



Sub. H.B. 127

125th General Assembly
(As Passed by the General Assembly)

Reps. Jolivette, Young, Seitz, Widowfield, Olman, Hagan, Hollister, Hughes, Niehaus, McGregor, Collier, Latta, Schaffer, Kilbane, Aslanides, Barrett, Daniels, DePiero, Distel, Driehaus, Flowers, Gilb, Hoops, T. Patton, Raussen, Schlichter, Schmidt, Setzer, G. Smith, Wagner, Webster, Wilson, Wolpert

Sens. Spada, Amstutz, Austria, Carey, Harris

Effective date: *

ACT SUMMARY

- Permits counties, municipal corporations, and townships to acquire tax-delinquent real estate before the foreclosure proceeding begins, without necessarily assuming the entire tax debt.
- Extinguishes the tax debt if all of the other taxing districts waive all of their claims to delinquent taxes on the real estate.
- Exempts acquired real estate from further taxation for as long as it is owned by the county, municipal corporation, or township.
- If the county, municipal corporation, or township later sells the property, requires net proceeds from the sale to be spent for redevelopment.
- Revises the land reutilization program in regard to delinquent vacant lands and the ability to locate the program in a municipality.
- Permits delinquent land to be redeemed after a foreclosure proceeding has been instituted, but before a confirmation of sale has been entered in

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

the proceeding, if the property complies with applicable zoning regulations, land use restrictions, and building, health, and safety codes.

- Exempts from municipal income taxation all of an S corporation shareholder's distributive share of net profits of the S corporation, other than wages or net earnings, except: (1) if, as of December 6, 2002, a municipal corporation taxed a shareholder's distributive share of net profits to any greater extent than that permitted under former law, and a majority of the municipal corporation's electors voted in favor of that question at the November 4, 2003, election, the municipal corporation may continue to so tax the distributive share of net profits, or (2) if, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on such distributive share of net profits to the extent the share would be attributable to business activities **in** Ohio, and a majority of the municipal corporation's electors vote in favor of that question at an election to be held on November 2, 2004, the municipal corporation may continue to impose the tax on such Ohio-source share.
- If the electors of a municipal corporation vote in favor of the questions presented at either of the elections, provides that the municipal corporation must tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders, and requires the municipality to specify as such in its ordinances or rules.
- Rounds the homestead exemption tax reduction amounts to the nearest \$10, rather than \$100, if the \$100 rounding does not increase the dollar amounts by which taxable or assessable value is reduced.
- Changes the law to permit prepayment of real property or manufactured or mobile home taxes by credit card, provides that discounts credited to prepaying taxpayers must be commensurate with the expenses incurred by the county treasurer to process prepayments, and allows the treasurer to keep a single record for all parcels or homes owned by a taxpayer.
- Limits the Tax Commissioner's authority to enforce certain components of enterprise zone agreements.
- Revises the information and statements that are required to be in an enterprise zone agreement.



- Exempts inventory in an enterprise zone from taxation only if the enterprise zone agreement specifically grants the exemption.
- Adds to the prohibitions against entering into enterprise zone agreements the expansion or relocation of operations to another location in Ohio that results in a reduction of an Ohio operation.
- Updates the enterprise zone city and population eligibility criteria to reflect the federal census of 2000.
- Voids an enterprise zone agreement if the requirement to be a "facility" has not been met.
- Reorganizes tax incentive review councils (TIRCs).
- Revises the duties of TIRCs when reviewing agreements granting tax exemptions for property used in or subject to urban renewal projects, community redevelopment programs, community reinvestment area programs, enterprise zone agreements, tax increment financing for public infrastructure improvements, or incentive agreements for remediation of property.
- Authorizes TIRCs to request information from owners of property that is exempted from taxation under those agreements.
- Requires legislative authorities that receive recommendations from a TIRC to act on the recommendations.
- Clarifies that the sales tax does not apply to public transit buses that seat ten or fewer persons, and permits persons operating such buses with that seating capacity to apply for motor fuel tax refunds.
- Delays from January 1, 2004, to January 1, 2005, the new sales tax law that establishes uniform standards, in accordance with the Streamlined Sales and Use Tax Agreement, for determining whether to source certain sales, leases, or rentals to Ohio.
- For purposes of determining tax liability under the corporation franchise tax law (1) eliminates from the sales factor sales of "excluded assets," such as intangible or intellectual property, (2) establishes market-based siting requirements that center on the types, and the location or use, of property, to be used in determining whether sales of the property were in



Ohio, and (3) provides that a law permitting related corporations to combine their net incomes for purposes of computing the value of issued and outstanding share of stock cannot be considered as part of the total value computation.

- Extends until 2015 the new manufacturing machinery and equipment tax credit against corporation franchise tax or income tax liability.
- Revises the method for computing the property, payroll, and sales factors used in calculating a trust's modified Ohio taxable income.
- Requires that interest earned on the School District Income Tax Fund be credited to that Fund.
- Permits subdivisions to specify that revenue from a property tax levied for various police purposes may also be used to pay for police department buildings and building sites.
- Changes the recipient entities of earmarks under the General Revenue Fund (GRF) appropriation item, Air Force Institute of Technology, that were made in the budget bill (Am. Sub. H.B. 95 of the 125th General Assembly).
- From unspent and unobligated cash balances, if any, in the GRF, makes an appropriation to the Department of Development of up to \$5 million over both fiscal years of the 2004-2005 biennium to support economic development projects for which appropriations otherwise would not be available.

