Ohio Legislative Service Commission

Final Analysis

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129th General Assembly

(As Passed by the General Assembly)

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Sens. Beagle, Coley, Hite, Manning

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ACT SUMMARY

Commercial Activity Tax

- Requires a commercial activity taxpayer that pays on a quarterly basis to exclude the taxpayer's first $1 million of taxable gross receipts in the first quarter of a year and to carry forward any unused portion of the exclusion amount only to quarters within the same calendar year.

- Eliminates references to "test" periods that ended in 2011 and that were used to adjust the rate of the CAT if revenue from the tax exceeded estimates.

- Exempts from the CAT "unauthorized" insurance companies (i.e., "surplus lines") whose gross premiums are subject to the surplus lines insurance tax.

- Removes provisions in prior law that referred to commercial activity taxpayers "electing" to pay the tax on an annual basis.

- Requires the Tax Commissioner to list the effective date that a taxpayer's CAT account was cancelled rather than the date the taxpayer requests cancellation.

- Requires CAT registration fees to be deducted from the first tax payment due instead of remitted separately and modifies the information that a taxpayer must provide on CAT registration forms.

Sales and Use Tax

- Eliminates the former special sales tax vendor license categories of "service vendor" and "delivery vendor," but allows the Tax Commissioner to create specific classes of vendor licenses.

- Permits the Tax Commissioner to cancel a vendor's license if the vendor fails to notify the commissioner of a change of address and if ordinary mail sent to the address on the vendor's license is returned as undeliverable.

- Requires all vendors to display their vendor licenses, not just transient vendors.

- Requires the Tax Commissioner to notify all vendors and sellers, not just those registered through the Streamlined Sales Tax Central Registration System, when local sales tax rates change.

- Specifies that all vendors making sales from a printed catalog do not have to apply changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change.

- Includes, as a taxable sale under the sales tax, the transfer of ownership interests in a pass-through entity if its sole assets are boats, planes, motor vehicles, or other recreational property used primarily by the entity's owners.

- Harmonizes the existing sales tax exemption for water bought for "residential use" with the definition of sales tax-exempt "food."

Personal Property Tax Reimbursements

- Makes technical changes to the formula used to reimburse taxing units for utility tangible personal property tax fixed-rate levy losses.

- Provides that, beginning in 2012, reimbursements for tangible personal property tax levy losses attributable to a tax levied on behalf of a public library must be calculated separately from the other levy losses of a taxing unit and reimbursed directly to the public library.

- Provides that the formula used to reimburse municipal corporations for business personal property current expense levy losses does not include certain values related to reimbursements the municipal corporation received for non-current expense levy losses.

- Clarifies that, for purposes of calculating reimbursements of business and utility tangible personal property tax losses, fixed-rate levies are reimbursed only to the extent that the levy continues to be charged and payable.

- Decreases, beginning in 2012, the percentage of business tangible personal property tax fixed-sum levy losses reimbursed to non-school taxing units, from 100% of the taxing unit's fixed-sum levy loss to 50% of taxing unit's fixed-sum levy loss.

- Extends the deadline by which the state must make the second of two semiannual reimbursements to non-school taxing units for their loss of business tangible personal property tax revenue, from November 20 to November 30 of each year.

- Shortens the time period in which a county treasurer must distribute tangible personal property tax reimbursement payments to local taxing units after receiving the payments in the county treasury, from 40 days to 30 days.

Property Tax

- Authorizes the Tax Commissioner, beginning in 2014 and continuing for the next five years, to extend the revaluation of real property required in a county by not more than one year.

- Excuses the Tax Commissioner from certifying certain property tax information that, under former law, had to be certified to the Department of Education and Office of Budget and Management in May and June of 2012 and that, if not for recent school funding formula changes, would have been used to calculate state aid to schools.

- Increases the maximum property tax levy rate that may be proposed by a board of park commissioners from two mills to three mills if some of the levy proceeds fund a metropolitan zoo.

- Authorizes a property tax exemption for a convention center or arena owned by the largest city in a county that had a population between 235,000 and 300,000 when the facility was constructed.

- Provides that, when a county reduces its inside millage to correspond to an increase in the county sales tax, the county budget commission may allocate the county's foregone inside millage to provide for another subdivision's levy for debt charges not payable by voted millage.

