Bill Analysis

Peter A. Cooper *Legislative Service Commission*

H.B. 123

126th General Assembly
(As Introduced)

Reps. Skindell, Sykes, Miller

BILL SUMMARY

- Reduces corporation franchise tax rates.
- Increases the maximum net worth-basis tax amount.
- Increases the lower tier minimum tax from $50 to $300.
- Requires affiliated corporations to file combined tax reports if they have specified thresholds of connection with the United States ("water's edge" combinations).
- Expands add-backs for expenses paid among related companies.
- Eliminates several corporation franchise tax credits and the similar income tax business credits for pass-through entities.
- Requires a sales factor throwback requiring corporations to include in their Ohio net income computation any sales destined to another state where the seller is not subject to a net income-based tax or any sales destined to the United States government.
- Disallows future net operating loss deductions, including carryforwards, and grants a future credit to address the financial statement effects of the disallowance.
- Eliminates the corporation franchise tax deduction for taxes paid to another jurisdiction.
- Narrows the financial institution net worth-basis tax exclusion relating to appreciation.

- Potentially expands the definition of business income.
- Clarifies the pass-through entity withholding tax base.
- Requires corporations subject to the franchise tax to make certain disclosures regarding their tax obligations, offsets, and gross profits.

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CONTENT AND OPERATION

<u>Corporation franchise tax rates</u>

(R.C. 5733.06)

The bill reduces corporation franchise tax rates imposed on both the net income and net worth measurement bases for corporations other than financial institutions, beginning with tax year 2006. The bill also creates new graduated brackets. Corporations will continue to be required to compute the tax on both a net income basis and net worth basis and pay the tax on the basis yielding the higher tax. The current and proposed rates are shown in the following schedule.

Proposed tax rate reductions			
Net income		**Net worth**	
Current law	**Proposed**	**Current law**	**Proposed**
5.1% on first $50,000	4% on first $50,000	0.4% (4 mills) of total net worth	0.2% (2 mills) on first $1 million
8.5% on $50,000-plus	7% on second $50,000		0.3% on next $1 million
	8% on next $400,000		0.4% on $2 million-plus
	8.5% on $500,000-plus		

Corporation franchise tax net worth tax ceiling

(R.C. 5733.06(D) and (G))

The bill increases the maximum tax computed on the net worth basis. Currently, a corporation's net worth tax may not exceed $150,000. The bill increases the maximum tax to $500,000, beginning with tax year 2006.

Corporation franchise minimum tax

(R.C. 5733.06(F))

The bill increases the lower-tier minimum corporation franchise tax for some corporations. Currently, there are two minimum tax tiers: $1,000 for corporations having $5 million or more in gross receipts everywhere or having at least 300 employees anywhere, and $50 for all other corporations.

The bill increases the lower tier minimum tax from $50 to $300, beginning with tax year 2006.

Combined reporting

(R.C. 5733.04 (5733.052))

The bill requires domestic United States corporations related through linkages of majority ownership or control to combine their net incomes if they are part of a unitary group of corporations. Under current law, the Tax Commissioner has the authority to require or to permit corporations linked by majority ownership or control to combine their net incomes. If they combine their net incomes, they must eliminate transactions between members of the group. The purpose of combining net incomes is to reflect the combined net income of the whole group, which can eliminate or reduce distortions in the net incomes of any subset of group members. One kind of distortion that can be addressed is an Ohio corporation paying various expenses to a related corporation in another state, such as intangible expenses or management fees, thereby reducing its individual Ohio net income for tax purposes but not necessarily increasing the net income of the entire group.

Under the bill, for a corporation to be required to combine net incomes with other related corporations, the corporations must be linked directly or indirectly through a chain of majority ownership or control and each corporation must be so linked for more than one-half of its taxable year. The corporations also must be a "unitary" group.

The combined reporting requirement applies beginning with tax year 2006.

Unitary group

The bill adopts a definition of unitary group known as "water's edge" that is employed by a number of other states for the purposes of their combination requirements. A unitary group is defined as a group of corporations that are linked through majority ownership or control and that are "economically interdependent." Economic interdependence is evidenced by three properties: centralization of management, functional integration, and economies of scale.