TABLE OF CONTENTS

TAX-DELINQUENT PROPERTY

Acquiring tax-delinquent property	6
Under the "land reutilization" law.....	6
Under the act.....	6
Delinquent vacant lands under the land reutilization law	8
Redeeming delinquent land after institution of a foreclosure proceeding.....	8

MUNICIPAL INCOME TAXATION

Taxation of S corporations	9
Background.....	9
Limiting the taxation of S corporation shareholder distributive shares	10



**TAXATION OF REAL PROPERTY OR
MANUFACTURED/MOBILE HOMES**

Homestead exemption inflation adjustments--rounding..... 11
Prepayment of real property and manufactured or mobile home taxes 12

ENTERPRISE ZONES

Background 13
Tax exemptions for inventory 13
Limitation on Tax Commissioner's authority regarding agreements 13
Format of an enterprise zone agreement 14
Discontinuation or relocation of operations in a zone 14
Update of enterprise zone characteristics 15

TAX INCENTIVE REVIEW COUNCILS

When councils must be created 15
Council officers and meetings 16
Duties of a TIRC..... 16
Legislative authority's duties..... 17
Information required to be submitted to a TIRC 17

SALES AND USE TAXES

Tax exemption for public transit buses 17
Delay of new sales tax sourcing laws 18

CORPORATION FRANCHISE TAX

Determining part of a corporation's tax liability by apportioning sales..... 18
 In general 18
 Computing the sales factor to determine Ohio apportioned net
 business income 19
 Using a market-based approach to situs receipts from sales..... 19
Computing net book value--net income cannot be combined 20
Extension of new manufacturing machinery and equipment tax credit 21

MISCELLANEOUS PROVISIONS

Apportionment factors revised for trusts 21
 Background 21
 Determining payroll, property, and sales factors 22
School District Income Tax Fund..... 24
Property taxes used to pay for police department buildings 24
Changes to the recipients of earmarked Air Force Institute of
Technology appropriations 24
Appropriation to the Department of Development..... 25



CONTENT AND OPERATION

TAX-DELINQUENT PROPERTY

Acquiring tax-delinquent property

Under the "land reutilization" law

(R.C. 5722.01 to 5722.15)

Continuing law not amended by the act authorizes municipal corporations, counties, and townships to acquire tax-delinquent land and delinquent vacant land under somewhat favorable terms (relative to a private buyer) after the land has been offered for sale at public auction and after most of a foreclosure proceeding's costs have been incurred. But the tax liens remain with the land and must be satisfied out of the proceeds from the eventual sale of the property, to the extent the sale price covers those liens after covering the acquiring subdivision's expenses.

Alternatively, the property may be devoted to a public use instead of being sold, but the law appears to require all property acquired in this manner to be offered for sale after 15 years. This authority, known as "land reutilization" or "land banking," applies only to "nonproductive land," which is property that has become subject to a foreclosure proceeding, that is unoccupied by people, and that either has no dwelling on it, has buildings on it that have been declared nuisances, or has buildings on it that the subdivision declares as necessary for effective reutilization. Under the land reutilization law, the subdivision may acquire delinquent property directly from the owner before foreclosure, but since the tax liens remain with the property, the other overlapping taxing districts are entitled to their share of the proceeds when the subdivision sells the property.

Under the act

(R.C. 5722.21)

In general. The act authorizes counties, municipal corporations, and townships to acquire tax-delinquent real property without necessarily incurring the entire tax debt, and before substantial costs are undertaken by the county in proceeding with foreclosure. Unlike tax debt under the land reutilization law, the tax debt is discharged to the extent that all of the overlapping taxing units (school districts, etc.) release their claims on the delinquent taxes.

Local implementing legislation. To acquire tax-delinquent property under the act's terms, a board of county commissioners, the legislative authority of a



municipal corporation, or a board of township trustees must adopt legislation declaring that acquiring such property is for the public purpose of redeveloping the property or rendering it suitable for productive, tax-paying use. The county, municipal corporation, or township then may purchase or otherwise acquire "eligible" delinquent land (described below) in a voluntary transaction; the property may not be acquired through eminent domain proceedings. Once acquired, the county, municipal corporation, or township holds title to the property free and clear of prior property tax liens if all of the other taxing units consent in writing to release all of their claims to their respective shares of the delinquent taxes. If a taxing unit does not consent to release its claim, the entire amount of the lien continues until paid or otherwise discharged. Other liens and encumbrances, such as mortgages or federal tax liens, are not affected.

Release of claims. A taxing authority of a taxing unit may consent to release its claims for delinquent taxes and associated costs on a parcel-by-parcel basis, or on a "blanket" basis whereby the release applies prospectively to all or a specified number of parcels acquired by the county, municipal corporation, or township.

The release for an individual parcel must be obtained in writing from the taxing authority or an authorized officer of the taxing authority. The release may be obtained either before or after the county, municipal corporation, or township takes title to the parcel.

A taxing authority may grant a prospective or "blanket" release of its claim for delinquent taxes and associated costs through an agreement with the county, municipal corporation, or township. The agreement must provide for any terms or conditions on the release of the claim as are mutually agreeable to the taxing authority and the county, municipal corporation, or township. The agreement may, but need not, provide for the following:

- Prior notice to the taxing authority of property acquisitions.
- An option for the taxing authority to revoke its release regarding a parcel before the release takes effect, and the manner in which the taxing authority gives notice of a revocation.