Corporation Franchise Tax

- Authorizes certain financial institutions to elect to use a single sales factor for purposes of calculating taxable net worth for the existing Corporation Franchise Tax.

Motion Picture Tax Credit

- Increases the maximum total amount of tax credits allowed for completion of motion pictures certified as tax credit-eligible productions from $20 million to $40 million per fiscal biennium.

Tax Administration

- Eliminates a former requirement that notification by the Tax Commissioner to county auditors of the interest rate be in writing.

- Lowers the number of income tax returns that a professional tax return preparer may prepare in a year before he or she is required to file all such returns electronically, from 75 to 11.

- Modifies an exception to the electronic filing requirement to provide that a return preparer is exempt from the requirement in one year if, during the previous year, the return preparer prepared ten or fewer (instead of 25 or fewer) income tax returns.

- Allows the Tax Commissioner to cancel a taxpayer's liability for unpaid taxes, penalties, and interest if the total amount due for a single tax period does not exceed $50.

- Requires that a corporation filing a certificate of voluntary dissolution demonstrate that it is current on all state taxes, rather than on only the personal property, corporation franchise, sales, use, and highway use taxes.

- Prescribes the method by which the Tax Commissioner may deliver tax notices or orders by secure electronic means.

- Authorizes the Department of Taxation to impose a $50 penalty on declined or dishonored electronic payments and limits penalties to $50 per payment.

- Streamlines the method for distributing revenue from the additional state horse-racing tax by requiring the Tax Commissioner to distribute tax collections directly to local governments, instead of routing distributions through the taxpayer.

- Requires permit holders that pay the additional horse-racing tax to file with the Tax Commissioner, within ten days after a horse-racing meet, a report showing the amount wagered at the meet.

- Eliminates a former requirement that certain assets of decedents dying on or after January 1, 2013, not be transferred without the written permission of the Tax Commissioner.

- Authorizes the Tax Commissioner to exempt a motor fuel dealer from a continuing law requirement that all motor fuel dealers provide a surety bond securing payment of the motor fuel tax if the dealer only sells or distributes fuel for which the tax has already been paid.

- Expressly extends to all kinds of business organizational forms the continuing provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax.

- Imposes a penalty of up to $1,000 for distributing tobacco products without a license, and requires any person doing so to obtain a license and to pay the annual $1,000 license fee for each location where the person acts as a distributor.

- Eliminates statutory references to "brokers" for the purpose of defining who is required to report and pay the tobacco product excise tax.

- Conforms the alcoholic beverage excise tax statute regarding bottled and canned beer with a separate statute requiring S liquor permit holders to pay the tax on those beverages.

- Requires S liquor permit holders to comply with a continuing law provision that requires alcoholic beverage taxpayers to submit monthly reports to the Tax Commissioner.

New Community Authorities

- Authorizes certain New Community Authorities (NCAs) to include as part of the calculation of the NCA's community development charge rentals received from leases of real property located in the New Community district.

- Provides that, if the basis of a charge includes rentals from leases of real property, the property against which such a charge is imposed may not be exempted from property taxation under a tax increment financing arrangement.

Accountancy Board

- Allows the Accountancy Board to hire an agent to administer all or part of the Board's peer review program and allows the agent to assess a reasonable fee to firms to cover the costs of program administration.

- Removes the Board's authority under prior law to establish fair and reasonable compensation for the Peer Review Committee.
- Authorizes the Board, or its authorized peer review program administrator, to issue a remedial order upon reviewing the results of a peer review report.
- Requires that disciplinary actions, and the associated administrative hearings, can only be taken after a firm has failed to comply with a remedial order or if the Board determines that a firm has a history of noncompliance with standards and practices set forth in rules adopted by the Board.
- Specifies which types of peer reviews that a firm may have independently undergone do not qualify to exempt the firm from the Board's peer review requirement.
- Requires firms that utilize the peer review exemption related to having never practiced before to review its registration with the Board two years after initial registration.
- Enables firms to utilize the peer review exemption related to not undertaking engagements for an indefinite period and requires a firm to agree to not take any engagement that would require a peer review in order to qualify for the exemption.
- Authorizes the Board to use documents related to peer reviews in a disciplinary hearing to determine a history of noncompliance with standards and practices.
- Removes the former requirement that the chief executive officer of a public accounting firm hold an Ohio permit or foreign certificate and requires instead that a firm designate a person who holds an Ohio permit to be responsible for the proper registration of the firm.
- Requires public accounting firms to identify to the Accountancy Board the person responsible for registering the firm.
- Removes the former higher education requirement from the list of conditions that a person who does not hold an Ohio permit or a foreign certificate must meet to own an equity interest in a public accounting firm.
- Clarifies that the definition of foreign certificate includes, in addition to a certificate, a license, permit, or registration issued by another state that authorizes the holder to practice public accounting in that state and requires a foreign certificate to be valid, in good standing, and not expired.

