Final Analysis

Peter A. Cooper *Legislative Service Commission*

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(As Passed by the General Assembly)

Sens. **Blessing, Johnson**

Reps. **Mottley, Britton, Amstutz, Hartnett, Hollister, Perry, Distel, Jolivette, Barnes, Mead, Verich, Terwilleger, Aslanides**

Effective date: *

ACT SUMMARY

- Reduces to 25% the tax assessment rate for all tangible personal property of a natural gas company, beginning tax year 2001.
- Revises the true value determination of current gas stored underground.
- On and after July 1, 2001, levies an excise tax (the MCF tax) on natural gas distribution companies at a variable rate that decreases with an increase in the natural gas distributed through the meter of an end user in this state.
- Permits natural gas distribution companies with 50,000 customers or less to aggregate when determining the MCF tax owed.
- Establishes an MCF tax rate of $.02 per MCF of natural gas distributed to a "flex customer."
- Exempts from the MCF tax the federal government and self-producing end users.
- Based on an annual target of $90 million in collections, requires that the MCF tax be deposited in the General Revenue Fund (GRF), and in the existing Local Government and School District Property Tax

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Replacement Funds, to be distributed to school districts and other local governments in the same manner as kilowatt-hour tax revenues, to replace tax revenues lost as a result of the reduction in the assessment rate for natural gas company tangible personal property.

- Reduces the GRF share of the MCF tax if the $90 million annual target is not met.

- Requires that property tax replacement payments distributed to county auditors and treasurers to reimburse them for administrative fee losses also reimburse losses due to the reduction in the property tax assessment rate for natural gas companies.

- Requires county auditors, when apportioning the expenses of a general health district to a township or municipal corporation, to account for reductions in taxable valuation for which the subdivisions receive property tax replacement payments.

- Allows an electricity user to self-assess the kWh tax if it used more than 45 million kWh over the past 12 months. The 45-million kWh threshold applies to electricity received through more than one meter if those meters are at a single location.

- Eliminates the revenue targets for self-assessing electricity purchasers that were designed to make up for any shortfall in kWh taxes paid by self-assessing electricity users through future increases in the "price" tax rate paid by self-assessing users.

- Applies the $0.00075 per kWh self-assessor tax only to the first 504 million kWhs (the taxpayer also pays the 4% tax on the price of the electricity).

- Allows an electricity user to self-assess the kWh tax if its estimated use over the following 12 months is more than 45 million kWhs. If the user's actual use falls short of 45 million kWhs, it must pay the tax savings that resulted from the user being treated as a self-assessor.

- Specifies how the price of electricity is determined for the purposes of the kWh tax imposed on self-assessing electricity users by adopting a definition of "price" that is analogous to the definition of that term in the Sales Tax Law, and that provides that if electricity is sold as part of a transaction involving other services or products, the self-assessor tax applies to the price of the entire transaction unless the price of the electricity is stated separately from the price of the other products or services.

- Permits a manufacturer entitled to an existing kWh tax exemption (a "qualified end user") to pay the self-assessor tax only if its annual nonexempt use of electricity exceeds 45 million kWhs.
- Exempts electricity from the kWh tax if it is converted to a form of stored energy that is then used to regenerate electricity sold to another person.
- Requires the Department of Taxation to study the effects, fairness, and structure of the kWh tax with respect to commercial and industrial electricity users.
- Eliminates the requirement that electricity bills contain a notice that the kWh tax is used to fund the PUCO and Ohio Consumers' Counsel when the electric company is not subject to assessments to support those agencies.
- Authorizes a three-year grant program for manufacturers in Appalachian counties that use very high amounts of electricity and that experience a "significant" increase in the cost of electricity because of the kWh tax.
- Recomputes a school district's share of the cost of a School Facilities Commission project under the Exceptional Needs Program if reductions in gas pipeline property assessment rates lower a district's taxable valuation, as is currently provided for other School Facilities Commission projects.
- Modifies the job training tax credit by making it available to additional forms of businesses, including sole proprietorships, partnerships, S corporations, and limited liability companies; by extending it to insurance companies and dealers in intangibles; by changing how the credit is computed; by permitting applicants for the credit to appeal the denial of the credit; and by requiring applicants to disclose whether they have any outstanding liabilities to the state government.
- Creates an exception to the income tax residency rules that will allow persons to spend up to 30 days in Ohio for certain reasons such as unpaid

work, fund-raising for a 501(c)(3) organization, funerals, and family medical reasons, without that time counting toward the residency thresholds.

- Expressly treats a nonresident's income from certain closely held investment companies as non-Ohio income for which the nonresident may claim the nonresident income tax credit.
- Reconciles the corporation franchise "exit" tax with existing law designed to ensure that a corporation cannot escape franchise tax liability by transferring its assets to another corporation.
- Clarifies the law governing when a municipal corporation may tax a nonresident’s pay for working there 12 or fewer days per year.
- Changes how the municipal income tax credit available to owners of a pass-through entity (e.g., partnership, S corporation) is apportioned among the owners.
- Corrects some effective dates in H.B.s 477 and 483.
- Terminates the authority of municipal corporations to levy new municipal income taxes (with voter approval) specifically for the purpose of sharing some of the revenue with an overlapping school district.
- Makes various corrections and clarifications to the law governing municipal taxation of electric companies, as enacted in H.B. 483.
- Extends, from December 31, 2000, to June 30, 2001, the deadline for the Director of Development to report the results of its study on the desirability of new job tax credits for generating equipment manufacturers.
- Makes other corrective and technical changes.
- Declares an emergency.

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CONTENT AND OPERATION

Assessment of tangible personal property and reduction of the assessment rate

A natural gas company pays taxes on its tangible personal property that on December 31 of the preceding year was located in Ohio and owned by it, or leased by it under a sale and leaseback transaction.[1] Every year the Tax Commissioner determines the true value of this taxable property, and assesses it at a percentage of true value established in statute. The resulting assessed value is the portion to which the local tax rate is applied to determine the tangible personal property taxes due. The act changes aspects of the true value determination and the assessment rate for natural gas tangible personal property.

Determination of taxable property's true value

(sec. 5727.11)

For the most part, the true value of a natural gas company's taxable property is determined by the Tax Commissioner by a method of valuation based on cost as capitalized on the company's books and records, less composite annual allowances as prescribed by the Commissioner. One exception is current gas stored underground, which typically is the quantity of gas expected to be sold in the next 24 months, and stored in underground rock formations, not wells. Its true value is the cost of that gas shown on the books and records of a public utility on December 31 of the preceding year.