The bill's definitions of these properties is drawn from the Multistate Tax Commission's Allocation and Apportionment Regulations, which in turn are derived from a 1980 United States Supreme Court decision, *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980).

"**Centralization of management**" exists if directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that also may operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from a combination thereof. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus-building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

"**Functional integration**" refers to transfers between, or pooling among, business activities that significantly affect the operation of business activities. "Functional integration" includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. No specific type of functional integration need be present.

"**Economies of scale**" refers to a relation among business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to an increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management.

"Water's edge" combinations

To be required to combine its income with other corporations, a corporation must not only be a member of a unitary group including those other corporations, but it also must have a certain threshold connection with the United States, as specified below:

- The average percentage of the corporation's property, payroll, and sales in the United States as compared to everywhere is 20%, or, alternatively, less than 80% of the corporation's gross income from an actively conducted business is derived from outside the United States;

- The corporation is a domestic international sales corporation (DISC), foreign sales corporation (FSC), or an export trade corporation;[1]

- The corporation does not satisfy either of the above criteria, but it derives some of its income from sources in the United States and from its property, payroll, or sales in the United States (such a corporation must combine its income with the group only to the extent that its income is derived from such U.S.-based sources);

- The corporation is a controlled foreign corporation that has certain foreign-source income that federal law requires the corporation's

[1] *These kinds of corporations are formed pursuant to federal law granting favorable tax treatment of profits generated outside the United States.*

shareholders to include in their federal taxable income ("Subpart F income"). (Only part of such a corporation's income is combined with other members of the unitary group: the portion representing the percentage of its earnings and profits that constitutes Subpart F income).[2]

Administrative rules

The bill also requires the Tax Commissioner to adopt rules necessary to ensure the tax liability or net income of any corporation in the combined reporting group and having Ohio-source income is properly reported, determined, computed, assessed, collected, or adjusted for each taxable year covered in the combined report and thereafter.

Add-back for certain inter-company expenses

(R.C. 5733.042, 5733.044, 5733.055, and 5733.068)

Current law

Under current law, a corporation may be required to add to its Ohio taxable net income certain federally deductible expenses and losses associated with borrowing from a related company or with using intangible property owned by a related company (e.g., royalties, patents, copyright fees, licensing fees). Generally, the add-back of an expense is required if it is paid to a holding company or certain other kinds of "passive investment companies" that are under common ownership or control with the corporation. Similarly, a corporation may be required to include losses it incurs in certain kinds of transactions with such a related passive investment company. Because those expenses or losses are deductible for federal income tax purposes, they are not included in Ohio taxable income, which reduces the corporation's Ohio taxable income. This add-back requirement addresses the practice of some corporations to diminish or eliminate their Ohio tax liability by essentially shifting income from Ohio to another state where there is no significant income-based tax on corporations (e.g., Delaware), or where the tax is lower.

The current add-back can be avoided if the corporation can demonstrate that the transaction resulting in the expense or loss was not principally motivated by tax avoidance, and that in the same year the related company paid the expense to (or incurred the loss with respect to) either an unrelated party or a related company that in turn paid the expense to (or incurred the loss with respect to) a

[2] *A controlled foreign corporation is a foreign corporation that is majority-owned by United States shareholders.*

third, unrelated party. And, any additional tax that may result from such add-backs cannot exceed the tax that the corporation and the related company would have owed if they had been eligible to file, and had filed, a combined tax report. (Combined tax reporting may be requested by, or required of, two or more related corporations if the combined report more accurately reflects the business activity in Ohio; particularly, it can be used to indicate and account for inter-company transactions.)

Extend add-back to all related entities, and to all expenses and losses

The bill broadens the add-back requirement in two ways: it applies to expenses and losses transacted between a corporation and *any* other related member company, even if the related member is not a passive investment company; and it applies to all expenses or losses, not just those associated with borrowing money or using intangible property.

Corporations still can avoid the add-back by showing the transaction was not principally motivated by tax avoidance and that the related member paid the expense to (or incurred the loss with respect to) an unrelated entity in the same year. And any increased tax resulting from the add-back adjustment still is limited, so that it cannot be greater than the tax that would be due if a combined tax report had been filed by the taxpayer-corporation paying the expense (or incurring the loss) and all related companies to which the expense was paid (or loss incurred), either directly, or indirectly through an intermediary. If a combined report is filed by the corporation and the related companies involved in transactions that would require an add-back adjustment, and the adjustment's effect is wholly or partly accounted for by the combined filing, then the adjustment does not have to be made to the extent it is accounted for by the combined filing.

