Bethany Boyd *Legislative Service Commission*

S.B. 1

126th General Assembly
(LSC 126-0315-2)
(As Accepted for Consideration by S. Ways and Means and Economic Development)

Sens. Amstutz, Spada, Austria, Harris

BILL SUMMARY

I. Commercial Activity Tax

- Imposes a new business privilege tax on the basis of the annual gross receipts of all forms of business organization having taxable gross receipts in excess of $40,000, other than financial institutions, public utilities, dealers in intangibles, insurance companies, and nonprofit organizations with no unrelated business income.

- When fully phased in, the annual tax equals $100 on taxable gross receipts up to $1 million, plus 0.26% of taxable gross receipts in excess of $1 million, with the percentage subject to an upward or downward one-time adjustment if revenue departs by more than 10% from the target of $815 million over the first two years.

- Devotes commercial activity tax revenue to the state General Revenue Fund for the first 13 years, to reimburse school districts and other local taxing units for the exemption from, and phase-out of, taxes on most business tangible personal property.

II. Corporation Franchise Tax

- Phases out the corporation franchise tax over five years for all corporations other than financial institutions.

- Clarifies the corporation franchise tax treatment of limited liability companies and other associations treated as corporations under federal tax law.

III. Personal Income Tax

- Reduces personal income tax dollar amounts and rates by 21% over five years, beginning in 2005.
- Delays yearly inflationary adjustments to the income tax bracket dollar amounts until 2010.
- Eliminates the existing personal income tax deduction for tuition and fees paid to postsecondary educational institutions located in Ohio.
- Creates a nonrefundable personal income tax credit for taxpayers having adjusted gross incomes (less exemptions) of $10,000 or less.
- Makes taxation of trust income, which is currently scheduled to end with taxable years of a trust beginning in 2004, permanent.
- Establishes additional criteria for determining the extent to which a trust is a resident of Ohio for Ohio income tax purposes.
- Specifies that the existing income tax credit for Ohio residents who incur out-of-state income tax liabilities is not available to taxpayers who deduct, or are required to deduct, their out-of-state income tax liabilities in computing their income tax bases.

IV. Property Taxes and Transfer Fees

- Eliminates the 10% rollback for real property that is not classified by the county auditor as "qualifying property," which is lands and improvements thereon that are used for residential or agricultural purposes.
- Increases the real property transfer fee, from $1, or 10¢ for each $100 or fraction of $100, whichever is greater, of the value of the real property, used manufactured home, or used mobile home transferred, to $1 or 20¢ for each $100 or fraction of $100, whichever is greater, of the value of that property or home transferred.
- Provides that the county auditor must deposit one-half of the transfer fee in the state treasury to the credit of the General Revenue Fund.

- Exempts newly installed machinery and equipment used in business from taxation, and phases out the taxation of existing business machinery and equipment by 2007.

- Accelerates the current phase-down of the taxation of business inventory, compressing it into a four-year phase-out so that taxes are eliminated by 2010.

- Reimburses school districts and other local taxing units for some of the revenue reductions caused by the bill's exemption and phase-out of machinery and equipment taxation and for the accelerated phase-out of inventory taxation.

- Makes most patterns, jigs, dies, and drawings subject to property taxation.

- Makes compensable reductions in the assessment rate on tangible personal property of electric companies.

- Requires businesses that supply electricity to others as an incidental line of business to report the portion of their electricity supplying-related property in the same manner as public utility electric companies, and to continue paying taxes on that portion of the property even if it otherwise would be subject to the phase-out of taxes on machinery and equipment.

- Reclassifies railroad track of a public utility railroad company as real property instead of tangible personal property, and transfers assessment authority of such tracks to county auditors.

- Accelerates the phase-out of state reimbursement for the $10,000 business tangible personal property tax exemption, ending in fiscal year 2009, rather than fiscal year 2012.

- Establishes a procedure to determine how property tax replacement payments are to be made to school districts or joint vocational school districts that merge with or transfer territory to other districts.

- Changes the computation used to determine the amount of money deposited each year in the Property Tax Administration Fund.

V. Sales and Use Taxes

- Establishes a permanent sales and use tax rate of 5½%, effective July 1, 2005.

- Establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by common pleas court clerks with applications for certificates of title for motor vehicles, watercraft, and outboard motors.

VI. Kilowatt-hour Tax

- Increases the kilowatt-hour tax by approximately 30% for all electric distribution companies, except self-assessors.

- Increases from 4% to 5% the percentage rate paid on the total price of all electricity distributed to a commercial or industrial self-assessor.

- Revises the percentages of kilowatt-hour tax revenues credited to the General Revenue Fund, Local Government Fund, Local Government Revenue Assistance Fund, School District Property Tax Replacement Fund, and Local Government Property Tax Replacement Fund.

VII. Tobacco and Alcohol Taxes

- Increases the existing cigarette excise tax from 27.5 mills (2.75¢) per cigarette to 50 mills (5¢) per cigarette, effective July 1, 2005.

- Increases the existing excise tax levied on tobacco products other than cigarettes from 17% to 30% of the wholesale price of the tobacco product, effective July 1, 2005.

- Doubles each of the existing taxes levied on the sale and distribution of wine, mixed beverages, cider, and beer effective July 1, 2005.

VIII. Estate Taxes

- Constructively eliminates the additional estate "sponge" tax and generation-skipping tax provisions by revising references to the Internal Revenue Code in those provisions, so that they generally incorporate any federal estate tax changes that have been made since the last time those provisions were amended.

- Repeals the estate tax deduction for family-owned businesses.
- Adopts a general definition of the Internal Revenue Code for purposes of the state estate tax law.

IX. Other Taxation Provisions

- Clarifies what constitutes a taxpayer audit for the purposes of the time at which certain of a taxpayer's rights are invoked, by stating that an audit does not include providing information to a taxpayer, serving notice of an assessment, or conducting certain kinds of investigations, which do not involve a visit by a tax authority.
- Clarifies the treatment of expenses and losses of a pass-through entity subject to the pass-through entity withholding tax.
- Authorizes the Tax Commissioner to require a social security number, employer identification number, or other identifying information from persons filing documents with the Department of Taxation.

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CONTENT AND OPERATION

Overview

The bill makes numerous changes in Ohio's tax laws. It imposes a new commercial activity tax measured by gross receipts, and at the same time phases-out the corporation franchise tax for non-financial corporations. Personal income tax rates are reduced by 21% over five years, and the taxation of trust income becomes permanent.

As for property taxes, the bill phases-out the taxation of machinery and equipment, exempts newly installed machinery and equipment used in business, and accelerates the phase-out of business inventory taxation, but reimburses school district and other local taxing units for some of the revenue reductions caused by the exemption and phase-outs. The 10% rollback for business real property is eliminated. The bill also accelerates the phase-out of state reimbursement for the $10,000 business tangible personal property tax exemption.

Under the bill, the temporary sales and use tax rate of 6% that was set to return to 5% on July 1, 2005, instead becomes a permanent rate of 5½% on that date. The bill increases the kilowatt-hour tax for all electric distribution companies, including self-assessors, and revises the percentages of revenues from that tax that are credited to various state and local government funds. Taxes on cigarettes and tobacco products are increased, and taxes on alcohol are doubled. Estate tax credits and a deduction that are tied into federal estate tax law are eliminated. The bill makes other changes to state tax law.

I. Commercial Activity Tax

New business privilege tax

(R.C. 140.08, 5703.052, 5703.053, 5703.70; Chapter 5751.; Section 5)

The bill imposes a new tax on businesses and other entities that generate business income, beginning July 1, 2005. The tax, referred to as the "commercial activity tax," is an excise tax for the privilege of doing business in Ohio (like the existing corporation franchise tax), but is imposed on the basis of gross receipts instead of net worth or net income. The bill prohibits taxpayers from billing any other person for the tax (but does not thereby prohibit taxpayers from recovering all or part of the expense of the tax as a cost of doing business).

The first tax return and tax payment are due February 10, 2006, based on gross receipts for the six-month period running from July 1 through December 31, 2005.

Persons subject to the tax

(R.C. 5751.01)

The tax applies to any legal person with more than $40,000 in annual taxable gross receipts in Ohio regardless of the person's legal or organizational form (e.g., corporation, partnership, limited liability company, S corporation, sole proprietor, business trust, estate, etc.), but does not apply to financial institutions, insurance companies, public utilities subject to the public utility excise tax, dealers in intangibles, or to nonprofit organizations that do not generate unrelated business income that is taxable for federal income tax purposes. If a nonprofit organization, including an organization operating a hospital, does generate federally taxable unrelated business income, the organization is taxed on the basis of the taxable gross receipts underlying that income.[1]

[1] *Under federal income tax law, nonprofit organizations are taxed on income unrelated to their principal business, such as net income from a gift shop operated by a hospital.*

In the first six months the tax is in effect, the $40,000 exclusion applies to a person's taxable gross receipts during all of 2005.

