of the tax credits the bill authorizes.

Reporting Of Members' Shares of Entity Tax Payments

The bill requires pass-through businesses to report, for each taxable year, each member's (1) direct pro rata share of entity tax imposed on the business and (2) indirect pro rata share of the entity tax imposed on any upper-tier entities of which the business is a member.

Businesses that elect to file a combined report must report to the DRS commissioner the direct and indirect pro rata share of the entity tax paid under the combined return that is allocated to each of their members. The report must be filed with the combined return and the allocation is irrevocable.

The bill makes corresponding changes to require that this information be included in the returns that pass-through businesses doing business in the state must file with the DRS commissioner. It also moves up, from the fourth to the third month following the taxable year, the date by which these returns must be filed.

Estimated Payments

By law, Connecticut income tax payers must make estimated income tax payments throughout the tax year through withholding, estimated payments, or both (CGS § 12-722). When calculating estimated income tax payments, taxpayers may take into account any tax credits they expect to receive, among other things. Currently, members of pass-through businesses typically make estimated payments on the income they expect to receive from such businesses.

The bill requires pass-through businesses to make estimated entity tax payments on a quarterly basis, in a similar manner to the estimated income tax payments under existing law. (Presumably, because pass-through business members receive offsetting credits for the entity taxes the business pays, such members will no longer be required to make quarterly payments on the income they receive from the pass-through business.)

Under the bill, the business's quarterly estimated payments are (1) generally equal to 25% of the "required annual payment" and (2) due on the 15th day of the taxable year's fourth, sixth, and ninth month, and on the 15th day of the first month of the next taxable year. The "required annual payment" means the lesser of (1) 90% of the entity tax reported or due for the current taxable year or (2) 100% of the entity tax reported on the entity tax return for the preceding taxable year, if the pass-through business filed a return for that year that covered a 12-month period.

The bill allows businesses to make payments based on the "annualized income installment" calculation if, for any required installment, such a calculation results in a lower installment payment. Under the bill, the annualized income installment is the amount by which the product of the applicable percentage (see Table 1) and the amount of entity tax that would be due if the business's taxable income for the months in the taxable year prior to the installment's due date exceeds the aggregate amount of any prior required installments for the taxable year. Any installment reduction that results from such a calculation must be recaptured by increasing the next required installment and, if the reduction has not been recaptured, subsequent installments.

Table 1: Applicable Percentages of Annualized Installment Calculation

Installment	*Applicable Percentage*

First	22.5%
Second	45%
Third	67.5%
Fourth	90%

If a pass-through business underpays the required estimated tax, the bill imposes an interest penalty of 1% of the underpayment amount per month, or part of a month, of the underpayment period. The underpayment amount is the amount by which the required installment exceeds the payment made, if any, on or before the installment's due date. The underpayment period runs from the installment's due date to the earlier of (1) the 15th day of the third month of the next succeeding taxable year or (2) the date on which the underpayment is paid. Estimated tax payments must be credited against unpaid or underpaid installments in the order in which the installments must be paid.

The bill allows businesses to make any required payment before its due date. Under the bill, estimated entity tax payments are considered payments toward the business's annual entity tax liability.

For taxable years of fewer than 12 months, the bill specifies that its provisions apply in a manner consistent with the income tax regulations pertaining to the relevant taxable years.

§ 10 — PROPERTY TAX CREDIT FOR DONATIONS TO COMMUNITY SUPPORTING ORGANIZATIONS

The bill allows municipalities to provide a property tax credit to eligible taxpayers who make voluntary, unrestricted, and irrevocable contributions to a community supporting organization (organization) approved by the municipality (see BACKGROUND).

Under the bill, a "community supporting organization" is a charitable nonprofit that is organized exclusively to support municipal spending on programs and services, such as public education. A "municipality" is any town, city, borough, consolidated town and city, or consolidated town and borough.

Under the bill, the credit applies only to taxes on "residential property," which the bill defines as (1) buildings with three or fewer dwelling units, the parcel of land on which the building is situated, and any accessory buildings or other improvements on the parcel; (2) residential condominiums; and (3) common interest communities.