If a company required to make the add-back adjustment fails to do so, and has not made the adjustment and paid the additional tax, if any, including penalty and interest within one year, then the company is subject to an additional penalty equal to double the interest charged corporations for delinquent corporation franchise tax payments. A safe harbor is available if the additional tax attributable to the adjustment is less than 10% of the tax otherwise due and is less than $50,000.

The expanded add-back requirement first applies to tax years ending on or after the day the bill becomes law.

Exemption for expenses paid to offshore affiliates

(R.C. 5733.042 and 5733.044)

The bill exempts expenses and losses from the existing add-back and the proposed add-back requirements if the expenses are paid (or losses are incurred with respect to) a related member that is not subject to the federal income tax. Specifically, the exemption applies only if the corporation paying or incurring the expenses or losses is able to demonstrate, by clear and convincing evidence, that all of the following four conditions are satisfied:

- The expenses or losses were paid directly to a related member that, with respect to those payments, was not subject to the federal income tax or was not required to file a federal income tax return for the three years before the payment and three years after the payment (hereafter, the "untaxed related member"). (For the purpose of this condition, a payment is made directly to the related member even if the payment is processed or paid through a third related member that does not charge a fee for the processing or payment.)

- The related member receiving the payment did not, within three years before or after the payment was received, pay any part of the payment to any other related member that was subject to the federal income tax during that six-year period--either directly, or indirectly through a third party.

- The corporation making the payment satisfies one of the following: (1) it is entitled to a federal income tax deduction with respect to the payment to the untaxed related member under the terms of an advanced pricing agreement between the corporation and the related member,[3] (2) it has complied with the documentation requirements under federal law respecting accuracy-related penalties for substantially understating or overstating the value of transactions between related members, or (3) it has complied with federal law

[3] *An advance pricing agreement is an agreement between a taxpayer and the I.R.S. whereby the taxpayer may avoid a reallocation of income by the I.R.S. between the taxpayer and its related members. Such a reallocation is authorized by federal law (I.R.C. sec. 482) to prevent tax evasion and ensure that each taxpayer's income is clearly reflected. Generally, the reallocation is intended to ensure that income or deductions arising from transactions between related members is not outside the range it would be if the transaction occurred at arm's length (i.e., between unrelated persons acting in their own best interest).*

governing reallocation of income items among related companies as necessary to prevent tax evasion.

- The transaction giving rise to the payment from the corporation to the untaxed related member was not principally motivated by avoidance of the corporation franchise tax. (This condition must be demonstrated only if the Tax Commissioner draws a "reasonable conclusion" that the principal purpose of the transaction was tax avoidance.)

If the Tax Commissioner draws a "reasonable conclusion" that a corporation is attempting to avail itself of the exemption by engaging in sham transactions, transactions with no business purpose, or other primarily tax avoidance-motivated transactions, the corporation must refute that conclusion by clear and convincing evidence. Under current law, it is the Tax Commissioner who must show, by the less rigorous preponderance of evidence standard, that a tax avoidance transaction is engaged in (see R.C. 5733.111). If a corporation claims the exemption and is found not to be entitled to it, the required add-back is doubled in amount as a penalty (unless an advance pricing agreement applies).

Elimination of some tax credits. exemptions, and deductions

(R.C. 1502.02, 5502.49, 5733.04, 5733.064, 5733.32, 5733.36, 5733.38, 5733.43, and 5733.44)

The bill eliminates several credits against the corporation franchise tax:

- The credit for corporate donations to support the Department of Natural Resources Division of Recycling and Litter Prevention Fund.
- The credit for agreement with child day-care centers for providing day-care for employees' children, and for reimbursements of employees' child day-care expenses.
- The credit for maintaining railroad grade crossings.
- The credit for purchasing lights and reflectors for slow-moving agricultural vehicles.
- The credit for purchasing grape production equipment.