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[1] *Under existing law (sec. 5727.01), any person is a "natural gas company" when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio.*

Under the act, for tax year 2001 and thereafter, the true value of current gas stored underground is to be determined by taking the value of the amount on hand on the last business day of each month, adding together those amounts, and dividing the resulting sum by the number of months that the utility was in business during the year.[2]

Reduced assessment rate

(sec. 5727.111)

After determining the true value of a natural gas company's taxable property, the Tax Commissioner assesses it at a percentage of that true value. It is the assessed value to which the local tax rate is applied to determine the tangible personal property taxes due. Beginning in tax year 2001, the act reduces the percentage used to determine the assessed value of all natural gas company personal property from 88% of true value to 25%.

The MCF tax

Levy of the new tax; rates

(secs. 5727.80 and 5727.811; Section 10)

The act levies a new excise tax on natural gas distribution companies, for the purpose of raising revenue for public education and state and local government operations. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company on and after July 1, 2001, and distributed through the "meter of an end user in this state."[3] (If there is no meter used to measure the gas, then the tax applies to the estimated quantity of gas distributed to the unmetered location.) Distribution is measured by 1,000 cubic feet of natural gas, or "MCF." For purposes of the MCF tax, a "natural gas distribution company" is a natural gas company or a combined natural gas and electric company that is subject to the natural gas company gross receipts tax and that distributes natural gas through a meter of an end user in this state.

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[2] Note that this provision applies to all public utilities that possess current gas, not just natural gas companies.

[3] The "meter of an end user in this state" is the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, or the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state.

The MCF tax is levied quarterly, at a rate that decreases as more natural gas is distributed. Except for natural gas distribution companies with 50,000 customers or less or flex customers, discussed below, for the first 100 MCF per month distributed to an end user, the rate is $.1593 per MCF; for the next 101 to 2,000 MCF per month, the rate is $.0877; and for 2,001 MCF per month and above, the rate is $.0411.

Rates for small distribution companies that aggregate. For a natural gas distribution company with 50,000 customers or less, the rate is lower. Such a company may elect to apply the three rate brackets to the aggregate of the natural gas distributed by the company through the meters of all its customers in this state, and upon that election, this method must be used to determine the amount of tax to be paid by the company.

Rates for flex customers. For "flex customers," the rate also is lower. If the natural gas is distributed through the meter of a flex customer, the natural gas distribution company must pay the tax at the rate of $.02 per MCF, and, correspondingly, must reduce the per MCF rate it charges the flex customer for natural gas distribution services by $.02 per MCF of natural gas. A "flex customer" is an industrial or a commercial facility that has consumed more than one billion cubic feet of natural gas a year at a single location during any of the previous five years, or an industrial or a commercial end user of natural gas that purchases natural gas distribution services from a natural gas distribution company at discounted rates or charges established in any of the following:

(1) A special arrangement subject to review and regulation by the Public Utilities Commission (PUCO);

(2) A special arrangement with a natural gas distribution company pursuant to a municipal ordinance;

(3) A variable rate schedule that permits rates to vary between defined amounts, provided that the schedule is on file with the PUCO.

An end user that meets this definition on January 1, 2000, and thereafter is a "flex customer" for purposes of determining the lower rate of taxation.

Filing of revised schedules

(Section 11)

The act requires that not later than 90 days after its effective date, each natural gas distribution company in this state having more than 50,000 customers, and each natural gas distribution company in this state with 50,000 customers or less that does not elect to aggregate, must file with the PUCO revised schedules that establish a rider providing for the collection of the MCF tax. Also within this 90 days, each natural gas company must file with the PUCO revised schedules that reduce natural gas MCF rates for all customers effective April 1, 2001, in an amount equal to the amount included in rates in each company's last base rate case for the differential resulting from the reduction in the personal property tax assessment rate. The PUCO must approve these revised schedules within 60 days of filing.

The act provides that to the extent possible, the rate reduction and the tax rider must be designed to avoid revenue responsibility shifts among the natural gas distribution company's customer rate schedules, or between the natural gas distribution company's commodity sales service and distribution service.

Payment of the MCF tax

(secs. 5727.33(E), 5727.811(B) and (D), 5727.82(A), and 5727.83)

A natural gas distribution company must base the excise tax on the MCF of natural gas distributed to an end user through the meter of the end user in Ohio that is estimated to be consumed by that end user as reflected on the customer statement from the company. The company is required to pay the tax to the Treasurer of State by the 20th day of May, August, and November, and February, by filing a return prescribed by the Tax Commissioner and paying the full amount of tax due for the preceding quarter. The first payment must be made on or before November 20, 2001, for the quarter ending September 30, 2001.

Failure to timely file a return and pay the tax subjects a natural gas distribution company to a charge of $50 or 10% of the tax required to be paid for the reporting period, whichever is greater. Additionally, if any tax due is not timely paid, a natural gas distribution company must pay interest, calculated by adding 3% to the federal short-term rate determined by the Tax Commissioner, which is 8% per annum for 2000.

As in existing law for electric distribution companies, a natural gas distribution company must remit tax payments by electronic funds transfer in the manner prescribed by rules adopted by the Treasurer of State.

A natural gas distribution company is required to pay the MCF tax if natural gas is distributed by the company through a meter of an end user in this state; the company is distributing natural gas through a meter located in another state, but the natural gas is consumed in Ohio in the manner prescribed by the Tax Commissioner; or the company is distributing natural gas in this state without the use of a meter, but the natural gas is consumed in Ohio as estimated and in the manner prescribed by the Commissioner.

The act requires that in determining the gross receipts of a natural gas company for purposes of the natural gas company (gross receipts) excise tax, the Commissioner must include receipts the company received to pay the MCF tax.

Exemptions

(sec. 5727.811(F))

The MCF tax does not apply to the distribution of natural gas to the federal government or any natural gas produced by an end user in this state that is consumed by that end user or its affiliates and is not distributed through the facilities of a natural gas company.

Disposition of MCF tax revenues

(secs. 5727.84(C) and 5727.85(A))

The act requires that MCF tax revenues be placed in specific funds and distributed in the same manner as kilowatt-hour taxes are under S.B. 3. The MCF tax must be credited as follows:

(1) 70%, less an amount equal to 30% of the total "state education aid offset," must be credited to the School District Property Tax Replacement Fund for the purpose of making property tax replacement payments to school districts and joint vocational school districts (see "***Property tax replacement payments***," below;

(2) 30% must be credited to the Local Government Property Tax Replacement Fund for the purpose of making property tax replacement payments to local governments;

(3) An amount equal to 30% of the total "state education aid offset" must be credited to the GRF. The "state education aid offset" represents the additional money paid by the state to school districts through the Foundation Formula attributable to the act's reduction of tangible personal property tax assessment rates. The offset is determined by the Department of Education and is the amount by which state education aid (the sum of state basic aid and state special education aid computed under the school foundation program law) exceeds the amount of state education aid that would be computed for the current fiscal year if the school district's adjusted total taxable value included the tax value loss certified by the Tax Commissioner (see "***Natural gas company tax value loss***," below).