EFFECTIVE DATE: July 1, 2018

Municipal Approval of Credit

The bill requires a municipality to annually approve the credit by a vote of its legislative body, or the board of selectman if the municipality's legislative body is a town meeting. In its approval, the municipality may include a residency requirement or other requirements that it deems necessary or desirable. The municipality must approve the credit by October first in order to provide the tax credit in the following fiscal year.

Under the bill, the municipality determines the tax credit amount, which may not exceed the lesser of:

1. the amount of property tax owed or

2. 85% of the taxpayer's donation, or the amount donated on his or her behalf, to an organization during the calendar year preceding the year in which the tax credit application is filed.

Community Supporting Organization and Municipal Grants

The bill requires a municipality that approves a credit to designate a single organization to receive qualifying cash donations. Municipalities can appropriate and spend grant funds received from the organization.

The municipality's chief executive must enter into an agreement with the organization the municipality selects, which must require the:

1. organization to accept only voluntary, unrestricted, and irrevocable cash donations;

2. organization, annually on or before July 1, to give the

municipality a grant equal to the amount of all donations it received in the prior fiscal year and a written statement of all the donations it received, including each donor's name and residential address, the name and residential address of the property owner if the donation was made on his or her behalf, and donation date;

3. municipality, by December 31 following such fiscal year (it is unclear which year the bill is referencing), to give the organization a written statement of the municipal programs and services supported by the grant in such fiscal year;

4. municipality to serve as the organization's administrative and fiscal agent (the bill limits administrative expenses to 15% of total grant amount); and

5. organization to provide donors with a contemporaneous written contribution receipt.

Donations and Credit Application

Upon the municipality's approval of the tax credit, the bill allows a residential property owner, or a person on his or her behalf, to make a donation to the organization designated by the municipality.

In order to receive the property tax credit, the bill requires a taxpayer to apply, to the tax collector in the municipality in which the property is located, between January 1 and April 1 of the fiscal year prior to the fiscal year for which the taxpayer will claim the credit. The application must include (1) evidence, satisfactory to the tax collector, of the amount of the taxpayer's donations to the organization in the preceding calendar year and (2) an affidavit, on an Office of Policy and Management-prescribed form, affirming that the taxpayer's donations were made in cash and were voluntary, unrestricted, and irrevocable.

Upon receiving the application and required documentation, the tax collector must apply the tax credit, subject to any limits the municipality applied to the tax credit in its authorizing ordinance, to the property tax due for the fiscal year for which the application was made. The bill prohibits taxpayers from using a donation made to an organization to claim a tax credit for more than one fiscal year.

Under the bill, a taxpayer who knowingly submits false records or makes a false affidavit in order to claim a tax credit must (1) pay a fine of up to $500 and (2) refund to the municipality the entire amount of the tax credit the taxpayer improperly received.

§§ 11 & 12 — BONUS DEPRECIATION AND ASSET EXPENSING DEDUCTIONS

The bill requires taxpayers to make certain adjustments to federal business tax deductions for bonus depreciation and asset expensing for purposes of state personal income and corporation business tax (see BACKGROUND).

Beginning with the 2017 tax year, the bill requires individuals receiving income from pass-through businesses (e.g., limited liability partnerships and limited liability corporations) to add back the federal bonus depreciation deduction for property placed in service after September 27, 2017, when calculating their Connecticut adjusted gross income for the state personal income tax. But it allows them to deduct 25% of the disallowed deduction for each of the four succeeding tax years. Existing law, unchanged by the bill, disallows the federal bonus depreciation deduction for state corporation business tax purposes.

The bill also requires individuals and corporations, for state personal income and corporation business tax purposes respectively, to apportion the federal deduction for the cost of qualifying property ("section 179 property") over a five-year period. They must do so for tax years (for personal income tax) or income years (for corporation business tax) beginning on or after January 1, 2018. Under the bill, individuals and corporations (1) must add back 80% of the federal deduction in the first year and (2) may deduct 25% of the disallowed portion of the deduction in each of the four succeeding tax years (i.e., 20% a year for five years).

EFFECTIVE DATE: Upon passage; the personal income tax provisions are applicable to tax years beginning on or after January 1, 2017.