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CAT: application of exclusion amount

The act modifies the manner in which a taxpayer with over $1 million of annual taxable gross receipts may exclude the first $1 million of taxable gross receipts from the taxpayer's quarterly commercial activity tax returns.

Commercial activity tax exclusion amount

The commercial activity tax is levied on the taxable gross receipts of businesses operating within the state. Taxpayers with between $150,000 and $1 million of taxable gross receipts owe an annual minimum tax of $150. (Businesses with $150,000 or less of taxable gross receipts do not owe the tax.) Taxpayers with taxable gross receipts of over

$1 million owe the $150 annual minimum tax on the first $1 million of taxable gross receipts, plus a tax of 0.26% on taxable gross receipts in excess of $1 million. A taxpayer with taxable gross receipts of $1 million or less (a "calendar year taxpayer") files a single annual return, while a taxpayer with over $1 million of taxable gross receipts (a "calendar quarter taxpayer") files quarterly returns. All taxpayers pay the $150 annual minimum tax with the annual or quarterly return filed in May of each year.

To account for the annual minimum tax on a calendar quarter taxpayer's first $1 million of taxable gross receipts, former law required such taxpayers to exclude the first $250,000 of taxable gross receipts from the calculation of the taxpayer's liability on each quarterly return. If the taxpayer had less than $250,000 of taxable gross receipts in a quarter, any leftover exclusion amount could be carried forward to the three following quarters, regardless of whether the quarters were in the same calendar year. Consequently, it was possible for such taxpayers to carry forward exclusion amounts to a succeeding calendar year and to accrue a total exclusion amount for that succeeding calendar year in excess of $1 million.

Changes to the method for applying the exclusion amount

The act provides that calendar quarter taxpayers must subtract the full $1 million exclusion amount on the taxpayer's first quarterly return of a calendar year. If taxable gross receipts in the first quarter are less than $1 million, the act allows the taxpayer to carry forward the unused exclusion amount only to the three subsequent quarters in that same year. Similarly, if a calendar year taxpayer switches to filing as a calendar quarter taxpayer, the taxpayer must take the full $1 million exclusion on the first quarterly return the taxpayer files, and may carry forward any unused exclusion amount to other quarters within the same year. As a result of these changes, the act prevents situations in which taxpayers may exclude more than $1 million of taxable gross receipts in any calendar year.

The act's changes take effect January 1, 2013. Consequently, taxpayers may use unused exclusion amounts carried forward from any year prior to 2013 only through the end of 2012.[1]

CAT rate adjustments

At the time the General Assembly enacted the commercial activity tax (CAT) in 2005, the Tax Commissioner was required to measure during three "test" periods the amount of revenue generated by the CAT and compare that amount against the amount projected to be generated by the CAT at the time it was enacted. The Commissioner

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[1] R.C. 5751.03; Section 757.40.

was originally required to lower or raise the rate of the CAT if the revenue actually collected differed from projected revenue by more than 10% to ensure that the CAT rate could be adjusted to compensate for significantly excessive or insufficient revenue compared to the revenue estimates at that time. The ability of the Commissioner to raise the rate was subsequently removed. The Commissioner did not make any adjustments in the rate. The law authorizing the test periods no longer had any effect after the final test period ended on June 30, 2011.