The bill also eliminates a deduction for taxes paid to other states; a deduction for capital gains accruing before the first year a corporation becomes taxable on the basis of its net income; a deduction for wages paid to employees qualifying under the federal Jobs Targeted Partnership Act (which Congress repealed); and a deduction for matching contributions to an individual development account. And corporations will no longer be permitted to exclude the value of civil defense property in computing their franchise tax base.

Disallowed net operating loss deductions

(R.C. 5733.04(I)(1))

In computing net income under current law, corporations are permitted deductions for net operating losses ("NOLs"), including carryforwards of unused NOL deductions from previous years.

The bill denies net operating loss deductions, including deductions for net operating losses that otherwise could be carried forward into tax year 2006 or thereafter. In other words, no deductions may be made for NOLs incurred in a taxable year ending after December 31, 2005, and no carryforward deductions may be made in tax year 2006 or thereafter regardless of when the NOLs were incurred.

To address the associated financial statement effects of the disallowed NOL deductions (which are carried as deferred tax assets), the bill permits affected corporations to claim a credit against the franchise tax beginning in tax year 2011 and extending to tax year 2030. In each of those years, an affected corporation may claim a refundable credit equal to 1/20 of the net value of the deferred tax asset represented by the NOL before the bill's denial of the deduction for NOLs.

Credits eliminated

(R.C. 5733.064, 5733.067, 5733.068, 5733.069, 5733.0610, 5733.31, 5733.32, 5733.34, 5733.36, 5733.37, 5733.38, 5733.42, 5733.43, 5733.44, 5733.46, 5747.057, 5747.058, 5747.26, 5747.261, 5747.28, 5747.32, 5747.34, 5747.35, 5747.36, 5747.75, and 5747.98; Section 3)

The bill eliminates numerous business-related tax credits currently available to corporations and to owners of pass-through entities. The elimination of the credits applies prospectively (see below). In certain instances, credits are eliminated for all but certain classes of taxpayer (as noted below).

The eliminated credits are shown in the following table:

Business credits eliminated
Job creation credit
Job retention credit
Job training credit
Export sales credit
Recycling & litter prevention donation credit
Ethanol plant investment credit
Environmental remediation (voluntary action) redevelopment credit
Employer-provided or -paid child day care credits
Railroad crossing maintenance expense credit
Agricultural vehicle lights & reflectors expense credit

The bill retains the credits shown in the following table:

Business credits retained
Research and development investment credit
Research and development loan credit
Qualified research expense credit
Venture capital loan loss credit
Enterprise zone credits for training and day care costs of targeted employees
Coal credit (will expire after 2005 instead of after 2007, as currently scheduled)
Savings & loan regulatory fee credit
Manufacturing property purchase credit
Credit for subsidiary dealers in intangibles (financial institutions only)
Credit for book-tax differences (electric and telephone companies only)

Small telephone company credit

Nonrecurring 9-1-1 charge credit (telephone companies only)

Communicatively impaired program credit (telephone companies only)

Credit for tax withheld on lottery income

Credit for tax withheld for nonresident pass-through investors

The bill also repeals three statutes granting corporation franchise tax credits that have expired: the credit for subsidiary corporations (R.C. 5733.067), the credit for qualifying affiliated groups (R.C. 5733.068), and the credit for property taxes paid on manufacturing property (R.C. 5733.061, re-enacted with new content).

Prospective application of credit repeals

(Section 3)

Generally, the bill allows taxpayers whose entitlement to a tax credit precedes the bill's effective date to continue to claim the credit. Since the circumstances that entitle a taxpayer to claim a tax credit vary with the kind of credit, special rules govern how such existing credits are to be claimed.

Job creation and job retention credits may continue to be claimed if the agreement granting the credit was entered into before the bill's effective date. The credit may be claimed for the number of years allowed in the agreement. The existing credit clawback provision continues to apply, as does the existing prohibition against credits for companies relocating employees.

Credits for investment in grape production property allowed for a tax year before tax year 2006 and remaining unused after tax year 2005 may be carried forward for up to seven tax years after the first year the credit was claimed.

Taxpayers allowed to claim the credit for redeveloping a formerly environmentally contaminated site remediated by a voluntary action may continue to apply to any remaining credit carryforwards.

Taxpayers with unused credits for providing a day care center for employees' children may continue to carry forward unused amounts for up to five years after the first year the credit was claimed.