§ 13 — DIVIDENDS RECEIVED DEDUCTION

Existing law generally allows corporations to deduct from their gross income the dividends they receive from other corporations in which they have an ownership stake. But the law disallows any deduction for expenses related to those dividends. The bill provides that expenses related to dividends equal 10% of all dividends received by a company during an income year, except as described below. For multi-state companies or financial service companies, the bill requires the net income associated with the disallowed expenses to be apportioned according to the existing statutory requirements for doing so.

Alternate Percentage

The bill allows companies to petition the DRS commissioner for a different percentage if the company believes that the dividend-related expenses it incurred during the income year and prior income years are less than 10% of such dividends. The company must submit its petition to the commissioner within 60 days before its tax return for the applicable income year is due, taking into account any filing extensions granted for the return. The commissioner may grant the petition if he determines that the company has established, by clear and convincing evidence, that the company's proposed alternate percentage accurately reflects its dividend-related expenses. The commissioner must grant or deny the petition before the return's due date.

EFFECTIVE DATE: Upon passage, and applicable to income years beginning on or after January 1, 2017.

§§ 14-16 — GIFT AND ESTATE TAX

The bill extends, by three years, the phase-in of the estate and gift tax threshold to the federal threshold. Under current law, the estate and gift tax threshold increases over three years, from $2.6 million in 2018, to $3.6 million in 2019, and to the federal basic exclusion amount in 2020 and thereafter. As Tables 2 and 3 show, the bill extends the phase-in to 2023 by setting the gift and estate tax threshold at $5.1

million for 2020, $7.1 million for 2021, $9.1 million for 2022, and the federal basic exclusion amount for 2023 and thereafter.

The federal Tax Cuts and Jobs Act of 2017 doubled the federal threshold (to $11 million in 2018, after adjusting for inflation).

Table 2: Estate and Gift Tax Rates, 2020 to 2022

<table>
<tr><th rowspan="3">Value of Taxable Estate or Gift</th><th colspan="4">Rates</th></tr>
<tr><th>Current Law</th><th colspan="3">Bill</th></tr>
<tr><th>2020 and after*</th><th>2020</th><th>2021</th><th>2022</th></tr>
<tr><td>Up to $5,100,000</td><td rowspan="2">None</td><td>None</td><td rowspan="4">None</td><td rowspan="6">None</td></tr>
<tr><td>$5,100,001 to federal threshold</td><td rowspan="2">10%</td></tr>
<tr><td>Federal threshold to $6,100,000</td><td>10%</td></tr>
<tr><td>$6,100,001 to $7,100,000</td><td>10.4%</td><td>10.4%</td></tr>
<tr><td>$7,100,001 to $8,100,000</td><td>10.8%</td><td>10.8%</td><td>10.8%</td></tr>
<tr><td>$8,100,001 to $9,100,000</td><td>11.2%</td><td>11.2%</td><td>11.2%</td></tr>
<tr><td>$9,100,001 to $10,100,000</td><td>11.6%</td><td>11.6%</td><td>11.6%</td><td>11.6%</td></tr>
<tr><td>Over $10,100,000</td><td>12%</td><td>12%</td><td>12%</td><td>12%</td></tr>
</table>

*Rates apply to the excess over the federal threshold

Table 3: Estate and Gift Tax Rates Under the Bill, 2023 and Thereafter

Value of Taxable Estate and Gift	*Rate for 2023 and Thereafter*
Up to federal threshold	None
Over federal threshold	12%

The bill makes conforming changes to requirements for filing tax returns with the Department of Revenue Services (DRS) and the probate court. By law, all estates, regardless of their gross value, must file an estate tax return. If the estate's value is more than the taxable threshold, the executor must file the return with DRS, with a copy to the probate court for the district where the decedent lived or, if the decedent was not a Connecticut resident, where the Connecticut property is located. If the estate's value is below the tax threshold, the return must be filed only with the appropriate probate court. The probate judge must review the return and issue a written opinion to the estate's representative if the judge determines it is not subject to the estate tax.