Beginning in the fiscal year in which payments are required to be made under the property tax replacement payment law, if the revenue arising from the MCF tax is less than $90 million, the amount credited to the GRF must be reduced by the amount necessary to credit to the School District and Local Government Property Tax Replacement Funds the amount that each Fund would have received if the MCF tax did raise $90 million for that fiscal year. The Tax Commissioner is required to certify to the Director of Budget and Management the amounts that are so credited.

Administration and enforcement of the MCF tax; assessments, interest, refunds, and penalties

(secs. 4933.33, 5703.052, and 5727.88 to 5727.95; Section 10)

The Tax Commissioner is charged with administering the act's MCF tax provisions. The Commissioner may adopt any necessary rules, prescribe forms, and request information from the PUCO regarding a natural gas distribution company. (Sec. 5727.88.)

The Tax Commissioner has the same powers to make assessments against natural gas distribution companies for MCF taxes as for electric distribution companies under the kilowatt-hour tax. The same four-year statute of limitations on assessments that applies under the kilowatt-hour tax law applies to assessments against natural gas distribution companies. (Secs. 5727.89 and 5727.90.)

Natural gas distribution companies have the same right to appeal assessments with regard to the MCF tax as electric distribution companies have with regard to the kilowatt-hour tax, beginning with administrative appeals before the Tax Commissioner, which are appealable to the Board of Tax Appeals. Assessments not paid bear interest in the same manner as under the kilowatt-hour tax. Money collected from an MCF tax assessment or interest is paid to the Treasurer of State, and is treated as revenue from the MCF tax. (Sec. 5727.89.)

Refunds of the MCF tax must be requested and paid from the Tax Refund Fund in the State Treasury, in the same manner as refunds of the kilowatt-hour tax. Additionally, any natural gas distribution company that can substantiate to the Tax Commissioner that the MCF tax was paid on natural gas distributed via its facilities and consumed at a location outside Ohio may claim a refund. (Secs. 5703.052 and 5727.91.)

As is the case for electric distribution companies, natural gas distribution companies must keep distribution records as required by the Tax Commissioner for four years after a return is due or filed, whichever is later. The records must be available for inspection by the Commissioner or an authorized agent. (Sec. 5727.92.)

Under the act, natural gas distribution companies must register with the Commissioner prior to distributing gas in Ohio. No person may distribute natural gas to a meter of an end user in this state without holding a valid registration. Those companies in existence on the act's effective date must register before July 1, 2001. (Secs. 5727.93 and 5727.95; Section 10.)

Each natural gas distribution company annually (or more frequently if it wishes) must state on each customer bill, or distribute to each of its customers a statement that explains, that the amount billed the customer includes MCF taxes (stating the rate) and assessments to assist in the support of PUCO operations and the Office of the Consumers' Counsel. (Secs. 4933.33 and 5727.94.) This notice is not required if the company is not subject to such assessments.

The penalty for a natural gas company failing to comply with any of the act's MCF tax provisions or rules adopted by the Tax Commissioner is the same as what applies to an electric distribution company failing to comply with the law governing the kilowatt-hour tax; violations are first degree misdemeanors, with subsequent offenses being fourth degree felonies. (Sec. 5727.99, not in the act.)

Property tax replacement payments

The act requires that school districts, joint vocational school districts, and other local governments receive property tax replacement payments for revenue lost due to the reduction in the tangible personal property tax assessment rate for natural gas companies, in the same manner as S.B. 3 did for the reduction in such rates for electric and rural electric companies. The payments are to be made from the existing Local Government Property Tax Replacement Fund and the School District Property Tax Replacement Fund, created by S.B. 3, into which revenues from the new MCF tax must be deposited. The act also requires that county auditors and treasurers receive replacement payments for losses incurred in their administrative fees. Calculation of the new payments, discussed in some detail below, is to be accomplished by adding to the S.B. 3 replacement payment framework a component representing the reduction in natural gas company personal property assessment rates.

Determination of electric company and natural gas company tax value losses and fixed-rate and fixed-sum levy losses used in replacement payment computations

(sec. 5727.84)

The act requires the Tax Commissioner, by January 1, 2002, to ascertain for each taxing district its "natural gas company tax value loss." This amount is added to the tax value losses caused by the reduction in electric and rural electric company tangible personal property assessment rates under S.B. 3, to obtain an aggregate number representing the tax value loss attributable to the reduction in the assessment rate on both electric and natural gas company property (sec. 5727.84(A)).

The property tax replacement payments calculated for each school district, joint vocational school district, and local taxing unit includes its "fixed-rate levy loss" and "fixed-sum levy loss." Under existing law and the act, the Tax Commissioner is required, when computing the tax value loss, fixed-rate levy loss, and fixed-sum levy loss, to use the greater of the 1998 or 1999 tax rate in the case of levy losses associated with the electric company tax value loss (but excluding any levy approved after June 30, 1999), and the greater of the 1999 or 2000 tax rate in the case of losses associated with the natural gas company tax value loss, (excluding any tax levy approved after November 7, 2000). (Sec. 5727.84(I).)

Natural gas company tax value loss. The natural gas company tax value loss generally is determined in the same manner as the electric company tax value loss under S.B. 3: it is the difference in the value of a natural gas company's tangible personal property before and after the assessment rate on it is reduced. Under the act, the natural gas company tax value loss is the **sum** of (1) the reduction in the value of the natural gas company's current gas and (2) the reduction in the value of all of its other tangible personal property. The reduction in value of its current gas is determined by computing the three-year average assessed value of current gas for tax years 1997, 1998, and 1999, as apportioned in the taxing district for those respective years **minus** the three-year average assessed value from the same current gas for the same tax years, using an assessment rate of 25%. The reduction in the value of all other natural gas company tangible personal property is determined by computing the value, as assessed for tax year 1999 and apportioned to the taxing district for tax year 1999 **minus** the value of that same property as assessed for the same tax year had the property been apportioned to the taxing district for tax year 2001, and assessed at 25%. (Sec. 5727.84(E).)

Fixed-sum levy loss. Continuing law defines a "fixed-sum levy" as a tax levied on property at whatever rate is required to produce a specified amount of tax money or to pay debt charges, and includes school district emergency levies (sec. 5727.84(A)(12)). The fixed-sum levy loss is determined as under existing law, using the electric company tax value loss; the act includes in the computation the natural gas company tax value loss. The fixed-sum levy loss is the **sum** of the electric company and natural gas company tax value loss **multiplied** by the respective 1998 and 1999 tax rates, for fixed-sum levies for all taxing districts within each school district, joint vocational school district, and local taxing unit **minus** the total taxable value in tax year 1998 for the electric company tax value loss and in 1999 for the natural gas company tax value loss, multiplied by one-fourth of one mill. (Sec. 5727.84(H).)

For years 2002 through 2006, the fixed-sum levy loss computation includes school district emergency levies that existed in 1998 for the electric company tax value loss, and in 1999 for the natural gas company tax value loss, and all other fixed-sum levies that existed in those respective years that continue to be charged in the tax year preceding the distribution year.