Computation of tax

(R.C. 5751.01, 5751.03, 5751.031, and 5751.032)

Initial rate. The tax is levied in two parts: on the first $1 million in taxable gross receipts, the tax is $100; on taxable gross receipts in excess of $1 million, the tax is 0.26% (2.6 mills per dollar) of those taxable gross receipts, at least for the first two years the tax is imposed.

Rate adjustment. The 0.26% rate on taxable gross receipts in excess of $1 million is subject to upward or downward adjustment if revenue during the first two years departs by more than 10% from the target revenue for the first two years of $815 million. By September 30, 2007, the Tax Commissioner is required to compute a rate that would have produced the target revenue over the initial two years the tax was imposed.

Phase-in of tax. In recognition of the new tax being imposed at the same time as the bill phases out the corporation franchise tax (see "***Phase-out of corporation franchise tax***," below), the bill phases in the tax for all taxpayers other than those having annual taxable gross receipts of less than $1 million (and thus owing less than $100) and choosing to pay the tax annually rather than quarterly (as explained below).

The tax becomes effective July 1, 2005. In the first six months of the tax, the tax equals $50 on the first $500,000 in taxable gross receipts during that period, plus 0.06% on taxable gross receipts in excess of $500,000 during that period. (This rate results from multiplying the permanent 0.26% rate by 23%, which is the initial phase-in percentage--see immediately below--then rounding to the nearest hundredth per cent.)

In the first quarter of 2006, only 23% of the tax as normally computed is payable; for the four quarters running from April 2006 to April 2007, 40% of the normal tax is due; for the four quarters running from April 2007 to April 2008, 60% of the normal tax is due; for the four quarters running from April 2008 to April 2009, 80% of the normal tax is due; from April 2009 on, the tax is payable on the basis of the permanent computation of 0.26% (or the adjusted rate, as explained above).

"Taxable gross receipts"

(R.C. 5751.01 and 5751.02)

The tax applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the bill's situsing provisions. Total gross receipts is defined broadly to include the total amount realized, without deduction for the cost of goods sold or other expenses, in transactions from activities that contribute to the production of gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration, and the total amount realized with regard to unrelated business income of a tax-exempt organization. The bill specifies certain examples of gross receipts, including:

- Amounts realized from the sale, exchange, or other disposition of property
- Amounts realized from performing services
- Amounts realized from rentals, leases, or other use or possession of the taxpayer's property or capital

Taxpayers that are members of a commonly owned or controlled group of businesses must include their taxable gross receipts from sales or other transactions with other members of the group unless they elect to be treated on a consolidated basis (see "***Consolidation of related taxpayers***," below).

Gross receipts are to be calculated on an accrual, rather than cash, basis, unless the taxpayer is not required to use accrual basis accounting for federal income tax purposes. If a cash discount is allowed and is actually taken in a transaction, the discount is deductible from gross receipts. Likewise, the value of returns and similar allowances is deductible. And if a taxpayer is owed an uncollectible payment from a transaction that was previously included in taxable gross receipts the taxpayer previously paid tax on, the uncollectible amount is deductible as a bad debt. (The bill sets forth specific rules for what constitutes a bad debt in R.C. 5751.01(E)(3)(c).)

Excluded amounts. The bill specifically excludes certain amounts from the calculation of gross receipts, if they are not received in the ordinary course of the taxpayer's trade or business and are not a form of payment for a transaction contributing to the production of gross receipts, including:

- Interest income
- Dividends and distributions

- Receipts from assets for which capital gain treatment is given under federal law but without regard to the holding period

- Proceeds attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument

- The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the taxpayer

- Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to any of the various pension and deferred compensation plans given favorable federal tax treatment

- Compensation received by an employee for services rendered to or for an employer, including fringe benefits and expense reimbursements

- Proceeds from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the person's treasury stock

- Proceeds on the account of payments from life insurance policies

- Gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization, except those proceeds realized with regard to its unrelated business income

- Damages in excess of amounts that, if received without litigation, would be gross receipts

- Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration

- Tax refunds and other tax benefit recoveries

- Pension reversions

- Contributions to capital

Also excluded from the calculation of gross receipts are any receipts the taxation of which is prohibited by the Ohio Constitution, the United States Constitution, or federal law.

Situsing receipts to Ohio. Only gross receipts sitused to Ohio are taxable. The bill prescribes specific situsing rules for various kinds of gross receipts. The following kinds of receipts are sitused to Ohio as follows:

- Gross rents and royalties from real property located in Ohio

- Gross rents and royalties from tangible personal property to the extent it is located or used in Ohio

- Gross receipts from the sale of real property located in Ohio

- Gross receipts from the sale of tangible personal property if the property is received in Ohio by the purchaser

- Gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property to the extent the receipts are based on the amount of use of the property in this state; if receipts are based on the right to use property and the payor has the right to use the property in Ohio, receipts are sitused to Ohio to the extent they are based on the right to use the property in Ohio

- Gross receipts from the sale of services, and all other gross receipts not otherwise sitused as provided above, are sitused to Ohio in the proportion to the purchaser's benefit in Ohio as compared to the purchaser's benefit everywhere

- Gross receipts from the sale of electricity and electric transmission and distribution services are sitused in the same manner as under the corporation franchise tax (see R.C. 5733.059, not in the bill)

If the foregoing situsing rules do not fairly represent a taxpayer's gross receipts in Ohio, alternative rules may be applied with the Tax Commissioner's approval. The Tax Commissioner also may prescribe rules providing alternative situsing rules for all taxpayers or for a subset of taxpayers in a particular trade or business.

Use of revenue

(R.C. 5751.20 to 5751.22)

Revenue from the new commercial activity tax will be for the General Revenue Fund (GRF) and to reimburse school districts and other local taxing units for the phase-out of taxes from business machinery and equipment and for the acceleration in the phase-out of taxes from business inventories (discussed below). Initially, revenue from the new tax is to be credited to the newly created Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	**GRF**	**SDRF**	**LGRF**
2006	83%	11.9%	5.1%
2007	37.3%	43.9%	18.8%
2008	27.7%	50.6%	21.7%
2009	36.2%	44.6%	19.1%
2010	41.8%	40.7%	17.5%
2011	36.8%	44.2%	19.0%
2012	40.0%	44.2%	15.8%
2013	42.9%	44.2%	12.8%
2014	45.7%	44.2%	10.1%
2015	48.2%	44.2%	7.6%
2016	50.6%	44.2%	5.2%
2017	52.8%	44.2%	3.0%
2018	54.8%	44.2%	1.0%
2019 and on	100%	0%	0%

The revenue credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund is to be used to provide the reimbursement to school districts and other local taxing units for the phase-out of taxes on business machinery and equipment and inventory, as explained under the heading "***Phase-out of tax on business machinery and equipment***."

Tax credits

(R.C. 122.17, 122.171, 5751.50 to 5751.52, and 5751.98)

The bill permits four of the credits that currently apply to the corporation franchise tax and personal income tax to be applied against the new commercial activity tax, beginning in 2008:

- The refundable jobs creation credit (currently R.C. 122.17)
- The nonrefundable jobs retention credit (R.C. 122.171)
- The nonrefundable credit for qualified research expenses (R.C. 5733.351)
- The nonrefundable credit for research and development loan payments (R.C. 5733.352)

If a corporation or other person claims such a credit against the franchise or income tax, the person may not claim the same credit amount against the new tax.

Generally, the same terms and conditions that govern the credits under the corporation franchise tax and personal income tax law also govern the credits under the new tax law. One difference, however, is that some taxpayers will pay the new tax on a quarterly basis, and they may apply the credits against quarterly tax payments. However, any applicable limit on carryforward periods or on credit maximums are still on an annual basis, meaning they are not affected by the quarterly payment requirement of some taxpayers.

Registration and fee

(R.C. 5751.05(B), 5751.11, and 5751.99; Section 5(C))

Every legal person subject to the new tax must register with the Tax Commissioner by November 15, 2005, or within 30 days after first becoming subject to the tax. The registration must be made on a form provided by the Commissioner that must include various items of information about the taxpayer (enumerated in R.C. 5751.05(B)).

A one-time $15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is $20. If a person registers after the due date, an additional fee may be charged of up to $100 per month, not to exceed $1,000. Persons that would otherwise be subject to the tax but that begin business after November 30 in any year are exempt from the fee, as are persons that do not surpass the $40,000 taxable gross receipts threshold as of December 1.

The registration fee may be waived by the Tax Commissioner. Fee collections are credited to a fund to defray the Commissioner's costs of administering the tax, including promoting awareness of the tax during its initial implementation.