The act repeals the law that obligated the Commissioner to reduce the CAT rate if, during any of the three test periods, the revenue actually collected exceeded projected revenue by more than 10%.[2]

CAT exemption for surplus lines insurers

"Unauthorized insurance" (also called "surplus lines insurance") is insurance sold by an insurer that is not licensed to do business in the state. A "surplus lines broker" is a person who negotiates for and obtains insurance, other than life insurance, on property or persons in the state from unauthorized insurers. Continuing law requires licensed surplus lines brokers to pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums. Furthermore, persons that independently procure unauthorized insurance (also called direct placement) must pay a 5% tax on gross premiums paid for unauthorized insurance after a deduction for return premiums.[3]

Under former law, licensed foreign and domestic insurance companies that paid the insurance company premiums tax were exempted from the CAT, while surplus lines insurers were still subject to the tax. The act extends the CAT exemption to surplus lines insurers whose gross premiums are subject to the unauthorized insurance tax.[4]

References to CAT annual filing election

Commercial activity taxpayers must pay the tax on an annual or quarterly basis, depending upon the taxpayer's level of annual taxable gross receipts. Taxpayers with annual taxable gross receipts of $1 million or less file a single return on or before May 10 of each year, while taxpayers with more than $1 million of annual taxable gross receipts must file quarterly returns.

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[2] R.C. 5751.03 and 5751.032.

[3] R.C. 3905.36.

[4] R.C. 5751.01(E)(9).

The act removes language in prior law that referred to commercial activity taxpayers "electing" to pay the tax on an annual basis. Prior to the enactment of H.B. 1 of the 128th General Assembly, taxpayers with annual taxable gross receipts of $1 million or less could pay on an annual basis, but only if the taxpayer elected to do so. (If no election was made, such taxpayers were required to pay quarterly.) H.B. 1 of the 128th General Assembly amended the law to require such taxpayers to pay the tax on an annual basis, rather than allowing taxpayers to "elect" that status. The act removes references to annual taxpayer "elections" that were not removed in that act.[5]

Listing of cancelled CAT accounts

The Tax Commissioner is required to post an electronic list of all taxpayers who are actively registered to pay the commercial activity tax (CAT). The list must include legal and trade names, addresses, and account numbers of each taxpayer. Law retained in part by the act requires that the list include all taxpayers that cancelled their CAT registration at any time during the preceding four years and the date on which the taxpayer requested cancellation.

The act retains the Commissioner's requirement to list taxpayers with cancelled accounts but requires the Commissioner to list the effective date of a taxpayer's cancellation rather than the date the taxpayer requested cancellation.[6]

Registration and fees

Registration fees

Under continuing law, a taxpayer is required to register with the Tax Commissioner to pay the commercial activity tax (CAT) when the taxpayer's gross receipts exceed $150,000 in a year or when two or more taxpayers want to be treated as a single taxpayer (consolidated elected taxpayer or combined taxpayer). Under prior law, a taxpayer registering for the CAT was required to pay a $15 fee (for electronic applications) or $20 fee (for other applications) with the taxpayer's registration forms. Multiple taxpayers electing to be taxed as a single consolidated elected or combined taxpayer were required to remit a fee of the lesser of $20 per person in the group or $200 for the whole group with the taxpayers' registration forms. Previous law required that fees be remitted before the due date of the taxpayer's first return. Fees paid were credited against the taxpayer's first tax payment. The fees were credited to the Commercial Activity Tax Administrative Fund and were used to defray the state's cost of administering the tax.

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[5] R.C. 5751.05, 5751.051, and 5751.12.

[6] R.C. 5751.12.

The act eliminates the separate CAT registration fee payment requirement. Instead of a separate fee payment that is credited against the first tax payment, the act specifies that a portion of each taxpayer's first tax payment is to be earmarked for CAT administration and "tax reform implementation." The act sets the amount to be earmarked at the same amount per taxpayer or for combined and consolidated elected taxpayers as would have been collected under the previous law's fee scheme. The earmarked money is to be credited to the new "Revenue Enhancement Fund" created by the act.