The act specifies that a taxing authority's blanket consent does not prevent it from revoking its advance consent to release its claim for any particular parcel, as long as it does so before the county, municipal corporation, or township enters into an agreement to acquire the parcel.

"Eligible" delinquent land. A parcel of delinquent real property may be acquired under the act's terms only if it has been listed on the county delinquent



tax list (or delinquent vacant tax list in counties maintaining such a list) and has been certified to be delinquent, as evidenced by the county auditor certifying a copy of the delinquent land list to the county treasurer. Since the delinquent tax list must be published in a newspaper twice within 60 days after the copy of the list is delivered to the county treasurer, inclusion in the delinquent tax list ensures that at least two publications of the delinquency occur before a county, municipal corporation, or township may seek to acquire a delinquent parcel under the act's terms.

In counties that sell the right to collect delinquent taxes to private parties through the "tax certificate" process, any parcel that has been selected for such treatment may not be acquired by a county, municipal corporation, or township under the act's terms.

Property tax exemption for acquired property and subsequent sale.

Property acquired by a county, municipal corporation, or township under the act's terms is real property held for a public purpose and is entitled to exemption from property taxation for as long as it is owned by the county, municipal corporation, or township. If the county, municipal corporation, or township sells property acquired under the act's terms, the net proceeds from the sale must be used for redevelopment purposes, as the municipal legislative authority or board of county commissioners or board of township trustees considers necessary or appropriate.

Delinquent vacant lands under the land reutilization law

(R.C. 5722.01(B) and (G))

The act contains provisions that affect delinquent vacant lands that may be acquired under the land reutilization law. Prior law required that delinquent vacant lands be delinquent lands for at least five years and unimproved by any dwelling. The act creates a separate definition for "delinquent vacant lands" that does not require that the lands be delinquent lands for at least five years.

The act also permits a municipal corporation to adopt an ordinance that gives consent to another subdivision to include land within the municipal corporation's boundaries in a land reutilization program. Previous law only permitted the program to be within a municipal corporation if the subdivision electing to establish the program was the municipal corporation.

Redeeming delinquent land after institution of a foreclosure proceeding

(R.C. 323.25 and 5721.25)

Continuing law requires that if taxes charged against land listed on the delinquent land list are not paid within 60 days of delivery of the delinquent land



duplicate to the county treasurer, the treasurer must commence a civil action for the sale of the premises. The act establishes a procedure whereby any person entitled to redeem the land may do so after the civil action has been instituted, but before the filing of an entry of confirmation of sale pursuant to the action. To redeem the land, the person must tender to the county treasurer an amount that is sufficient, as determined by the court, to pay the taxes, assessments, penalties, interest, and charges due, and the costs of the civil action. The person also must demonstrate that the property complies with all zoning regulations, land use restrictions, and building, health, and safety codes that apply to it.

The act extends the same redemption procedure to persons who redeem delinquent land under a delinquent tax contract with the county treasurer. The contract may be entered into after a foreclosure proceeding has been instituted, but before the entry of confirmation of sale is filed, and the person entitled to redeem the land must demonstrate the property's compliance with zoning regulations, land use restrictions, and building, health, and safety codes that apply to it. The act provides that the delinquent tax contract may be terminated if a court determines that the property is not in such compliance, in which case the court must order the property sold to satisfy the tax debt.

MUNICIPAL INCOME TAXATION

Taxation of S corporations

Background

An S corporation is a corporation that elects special tax treatment under federal law. S corporations, like partnerships, are given pass-through tax treatment under the Internal Revenue Code. An S corporation records transactions undertaken by it and reports the results to the government, but pays no federal tax on the results of its operations. Rather, the S corporation's tax characteristics (income, deductions, losses, and credits) flow through it directly to its shareholders on a pro rata basis and are reported on the shareholders' individual tax returns for federal and Ohio tax purposes.

Some municipal corporations do not grant S corporations the same pass-through tax treatment they receive under federal and Ohio law. Pursuant to their home rule powers, some of those municipal corporations tax the net profits of S corporations located or doing business in the municipality, and some tax resident S corporation shareholders' distributive shares of those same net profits, resulting in the possibility that those net profits can be taxed twice--once at the entity level and once at the individual shareholder level.



Under prior law, an S corporation's distributive share of net profits flowing to a shareholder was exempt from municipal income taxation if the share was attributable to the corporation's business activities outside Ohio.¹ But, such non-Ohio share of net profits was not exempt under either of two conditions: (1) the share represented wages paid to the shareholder for services the shareholder performed for the S corporation (more specifically, it satisfied the definition of "wages" under the federal Medicare withholding tax base), or (2) the municipal corporation taxed such non-Ohio shares of net profits as of December 6, 2002, and the municipal electors voted for the continued taxation of those net profits at a referendum held at the 2003 general election.² Any S corporation share of net profits flowing to a shareholder that were attributable to the corporation's Ohio activities were taxable under prior law.