The Tax Commissioner may revoke a registration if a taxpayer fails to comply with any requirement of the tax, but only after providing the taxpayer with 30 days' notice of intent to revoke and providing an informal hearing. If a taxpayer's registration is revoked, the taxpayer is barred from engaging in business in Ohio thereafter, and may not re-register without paying outstanding taxes, penalties, and interest. Nor may any other person holding at least a 10% interest in that taxpayer's business re-register or register anew unless those amounts are paid.

Any person required to have an active registration but that does not is prohibited from generating taxable gross receipts in Ohio; a violation may be prosecuted as a first degree misdemeanor for a first offense, or a fourth degree felony for subsequent offenses. Any person that fails to comply with the bill's registration, tax payment, fee payment, or tax filing requirements is prohibited from conducting business in Ohio. Violation of any provisions of the new chapter, other than the prohibition against generating taxable gross receipts without a registration, carries a fine of up to $500 or imprisonment of up to 30 days, or both.

The Tax Commissioner is required to make an electronic list available to the public identifying registered taxpayers, as well as of persons whose registration has been revoked or cancelled within the preceding four years.

Consolidation of related taxpayers

(R.C. 5751.01(B), (G), and (H), and 5751.011)

The bill permits a group of commonly owned or controlled persons to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts from transactions with other members of the group. (Receipts may not be excluded, however, if the purchasing member uses the purchased good or service in Ohio.) Each member of the group remains jointly and severally liable for the tax and associated penalties and interest, and each member is subject to assessment.

Once made, the consolidation election means the group must file as a single taxpayer for eight consecutive calendar quarters so long as at least two members satisfy the ownership and control criteria. The election rolls over to the following eight quarters, unless the group cancels it before the expiration of the election. If a person is no longer under common ownership or control with the group, it must report and pay the tax as a separate taxpayer or as part of a combined taxpayer group (see below). If a person is added to the group after the election, it must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $40,000 or less does not apply to consolidated taxpayers.

If a consolidation election is in effect for a group, the group must report and pay the tax on the basis of every member's taxable gross receipts, including members that do not have substantial nexus with Ohio. For this purpose, substantial nexus means a person satisfies at least one of the following criteria:

- It owns or uses a part or all of its capital in Ohio
- It holds a certificate of compliance authorizing it to do business in Ohio
- It owns or leases property in Ohio
- It has one or more individuals performing services in Ohio
- It has "bright-line presence" in Ohio (explained below)
- It otherwise has nexus with Ohio to the extent that the state may require the person to remit the tax under the United States Constitution.

The bill defines "bright-line presence" as any one of the following conditions:

- Having property in Ohio with an aggregate value of at least $50,000 (where value equals original cost or, in the case of rented property, eight times the net annual rental charge)
- Having payroll in Ohio of at least $50,000 (including any amount subject to Ohio income tax withholding and any other compensation paid to an individual under the supervision or control of the person for work done in Ohio)
- Having taxable gross receipts in Ohio of at least $500,000

- Having in Ohio at least 25% of the person's total property, total payroll, or total sales
- Being domiciled in this state either as an individual or for corporate, commercial, or other business purposes.

The Tax Commissioner may require one of the members of a consolidated group to undertake the registration and tax payment requirements on behalf of the group. The registration fee is $20 for each member of the group, up to a maximum per-group fee of $200. The consolidation election must be made on a form prescribed by the Tax Commissioner, and must be accepted by the Commissioner if the group satisfies the criteria for making such an election.

Combined taxpayer group

(R.C. 5751.012)

Any group of persons subject to the new tax and also being under common ownership or control, but not electing to be treated as a consolidated taxpayer group, will be treated as a "combined taxpayer" group. Like a consolidated taxpayer group, a combined taxpayer group must report and pay the tax as a single taxpayer, and each member of the group is jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment. A combined group must register as a group and is subject to the same $20 per member registration fee as a consolidated group, up to a maximum of $200. And the exemption for taxpayers having taxable gross receipts of $40,000 or less does not apply to combined taxpayers. However, unlike members of a group making the consolidation election, members of a combined taxpayer group may not exclude receipts arising from transactions between the members.

Tax periods

(R.C. 5751.04)

The new commercial activity tax is an annual tax, but taxpayers generating annual taxable gross receipts of $1 million or more are required to pay the tax on a quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which follows the calendar quarters: January through March, April through June, July through September, and October through December. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative. The Tax Commissioner also can adopt alternative filing and payment rules for groups of taxpayers without the taxpayers seeking approval.

Taxpayers having estimated annual taxable gross receipts of less than $1 million may report and pay the tax on a calendar year basis, but only if the taxpayers make an election to do so. Such taxpayers are referred to as "calendar year taxpayers." The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts reach $1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

General administration

(R.C. 5751.05, 5751.06, 5751.07, 5751.08, 5751.081, 5751.09, 5751.10, 5751.11, 5751.12, and 5751.99)

Payments. Tax payments must be made either quarterly or annually, depending on the taxpayer's status as a quarterly taxpayer or annual taxpayer. Calendar quarter taxpayers must make payments electronically and, if the Tax Commissioner requires, file returns electronically. Such taxpayers may be excused from the electronic filing and payment requirement by applying to the Tax Commissioner, who may excuse taxpayers for good cause.

Penalties and interest. Penalties are imposed for not filing and paying the tax or for not filing and paying on time. The penalty for late filing and payment is up to $50 or 10% of the amount due, whichever is greater. In the case of underpaid tax, the penalty is up to 15% of the underpayment, including in those cases where payment is made after the taxpayer is notified of the deficiency by the Tax Commissioner. Penalties also may be imposed if taxpayers required to file and pay electronically fail to do so. The penalty is up to 5% of the payment due for the first two occasions, and 10% for subsequent occasions.

A penalty also may be imposed if a taxpayer fails to switch from being a calendar year taxpayer to a calendar quarter taxpayer once the taxpayer's annual taxable gross receipts exceeds $2 million (giving such taxpayers a $1 million margin of error). The penalty may be up to 10% of the amount of taxable gross receipts over $2 million.

A penalty is imposed on persons who have been notified of the registration requirement but that fail to register within 60 days. The penalty is up to 35% of the tax found to be due.

Interest accrues against unpaid amounts at the normal statutory rate of 3 percentage points above the current yield on marketable United States government securities having a remaining maturity of three years or less. The interest accrues from the due date to the time the tax is paid or an assessment is issued, whichever occurs first.

The Tax Commissioner is authorized to waive penalties, but not interest, and is authorized to adopt rules governing waiver of penalties.

Refunds. Refunds are available for overpaid, illegal, or erroneously paid taxes. Refunds must be applied for within the four-year statute of limitations on the issuance of assessments. Interest accrues on refund amounts at the same rate as it accrues on underpayments. Refunds also may be issued to a taxpayer that, "because of the operation of that taxpayer's business operations," is not able to exclude the full $1 million excludable annually from the 0.26% tax on receipts above $1 million. A refund may not be issued to any registered taxpayer for the $100 tax on the first $1 million in annual receipts unless the taxpayer cancels the registration before February 10 of the current year.

As with other taxes, refunds must be offset for various debts to the state, including unpaid workers compensation premiums, unemployment compensation contributions, unpaid motor vehicle fees, and incorrect medical assistance payments.

Anyone who files a fraudulent refund claim is subject to a fine of up to $1,000 or imprisonment for up to 60 days or both.

Assessments. As with other taxes, the Tax Commissioner may issue assessments for unpaid or unreported commercial activity taxes. The assessment provisions are substantially the same as for other state taxes, except the statute of limitations for issuing an assessment is four years unless fraud or failure to file is involved, in which case there is no time limit. (For comparison, the limit under the corporation franchise tax is three years except for fraud or failure to file, and the limit for personal income taxes is four years except for fraud or failure to file.) Also, since the commercial activity tax is based on gross receipts, the Tax Commissioner may use sampling in conducting an audit of a taxpayer.

Winding-up obligations. Taxpayers quitting business or transferring their business to another person must pay the commercial activity tax and file a return within 15 days after the date of selling or quitting the trade or business. The purchaser or other successor, if there is such a person, must withhold enough money from the purchase money to cover the tax obligation until the former owner produces a receipt showing payment of the tax due or a certificate showing no tax is due. The purchaser is liable for any unpaid tax due.

Recordkeeping. The bill authorizes the Tax Commissioner to prescribe recordkeeping requirements applicable under the commercial activity tax.

Information is confidential taxpayer information, except for the listing of registered taxpayers.

Challenging legality of tax's application

(R.C. 5751.31)

The bill provides for taxpayer appeals directly to the Ohio Supreme Court when the Tax Commissioner issues a final determination in response to a taxpayer's challenge of an assessment and the primary issue raised by the taxpayer is the constitutionality of the bill's "bright-line presence" provision as a standard conferring Ohio nexus status on a person. (See R.C. 5751.01(G)(5), as explained under the heading "***Consolidation of related taxpayers***," above.) The appeal must be made within 30 days after issuance of the final determination.