The "Revenue Enhancement Fund" is composed of the "Tax Reform Implementation System Fund," to which is deposited 0.085% of annual CAT revenue. The Revenue Enhancement Fund also receives the earmarked money from new CAT registrants. Money in the Revenue Enhancement Fund is used to help defray the state's CAT administrative costs and implement tax reform measures.[7]

Registration information

The act modifies the information a taxpayer is required to provide on CAT registration forms. Under the act, a taxpayer is no longer required to identify the state or country in which the taxpayer is incorporated, the names and addresses of the taxpayer's corporate officers and agents, and the first date of the taxpayer's annual accounting period, all of which were required under prior law. However, the act requires the taxpayer to provide the taxpayer's organizational type, the date the taxpayer is first subject to the CAT, and, if applicable, the names, addresses, federal identification numbers, and organization types of each member that is commonly owned in a consolidated elected taxpayer or combined taxpayer group, none of which were required under prior law.[8]

II. Sales and Use Tax

Elimination of special sales tax vendor license categories

Continuing law requires that, unless a statutory exception applies, any person engaged in making retail sales subject to sales tax is required to have a vendor's license. Application for a vendor's license must be made to the county auditor of each county in which the applicant desires to engage in business. In place of a standard vendor's license, applicants meeting certain criteria may apply for certain special vendor's licenses.

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[7] R.C. 5751.01(F)(2)(z), 5751.011, 5751.012, 5751.04, 5751.051, and 5751.20(B).

[8] R.C. 5751.04.

A transient vendor's license authorizes a "transient vendor" to make retail sales in any county in which the transient vendor does not maintain a fixed place of business. "Transient vendor" is defined as:

> any person who makes sales of tangible personal property from vending machines located on land owned by others, who leases titled motor vehicles, titled watercraft, or titled outboard motors, who effectuates [taxable] leases . . . or who, in the usual course of the person's business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business or temporary exhibition, show, fair, flea market, or similar event in a county in which the person has no fixed place of business, for the purpose of making retail sales of such property.

"Temporary place of business" is defined as a public or quasi-public place that is temporarily occupied for the purpose of making retail sales of goods to the public.

Previous law provided for a service vendor's license which authorized a "service vendor" to sell certain taxable services. A service vendor who also made sales of other services or of tangible personal property also had to apply for a vendor's license, a transient vendor's license, or a delivery vendor's license, whichever was appropriate.

Prior law also provided for a delivery vendor's license which authorized a delivery vendor to make retail sales throughout the state with the caveat that all sales had to be reported under the delivery license. A delivery vendor was defined as any person "who maintains no store, showroom, or similar fixed place of business or other location where merchandise is regularly offered for sale or displayed or shown in catalogs for selection or pick up by consumers, or where consumers bring goods" and who engages in one of several specified activities.

The act eliminates the vendor license categories of "service vendor" and "delivery vendor," but authorizes the Tax Commissioner to create specific classes of vendor licenses. The act retains standard vendor's licenses and transient vendor's licenses.[9]

Notification of Tax Commissioner upon moving a fixed place of business

Continuing law requires vendors who move an existing fixed place of business to a new location to notify the Tax Commissioner. If the new location is within the same county as the vendor's existing fixed place of business, the vendor must either obtain a

[9] R.C. 5739.01(O) and 5739.17.

new vendor's license or submit a request to the Commissioner to transfer the existing vendor's license to the new location. If the new location is in a different county, the vendor must obtain a new vendor's license. The act explicitly permits the Commissioner to cancel a vendor's license if the vendor fails to notify the Commissioner of a change of address and if ordinary mail sent to the address on the vendor's license is returned as undeliverable. Former law did not prescribe a penalty for a vendor who failed to notify the Commissioner upon moving the existing fixed place of business.[10]

Display of vendor's license

The act requires all vendors to display their vendor's licenses, or a copy thereof, prominently in plain view at every place of business. Previous law imposed this requirement only for transient vendors.[11]

Notification of changes in local sales tax rates

The act requires the Tax Commissioner to notify all vendors and sellers when local sales tax rates change due to a modification of a county's jurisdictional boundaries or a transit authority's territory. Notification of the vendors and sellers registered through the Streamlined Sales Tax Central Electronic Registration System is required to comply with the Streamlined Sales and Use Tax Agreement, which is intended to allow vendors located throughout the United States to collect states' use taxes, primarily for online or mail-order sales, if the vendor is required to (because of physical presence in the state) or elects to collect the tax.

Previous law required the Tax Commissioner to notify vendors and sellers of such a change only if they were registered through the Streamlined Sales Tax Central Electronic Registration System.[12]

Delay in application of changes in local sales tax rates for catalog vendors

The act specifies that all vendors making sales from a printed catalog, not just vendors registered under the registration system who make catalog sales, do not have to apply changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change.[13]

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[10] R.C. 5739.17(B).

[11] R.C. 5739.17(E).