Limiting the taxation of S corporation shareholder distributive shares

(R.C. 718.01(F)(9))

The act expands the scope of the municipal income tax exemption for distributive shares of net profits flowing through an S corporation to a shareholder. The act requires municipal corporations to exempt from taxation all of an S corporation shareholder's distributive shares of net profits of the S corporation, regardless of whether the shares are attributable to the corporation's business activities inside or outside Ohio, unless the shares represent wages, or unless either of the following applies to the municipal corporation:

(1) The municipal corporation may tax shares of net profits if the municipal corporation already taxed shares as of December 6, 2002, to any greater extent than that permitted under former law, and municipality's electors voted to

¹ *Whether income is attributed to activities inside or outside Ohio is determined under the same rules used to determine where a traditional corporation's income originates for Ohio corporation franchise tax purposes: i.e., operating income is apportioned on the basis of the percentage of the corporation's U.S. payroll, property, and sales within Ohio, and other income is allocated on the basis of where the income-producing property is located.*

² *December 6, 2002, was the day after the day House amendments to S.B. 180 of the 124th General Assembly were approved by a conference committee. Among other things, S.B. 180 limited the taxation of non-Ohio S corporation shareholder income as here described.*

continue so taxing such shares at the 2003 general election (the same as prior law);³

(2) The municipal corporation may tax Ohio-source shares of net profits (but not non-Ohio source shares) if it already imposed, assessed, and collected a tax on such Ohio-source shares as of December 6, 2002, and the municipality's electors vote to continue taxing those shares at the November 2, 2004, general election. If the question fails, the municipal corporation must cease taxing Ohio-source shares after December 31, 2004.

If a majority of the municipality's electors vote in favor of either of the ballot issues presented under (1) or (2), the act provides that the municipal corporation is deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders. The act requires that the municipal corporation specify by ordinance or rule that its income tax applies to the shareholder's distributive share of net profits of an S corporation in the hands of the shareholder.

TAXATION OF REAL PROPERTY OR MANUFACTURED/MOBILE HOMES

Homestead exemption inflation adjustments--rounding

(R.C. 323.152 and 4503.065; Section 10)

Under the homestead exemption, the property taxes charged against homes, and the manufactured home tax on manufactured or mobile homes, owned and occupied by elderly or disabled individuals with limited incomes are reduced. An individual's tax reduction amount for tax year 2003 is as follows:

<u>Income</u>	<u>Tax reduction</u> (lesser of \$ or %)
Up to \$12,800	\$5,200 or 75% of taxable or assessable value
\$12,801 to \$18,700	\$3,200 or 60% of taxable or assessable value
\$18,701 to \$24,700	\$1,000 or 25% of taxable or assessable

³ *The act is not clear about whether the municipal corporation could tax non-Ohio source shares or Ohio-source shares of net profits. That depended on the ballot question presented at the 2003 election and the assumption is made by the act that the municipality desired to tax all shares of net profits, regardless of their source.*



Both the income amounts and the dollar tax reduction amounts are indexed annually to account for general price inflation. Under continuing law, the inflation-adjusted income and tax reduction amounts both are rounded to the nearest multiple of \$100. This means that the \$5,200 and \$3,200 tax reduction amounts are likely to increase each year even at modest inflation rates, but the \$1,000 reduction amount will increase only at an inflation rate of more than 5%.

The act requires that if rounding to the nearest multiple of \$100 does not increase the dollar tax reduction amounts, then the income and tax reduction amounts must be rounded to the nearest \$10. The change begins to apply to real property taxes charged for tax year 2004 (i.e., to taxes payable in 2005), and begins to apply to manufactured home taxes payable in 2005.

Prepayment of real property and manufactured or mobile home taxes

(R.C. 321.45)

Continuing law permits county treasurers to enter into written agreements with taxpayers for the prepayment of current taxes. As part of the agreement, a treasurer may agree to invest prepayments in the county's escrow fund or depository account and, after deducting expenses incurred in operating the prepayment system, apply the earnings thereon as a discount against the total taxes due of each taxpayer entering into a prepayment agreement. The discount is apportioned among the taxpayers, commensurate with the amount of current taxes due and the length of time the taxes are held in escrow. The act requires that the discount also be apportioned among the taxpayers in an amount commensurate with the expenses incurred by the county treasurer to process the prepayments. The act eliminates a requirement that a discount be applied against total taxes due for the ensuing tax year.

Prior law required that the treasurer keep a separate record for each parcel of land or manufactured or mobile home, showing the date and amount of each prepayment. The act requires that the treasurer keep either that separate record or a single record for all of the parcels or manufactured or mobile homes owned by a taxpayer.

Prepayments may be made by electronic funds transfer from a taxpayer's account in a financial institution. The act also permits prepayments to be made by credit card.

ENTERPRISE ZONES

Background

Under law not changed by the act, municipal corporations and boards of county commissioners may enter into agreements with an enterprise to provide certain real and personal property tax abatements for the enterprise's place of business, or "facility," located in an area certified by the Director of Development as an enterprise zone. Generally, only enterprises that are qualified by financial responsibility and business experience, and that agree to create or preserve jobs within the zone, may apply for the tax abatements.

When an agreement is entered into, the legislative authority authorizing the agreement must forward a copy of it to the Director of Development and the Tax Commissioner. While the agreement is in effect, the enterprise must file with the Tax Commissioner, along with its personal property tax return (or annual report of public utility personal property), an informational return that sets forth the property and related costs and values exempted from taxation under the agreement.