If the bill's bright-line presence standard is ruled unconstitutional under the Ohio Constitution or United States Constitution, the bill authorizes the Tax Commissioner to require taxpayers having taxable gross receipts in Ohio to provide a report detailing purchases they make from persons that are not registered to collect the commercial activity tax.

II. Corporation Franchise Tax

Phase-out of corporation franchise tax

(R.C. 5733.01(G))

The bill phases out the corporation franchise tax over five years, beginning with tax year 2006, for all corporations other than banks and other financial institutions, which will continue to be subject to the franchise tax on the basis of their net worth (at a rate of 1.3%).

The phase-out begins with tax year 2006, and the tax is eliminated for nonfinancial corporations, beginning in 2010. The phase-out is made in even increments over the intervening five years. In 2006, corporations will owe the greater of the minimum tax (which is $50 or $1,000, depending on a corporation's employment level and gross receipts)[2] or 4/5 of the tax they would otherwise owe under current law after deducting nonrefundable credits. If a corporation has refundable credits for the year, or is entitled to the credit for taxes paid on its behalf by a partnership of which it is a partner, the refundable or partnership credit

[2] *The $1,000 minimum tax applies to any corporation having at least 300 employees or worldwide gross receipts of $5 million or more.*

is subtracted from the reduced tax.[3] Likewise, in 2007, corporations owe the greater of the minimum tax or 3/5 of the tax they otherwise would owe after deducting nonrefundable credits. Refundable credits and the partnership credit are subtracted from that amount. The fractions decline in 2008 to 2/5 and in 2009 to 1/5, and any refundable credits and the partnership credit are subtracted in the same fashion in each of those years.

The corporation franchise tax has been in place in one form or other since 1902. Originally a tax on net worth, in 1971 it was converted to a tax computed on the basis of net worth or net income, with taxpayers owing tax on whichever computation yields the higher tax. Currently, the rate of tax on general business corporations is 0.4% of net worth or 8.5% of net income (5.1% on the first $50,000).

Some noncorporations treated as corporations

(R.C. 5733.01(E))

The bill clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in current law, the bill makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.

III. Personal Income Tax

Tax rates reduced uniformly by 21%

(R.C. 5747.02(A))

Current law establishes nine income tax brackets for individuals, trusts, and estates, each with a corresponding tax dollar amount and tax rate. The current income brackets and applicable tax dollar amounts and rates for each bracket is as follows:

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[3] *The partnership credit, known as the "qualifying pass-through entity tax credit," is a credit for taxes paid by a partnership or other pass-through entity on behalf of a corporation that is a partner or owner of a pass-through entity doing business in Ohio, but which itself does not have any taxable business presence in the state. A withholding tax is imposed on the partnership or entity to ensure that the corporation satisfies its franchise tax obligation. The corporation then is credited with the tax paid on its behalf by the entity against the corporation's individual franchise tax obligation.*

Taxable income	Tax
$5,000 or less	.743%
More than $5,000 but not more than $10,000	$37.15 plus 1.486% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$111.45 plus 2.972% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$260.05 plus 3.715% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$445.80 plus 4.457% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,337.20 plus 5.201% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,417.60 plus 5.943% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,606.20 plus 6.9% of the amount in excess of $100,000

The bill reduces the rates and amounts within each bracket by a total of 21% over five years, starting with taxable years beginning in 2005, in nearly even per-year increments. The resulting tax brackets for 2009 and thereafter are as follows:

Taxable income	Tax
$5,000 or less	.587%
More than $5,000 but not more than $10,000	$29.35 plus 1.174% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$88.05 plus 2.348% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$205.45 plus 2.935% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$352.20 plus 3.521% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,056.40 plus 4.109% of the amount in excess of $40,000

Taxable income	Tax
More than $80,000 but not more than $100,000	$2,700.00 plus 4.695% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$3,639.00 plus 5.451% of the amount in excess of $100,000
More than $200,000	$9,090.00 plus 5.925% of the amount in excess of $200,000

For each taxable year beginning after 2009, the income tax dollar amounts and rates are the same as for taxable years beginning in 2009.

Inflation adjustments delayed

(R.C. 5747.02(A))

Under existing law, beginning in July of 2005, the Tax Commissioner is to make yearly adjustments to each of the existing income amounts to account for general price inflation, based on the gross domestic product deflator, and recompute the tax dollar amounts (but not the percentage rates) to reflect adjustment of the income amounts. The bill postpones commencement of these yearly adjustments until 2010.

Deduction for qualified tuition and fees eliminated

(R.C. 5747.01(A)(18))

Existing law permits taxpayers to take a deduction for certain tuition costs and fees paid by them on their own behalf or on behalf of a spouse or dependent during the taxable year. The deduction is available for tuition and fees paid to a state university or other postsecondary institution located in Ohio. For taxpayers enrolled in a full-time course of study, the deduction is available for tuition and fees paid in each of the first two years of postsecondary education. For taxpayers enrolled part-time, the deduction is available for tuition and fees paid for the academic equivalent of the first two years of postsecondary education during a maximum of five taxable years. The total amount of tuition and fees that may be deducted by a taxpayer for all taxable years is $5,000. The deduction is not available to individuals filing a joint return showing a combined federal adjusted gross income[4] greater than $100,000 or to single filers having federal adjusted gross income in excess of $50,000.

The bill eliminates the deduction for tuition and fees. The bill provides that the deduction is not available for any taxable year beginning after December 31, 2005.

Credit for low-income taxpayers created

(R.C. 5747.056, 5747.08, and 5747.98)

The bill creates a nonrefundable[5] credit for individuals whose Ohio adjusted gross income (less exemptions) does not exceed $10,000. The amount of the credit varies depending upon the taxable year for which it is claimed. For taxable years beginning in 2005, the credit equals $107. For taxable years beginning in 2006, the credit equals $102. For taxable years beginning in 2007, the credit equals $98. For taxable years beginning in 2008, the credit equals $93. For taxable years beginning in 2009 or thereafter, the credit equals $88. The credit is decreased in conjunction with the reduction of the income tax rates.

Taxation of trust income made permanent

(R.C. 5747.01 and 5747.02(B); Section 11)

Under existing law, the income tax applies to trusts for only three taxable years; namely, the taxable years of a trust beginning in 2002, 2003, and 2004. Thus, under existing law, the last year in which trusts are subject to the personal income tax is the taxable year of a trust beginning in 2004. The bill makes application of the personal income tax to trusts permanent, beginning with taxable years beginning in 2005.

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[4] A taxpayer's Ohio adjusted gross income, which is the income tax base from which Ohio income tax liability is calculated, is calculated on the basis of the taxpayer's federal adjusted gross income (R.C. 5747.01(A)).

[5] A "nonrefundable" credit is a credit that can be claimed by a taxpayer only to the extent the amount of the credit does not exceed the taxpayer's tax liability. If a nonrefundable credit exceeds a taxpayer's tax liability, the taxpayer is not entitled to a refund of the excess.

Trust residency rules

(R.C. 5747.01(I)(3)(a)(iii) and (I)(3)(d)(iii))

The residency of a trust determines the extent to which the trust's nonbusiness income is taxable by Ohio. If a trust is not a resident trust, it is entitled to a credit for taxes paid to another state on its nonbusiness income.

Under continuing law, a trust is considered a resident trust to the extent it consists of assets transferred under any of the following three conditions:

(1) With respect to certain testamentary and irrevocable inter vivos trusts, the assets were transferred by a person, court, or governmental entity or instrumentality on account of the decedent-transferor's death;

(2) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) at the time of transfer, provided at least one of the trust's beneficiaries is domiciled in Ohio (for Ohio income tax purposes) during some portion of the trust's current taxable year;

(3) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) when the trust became irrevocable, but only if at least one of the trust's beneficiaries was an Ohio resident (for Ohio income tax purposes) during some portion of the trust's taxable year.

The bill specifies that with respect to (3) above, a trust is considered a resident trust even when the trust became irrevocable upon the death of a person domiciled in Ohio (for Ohio income tax purposes).

Under continuing law, the extent to which a trust consists of assets transferred to it from any of the sources enumerated in (1), (2), and (3) above is ascertained by multiplying the fair market value of the trust's assets by a "qualifying ratio"[6] that is based, generally, on the relationship of the fair market value of the transferred assets at the time of transfer to the fair market value of all of the trust's assets at that time. The bill provides that the domicile of a trust's

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[6] *The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time and the denominator is the fair market value of all of the trust's assets at that time. Each subsequent time the trust receives assets, the numerator of the qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, multiplied by the last qualifying ratio computed, and (2) the fair market value of the subsequently transferred assets at the time transferred. The denominator is the fair market value of all of the trust's assets immediately after the subsequent transfer.*

beneficiaries is not to be taken into account in this computation, insofar as the assets are transferred as described in (2) or (3) above.