For years 2007 through 2016, the fixed-sum levy loss computation excludes all school district emergency levies, and all other fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss, but that are no longer in effect in the tax year preceding the distribution year. The act provides that an emergency tax levy that existed in 1998 for the electric company tax value loss, and 1999 for the natural gas company tax value loss, continues to exist in a year beginning on or after January 1, 2007, but before January 1, 2017, if, in that year, the board of education levies an emergency levy for an annual sum at least equal to the annual sum levied in 1998 or 1999, respectively, less the payment amount certified for 2002. (Sec. 5727.84(H).)

If the amount computed for any school district, joint vocational school district, or local taxing unit is greater than zero, that amount must equal the fixed-sum levy loss, and the one-fourth of one mill that was subtracted in the computation of the loss must be apportioned among all contributing fixed-sum levies levied within each school district, joint vocational school district, or local taxing unit.

Fixed-rate levy loss. A fixed-rate levy is any tax levied on property other than a fixed-sum levy (sec. 5727.84(A)(10)). The loss for a school district, joint vocational school district, or local taxing unit is the total sum of (1) the electric company tax value loss multiplied by the tax rate in effect in tax year 1998 for fixed-rate levies and (2) the natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999 for fixed-rate levies. (Sec. 5727.84(G).)

Replacement payments for schools

(secs. 5727.84(A) and 5727.85(C), (D), and (E))

After computing the tax value loss, fixed-sum levy loss, and fixed-rate levy loss, the Tax Commissioner then uses them to determine the property tax replacement payments to be made from the School District Property Tax Replacement Fund to city, local, exempted village, and joint vocational school districts for tax revenue losses incurred in their fixed-sum and fixed-rate levies. Generally, payments for fixed-rate levy losses must be made twice a year, beginning in February 2002 and each August and February thereafter until August 2016. Payments for fixed-sum levy losses must be made in those same months, but may extend past 2016 because they are required to be made until fixed-sum levies, in effect in 1998 to June 30, 1999, for levy losses associated with the electric company tax value loss, or 1999 to November 7, 2000, for levy losses associated with the natural gas company tax value loss, are no longer in effect.

Replacement payments for other local governments

(sec. 5727.86)

The Tax Commissioner also uses the tax value loss, fixed-sum levy loss, and fixed-rate levy loss to compute the property tax replacement payments to be made from the Local Government Property Tax Replacement Fund to local taxing units. The act requires that the losses from the reduction in the natural gas company property tax assessment rate be reflected in those payments. Generally, fixed-rate levy losses must be reimbursed under existing law at a decreasing percentage in years 2002 through 2016. Fixed-sum levy losses must be paid under existing law at 100% of the loss from 2002 until the levy expires. Fixed-rate and fixed-sum levy loss payments are made at the same time as property tax replacement payments to school districts are made.

S.B. 3 permits the Tax Commissioner to make a one-time early payoff of property tax replacement payments to school districts and other local governments. The law that allows the Commissioner to do this for school districts designates the fund from which the payments are paid, requires that the amounts be distributed to the proper local taxing unit as if they had been levied and collected as taxes, and directs the local taxing unit to apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes. The act establishes this same requirement for one-time payments made to local taxing units from the Local Government Property Tax Replacement Fund.

Replacement of certain administrative fees

(sec. 5727.87)

County auditors and county treasurers collect administrative fees for services rendered in collecting personal property and classified property taxes (secs. 319.54 and 321.26). The fees are imposed at a percentage of the moneys collected in the county. S.B. 3 required that a portion of the Local Government and School District Property Tax Replacement Funds be distributed until August 10, 2011, to county auditors and treasurers to reimburse them for administrative fee losses incurred as a result of the reduction in assessment rates on electric and rural electric company tangible personal property. The act amends this requirement to provide that losses from the reduction in the natural gas company property tax assessment rate must be included in calculating the fee losses that are to be reimbursed.

Effect of replacement payments on apportionment of general health district expenses

(sec. 3709.28)

Continuing law requires that the county auditor apportion the expenses of a general health district among the townships and municipal corporations composing the health district. The act provides that in making the apportionment for each year from 2002 through 2016, the county auditor must add to the taxable valuation of each township and municipal corporation the tax value loss determined for it, multiplied by the percentage used for that year in determining property tax replacement payments for fixed-rate levy losses (for instance, for 2011, 80% of the fixed-rate levy loss). The Tax Commissioner must certify to the county auditor the tax value loss for each township and municipal corporation for which the auditor must make an apportionment.

Public Utility Property Tax Study Committee

(sec. 5727.85(J))

The act renames the existing Electric Property Tax Study Committee the Public Utility Property Tax Study Committee. The act requires that, in addition to reporting, in 2011, the extent to which each school district has been compensated for its property tax losses caused by the reduction in assessment rates for electric company and rural electric company personal property, it also must consider natural gas company property.

Kilowatt-hour tax changes

The act makes a number of changes in the kilowatt-hour (kWh) tax enacted in S.B. 3. The kWh tax is imposed on companies that distribute electricity to electricity users in Ohio. The tax may be assessed and paid directly by high-volume users at a lower rate.

Self-assessing electricity users

(sec. 5727.81(C))

Ceiling on per-kWh tax rate. Under continuing law, self-assessing electricity users pay the kWh tax at a rate that accounts for both their use and the price they pay for electricity. The tax is imposed at the rate of $0.00075 per kWh plus 4% of the total price of electricity delivered to the user. The act places a ceiling on the per-kWh rate component by applying that rate only to the first 504 million kWhs delivered; electricity received in excess of that amount is taxed only at the rate of 4% of the price of the electricity.

Lower self-assessor threshold. In order to be eligible to self assess the kWh tax under prior law, an electricity user had to have used more than 120 million kWhs over the preceding 12 months. The act lowers this threshold to 45 million kWhs.

Estimated self-assessor threshold. Under prior law, an electricity user could qualify for self-assessor status only on the basis of actual prior consumption over the preceding 12 months. The act permits a user to apply for self-assessor status on the basis of an estimated use of over 45 million kWhs over a succeeding 12 month period. This provision is likely to apply primarily to new or reorganized electricity users that do not have a prior consumption history. If a user qualifies for self-assessor status on the basis of estimated consumption but does not, in fact, use more than 45 million kWhs over the 12-month period, then the self-assessor is required to pay the tax savings that resulted from it paying the lower self-assessor tax rates. Penalty and interest may be charged on the payment if it is not made within the prescribed time.

Remove revenue targets. Under prior law, revenue targets were established for self-assessing electricity users. If the targets were not met, the tax rate on self-assessors would increase to make up for the shortfall in revenue. The act eliminates these targets.