Tax exemptions for inventory

(R.C. 5709.62(C)(1) and 5709.63(B)(1)(b)(i))

Continuing law provides that one of the tax abatements that may be granted to an enterprise is to exempt, for up to ten years, up to 75% (or 60% for agreements with boards of county commissioners) of the assessed value of tangible personal property first used in the business at the project site as a result of the enterprise zone agreement. Prior law provided that the exemption applied to inventory. The act provides that the exemption applies to inventory only if that exemption is specifically granted in the agreement.

Limitation on Tax Commissioner's authority regarding agreements

(R.C. 5709.62(L) and 5709.63(L))

The act limits the Tax Commissioner's authority regarding the accuracy of any exemption granted under an enterprise zone agreement. Under the act, the Tax Commissioner may consider matters that typically involve the property listed on the enterprise's informational return, such as whether the property is accurately listed as exempt, but not those matters that involve the Director of Development's authority to certify zones, whether the agreement is in the form required by law, or whether the legislative authority fulfilled its promises under the agreement (e.g., agreeing to provide optional services or assistance to a project site).

The Tax Commissioner, as authorized by law, may enforce any modification to, or revocation of, an agreement by the municipal corporation, board of county commissioners, or Director of Development.

Format of an enterprise zone agreement

(R.C. 5709.631(B)(2))

Continuing law requires that enterprise zone agreements contain certain information and statements. One of the requirements is that the agreement incorporate a description of tangible personal property to be exempted from taxation, the percentage of its assessed value that is exempted, and the period of the exemption, together with a statement about the year the exemption commences and ends. The act requires that the statement also include the minimum and maximum investment amounts that have to be met to qualify for the exemption, for three categories of property: machinery and equipment, furniture and fixtures and other non-inventory personal property, and new inventory.

The statement in the agreement also must contain the beginning and ending dates of exemptions on the basis of tax return years, and must state that tangible personal property cannot be exempted from taxation for more than ten return years, unless the project to which the agreement applies involves the enrichment and commercialization of uranium or uranium products, or the research and development activities related to that enrichment and commercialization. In the latter case, the statement must state that the property may be exempted from taxation for up to 15 return years.

The act further requires that the agreement provide that no exemption is allowed for any category of tangible personal property if the total investment is less than the minimum dollar amount specified in the statement for that property. If minimum and maximum dollar amounts are not specified in the statement or the dollar amounts are designated in the statement as not applicable, the exemption is required to apply to the total cost of that type of tangible personal property first used in business at the facility as a result of the project.

Discontinuation or relocation of operations in a zone

(R.C. 5709.633(A)(2))

Continuing law prohibits a legislative authority from entering into an enterprise zone agreement with an enterprise, related member, or successor enterprise for five years if the enterprise that is subject to an agreement granting an exemption discontinues operations at a project site to which that exemption applies prior to the expiration of the term of the agreement. The act also prohibits

a legislative authority from entering into an agreement if the enterprise expands its operations or relocates its operations to another location in Ohio and the expansion or relocation results in a reduction of its operations at any Ohio location.

The act also specifies that an agreement is void if, after reviewing it, the Director of Development determines that the requirements to be a "facility" (i.e., a place of business in an enterprise zone) have not been met.

Update of enterprise zone characteristics

(R.C. 5709.61)

Prior law provided that two of the characteristics for being an enterprise zone was that the area was located in a municipal corporation defined by the United States Office of Management and Budget as a "central" city of a metropolitan statistical area, or the population of all census tracts in the area, according to the federal census of 1990, decreased by at least 10% between 1970 and 1990. The act revises these two characteristics by providing that the municipal corporation be a "principal" city of a metropolitan statistical area, and that the population decrease be based on the 2000 federal census, between 1980 and 2000.

TAX INCENTIVE REVIEW COUNCILS

When councils must be created

(R.C. 5709.85 and 5709.883)

Continuing law provides that the legislative authority of a county, township, or municipal corporation that grants an exemption from property taxation under any of the following laws must create a tax incentive review council:

- (1) Urban renewal projects (R.C. Chapter 725.);
- (2) Community redevelopment programs (for blighted areas) (R.C. Chapter 1728.);
- (3) Community reinvestment area programs (R.C. 3735.67);
- (4) Tax increment financing for public infrastructure improvements (R.C. 5709.40, 5709.41, 5709.73, and 5709.78);
- (5) Enterprise zone programs (R.C. 5709.62, 5709.63, and 5709.632);
- (6) Incentive agreements for remediation of property (R.C. 5709.88).



Council officers and meetings

(R.C. 5709.85(B) and 5709.883(B))

Tax incentive review councils (TIRCs) are composed of the county auditor and various local office holders, depending on the legislative authority that grants a property tax exemption. Under prior law, the legislative authority called the first meeting, and the chairman and vice-chairman were chosen. Under the act, the county auditor or the county auditor's designee serves as the TIRC's chairperson and calls meetings, and the vice-chairperson is selected by the TIRC at the first meeting.

Duties of a TIRC

(R.C. 5709.85(C) and 5709.883(C))

Continuing law requires that TIRCs annually review all agreements granting exemptions from property taxation for urban renewal projects, community redevelopment programs, community reinvestment area programs, enterprise zone programs, and remediation of property, and any performance audit reports submitted under an agreement. For each agreement, the TIRC must determine whether the owner of exempted property has complied with the agreement, and must take into consideration any fluctuations in the business cycle unique to the owner's business. The TIRC must submit to the legislative authority written recommendations for continuation, modification, or cancellation of each agreement. The act provides that the recommendations must be submitted to the proper legislative authority on or before September 1 of each year.