<u>Credit for a resident's out-of-state income tax liability disallowed if the out-of-state income tax liability is deducted in computing the resident's tax base</u>

(R.C. 5747.01 and 5747.05; Section 12)

Continuing law allows a credit against the personal income tax for income taxes paid by an Ohio resident to another state or the District of Columbia. The credit is equal to the lesser of the following:

(1) The amount of income tax otherwise due to Ohio on the portion of Ohio adjusted gross income (which is the tax base from which Ohio income tax liability is calculated) that is subject to taxation by another state or the District of Columbia; or

(2) The amount of income tax liability to another state or the District of Columbia on the portion of Ohio adjusted gross income that is subject to taxation by another state or the District of Columbia.

The tax base from which Ohio income tax liability is calculated, Ohio adjusted gross income, is defined under continuing law as a taxpayer's federal adjusted gross income, adjusted as prescribed under continuing Ohio law. Thus, a taxpayer's Ohio income tax base is derived from the taxpayer's federal adjusted gross income.

The bill provides that the credit for income taxes paid by Ohio residents to other states or the District of Columbia is not available to any taxpayer who has directly or indirectly deducted, or was required to directly or indirectly deduct, the amount of income taxes owed to another state or the District of Columbia in computing federal adjusted gross income. Thus, the bill precludes a resident taxpayer from claiming the credit when the taxpayer deducted, or should have deducted, the out-of-state income taxes in computing the taxpayer's federal income tax base. Because Ohio's income tax base is derived from the federal income tax base (by calculating Ohio taxes based on federal adjusted gross income), the effect of the bill is to preclude a resident taxpayer from taking, for state income tax purposes, a deduction for out-of-state income taxes and also claiming a credit with respect to those taxes.

IV. Property Taxes and Transfer Fees

Elimination of the 10% rollback in real property taxes for certain real property

(R.C. 319.302 and 323.152; Section 6)

Under current law, all real property, and manufactured and mobile homes that are treated as real property for purposes of property taxation, receive a reduction of 10% of the property tax bill (known as the "rollback"). Beginning in tax year 2006, the bill requires that the county auditor classify each parcel of real property according to its principal, current use, and apply the 10% rollback only to property that is classified as "qualifying property" or to manufactured or mobile homes. Under the bill, only lands and improvements thereon that are used for residential or agricultural purposes may be classified as "qualifying property." All other lands and improvements thereon, and minerals or rights to minerals, will no longer receive the rollback. The bill requires that the Tax Commissioner adopt rules governing this classification of property, and no property may be classified except in accordance with those rules.

Under the bill, the county auditor also must reclassify each parcel of real property whose principal, current use has changed from the preceding year to reflect the use of the property as of January 1 of the current tax year.

Continuing law provides for the reduction of real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes, in an amount equal to ¼ of the amount by which taxes are reduced under the 10% rollback (which equals 2½%). The bill replaces this equation with language that simply states that to provide a partial exemption, real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes is 2½% of the amount of taxes to be levied on the homestead or home.

Increase in real property transfer fee

(R.C. 319.54; Section 7)

Continuing law requires that county auditors charge fees for transferring real property or used manufactured or mobile homes. Currently, the fee is $1, or 10¢ for each $100 or fraction of $100, whichever is greater, of the value of the real property, used manufactured home, or used mobile home transferred.

The bill increases the fee to the greater of $1, or **20**¢ for each $100 or fraction of $100 of the value of the property or home transferred. The increase applies to any conveyance of real property presented to the county auditor on or after July 1, 2005, regardless of its time of execution or delivery. The bill requires that the county auditor deposit the greater of $1 or one-half of the fee in the county treasury to the credit of the county general fund, and deposit the balance in the state treasury to the credit of the General Revenue Fund (GRF). The deposit to the credit of the GRF must be made by the 15th day of the month following the date the fee was received by the county auditor. If the county auditor fails to make the deposit by that time, the Tax Commissioner may withhold Local Government Fund money allocated to the county until such time the deposit is made.

Phase-out of tax on business machinery and equipment

(R.C. 5711.21, 5711.22, 5727.02, 5727.031, and 5727.06)

Exemption of new business machinery and equipment

The bill exempts from property taxation all machinery and equipment used in business that is installed (or otherwise first used in business in Ohio) after the end of 2004. The exemption applies to all such property if it was not used in business before 2005 by the property's owner or by a related member or predecessor of the owner, unless the property was the inventory of the owner, related member, or predecessor (in which case the property is subject to the phase-out described below).

Phase-out of tax on existing business machinery and equipment

For machinery and equipment used in business in Ohio before the end of 2004, taxation of the property is phased out over two years so that the property will be totally exempt in 2007 and thereafter. In 2005, the property will be taxed on 25% of its value, as provided under current law. In 2006, it will be taxed on 12-1/2% of its value. In 2007 and thereafter, it will be exempted from taxation entirely.

Accelerated phase-out of tax on business inventory

The bill accelerates the current phase-down of the taxation of business inventory. Currently, taxes on business inventory is being phased out over several years according to a schedule that is contingent, during the first few years, on a trigger requiring increasing statewide property tax collections, and that provides for an automatic two percentage point-per-year reduction in the assessment rate after 2006. Currently, the assessment rate has been reduced from 25% to 23%; the phase-down of the assessment rate has not operated for two consecutive years because statewide property tax collections have not increased year-on-year for two years.

The bill dispenses with the current triggering mechanism and the two-percentage-point automatic phase-down and replaces them with a compressed phase-down schedule, eliminating taxes on business inventory by 2010. Under the compressed phase-down, the assessment rate for 2005 and 2006 remains at 23%. In 2007, the rate declines to 21%, then to 14% in 2008, 7% in 2009, and 0% in 2010 and thereafter, effectively repealing the taxation of business inventory after 2009.

Reimbursement of local taxing units

(R.C. 5751.20 to 5751.22)

The bill provides reimbursement to school districts and other local taxing units for some of the net revenue reduction that would result from the bill's exemption of newly installed machinery and equipment, phase-out of existing machinery and equipment, and the accelerated business inventory phase-out. Reimbursement is to be paid to school districts and joint vocational school districts from the newly created School District Tangible Property Tax Replacement Fund, and to other local taxing units through the newly created Local Government Tangible Property Tax Replacement Fund. These funds are to be funded by a portion of the Commercial Activity Tax proposed by the bill. The bill prescribes specific computations and procedures for the Tax Commissioner and the Department of Education to implement the reimbursement.

School districts. Generally, the reimbursement for school districts (including joint vocational school districts) is based on the net revenue effect of the bill's property tax exemption and phase-outs after offsetting the increased state funding school districts receive when their taxable property values decline, and disregarding the effects of the previously enacted phase-down of business inventory taxes. The revenue effect of the previously enacted inventory tax phase-out is essentially subtracted from the revenue effect of the bill's exemptions and phase-outs, meaning the bill does not reimburse districts for revenue losses resulting from the previously enacted phase-down. (Nor does current law provide direct reimbursement for the previously enacted phase-down.) For the same reason, the state education aid offset incorporated in the bill's reimbursement formula does not offset state aid increases to the extent those increases result from the previously enacted inventory tax phase-down. In other words, the bill's reimbursement provision reimburses only for net revenue losses resulting from the bill's tax changes, disregarding previously enacted changes.

The reimbursable net revenue losses generally are computed on the basis of school district levies in effect in 2005 (so long as the levy was approved by voters before September 1, 2005). In the case of levies raising a fixed sum of money, such as bond levies and emergency levies, reimbursable losses are computed for as long as the district continues to impose the levy after 2005 and through 2018, including, in the case of emergency levies only, any renewals for the same amount as the original emergency levy minus the 2006 reimbursement amount. The total reimbursement for all fixed-sum levies imposed over the same territory is to within 1/2-mill worth of the reimbursable loss. The unreimbursed 1/2-mill is divided among the overlapping school districts and local taxing units in proportion to the relative rates of their reimbursable fixed-sum levies. For example, if a school district's fixed-sum levies constitute 60% of all reimbursable fixed-sum levies over a territory, 60% of the unreimbursed 1/2-mill (0.30 mills) is not reimbursed to the school district. Instead, the rate of the district's fixed-sum levies will increase by a total of 0.30 mills, and the total of the other overlapping taxing units' levies will increase by the remaining 0.20 mills.

Reimbursement for fixed-rate levies is to be paid in declining amounts through the end of fiscal year 2018. Fixed-sum levies and unvoted millage for debt are fully reimbursed through the end of fiscal year 2017. Reimbursement payments are to be made quarterly in February, May, August, and November, beginning May 2006.