The credit for employee training expenses may continue to be claimed if the tax certificate evidencing the company's claim for the credit is issued on or before the bill's effective date. Unused credit amounts may be carried forward to tax year 2006 or thereafter so long as unused credits are not carried forward for more than three years after the credit was first claimed.

Credits for investment in ethanol production plants may not be claimed for tax year 2006, but any unused credit amount from before tax year 2006 may be carried forward for up to three years after the first year the credit was claimed.

Enterprise zone incentives

(R.C. 5709.64 and 5709.65)

Currently, businesses granted enterprise zone incentives may be eligible for several adjustments in their franchise or income tax bases (in addition to the credits retained in the bill, as indicated above). The adjustments allow businesses to subtract certain property and payroll in computing the Ohio portion of the net worth, net income, and pass-through income tax bases. The subtractible property is nonretail property first used at the business' site within the zone; the subtractible payroll is for new, nonretail employees hired to work at the site within the zone.

The bill prospectively eliminates these adjustments beginning with enterprise zone agreements entered into on or after the bill's effective date. Carryforwards of credits granted under agreements entered into before that date may continue to be claimed.

The bill retains current franchise tax or income tax credits available to businesses having an enterprise zone agreement and reimbursing certain targeted employees for day care costs or paying or reimbursing job training costs on behalf of such targeted employees. The targeted employees must be newly hired to work at the business' site in the zone and must be either one-year minimum residents of the county where the zone is located, previously unemployed county residents (six months' minimum residency), county residents with handicaps (six months' minimum residency), Works First participants, public assistance and unemployment compensation recipients (six months' minimum county residency), and workers on behalf of whom the business may claim a federal Work Opportunity Credit (six months' minimum county residency).

Business income definition

(R.C. 5733.04(Q) and 5747.01(B))

Under ongoing law, a corporation with sources of income both within and outside Ohio must apportion or allocate its total net income or net worth to Ohio in order to determine the portion of that income or net worth that is taxable by Ohio. Similarly, a nonresident taxpayer subject to the personal income tax must apportion and allocate income for the purpose of computing the nonresident credit. Two forms of income are distinguished for the purpose of this apportionment and allocation: business income and nonbusiness income. Business income is apportioned under the three-factor formula (property, payroll, and sales); some forms of nonbusiness income are allocated wholly to Ohio or not at all; and some forms of nonbusiness income, primarily from intangibles, are allocated to Ohio in relation to where the underlying income-producing assets are located. There are federal constitutional limitations on the extent to which any state can apportion or allocate a multistate corporation's income to that state, or tax a nonresident's income derived from sources outside the taxing state. The distinction between business and nonbusiness income can affect a corporation's or person's tax liability by influencing whether it is treated as allocable to Ohio or apportionable under the three-factor formula.

"Business income" is defined in current law to mean income arising from transactions, activities, and sources in the regular course of a corporation's trade or business. It includes income from property if the corporation's acquisition, rental, management, and disposition of the property "constitute integral parts" of the corporation's trade or business operation. Business income also includes income from the liquidation of a business, including any gain or loss from the disposition of the business' goodwill.

The bill expands the definition of business income, at least potentially, to include any other kind or source of income that a state is permitted to apportion under the Constitution of the United States. Therefore, to the extent federal jurisprudence permits income of a multistate corporation to be apportioned, it will be deemed business income and apportioned under the three-factor formula rather than allocated. The provision applies beginning with tax year 2006.

Sales factor "throwback"

(R.C. 5733.05(B)(2)(c))

Under the existing net income apportionment rules, the sales factor attributes a business's sales of tangible personal property to Ohio if the property is received in Ohio. If property is received elsewhere, receipts from the sale are not included in the seller's Ohio sales factor. With respect to sales of services, the sale is attributed to each state where some benefit of the service is received in proportion to the benefit received in that state as compared to all other states where some benefit is received.

The bill modifies this rule to attribute property sales to Ohio if property is received outside Ohio but it is received in a state that does not have a net income-based tax or if the purchaser receiving the property is the United States government. Similarly, regarding a sale of services, if the benefit of a service is received in a state where the seller is not subject to a net income-based tax, the benefit received in that state is attributed to Ohio. The provision applies beginning with tax year 2006.