Continuing law also requires that a TIRC annually review all property tax exemptions resulting from the declaration of public purpose improvements under tax increment financing. For each improvement, the TIRC must determine the increase in true value of the real property on which improvements have been undertaken, the value of improvements exempted, and the number of new employees or employees retained on the site of the improvement.

The act expands both reviews to require that TIRCs also review agreements granting exemptions that were entered into, and exemptions that were granted, prior to July 22, 1994, and that continue to be in force and applicable to the current year's property taxes. Under the act, business cycle fluctuations may, but are not required to be, considered during review of an agreement.

Legislative authority's duties

(R.C. 5709.85(E) and 5709.883(D))

The act provides that any legislative authority that receives written recommendations from a TIRC must, within 60 days after their receipt, hold a meeting and vote to accept, reject, or modify all or any portion of the recommendations.

Information required to be submitted to a TIRC

(R.C. 5709.85(C) and (F) and 5709.883(C) and (E))

Continuing law requires that, upon the request of a TIRC, the county auditor and the legislative authority of the county or municipal corporation granting an exemption (or, if reviewing an incentive agreement for remediation of property, the housing officer, legislative authority, or owner of a structure or improvement) must supply the TIRC with information, including property tax returns, reasonably necessary for the TIRC to complete its review and make determinations. Along with those tax returns, the act provides that the TIRC may request combined property tax returns (where property is listed in more than one county) and reports of public utilities.

The act also authorizes a TIRC to request from the recipient of a tax exemption any information reasonably necessary for the TIRC to perform its review. The request must be in writing and sent to the recipient by certified mail. Within ten days of receipt of the request, the recipient must provide the information requested to the TIRC.

SALES AND USE TAXES

Tax exemption for public transit buses

(R.C. 5735.01, and 5739.01(B)(3)(s) [not in the bill])

The recent operating budget act, Am. Sub. H.B. 95 of the 125th General Assembly, levied sales taxes on the intrastate transportation of persons by motor vehicles or aircraft, except for transportation provided by ambulance service, public transit bus (as defined in the motor fuel tax law), or household goods movers. The motor fuel tax law defines a "transit bus" as a motor vehicle having a seating capacity of more than ten persons that is operated for public transit or paratransit service on a regular and continuing basis, generally by or for certain political subdivisions. As a result of the use of this motor fuel tax law definition, transit buses with a seating capacity of ten or fewer persons are subject to the sales tax.



The act eliminates the ten-person seating qualifier, which results in smaller public transit buses being exempted from the sales tax. By revising the definition of "transit bus," the act also permits persons operating any size of transit bus to apply for motor fuel tax refunds under existing law (R.C. 5735.142).

Delay of new sales tax sourcing laws

(Sections 3 to 5)

As a member state under the Streamlined Sales and Use Tax Agreement, Ohio is required to adopt uniform standards for attributing the source of transactions to taxing jurisdictions so that it can collect taxes from sellers that register with the central electronic registration system that is to be established by the member states. The recent operating budget act, Am. Sub. H.B. 95 of the 125th General Assembly, enacted those new standards, which were to go into effect January 1, 2004. The standards generally apply to most sales, and also sourced specific types of sales, such as sales of computer software delivered electronically, and leases and rental of tangible personal property.

The act delays the new sourcing standards until January 1, 2005.

CORPORATION FRANCHISE TAX

Determining part of a corporation's tax liability by apportioning sales

In general

For purposes of measuring corporation franchise tax liability, the value of a corporation's issued and outstanding shares of stock is the base. That value is determined by computing the corporation's net income and net book value. Net income is the sum of the corporation's (1) nonbusiness income (capital gains and losses, rents, royalties, and dividends) allocated or apportioned to Ohio according to where the underlying property or assets are located or used, and (2) Ohio apportioned net business income, apportioned according to the percentage of the corporation's payroll, property, and sales that are in Ohio as compared to everywhere. The act revises computation of the corporation's sales (the "sales factor") used to determine part of the corporation's Ohio apportioned net business income. The act also changes the law used to determine whether sales are apportioned to Ohio or elsewhere. These revisions take effect immediately.

Computing the sales factor to determine Ohio apportioned net business income

(R.C. 5733.05(B)(2)(c)(iii); Section 13)

Continuing law requires that the sales factor be computed by using a fraction, with the numerator being total sales in Ohio and the denominator being total sales by the corporation everywhere. Under prior law, receipts from the sale or other disposal of a capital asset, as defined by the Internal Revenue Code, were eliminated from the fraction.

The act revises how the sales factor fraction is computed. Under the act, receipts and any related gains or losses from the sale or other disposal of "excluded assets" are eliminated from the fraction. In addition, dividends and distributions, and interest or other similar amounts received for the use of, or for the forbearance of the use of, money, are eliminated from the fraction. The act defines "excluded assets" as property that is either: intangible property, other than trademarks, trade names, patents, copyrights, and similar intellectual property; or tangible personal property or real property where that property is a capital asset or an asset under the Internal Revenue Code, without regard to the holding period specified in that law.

The act provides that income from receipts eliminated or excluded from the sales factor cannot be presumed to be nonbusiness income.