Other taxing units. Reimbursement to local taxing units other than school districts and joint vocational school districts is similar in concept to the school district reimbursement except there is no offset for increases in state aid. Accordingly, local taxing units are reimbursed for the net revenue losses caused by the bill's exemption of newly installed machinery and equipment, the phase-out of taxes on existing machinery and equipment, and the incremental revenue loss from the accelerated phase-out of taxes on inventory. Revenue losses from the previously enacted phase-down of inventory taxes are not reimbursed. Levies qualify for reimbursement under the same terms as for school district levies, except local taxing units do not impose emergency levies of the sort that school districts may impose. Reimbursement for fixed-rate levies is to be paid in declining amounts through the end of calendar year 2017. Fixed-sum levies and unvoted millage for debt are to be fully reimbursed through 2017. Reimbursement payments are to be made quarterly in February, May, August, and November, beginning May 2006.

Elimination of the tax exemption for patterns, dies, jigs, and drawings

(R.C. 5701.03)

The bill terminates the existing tax exemption for certain kinds of tangible personal property. Under current law, patterns, jigs, dies, and drawings that a person holds for its own use and not for selling to others in the course of its business (including as inventory) are not taxable. The bill terminates the exemption after the end of tax year 2005, making the property taxable beginning in 2006.

Such property becomes taxable whether it is held by a business or a public utility, but an exemption remains for the cost of drawings used by most public utilities and all interexchange telecommunications companies, so long as the drawings are used to provide the utility's or company's services. To qualify for the continued exemption, the cost of the drawings must be documented. The continued exemption does not apply to drawings of electric companies or of combined companies acting as electric companies.

Reduction in assessment rate on public utility property

(R.C. 5727.01 and 5727.111)

In recognition of the terminated exemption for patterns, jigs, dies, and drawings, the bill reduces the assessment rate on electric company tangible personal property. Currently, most electric companies' transmission and distribution equipment is taxed on 88% of its value and their other property is taxed on 25% of value. The bill reduces the 88% assessment rate for transmission and distribution equipment to 85% and reduces the 25% assessment rate for all other property to 24%. The reductions take effect beginning in tax year 2006.

The bill does not change the current assessment rates on the property of rural electric companies, which are cooperatives and other organizations providing electricity to their members, primarily in rural communities.

Tax treatment of nonutility electricity providers

(R.C. 5711.21, 5711.22, 5727.02, and 5727.031)

Currently, when a business, other than an electric company, generates or distributes electricity for its own use, as in large manufacturing operations, and provides electricity to others (for example, when excess capacity is available), the property used to generate or distribute the electricity is treated, in effect, as partly business property and partly public utility property. This treatment recognizes that the method of deriving the value of public utility property and business property differs, as do the respective assessment rates. Under current law, the value of the property is divided into two parts each year on the basis of the relative percentage of the electricity used by the generator and by anyone else in the previous year. The part attributed to the generator is valued and assessed like business property (at 25%), and the part attributed to generation for others is treated as electric company property; i.e., the transmission and distribution component of that part is valued and assessed like that of electric companies (at 88%), and the generation component is valued and assessed like that of electric companies (at 25%).

Under the bill, businesses that generate electricity and supply some of it to others, but whose primary business is not supplying electricity, will continue to be taxed on their electricity-related property in the same manner as under current law. But because much of the part of that property attributed to the business's own electricity use will no longer be taxable after 2009 (because of the bill's phase-out of tax on business machinery and equipment), the business will be required to report its electricity-related property as an electric company does. Its report will have to contain only the part of the value of the property attributed to supplying electricity to others (determined on the basis of the relative percentage of electricity supplied to others, as in current law). The reportable property will continue to be determined and assessed as under current law--i.e., in the same manner as for the equivalent electric company property--but at the bill's new assessment rates: 85% for transmission and distribution property, and 25% for all other property.

Railroad property

(R.C. 5701.03, 5713.01, 5727.06, 5727.10, 5727.11, and 5727.12)

Currently, railroad tracks owned and operated by a railroad company are classified as a business fixture rather than real property. Business fixtures are taxed as a form of tangible personal property instead of real property, even though they may have many of the attributes of real property, primarily in terms of relative permanence as a feature of land.

The bill reclassifies railroad tracks owned and operated (or leased) by a railroad company as real property, rather than as business fixtures, beginning in 2006. Accordingly, county auditors will become responsible for appraising and assessing such tracks beginning in 2006, in lieu of the Tax Commissioner.

Leased property

(R.C. 5711.21, 5711.22, and 5727.06)

Under current law, property owned by someone other than a public utility or interexchange telecommunications company, but leased by that person to a public utility or interexchange telecommunications company, is valued and assessed as if it were owned by the utility or company.

Such leased property would continue to be treated in this manner, but, from tax year 2006 and thereafter, it would have to be reported by the public utility or interexchange telecommunications company leasing the property, instead of the lessor.

Accelerate phase-out of state reimbursement for $10,000 business property exemption

(R.C. 321.24(G); Section 16(A))

Continuing law exempts the first $10,000 of a business's tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction, but Am. Sub. H.B. 95 of the 125th General Assembly phases-out the state's reimbursement for the exemption, over ten years. Under the phase-out, county treasurers receive a payment each year from the General Revenue Fund that is a reduced percentage of the county's fiscal year 2003 reimbursement. The payment is then apportioned among the county's taxing districts as if levied and collected as personal property taxes. No further reimbursements are to be paid after fiscal year 2012.

The bill accelerates the phase-out period so that no reimbursement payments are made after fiscal year 2009.

Property tax replacement payments when school district mergers occur

(R.C. 5727.85; Section 15)

Under continuing law, school districts and joint vocational school districts receive property tax replacement payments to offset the loss of revenues that occurred when the assessment rates on the tangible personal property of rural electric companies, electric companies, and natural gas companies were reduced. Those replacement payments come from a portion of the kilowatt-hour and MCF tax revenues, and are based on a district's fixed-rate levy loss and fixed-sum levy loss. Effective July 1, 2005, the bill establishes a procedure to determine how payments are to be made to those districts that merge with or transfer territory to other districts, as follows:

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Complete merger of two or more districts	Successor district receives the sum of the fixed-rate levy losses for each district merged.	Successor district receives the sum of the fixed-sum levy losses for each district merged.
Transfer of part of a district's territory to an existing district	Recipient district receives the transferring district's total fixed-rate levy loss times a fraction, with the numerator being the value of electric company tangible personal property in the	The Department of Education makes an equitable division of the fixed-sum levy losses for both districts, if the recipient district takes on debt from

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
	part of the territory transferred, and the denominator being the total value of that property in the entire district from which the territory was transferred.	the other district.
Transfer of part of one or more districts' territory to form a new district between January 1, 2000, and January 1, 2005	New district receives just its current fixed-rate levy loss through August 2006. From February 2007 to August 2016, the new district receives the **lesser** of (1) an amount determined using existing law's calculation of the district's state education aid and inflation-adjusted property tax loss, or (2) the amount determined for local taxing units, which is phased-out per a schedule under existing law.	The Department of Education makes an equitable division of the fixed-sum levy losses for all the districts, if the new district takes on debt from the other district(s).
Transfer of part of one or more districts' territory to form a new district on or after January 1, 2005	New district does not receive any fixed-rate levy loss. The transferring district(s) continue to receive their current fixed-rate levy loss.	New district does not receive any fixed-sum levy loss, unless it takes on debt from the other district(s), in which case the Department of Education makes an equitable division of the losses for the districts.

The bill also changes one of the dates by which the Director of Budget and Management must transfer amounts from the School District Property Tax Replacement Fund to the General Revenue Fund, from between the first and fifth days of March to between those days in May.

Computation used to determine amounts deposited each year in the Property Tax Administration Fund changed

(R.C. 321.24(F) and 5703.80; Sections 15 and 16(B))

Continuing law provides for a percentage of real property tax rollback reimbursements to local governments to be diverted to a special fund known as the Property Tax Administration Fund (the Fund) to be used by the Department of Taxation to defray its costs of administering property taxation and of equalizing real property. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.

The Fund is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. Under current law, the portion diverted to the Fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);

- 0.15% of the taxes charged against public utility personal property;

- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department);

The bill changes the computation used to determine the portion of the 10% rollback reimbursement to be diverted to the Fund. Under the bill, the portion diverted to the Fund is computed as follows:

- For fiscal year 2006:

  - 0.33% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

  - 0.5% of the taxes charged against public utility personal property; plus

  - 0.5% of the taxes charged against tangible personal property of businesses owning property in more than one county.

- For fiscal year 2007:

  - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

  - 0.56% of the taxes charged against public utility personal property; plus

- 0.56% of the taxes charged against tangible personal property of businesses owning property in more than one county.

- For fiscal year 2008 and thereafter:

  - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

  - 0.6% of the taxes charged against public utility personal property; plus

  - 0.6% of the taxes charged against tangible personal property of businesses owning property in more than one county.