Under current law, for deaths on or after January 1, 2020, the threshold for filing an estate tax return only with the probate court is the federal estate tax threshold. The bill instead sets the threshold at:

1. $5.1 million for deaths on or after January 1, 2020, but before January 1, 2021;
2. $7.1 million for deaths on or after January 1, 2021, but before January 1, 2022;
3. $9.1 million for deaths on or after January 1, 2022, but before January 1, 2023; and
4. the federal threshold for deaths on or after January 1, 2023.

§ 17 — CONNECTICUT GREEN BANK

Existing law allows the Green Bank to issue bonds secured by a SCRF, subject to the (1) approval of the Office of Policy and Management (OPM) secretary and state treasurer, or their deputies, and (2) Green Bank determining and documenting that project revenue will be sufficient to pay the bond principal and interest and other specified costs.

The bill authorizes the Green Bank to secure with a SCRF its obligations to make basic rental payments, consisting of principal and interest, under the equipment lease-purchase agreement it entered into in December 2017 for the installation of solar equipment at various locations of the Connecticut State Colleges and Universities. The authorization applies as long as the Green Bank obtains the required approvals after the obligation's issuance and regardless that the obligation is established in the form of a lease agreement.

§ 18 — OPPORTUNITY ZONES STUDY

The bill requires the Department of Economic and Community Development commissioner to conduct a study identifying best practices for marketing the benefits of qualified "opportunity zones," as defined by federal law, in order to increase investment in distressed census tracts and municipalities. By January 1, 2019, the commissioner must report the findings to the Commerce; Planning and

Development; and Finance, Revenue and Bonding committees.

The federal Tax Cuts and Jobs Act of 2017 allows state chief executive officers to nominate low-income communities for designation as a qualified opportunity zone and establishes tax incentives for investing in the designated zones through a qualified fund.

BACKGROUND

SALT Deduction

The federal SALT (i.e., state and local taxes) deduction allows taxpayers to reduce their taxable income by the amount they paid in certain state and local taxes during the tax year. Under prior law, taxpayers could claim the deduction (with no dollar limit) for four types of nonbusiness taxes, including state personal income taxes and property taxes. Under the federal Tax Cuts and Jobs Act, for the 2018 to 2025 tax years, the deduction is limited to $10,000 ($5,000 for married taxpayers filing separately) for such taxes paid or accrued in the tax year. Taxpayers may still claim a deduction with no dollar limit for state and local property taxes related to a business (e.g., property taxes paid for rental property) (26 U.S.C.A. § 164, as amended by P.L. 115-97, § 11042).

Volatility Cap

Established under PA 17-2, JSS (§§ 704, 707, 708 & 729), the "volatility cap" is a mechanism for diverting volatile tax revenue to the Budget Reserve Fund (BRF). It effectively caps at $3.15 billion the amount of personal income tax estimated and final payments that may be used to balance the budget, thus requiring any excess amounts to be transferred to the BRF after the close of General Fund accounts each fiscal year. It also requires certain state bonds to include a pledge to bondholders that the state will comply with the BRF law, except in limited circumstances.

Bonus Depreciation Deduction (26 USC § 168(k))

The federal Tax Cuts and Jobs Act of 2017 authorizes a first-year bonus depreciation deduction of 100% on qualified new and used property businesses place in service after September 27, 2017, and before January 1, 2023 (the rate phases down by 20% each year thereafter). Prior law generally provided for a 50% bonus depreciation deduction in 2017, 40% in 2018, and 30% in 2019.

Asset Expensing (26 USC § 179)

Under federal law, businesses can elect to treat the cost of qualifying property ("section 179 property") as a deductible expense rather than a capital expenditure, subject to a maximum deduction and investment limitation. The federal Tax Cuts and Jobs Act of 2017 expands the type of property that taxpayers may elect to treat as section 179 property and increases the (1) maximum deduction for section 179 expensing from $510,000 to $1 million and (2) investment limitation from $2.03 million to $2.5 million. (The investment limitation reduces the maximum deduction allowed, dollar for dollar, by the amount of section 179 property placed in service during the tax year that exceeds the limit.)

Related Bills

HB 5581, favorably reported by the Finance, Revenue and Bonding Committee, requires business taxpayers to add back half of their federal bonus depreciation and asset expensing deductions and deduct the disallowed portion in the succeeding tax year.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 44 Nay 7 (04/05/2018)