Using a market-based approach to situs receipts from sales

(R.C. 5733.05(B)(2)(c)(i) and (ii))

For purposes of determining whether a sale occurred in Ohio or elsewhere, prior law considered sales of tangible personal property to have been made in Ohio (situated to Ohio) if the property was received in Ohio by the purchaser. All other sales were situated to Ohio if the income producing activity was performed solely in Ohio, or the income producing activity was performed both inside and outside Ohio and a greater proportion of the seller's activity was performed in Ohio than any other state, based on costs of performance.

The act situates sales by using a market-based approach that centers on the type, and the location or use, of the property generating the receipts. Any receipts not eliminated or excluded from the sales factor must be situated under the act as follows:

(1) Receipts from rents and royalties from real property located in Ohio are situated to Ohio.

(2) Receipts from rents and royalties of tangible personal property, to the extent that property is used in Ohio, are situated to Ohio.

(3) Receipts from the sale of electricity and of electric transmission and distribution services are situated to Ohio in the manner provided under existing law.

(4) Receipts from the sale of real property located in Ohio are situated to Ohio.

(5) Receipts from the sale of tangible personal property continue to be situated to Ohio, as under prior law, if the property is received in Ohio by the purchaser.

(6) Receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property are situated to Ohio to the extent that the receipts are based on the amount of that property's use in Ohio. If the receipts are not based on the amount of use of that property, but rather on the right to use the property, and the payor has the right to use the property in Ohio, then the receipts from the sale, exchange, disposition, or other grant of the right to use the property is situated to Ohio to the extent the receipts are based on the right to use the property in Ohio.

(7) Receipts from the sale of services, and receipts from any other sales not eliminated or excluded from the sales factor and not otherwise situated as explained above, are situated to Ohio in proportion to the purchaser's benefit, with respect to the sale, in Ohio, to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased is paramount in determining the proportion of the benefit in Ohio to the benefit everywhere.

Computing net book value--net income cannot be combined

(R.C. 5733.05(C)(2))

Under continuing law, to measure corporation franchise tax liability, the total value of the net book value of a corporation's assets, less the net carrying value of its liabilities, must be computed. Like a corporation's net business income, the corporation's total value also is apportioned according to the percentage of its payroll, property, and sales that are in Ohio as compared to everywhere.

Under prior law, a provision permitting related corporations to combine their net incomes for purposes of computing the value of issued and outstanding shares of stock had to be considered in making the total value computation. The

act requires that this combined net income provision not be considered as part of that computation. This revision takes effect immediately.

Extension of new manufacturing machinery and equipment tax credit

(R.C. 5733.33 and 5747.31 [not in the bill])

Continuing law authorizes a nonrefundable tax credit for new manufacturing machinery and equipment purchased and used in Ohio by corporations and other business organizations. The credit was to have ceased in 2005 under prior law. The act extends the tax credit until 2015, provided the new machinery or equipment is installed not later than December 31, 2016.

MISCELLANEOUS PROVISIONS

Apportionment factors revised for trusts

Background

(R.C. 5747.01(BB)(4)(a); Section 13)

Trusts are taxed on their "modified Ohio taxable income" under the state income tax law. In determining a trust's modified Ohio taxable income, part of the computation uses a fraction to apportion the trust's income according to the percentage of its payroll, property, and sales that are in Ohio as compared to everywhere, as if the trust were a corporation under the corporation franchise tax law (R.C. 5733.05). The fraction is then multiplied by the sum of the trust's modified business income and qualifying investment income to determine one portion of modified Ohio taxable income.

Am. Sub. H.B. 95 of the 125th General Assembly revised the corporation franchise tax's allocation and apportionment provisions by adopting the distinction between business and nonbusiness income used by many states, with business income being apportioned according to the property, payroll, and sales formula, and nonbusiness income being allocated either to Ohio or outside Ohio. Moreover, this act revises the apportionment formula in the corporation franchise tax law that is used to determine the sales factor and changes how sales are situated to Ohio (see "Computing the sales factor to determine Ohio apportioned net business income," and "Using a market-based approach to situs receipts from sales," above). Consequently, these changes to the corporation franchise tax law directly affect trusts because they are required to apportion their income in accordance with the corporation franchise tax law, as if they were corporations. As a result, this act revises how a trust's modified Ohio taxable income is determined under the payroll, property, and sales factors, by reverting to the

manner in which those factors were computed prior to H.B. 95, by placing the former apportionment formula in the state income tax law.

Determining payroll, property, and sales factors

(R.C. 5747.013; Section 13)

The act establishes a formula, which takes effect immediately, for computing the fraction to be used to apportion a trust's income according to the percentage of its payroll, property, and sales that are in Ohio as compared to everywhere. The numerator of the fraction is the sum of the following products: the property factor multiplied by 20, the payroll factor multiplied by 20, and the sales factor multiplied by 60. The denominator of the fraction is 100, and must be reduced by 20 if the property factor has a denominator of zero, by 20 if the payroll factor has a denominator of zero, and by 60 if the sales factor has a denominator of zero.

Property factor. The property factor is a fraction, the numerator of which is the average value of the trust's real and tangible personal property owned or rented and used in the trade or business in Ohio during the taxable year, and the denominator of which is the average value of all the trust's real and tangible personal property owned or rented and used in the trade or business everywhere during the taxable year. Real and tangible personal property that is owned but leased to a lessee to be used in the lessee's trade or business is not included in the owner's property factor. The original cost of certain pollution control property and property used exclusively during the taxable year for qualified research is excluded from the fraction's numerator and denominator.⁴

Property owned by the trust is valued at its original cost. Property rented by the trust is valued at eight times the net annual rental rate, meaning the annual rental rate paid by the trust less any annual rental rate received by the trust from subrentals.