V. Sales and Use Taxes

Rate change

(R.C. 5739.02, 5739.025, 5739.10, and 5741.02)

Am. Sub. H.B. 95 of the 125th General Assembly temporarily increased state sales and use taxes, from 5% to 6%. The temporary increase applies to sales occurring on and after July 1, 2003, but before July 1, 2005. Under current law, the rate is scheduled to return to 5% on July 1, 2005.

The bill establishes a permanent sales and use tax rate of 5½%, beginning July 1, 2005. This rate also applies to the vendors' excise tax for the privilege of engaging in the business of making retail sales on and after July 1, 2005. To reflect the tax rate change, the bill revises the tax rate schedules that specify how the tax is applied to fractions of dollars when sales are not in exact dollar amounts.

Transmission to the Treasurer of State of sales and use taxes collected by court clerks upon issuing certificates of title

(R.C. 1548.06 and 4505.06)

Under continuing law, applications for certificates of title for motor vehicles, watercraft, and watercraft outboard motors are filed with the clerks of the courts of common pleas, and the clerks are required to collect unpaid sales and use taxes from the applicants at the time the applications are filed. The clerks retain a poundage fee for collecting the taxes. Under existing law, the clerks forward the taxes collected by them to the Treasurer of State in a manner prescribed by the Tax Commissioner.

The bill establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by the court clerks. The bill provides that the clerks are to transmit sales and use taxes resulting from sales of motor vehicles, off-highway vehicles, all-purpose vehicles, and titled watercraft and outboard motors during the week to the Treasurer on or before the Friday following the close of that week. If, on any Friday, the offices of a court clerk or the state are closed, the tax must be forwarded to the Treasurer on or before the next day on which the offices are open. Every remittance of tax made by a clerk must be accompanied by a remittance report. Under the bill, the Tax Commissioner is to determine the form of this report. Upon receiving a tax remittance and report, the Treasurer is required to date stamp the report and forward it to the Tax Commissioner. The Treasurer may require the court clerks to transmit tax collections and remittance reports electronically.

If the tax due for any week with respect to titled watercraft and outboard motors is not remitted by a court clerk in accordance with the procedures outlined in the bill, the clerk must forfeit the poundage fees collected by the clerk for sales made during that week. If the tax due for any week with respect to motor vehicles, off-highway vehicles, and all-purpose vehicles is not remitted by a court clerk in accordance with the bill's procedures, the Tax Commissioner may, but is not required to, compel the clerk to forfeit the poundage fees collected by the clerk for sales made during that week.

VI. The Kilowatt-hour Tax

Increase in the tax

(R.C. 5727.81(A) and (C)(2); Section 8)

A kilowatt-hour (kWh) tax is imposed on electric distribution companies for all electricity distributed by them through meters of end users, or to unmetered locations, in this state. The bill increases the kWh tax by approximately 30%, beginning in the tax measurement period that includes July 1, 2005. The tax rate increases as follows:

Kilowatt hours distributed	Tax rate per kilowatt hour under current law	Tax rate per kilowatt hour under the bill
For the first 2,000:	$.00465	$.00605
For the next 2,001 to 15,000:	$.00419	$.00545
For 15,001 and above:	$.00363	$.00472

Under current law, commercial or industrial purchasers that are self-assessing the kWh tax (because of their high-volume consumption of electricity) are required to pay the tax at a rate of $.00075 per kWh on the first 504 million kWhs distributed to them, plus 4% of the total price of all electricity distributed to them. The bill retains the rate of $.00075 per kWh on the first 504 million kWhs, but raises the percentage to 5% of the total price of all electricity, distributed to a self-assessor.

Changes to distribution of the tax

(R.C. 5727.84(B); Section 15)

Revenues from the kWh tax are deposited in the Kilowatt-Hour Tax Receipts Fund, to the credit of five funds. The bill revises the percentages of kWh tax revenues that are credited to those funds after July 31, 2005, as follows:

	Percentage credited under current law	**Percentage credited under the bill**
General Revenue Fund	59.976%	69.213%
Local Government Fund	2.646%	2.035%
Local Government Revenue Assistance Fund	.378%	.291%
School District Property Tax Replacement Fund	25.4%	19.538%
Local Government Property Tax Replacement Fund	11.6%	8.923%

Under current law, if, in fiscal years 2002-2006, the kWh tax revenues are less than $552 million, the amount credited to the General Revenue Fund (GRF) must be reduced by the amount necessary to credit to the Local Government Fund and Local Government Revenue Assistance Fund the amount each would have received if the tax did raise that amount in the fiscal year. Beginning in fiscal year 2007, if the tax revenues are less than $552 million, current law requires that the amount credited to GRF be reduced by the amount necessary to credit to all four of the other funds the amount each one would have received if the tax did raise that amount in the fiscal year.

The bill changes these threshold amounts to $703,800,000 for fiscal year 2006, and to $717,600,000 for fiscal year 2007 and fiscal years thereafter.

VII. Tobacco and Alcohol Taxes

Tobacco taxes

Cigarette tax

(R.C. 5743.02 and 5743.32; Section 15)

Under existing law, an excise tax is levied on the sale, use, consumption, or storage in this state of cigarettes at the rate of 27.5 mills per cigarette. The bill increases the tax to 50 mills per cigarette. (A "mill" is equal to one-tenth of one cent. Accordingly, 10 mills equals one cent, 27.5 mills equals 2.75¢, and 50 mills equals 5¢. So, an excise tax of 50 mills per cigarette equates to a tax of $1 on a package of cigarettes containing 20 cigarettes.) The increase takes effect July 1, 2005.

Tobacco products tax

(R.C. 5743.51, 5743.62, and 5743.63; Section 15)

Continuing law levies an excise tax on the sale, use, consumption, or storage in this state of tobacco products, other than cigarettes, at the rate of 17% of the wholesale price of the tobacco product. The bill increases the tax to 30% of the wholesale price. The increase takes effect July 1, 2005.

"Floor tax" on cigarette inventories

(Section 4)

The bill requires wholesale and retail dealers to pay the "net additional tax" resulting from the bill's increase in the cigarette tax on stamped cigarettes and unaffixed Ohio tax stamps in their possession on July 1, 2005, the date on which the tax increase takes effect. The "net additional tax" is the net additional tax resulting from the bill's increase in the cigarette tax due on all packages of Ohio stamped cigarettes and on all unaffixed Ohio cigarette tax stamps that a wholesale or retail dealer has on hand as of the beginning of business on July 1, 2005. On or before August 31, 2005, each dealer must pay the additional tax due and file a return with the Treasurer of State showing the net additional tax due, along with any other information the Commissioner considers necessary to administer the net additional tax.

A dealer who fails to file a return or pay the net additional tax must pay a late charge of $50 or 10% of the net additional tax due, whichever is greater. Interest accrues on additional tax that is not timely paid. Unpaid or unreported net additional taxes, late charges, and interest may be collected by assessment.

Alcohol taxes

Beer sold in sealed bottles and cans

(R.C. 4301.42)

Under continuing law, a tax is levied on the sale of beer in sealed bottles and cans containing 12 or fewer ounces of liquid content. Currently, the tax is levied at the rate of fourteen one-hundredths (0.14) of one cent on each ounce or fractional part of an ounce of liquid content. The bill increases the tax to twenty-eight one-hundredths (0.28) of one cent.

Current law levies a tax on the sale of beer in sealed bottles and cans in excess of 12 ounces at the rate of eighty-four one-hundredths (0.84) of one cent on each six ounces of liquid content or fractional part of each six ounces of liquid content. The bill increases the tax to one and sixty-eight one-hundredths (1.68) cents.

Beer sold in containers other than sealed bottles and cans

(R.C. 4305.01)

Under current law, a tax is levied on the sale or distribution of beer in barrels or other containers that are not sealed bottles or cans at the rate of $5.58 per barrel of 31 gallons. The bill increases the tax to $11.16 per barrel.

Wine, mixed beverages, and cider

(R.C. 4301.43)

Current law levies a tax on the sale or distribution of wine containing at least 4% alcohol by volume but not more than 14% alcohol by volume at the rate of 30¢ per wine gallon. The bill increases the tax to 60¢ per wine gallon.

Under current law, a tax is levied on the sale or distribution of wine containing more than 14% alcohol by volume but not more than 21% alcohol by volume at the rate of 98¢ per wine gallon. The bill increases the tax to $1.96 per wine gallon.

Current law levies a tax on the sale or distribution of vermouth at the rate of $1.08 per wine gallon. The bill increases the tax to $2.16 per wine gallon.

Under current law, a tax is levied on the sale or distribution of sparkling and carbonated wine and champagne at the rate of $1.48 per wine gallon. The bill increases the tax to $2.96 per wine gallon.

Current law levies a tax on prepared and bottled highballs, cocktails, cordials, and other mixed beverages at the rate of $1.20 per wine gallon. The bill increases the tax to $2.40 per wine gallon.