Elimination of the deduction for taxes paid to another jurisdiction

(R.C. 5733.04(I)(19))

The net income basis of the franchise tax is computed as a modification of federal taxable income, which does not include taxes paid to states or other jurisdictions because those taxes are deducted in computing federal taxable income.

The bill requires corporations to add back such taxes to the extent they were deducted in computing federal taxable income unless the taxes were paid to Ohio or any of its political subdivisions, beginning with tax year 2006.

Financial institutions: Clarify appreciation exclusion

(R.C. 5733.056(B)(4))

Currently under the corporation franchise tax law, banks and other financial institutions can exclude appreciation (among other things) in computing their taxable net worth. "Appreciation" is not defined for this purpose.

The bill specifies that excludable appreciation is net aggregate appreciation in investments in the capital stock of first-tier affiliates directly owned by the institution, as determined under the equity method of accounting.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40)

A withholding tax currently is imposed on distributive shares held by nonresident investors in pass-through entities (e.g., partnerships, limited liability companies, S corporations) that have a taxable business presence in Ohio. The tax helps ensure satisfaction of the investors' Ohio tax liabilities, especially if they lack any tax-related connection with Ohio other than their ownership of an entity doing business in Ohio. The tax is imposed on the entity on the basis of the nonresident investors' respective tax liabilities to Ohio (whether corporation franchise or personal income, depending on the status of the investor). In computing the amount of tax to be withheld, the entity's expenses and losses paid to a related entity are apportioned to Ohio under the weighted three-factor formula (sales, property, and payroll). In computing a nonresident investor's individual tax and the corresponding nonresident credit, only compensation expenses paid to a related entity are apportioned.

The bill ensures that all expenses a pass-through entity pays to a related entity are apportioned for the purposes of both the withholding tax and computing the nonresident investors' individual tax and the corresponding nonresident credit.

The bill also expressly provides that, for the purposes of the pass-through entity tax, a nonresident investor's distributive share of a pass-through entity (which is the basis for measuring the withholding tax on account of the investor) includes income amounts from a qualified subchapter S subsidiary ("QSSS"). A QSSS is a wholly-owned subsidiary of an S corporation that is treated for federal tax purposes as not being separate from the parent S corporation. The bill's treatment of QSSS distributive shares under the pass-through entity tax is consistent with the current treatment of distributive shares of a "disregarded entity," which is a company owned by a parent company but not treated as separate from the parent for tax purposes (e.g., a limited liability company with but a single member).

Disclosure requirements

(R.C. 5733.023)

The bill requires publicly traded corporations, corporations with more than 25 employees, and corporations with Ohio sales of more than $1 million to file a disclosure report with the Tax Commissioner every year with its annual franchise tax report. The disclosure report must contain the following information regarding the corporation:

- Name, address of principal office, and (if a foreign corporation) its statutory agent's name and address
- Gross profits for preceding year
- Preceding year's Ohio franchise tax liability and payments
- Deductions or offsets that reduce net income by more than 5%
- Credits claimed currently or in the future that reduce current tax liability, or that would reduce current tax liability if currently applied, by more than 5%

- Federal taxable income and Ohio net income for the current reporting period

- The percentage of net income apportioned or allocated to Ohio

- Income as reported to shareholders

- An explanation of the difference between federal taxable income and the income reported to shareholders

- The net worth apportioned or allocated to Ohio

- The average monthly value of tangible personal property in Ohio and property taxes paid on that property in the preceding year

The report must be filed annually between March 1 and April 30, beginning in 2006. The reports, and a list of corporations required to file the report but failing to do so, must be published on the Department of Taxation's website, and the Tax Commissioner must make copies of the reports and list available for duplication or inspection by the public.

Corporations required to file the report but filing it late, or not disclosing all required items, may be subject to a penalty of up to $1,000. Corporations falsifying information on the report may be subject to a penalty of up to $10,000.

If any of the information shown on a corporation's report changes because the corporation files an amended tax report, because an audit adjustment is made, or because a payment date was extended, the corporation must file an amended disclosure report.

The Tax Commissioner must certify a list of corporations subject to the disclosure requirement to the Secretary of State not later than June 1 each year.

HISTORY

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