The average value of property is determined by averaging the values at the beginning and the end of the taxable year, but the Tax Commissioner may require

⁴ Under the act, "qualified research" means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. "Qualified research" does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of material or products for quality control, historical research, or literary research. "Product" does not include services or intangible property.

the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the trust's property.

The payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in Ohio during the taxable year by the trust for compensation, and the denominator of which is the total compensation paid everywhere by the trust during the taxable year. Total compensation paid in Ohio to employees who are primarily engaged in qualified research is excluded from the fraction's numerator and denominator.

Compensation is paid in Ohio if: (1) the recipient's service is performed entirely within Ohio, (2) the recipient's service is performed both within and without Ohio, but the service performed outside Ohio is incidental to the recipient's service within Ohio, or (3) some of the service is performed within Ohio and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is within Ohio, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in Ohio.

Compensation is paid in Ohio to any employee of a common or contract motor carrier corporation who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by the employee within Ohio bears to the total mileage traveled by that employee everywhere during the taxable year.

The sales factor. The sales factor is a fraction, the numerator of which is the total sales in Ohio by the trust during the taxable year, and the denominator of which is the total sales by the trust everywhere during the taxable year. In determining the numerator and denominator, receipts from the sale or other disposal of a capital asset or an asset described under the Internal Revenue Code are eliminated. Also, in determining the fraction's numerator and denominator, in the case of a trust owning at least 80% of the issued and outstanding common stock of one or more insurance companies or public utilities (except an electric company and a combined company, and, for tax years 2005 and thereafter, a telephone company), or owning at least 25% of the issued and outstanding common stock of one or more financial institutions, receipts received by the trust from such utilities, insurance companies, and financial institutions is eliminated.

Sales of tangible personal property are in Ohio where the property is received in Ohio by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which the property is ultimately received after all transportation has been completed is considered as the place at which the property is received by the



purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale.

Under the act, sales, other than sales of tangible personal property, are in Ohio if either: (1) the income-producing activity is performed solely in Ohio, or (2) the income-producing activity is performed both within and without Ohio, and a greater proportion of the seller's income-producing activity is performed within Ohio than in any other state, based on costs of performance.

School District Income Tax Fund

(R.C. 5747.03)

Continuing law requires that payments received each month from school district income taxes, and any penalties or interest thereon, must be paid into the School District Income Tax Fund, in the state treasury. The act provides that all interest earned on moneys in the Fund must be credited to the Fund.

Property taxes used to pay for police department buildings

(R.C. 5705.19; Section 11)

Continuing law provides that the taxing authority of a subdivision, by resolution adopted by two-thirds of the members of the taxing authority and with the approval of the subdivision's voters, may levy property taxes for the purpose of providing and maintaining motor vehicles, communications, and other equipment used directly in operating a police department, or to pay the salaries of permanent police personnel. The act adds to this purpose providing and maintaining building and sites for such buildings used directly in operating a police department. The act provides that this change applies to resolutions adopted on or after the act's effective date.

Changes to the recipients of earmarked Air Force Institute of Technology appropriations

(Sections 6 to 8)

The recent operating budget act, Am. Sub. H.B. 95 of the 125th General Assembly, out of Air Force Institute of Technology appropriations, earmarked \$477,237 in fiscal year 2004 and \$476,786 in fiscal year 2005 to match federal dollars to support the Wright Brothers Institute. Funds were to be used to create or expand Ohio-based technology and commercial development collaborations for

carbon nano-tube materials technology, genome-based biotechnology, knowledge-creation information technology, cognitive systems modeling and engineering, and other related high-technology projects. Additionally, the budget act earmarked out of Air Force Institute of Technology appropriations \$302,113 in fiscal year 2004 and \$261,145 in fiscal year 2005 to directly support collaborative research between academia, industry, and the Air Force for the Wright Brothers Institute Nanomaterials and Advanced Data Management and Analysis.

The act changes who receives these earmarked dollars and requires that the first pair of earmarked moneys be used by the University of Dayton to establish and support a chair in nano technology in support of the Wright Brothers Institute through the Miami Valley Economic Development Research Corporation. The second pair of earmarkings must be used by the Miami Valley Economic Development Research Corporation to support collaborative research between academia, industry, and the Air Force for the Wright Brothers Institute and related initiatives in nanomaterials and advanced data management and analysis or other technology projects as determined by the Corporation.

These changes take immediate effect under the act.

Appropriation to the Department of Development

(Section 9)

The act appropriates up to \$5 million of unspent and unobligated cash balances in the General Revenue Fund (GRF) to the Department of Development, if requested by the Director of Development and if the unspent and unobligated cash balances in the GRF are sufficient. The appropriation must be used to support economic development projects for which appropriations otherwise would not be available. The up to \$5 million appropriation is over both fiscal years of the 2004-2005 biennium.

This provision goes into immediate effect.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-18-03	p. 258
Reported, H. Ways & Means	05-30-03	pp. 529-530
Passed House (96-0)	06-10-03	pp. 579-580



Reported, S. Ways & Means & Economic Development	11-13-03	pp.	1164-1165
Passed Senate (33-0)	11-13-03	pp.	1179-1180
House concurred (54-37)	11-13-03	pp.	1100-1104

03-hb127-125.doc/jc