Define "total price of electricity". The self-assessor tax is imposed on the basis of both the number of kWhs used and the price paid for electricity. The act specifies how the price of electricity is determined for this purpose. "Total price of electricity" means anything paid or transferred (or promised to be paid or transferred) to obtain electricity or electric service, including anything paid (or promised to be paid) for the transmission or distribution of electricity or for transition costs. (Transition costs are costs incurred by electric companies to make the transition to a competitive market for electricity generation. The companies may charge additional rates and charges to retail customers in order to cover these costs, subject to PUCO approval. See secs. 4928.37 to 4928.40.) If electricity is sold as part of a package including other products or services, the kWh tax applies to the price of the entire package unless the price of the electricity is stated separately from the other parts of the package. The Tax Commissioner is authorized to adopt rules for computing the total price of electricity in accordance with the act's definition.

Self-assessors that are qualified end users. Under continuing law, some electricity users' receipt of electricity is exempted from the kWh tax because the electricity is used in a certain manufacturing process; such a user is a "qualified end user." (The process involves using electricity in an electrochemical reaction that, by direct current, transfers electrons that remain a part of the manufactured product.) Previously, a qualified end user could qualify to be a self-assessor on the basis of how much electricity it received, whether or not the electricity was used in a taxable or tax-exempt fashion. The act permits a qualified end user to pay the self-assessor tax only if its annual *nonexempt* use of electricity exceeds the 45 million kWhs per year threshold.

Multiple meters at a single location. The act provides that the tax on self-assessing purchasers applies to electricity received at a single location, even if more than one meter is used to measure the electricity at that location. The single location must be a facility located on contiguous property that, if separated, is separated only by a roadway, railway, or waterway. Under prior law, the kWh tax would have applied to the electricity received at each of the last meters used to measure electricity at such a location. The single location provision applies only to self-assessing purchasers.

Exemption for regeneration

(secs. 5727.80(G) and (H) and 5727.81(D))

The act creates a new exemption from the kWh tax for electricity used to store energy for subsequent electricity regeneration. The exemption applies to "qualified regeneration," which is a process whereby electricity is converted to a form of stored energy--for example, by compressing air for storage or to pump water to an elevated storage reservoir--and the energy so stored is then used to generate electricity for sale to others, primarily during peak electricity demand periods. Any electricity passing through the last meter measuring electricity used in such a process is exempt from the tax.

Grants for high-electricity-use manufacturers

(Section 14)

The act authorizes grants to be made to certain manufacturers in the state's Appalachian counties (these counties are listed in section 107.21, not in the act). The grants are to be made by the Appalachian Energy Grant Authority, which is created by the act. The Authority is composed of the Director of Development (or the Director's designee), the Director of Budget and Management (or designee), and the Deputy Director of the Governor's Office of Appalachian Ohio.

The Authority is authorized to make grants to a company satisfying all of the following criteria: (1) it is a manufacturer in an Appalachian county, (2) it consumed at least 550 million kWhs of electricity during 1999, (3) the average cost of the electricity it consumed in 1999 was less than 2.5 cents per kWh, (4) its cost of electricity on a per-kWh basis increases significantly because of the kWh tax, and (5) receiving the grant is likely to enhance or maintain the economic welfare of the Appalachian region. The grant is available between July 1, 2001, and June 30, 2004. Companies must apply to the Authority for the grant.

The Authority must hold its first meeting by July 1, 2001. The staff of the Department of Development, Office of Budget and Management, and Governor's Office of Appalachian Ohio must provide staff assistance to the Authority. The Authority ceases to exist on July 1, 2004.

Electricity bill notices

(sec. 4933.33)

Under continuing law, electric distribution companies must notify their customers that the price billed for electricity includes assessments to support the operations of the PUCO and Consumers' Counsel. Under the act, such a notice does not have to be provided if the company is not subject to those assessments.

Study on the effect of the kWh tax

(Section 9)

The act requires the Department of Taxation, in conjunction with the Public Utilities Commission, to study the effects, fairness, and structure of the kWh tax on commercial and industrial electricity customers. Not later than September 30, 2007, the Department must issue a report of its findings to the President of the

Senate, the Speaker of the House of Representatives, the majority and minority leaders of the Senate and House, and the chairpersons of the standing committee of the House of Representatives and the Senate that primarily considers tax legislation.

Corporation franchise tax

(secs. 5733.053 and 5733.06; Section 13)

The act reconciles two distinct provisions of continuing law that are intended to prevent corporations from avoiding payment of the corporation franchise tax. Both provisions arise from the fact that the corporation franchise tax is imposed for a particular calendar year (the "tax year") but is measured on the basis of the corporation's income for its fiscal year that ended in the prior year. One provision (sec. 5733.053) ensures that a corporation does not avoid the tax by reorganizing itself as a new corporation before each new tax year begins. Generally, this provision requires a corporation (the "transferee") that receives all of its assets from another corporation (the "transferor") to add to its own income the income that the transferor would have been taxed on if the transferor was still subject to the tax on that income. The second provision (sec. 5733.06(H)) prevents a corporation from avoiding the franchise tax by ceasing to do business in Ohio before the new tax year begins. Generally, such a corporation must pay an "exit" tax on the "unreported net income" that it had for any part of its fiscal year that ended before the new tax year begins.

The act modifies the transferor/transferee provision to account for the possibility that a transferor corporation may be subject to the exit tax. Under prior law, one of the conditions for the transferor/transferee provision to be applied was that the transferor ceased to be subject to the corporation franchise tax. Since it is possible, if not likely, that a transferor would be subject to the exit tax upon transferring substantially all of its assets to another corporation, this condition is stricken by the act. Instead, the act requires the transferee corporation to add the transferor's income to its own income only to the extent that that income was not reported as income subject to the exit tax.

The act also applies the transferor/transferee provision to a transfer of assets between two corporations even if the transferor transfers "substantially all" of its assets to the transferee, and even if the transferor continues to do business or own or employ capital or property in this state. Under prior law, the extent of the transferor's assets that had to be transferred before the provision applied was not specified, and the transferor had to have ceased doing business in Ohio or owning or using capital or property in Ohio.

The act allows a transferee to claim all of the corporation franchise tax deductions and credits that the transferor would have been entitled to if it had not transferred its assets, and requires a transferee to make any other adjustments to income that the transferor would have been required to make. Under prior law, only one credit was specifically allowed (it has since become defunct), and only certain specific deductions were allowed (they, too, have become defunct); but others were allowed if it would have been unreasonable or absurd to deny them.

The provision applies to tax year 2002 and thereafter.

Personal income tax

Residency presumption--exceptions

(sec. 5747.24; Section 13)

The act creates an exception to the state income tax residency rules, allowing persons to spend up to 30 days in Ohio for certain reasons without that time counting toward the current residency thresholds. Under continuing law, a person is presumed to be an Ohio resident for income tax purposes if he or she has more than 120 "contact periods" with the state during a calendar year. A contact period occurs when a person whose abode is outside Ohio spends time in Ohio during two consecutive days while away overnight from that abode. The residency presumption is rebuttable by a preponderance of the evidence if a person has between 121 and 182 contact periods during a calendar year; if a person has 183 or more contact periods during a year, the presumption is rebuttable only with clear and convincing evidence to the contrary. A person's residency determines whether he or she claims the resident credit for income taxed by another state, or the nonresident credit for the Ohio tax that would (without the credit) be imposed on non-Ohio income.