Finally, under current law, a tax is levied on cider at the rate of 24¢ per wine gallon. The bill increases the tax to 48¢ per wine gallon.

Effective date of alcohol tax increases

(Section 15)

The alcohol tax increases take effect July 1, 2005.

VIII. Estate Taxes

Overview of the additional estate tax, generation-skipping tax, and the family-owned business deduction

Ohio's estate tax consists of four distinct levies: the basic tax, the additional estate tax, the generation-skipping tax, and the nonresident tax. The bill addresses the additional estate tax and the generation-skipping tax, in light of changes made in the federal estate tax law, which affects those two state taxes. The additional estate tax (R.C. 5731.18) is equal to the maximum credit allowed by federal estate tax law for paying state death taxes, while the generation-skipping tax (R.C. 5731.181) is equal to the federal credit for state taxes paid on generation-skipping transfers (of property to a person who is two or more generations below the transferor, such as from a grandparent to a grandchild). Both taxes, known as "sponge" taxes because they allow the state to absorb as much revenue from an estate as is permitted by the federal credits, are equal to the difference between state tax liability and the estate's federal credit. In effect, both sponge taxes allow Ohio to collect more tax from an estate without increasing the estate's combined federal/state tax liability, because federal tax liability is reduced by the amount of the additional estate tax and generation-skipping tax liability.

The bill also addresses the family-owned business deduction because of revisions made to the federal estate tax law, which greatly affects this deduction. Federal law permits estates to avoid federal estate taxes on any part of the estate consisting of family-owned businesses inherited by or passed to family members. These family-owned business interests are deducted in computing the value of the estate that is subject to the federal estate tax. Ohio has a deduction modeled closely after this federal deduction, for the value of a family-owned business (including a farm) when computing the Ohio estate tax, to the extent the business is passed on to other family members. The state deduction may be claimed **only** if the federal deduction is claimed against federal estate tax liability.

Federal changes that have affected the state estate tax law

The federal "Economic Growth and Tax Relief Reconciliation Act of 2001" (the "Act") phased out the federal credits for paying state death taxes and state generation-skipping transfer taxes. These credits no longer apply, respectively, to estates of decedents dying after December 31, 2004, or to generation-skipping transfers made after that date. Under the Act's sunset clause, the credits are scheduled to be restored to their current forms in 2011, assuming Congress does not intervene before that year and repeal or revise the credits.

The Act suspended the federal deduction for family-owned business interests by providing that the deduction does not apply to estates of decedents dying after December 31, 2003. But, technically, the Act's sunset clause reinstates the deduction in 2011.

Constructive elimination of the additional estate tax and generation-skipping tax; repeal of the deduction for family-owned businesses

(R.C. 5731.01(F), 5731.14, 5731.18, and 5731.181; repeal of 5731.20; Sections 9 and 14)

The bill amends the additional estate tax and generation-skipping tax statutes by revising the references to the Internal Revenue Code (IRC) in them, thereby incorporating changes made by the Act. For purposes of the entire Ohio estate tax law, the bill defines the "Internal Revenue Code" to be the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended. Under an Ohio Supreme Court decision, *State v. Gill*, 63 Ohio St.3d 53 (1992), updating Ohio statutory references to federal law incorporates changes in the federal law occurring since the most recent amendment of the Ohio statute. Therefore, updating references to the IRC in Ohio's two sponge tax statutes has the effect of incorporating the federal Act's phase-out of the federal credit for paying state death taxes and state generation-skipping taxes. In other words, the bill constructively repeals Ohio's additional estate sponge tax and the generation-skipping sponge tax for decedents dying on and after the bill's effective date.

The bill repeals outright the Ohio estate tax deduction for family-owned businesses, since the Act revised federal law to suspend the federal deduction for family-owned business interests for estates of decedents dying after December 31, 2003.

These amendments and the repeal take effect immediately on the day the Governor signs the bill.

Temporary tax credit

(Section 3)

The bill grants a tax credit against the additional estate sponge tax to the estate of a decedent who dies on or after January 1, 2002, but before the effective date of the bill's changes. In effect, the credit retroactively gives those relatively few larger estates that are subject to the sponge tax the tax reduction they would have received if Ohio's law had reflected the phase-out of the federal credit for state estate taxes. Specifically, the credit equals the portion of the additional estate sponge tax that is over and above the sponge tax that would have been imposed if the tax had been equal to the maximum federal credit allowable for paying state estate taxes under the federal law that was in effect and applicable on the date of the decedent's death.

Additional amendments made to incorporate federal tax law changes

(R.C. 5731.01(B), (D), and (F), 5731.05(C), and 5731.131; Section 9)

The bill also revises all other IRC references in the Ohio estate tax law, with the effect of generally incorporating any applicable federal tax law changes made since the last time those state laws were amended. The actual effect of this incorporation is difficult to discern, but the substantive effect does not appear to be substantial.

These amendments take effect immediately on the day the Governor signs the bill.

IX. Other Taxation Provisions

Taxpayer audits

(R.C. 5703.50)

Under current law, various rights are granted to taxpayers that become effective when a taxpayer is subjected to an audit by the Department of Taxation or a county auditor, including the right to receive information about the Department's role in the audit and the taxpayer's right to be represented or accompanied by an attorney, accountant, tax professional, or other competent advisor. (The rights are set forth in R.C. 5703.51.) What constitutes an "audit," and therefore what invokes a taxpayer's rights, is specifically defined by current law: "audit" means the examination of a taxpayer or the inspection of the taxpayer's books, records, memoranda, or accounts for the purpose of determining tax liability. Law not changed by the bill requires that the Department notify a taxpayer when an audit is considered to have begun.

The bill changes the definition of "audit," and therefore what activity invokes a taxpayer's rights under an audit. The bill defines "audit" as a visit by an employee of the Department of Taxation to one or more of the taxpayer's business locations or other locations designated by the taxpayer to inspect the taxpayer's books, records, memoranda, or accounts for the purpose of determining tax liability. "Audit" does not include being served an assessment (i.e., formal notice of outstanding liability) or any other type of document or notification, and does not include an investigation by an enforcement agent or other Department employee to verify that a taxpayer has the appropriate license or registration, to conduct a test purchase, or to conduct a "similar" investigation.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40 and 5733.41; Section 10)

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).

Tax Commissioner authorized to require identifying information from persons filing tax documents with the Department of Taxation

(R.C. 5703.057, 5703.26 (not in the bill), and 5703.99 (not in the bill))

Overview

The bill authorizes the Tax Commissioner to require any person filing a tax document with the Department of Taxation to provide identifying information requested by the Commissioner, including the person's social security number, federal employer identification number, or other identification number requested by the Commissioner. A person who is required to provide identifying information is required to notify the Commissioner of any changes with respect to that information prior to, or at the time of, filing the next tax document requiring identifying information. The bill states that the Tax Commissioner is being granted authority to request identifying information in order to increase the efficiency with which the Commissioner administers taxes and fees.

Confidentiality of social security numbers

The bill requires that the Commissioner maintain the confidentiality of individuals' social security numbers. Specifically, the bill provides that when transmitting or otherwise making use of a tax document that contains a person's social security number, the Commissioner is to take all reasonable measures necessary to ensure that the general public is unable to view the number. The bill directs the Commissioner to mask social security numbers when necessary to maintain their confidentiality.

Commissioner may impose penalties for failure to provide or update identifying information

The bill permits the Commissioner to impose penalties for failure to provide identifying information. If the Commissioner requests identifying information from a person and the person does not respond by providing valid identifying information within 30 days after the request is made, the Commissioner may impose a penalty upon that person of up to $100. If, after the expiration of the initial 30-day period, the Commissioner makes one or more subsequent requests for identifying information, and valid identifying information is not provided to the Commissioner within 30 days after the Commissioner makes the subsequent request, the Commissioner may impose an additional penalty of up to $200 for each subsequent request that a person fails to comply with in a timely fashion. The bill provides, further, that if a person required to provide identifying information fails to notify the Commissioner of a change with respect to that information within 30 days after filing the next tax document requiring the identifying information, the Commissioner may impose a penalty upon that person of up to $50.

Under the bill, penalties imposed by the Commissioner may be billed and assessed by the Commissioner in the same manner as the tax or fee with respect to which the Commissioner seeks the identifying information. The bill specifies that the penalties are in addition to any applicable criminal penalties and any other penalties that the Commissioner is authorized by law to impose.

Criminal penalties

Continuing law makes it a criminal offense to file a false or fraudulent document with the Department of Taxation with the intent to defraud the state or any of its political subdivisions. Violation of this criminal prohibition constitutes a felony of the fifth degree, which is punishable by six to 12 months of confinement and a fine of up to $5,000, upon which a court may impose an additional fine of up to $7,500. The bill specifies that the criminal prohibition for filing false or fraudulent tax documents with intent to defraud applies with respect to tax documents containing false or fraudulent identifying information.

HISTORY

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