The act's exceptions to the residency thresholds include unpaid work, fund-raising for a 501(c)(3) organization, funerals, or family medical purposes. The family medical exception applies only in cases of "medical hardship": i.e., when a person, or a member of that person's immediate or extended family, is admitted to a hospital in Ohio, examined by a licensed medical professional within Ohio, admitted to a nursing home in Ohio, receiving nursing care while in a dwelling within Ohio, or otherwise receiving ongoing, necessary medical care in Ohio. "Medical hardship" includes treatment or care for acute or chronic illness or obstetric treatment or care. The exception for funerals applies only to funerals involving a member of the person's immediate or extended family (a spouse, child, grandchild, parent, sibling, in-law, or a dependent).

The provision applies to taxable years beginning on or after January 1, 2001. (The effective date is set by Section 6 of S.B. 180, which replaces the date set by Section 13 of S.B. 287.)

Nonresident credit: non-Ohio investment company income

(sec. 5747.221; Section 13)

Under continuing law, a "withholding" or "qualifying entity" tax is imposed on pass-through entities (e.g., S corporations, partnerships, some limited liability companies, and certain trusts) to ensure payment of Ohio income taxes by any nonresident owners of the entity. The withholding tax does not apply to most of the income (or a deduction item) from an "investment pass-through entity" (e.g., a mutual fund or finance company organized as a pass-through entity).

The act provides that any such income (or deduction) that is not subject to the withholding tax also shall not be considered Ohio income (or an Ohio deduction) for the purposes of computing the nonresident income tax credit, even though the nonresident is an owner for which the withholding tax otherwise would be due. (Existing law allows nonresidents to receive a credit against Ohio income tax equal to the amount of Ohio tax that would, without the credit, be due on non-Ohio income.) The effect of the provision is to increase the amount of the nonresident credit.

The provision applies to taxable years beginning on or after January 1, 2001. (The effective date is set by Section 6 of S.B. 180, which replaces the date set by Section 13 of S.B. 287.)

Withholding tax--application to guaranteed payments

(sec. 5733.40; Section 13)

The act simplifies a reference relating to the kinds of pass-through entity payments that are considered taxable under the withholding tax. The withholding tax is imposed on a pass-through entity's "adjusted qualifying amount"--generally, all of the nonresident owners' shares of the entity's income (or other tax item, such as deductions for losses) apportionable to Ohio, plus and minus certain adjustments. One of the adjustments is for guaranteed payments made to individual partners or limited liability company members and compensation paid to S corporation shareholders. Such payments and compensation are included in the adjusted qualifying amount only if they are paid to a nonresident partner, member, or shareholder who has a certain relationship with the partnership, company, or corporation. Under the act, the relationship must be that the partner, member, or shareholder holds at least a 20% interest in the entity's profit or capital (directly or indirectly) at any time during the entity's taxable year. Under prior law, the partner, member, or shareholder had to be a "related member" to the entity--i.e., had to either own at least 50% of the entity (including shares owned by an individual's family or by the individual's estate, trust, or corporation, or shares owned by a corporation indirectly through another closely related corporation), or be a member of a corporate group (or a significant owner of a member of such a group) under a federal tax law designed to prevent a corporation from dividing into several component corporations in order to receive federal tax advantages such as lower marginal tax rates or multiple credits and exemptions.

The provision applies to tax year 2002 and thereafter.

Municipal taxation--electric companies

The act modifies several aspects of existing law providing uniform procedures for, and limitations on, the taxation of electric companies by municipal corporations, as enacted by H.B. 483 of the 123rd General Assembly.

Estimated tax payments

(sec. 5745.04; Section 7)

The act modifies the estimated municipal income tax payment requirements for electric companies--both the permanent requirements in section 5745.04 and the temporary ones in Section 4 of H.B. 483. (The temporary requirements were established because the permanent ones assume a prior year tax liability for each company; but there is no prior liability because electric companies are not subject to municipal income taxation until 2002.)

The act specifies that the reporting and payment requirements begin to apply to an electric company during its *taxable* year that includes January 1, 2002. If a company's taxable year includes days in both calendar year 2001 and 2002, it must pay the tax only on the basis of its income in calendar year 2002, which is to be computed by prorating its taxable income for the taxable year on the basis of the number of days in the taxable year that are also in calendar year 2002. If a company's taxable year begins before September 1, 2001, it must accumulate the quarterly estimated tax payments it otherwise would have to make before January 15, 2002, and pay the entire accumulated payment on January 15, 2002 (or, if January 2002 is not the fourth, sixth, ninth, or twelfth month of its taxable year, it must pay the accumulated amount on the fifteenth day of the first of those months that falls after January 15, 2002).

In the case of an electric light company (a company that distributes electricity) that is not a public utility and that has elected to be subject to the uniform municipal income tax provisions, quarterly estimated tax payments and reports must first be made for the latest taxable year that ends on or before December 31, 2001. The payments and reports must be made in the fourth, sixth, ninth, and twelfth month of the following taxable year. The safe harbor for the first year, whereby penalty and interest is not charged if a company's estimated payments equal a specified percentage of the prior year's municipal income tax liability, is increased from 80% to 100%. The act clarifies when an electric light company (other than a public utility) may first elect to be subject to the uniform provisions: it may make the election for any taxable year that includes December 31, 2002. If a company has a "short" taxable year that begins on or after January 1, 2002, but ends before December 31, 2002, it also may make its initial election for that year.

The act specifies that the permanent payment and reporting requirements begin with an electric company's taxable year that begins in calendar year 2003. Also, if a company has a "short" taxable year that includes at least one month in calendar year 2002, it must begin paying and reporting estimated taxes if its short taxable year begins before the beginning of calendar year 2003. Under prior law, the permanent requirements would have begun to apply in calendar year 2003, which could have required a company to comply in the middle of its taxable year.

Computation of municipal taxable income

(sec. 5745.01)

The act clarifies language regarding how electric companies compute the income amount used to derive the income that is taxable by municipal corporations. Under continuing law, the base from which municipal taxable income is derived is the company's "adjusted federal taxable income"--i.e., federal taxable income adjusted to discount net intangible income and to account for gains or losses from the exchange of certain company assets that parallel an income adjustment in the corporation franchise tax law (sec. 5733.0510). The adjustment accounts for differences between the book value of those assets and their adjusted basis (unrecovered capital cost) as of December 31, 2000, that might be realized for tax purposes at a later date. In current law, the adjustment is expressed by referring to a similar adjustment made in computing an electric company's corporation franchise tax liability. The act does not substantially change how the adjustment is computed; instead, it replaces the reference to franchise tax adjustments with a recitation of the language used in the corporation franchise tax law.

Apportionment of income

(secs. 5745.02 and 5745.13)

Under continuing law, each electric company's tax liability to a municipal corporation is determined under a two-stage apportionment/allocation scheme. The company's federal taxable income is first apportioned or allocated to Ohio, and then the resulting Ohio income is apportioned among all municipal corporations where it has a business presence, as measured by the location of its property, where its employees work and how much they are paid for that work, and where it sells electricity. The act clarifies language governing both stages and fixes a threshold for when adjustments are to be made to a company's apportionment after it initially has been determined.

To Ohio. The act clarifies that sales of electricity are incorporated into the Ohio sales factor along with sales of any other services, even though the location of electricity sales will continue to be determined as they are for the purposes of the corporation franchise tax. Under prior law, there was a possible inference that electricity sales were to be segregated from other sales for the purpose of computing a separate sales factor. The act eliminates the possibility of such an inference.

To each municipal corporation. Under continuing law, an electric company's Ohio income is apportioned among municipal corporations where the company does business on the basis of a three-factor formula accounting for the company's property, payroll, and sales. Each factor is expressed as a fraction, with the numerator representing a measure of the company's presence in a particular municipal corporation and the denominator representing a measure of its presence throughout Ohio.

The act modifies the municipal payroll factor by specifying that the numerator consists of all compensation that is both (1) *earned* in the municipal corporation by the company's employees for their services to the company and (2) subject to the municipal corporation's income tax withholding. Under prior law, the numerator consisted of all compensation that was both (1) *paid* by the company to its employees and (2) subject to the municipal corporation's income tax withholding. The act's change clarifies that the numerator does not include compensation that is merely issued from a company's facilities in a municipal corporation (i.e., the headquarters or payroll office) for work that is performed outside the municipal corporation. Similarly, the denominator of the payroll factor is changed to clarify that it includes only compensation paid to employees who are in Ohio, regardless of the source of the payment (i.e., where it might be issued from).

Adjustments. Under continuing law, adjustments to the apportionment of an electric company's income may be warranted once an audit has been conducted by the Tax Commissioner. If an adjustment is warranted, the Tax Commissioner must notify the company and the affected municipal corporations of the adjustment.

The act requires notification of affected municipal corporations only if the adjustment is for more than $500. The taxpayer continues to be entitled to notice regardless of the amount of the adjustment.

Distribution of revenue among municipal corporations

(sec. 5745.05)

Continuing law provides that revenue from municipal income taxes paid by electric companies is to be collected and distributed by the Department of Taxation (including revenue arising from the imposition of penalties and interest). The Department must distribute the revenue among the municipal corporations quarterly, based on the quarterly estimated tax payments and the annual end-of-year returns.

The act specifies that the Department of Taxation is to adjust the payments made to each municipal corporation to account for any audit adjustments made by the Department (i.e., adjustments to reflect increases or decreases to a particular municipal corporation arising from adjustments made to a company's taxable income or its apportionment fractions). The act also specifies that, when penalties and interest collected from a company are distributed to municipal corporations, they are to be distributed in the same proportions as the taxpayer's taxes are distributed among those municipal corporations for the quarterly estimated tax payment period if the annual report has not yet been filed; if the annual report has been filed, then penalties and interest are to be distributed on the basis of the distribution called for on the basis of the annual report.

Administrative fee

(Section 7)

Under continuing law, the Department of Taxation is entitled to receive up to 1.5% of the municipal income tax revenue from electric companies to defray the costs incurred to administer the uniform income tax provisions. In the first two years, however, the fee may be as high as 5% of collections. The act eliminates the 5% cap for the first two years, but the fee still must not be more than is necessary to defray the Department's administrative costs.

Refunds

(sec. 5745.11)

Under continuing law, refunds are paid to electric companies for municipal income tax overpayments. Interest is added to the refund if the refund is not issued within 90 days after a refund application is made. Municipal corporations are responsible for paying refunds and interest on refunds. The act clarifies that refunds are payable on any tax overpayment, whether or not the overpayment resulted from an assessment (i.e., from a formal notice of a tax deficiency). The act also specifies that interest on a refund of tax arising from the payment of an assessment runs from the day the assessment was issued until the day the refund is issued.

Interest on tax underpayments

(sec. 5745.07)

Under prior law, if an electric company did not pay its municipal income tax obligation on time, interest became payable on the unpaid amount. And the law specifically noted that this liability existed regardless of whether the amount of tax was determined by the Tax Commissioner of the taxpayer. The act continues the provision, but no longer refers to the determination of the tax.

Effective dates

(Section 7)

The act corrects effective dates originally enacted by H.B. 483 and subsequently amended by S.B. 3. H.B. 483 set January 1, 2001, as the effective date of sections 718.01, 718.011, 718.02, and 718.08 (governing municipal income tax definitions of taxable income and electric companies, allocation of income, and estimated tax payments). S.B. 3 inadvertently delayed the effective date of these sections to January 1, 2002.

Municipal income taxation--individuals

Taxation of pass-through entity owners

(sec. 718.14)

Continuing law (effective January 1, 2003) requires municipal corporations levying an income tax that applies to income from a pass-through entity to grant a credit to any residents who are owners of the entity. The credit is intended to offset taxes paid by the entity to any other municipal corporation that taxes the entity at the entity level. The credit equals the owner's percentage share of the tax paid by the entity to the other municipal corporation. Under prior law, the percentage share was determined by dividing the owner's ownership share by the total ownership shares of all owners, whether or not those owners were subject to taxation by the municipal corporation granting the credit.

The act modifies how the percentage share is to be determined by dividing each resident owner's income from the entity (to the extent it is taxable by the municipal corporation) by the total income from the entity of all owners whose income from the entity is subject to the municipal corporation's income tax. Generally, this should result in a greater credit for each resident owner of a pass-through entity than would have been available under prior law.

<u>Taxation of "occasional entrants"</u>

(sec. 718.011)

The act clarifies the law governing when a municipal corporation may tax a nonresident’s pay for working there 12 or fewer days per year. Under the act, a municipal corporation may not tax the compensation earned by a nonresident for those days unless the person's employer has no principal place of business elsewhere in Ohio where the compensation for those days is taxed by a municipal corporation. Under prior law (effective January 1, 2001), the prohibition would have applied if (1) the employer's principal place of business was located outside the municipal corporation, (2) the person paid tax on that compensation to another municipal corporation (if any) where that principal place of business was located, and (3) no part of that tax was refunded.

The act affects only the provision governing nonresident employees; a provision in existing law regarding professional entertainers and athletes is not changed.

<u>Municipal--school district tax sharing agreements</u>

(secs. 718.09 and 718.10)

Under prior law, if a school district overlapped substantially with one or more municipal corporations, the school board and the municipal legislative authorities could agree to share the revenue from income taxes levied by the municipal corporations. In order to enter into such an agreement, the territories of the school district and the municipal corporations had to overlap to the extent that not more than 5% of the municipal corporation territory is outside the school district and not more than 5% of the school district's territory is outside the municipal corporations; or, up to 10% of the school district's territory could be outside a single municipal corporation, but the portion lying outside that municipal corporation had to lie entirely within another municipal corporation having a population of 400,000 or more.

The tax sharing agreement provided for the municipal corporation to propose a municipal income tax to the voters of the municipal corporation (including municipal residents who reside outside the school district, if any). The tax was levied under the terms of the municipal corporation's ordinance adopted for the purpose; the tax was not levied under the school district income tax law (Chapter 5748.). The agreement also had to provide for at least 25% of the revenue to be paid to the school district. The ordinance and the ballot question had to indicate that a specified portion of the revenue was to be paid to the school district.

The act eliminates the authority of municipal corporations and school districts to enter into such income tax sharing agreements. No such agreement may be proposed at an election on or after January 1, 2001. The act does not affect income tax sharing agreements approved by voters before that date.

Study of job creation tax credits for electric generating equipment manufacturers

(Sections 3 and 4)

The act extends from December 31, 2000, to June 30, 2001, the deadline for the Director of Development to report the results of its study on the desirability of new job tax credits for generating equipment manufacturers.

Job training tax credit

The act makes several changes to the tax credit for job training expenses.

Extension of credit to other industries and business forms

(secs. 5725.31, 5729.07, 5733.42, and 5747.39; Section 15)

Under prior law, the credit was limited only to corporations in certain standardized industry categories: manufacturing; finance, insurance, and real estate; business services; legal services; and engineering, accounting, research, management, and "related" services. The act extends the credit to a company in any industry, regardless of how the industry might be categorized. Companies may claim the credit for training costs paid or incurred on or before December 31, 2003.

Under prior law, the credit was available only to "C" corporations that were subject to the corporation franchise tax (including financial institutions). The act extends availability of the credit to partnerships, S corporations, limited liability companies, other pass-through entities, insurance companies, and dealers in intangibles (e.g., stockbrokers, finance companies). Each owner of a pass-through entity is entitled to its proportionate share of the credit available to the entire entity. In order to claim the credit, an owner must hold the ownership share on the last day of the three-year period over which the credit is computed (see below under "***Computation of the credit***").

The act also makes explicit that "C" corporations that form partnerships or other legal pass-through entities may claim the credit as a partnership. Each partner is entitled to claim its proportionate partnership share of the credit if it held a partnership share on the last day of the three-year period over which the credit is computed.

Computation of the credit

The act changes how the amount of a taxpayer's credit is to be computed. Under prior law, the credit was to equal 50% of the incremental increase in training costs above a company's 3-year average training costs. Under the act, the credit equals 50% of the average of a company's training costs for the preceding three years.

The act also changes the limits on the credit amount. Under prior law, the credit was limited to $500 times the number of eligible employees who were trained, and the lesser of $100,000 per company or 50% of its previous year's franchise tax liability. Under the act, the credit is limited to $1,000 per trained employee, and $100,000 per company.

If a company's credit exceeds its end-of-year tax liability, it may carry the difference forward and claim it as a credit against its tax liability for up to three of the following years.

"Eligible" employee

Under continuing law, the credit is available only for training costs paid or incurred with respect to eligible employees. The act modifies who qualifies as an eligible employee. Under prior law, an employee had to work only 24 hours per week, had to have been employed by the same company for 180 consecutive days, and had to have held the same position for at least 90 consecutive days. The act requires eligible employees to be full-time employees--i.e., employed at least 35 hours per week or the customary or contractual equivalent of full-time employment--but requires only that the employee be employed by the same company for 180 consecutive days, regardless of how long the employee held the same position. The act also specifies that the 180-day employment requirement applies to the period before the day the tax credit application is filed.

"Eligible training"

Under continuing law, the credit is available only for eligible training costs. Prior law characterized eligible training as training to provide job skills to those who have skill deficiencies adversely affecting their ability to function effectively or to those who might be displaced because of such deficiencies or because of inability to use new technology. The act adds another criterion--providing job skills allowing employees to perform additional job duties for the company. Prior law excluded any "career development" programs. Under the act, career development programs are excluded only if they are intended exclusively for *personal* career development.

Claiming credit jointly by related corporations

Under prior law, if a group of corporations were related through majority stock ownership (i.e., they were a "qualifying controlled group"), they were required to claim the credit as a single entity. In other words, the maximum per-company credit would have been divided among the members of the group. Under the act, each member of such a corporate group may claim the credit individually. Thus, the per-company credit cap ($100,000) applies to each company separately.

Administration of credit

(secs. 9.66, 5717.02, and 5733.42)

The act gives companies the express right to appeal the denial of job training tax credit applications. And, if a company's credit is reduced because the company is alleged to have failed to follow through in providing eligible training, the company may appeal the credit reduction. An appeal entitles a company to a hearing before the Director of Job and Family Services. The Director's decision on the appeal may be appealed to the Board of Tax Appeals.

The act requires a company applying for the credit to indicate if it owes delinquent state taxes or has any other outstanding liability to a state agency or a political subdivision. If a company makes a false statement regarding those liabilities on its application, it may be denied the credit. This is currently required for applicants for various economic development assistance programs and local property tax exemptions.

The act requires companies receiving a credit to retain pertinent records and make them available to the Director of Job and Family Services upon request.

The act makes the Superintendent of Insurance responsible for reducing an insurance company's premium tax liability in accordance with the credit granted by the Director of Job and Family Services, and for reducing the credit if a company's credit is reduced by the Director. (The Superintendent of Insurance is responsible under continuing law for administering the insurance company premium tax.)

Technical changes

(sec. 5727.33; Sections 5 and 6)

In moving electric companies from the public utility excise tax to the corporation franchise tax under S.B. 3, and at the same time moving natural gas companies from the public utility excise tax to the new excise tax under Am. Sub. H.B. 283 of the 123rd General Assembly, provisions that appeared in both acts regarding the gross receipts of rural electric companies and receipts derived from providing electricity to a qualified former owner of a production facility were inadvertently eliminated due to the overlapping effective dates of the provisions. The act reinstates those provisions and applies them only to tax years prior to tax year 2002, which is when electric companies and rural electric companies cease paying the public utility excise tax.

Miscellaneous

The act makes several other changes of a technical or corrective nature.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-11-00	p.	1585
Reported, S. Ways & Means	05-24-00	p.	1810
Passed Senate (33-0)	05-24-00	pp.	1824-1825
Reported, H. Ways & Means	12-05-00	pp.	2427-2428
Passed House (84-8)	12-06-00	pp.	2440-2444
Senate concurred in House amendments (30-1)	12-07-00	pp.	2349-2350

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