[12] R.C. 5739.04 and 5741.08.

[13] R.C. 5739.021, 5739.023, and 5739.026.

Sales tax on transfer of ownership interest of a pass-through entity

The act expressly includes, as a taxable sale under the sales tax, the transfer of ownership interests in a pass-through entity if its sole assets are boats, planes, motor vehicles, or other recreation property used primarily by the entity's owners.

Under continuing law, the transfer of all the shares of a corporation whose sole assets are boats, planes, motor vehicles, or other recreation property is a taxable sale. This prevents shareholders from using such transfers to avoid the tax that applies to an outright sale of the property itself. The act extends this concept to include the transfer of any ownership interest of a pass-through entity whose sole assets are boats, planes, motor vehicles, or other recreational property. "Pass-through entity" is defined to include an S corporation, partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.[14]

Correction of typographical errors

The act corrects typographical errors in provisions defining prepaid wireless calling services and prepaid wireless services.

Sales tax exemption for water for residential use

The act harmonizes the existing sales tax exemption for water bought for "residential use" with the definition of sales tax-exempt "food." Continuing law imposes a sales tax on each retail sale made in this state.

Under continuing law, sales of food for human consumption off the premises where sold are exempt from sales tax. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco. According to the Department of Taxation, bottled water, distilled water, mineral water, carbonated water, and ice qualify as "food" and thus qualify for the sales tax exemption. (See the Department's Information Release 2004-1.)

Sales of water to a consumer for "residential use" also continue to be exempted from sales tax. However, under prior law, bottled water, distilled water, mineral water, carbonated water, and ice were explicitly excluded from the exemption. The act removes specific references to bottled water, distilled water, mineral water, carbonated

[14] R.C. 5739.01(B)(6).

water, and ice from R.C. 5739.02(B)(25). The effect is to align the "residential use" exemption with the "food" exemption. The act does not create a new sales tax exemption; rather, it brings the statutory language in line with current practice of the Department of Taxation.[15]

III. Personal Property Tax Reimbursements

Tangible personal property tax loss reimbursements

The act makes several changes to the method for calculating and making reimbursements to local taxing units for their loss of tax revenue resulting from the repeal of the business tangible personal property tax and from reductions in the tax rates applicable to certain public utility tangible personal property. The changes are exempt from the right of referendum and take immediate effect.

Background

In 2001 and 2002, state law reduced the assessment rates for taxes levied by local governments on the personal property of electric and natural gas companies. Then, between 2005 and 2011, state law completely phased-out the taxes levied by local governments on other business personal property. To compensate local taxing units for their resulting property tax losses, state law established a schedule of "replacement" payments.

Am. Sub. H.B. 153 of the 129th General Assembly modified the schedule for making these reimbursements to local taxing units, with the effect of accelerating a previously legislated phase-out of those reimbursements. In general, that act allows a taxing unit to continue receiving reimbursements for most tax levy losses only if the amount reimbursed to the taxing unit in 2010 (non-school taxing units) or fiscal year 2011 (school districts) exceeds a certain percentage of the taxing unit's total budget.

Fixed-rate levy loss reimbursement

For the purposes of calculating reimbursements, continuing law divides the tangible personal property (TPP) tax revenue losses experienced by taxing units into three types: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the ten-mill limit or a municipal charter limit). The act makes three changes to the formula used to calculate reimbursements for fixed-rate levy losses.

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[15] R.C. 5739.02(B)(25).

Threshold formula

Under law generally retained by the act, the amount reimbursed to a taxing unit for business TPP fixed-rate levy losses is based on, for school districts, the district's "current expense TPP allocation" and, for non-school taxing units, the taxing unit's "TPP allocation." Current expense TPP allocation is the portion of the business TPP loss reimbursement that a school district received in fiscal year 2011 relating to fixed-rate current expense levies. TPP allocation is the sum of the reimbursements that a non-school taxing unit received in tax year 2010 relating to fixed-rate and fixed-sum levies. (For ease of explanation, current expense TPP allocation will be referred to hereafter as "TPP allocation.")

The base used to calculate reimbursements for utility TPP fixed-rate levy losses is substantially similar. For school districts, the base is the district's "2011 current expense S.B. 3 allocation," and, for non-school taxing units, the base is the taxing unit's "2010 S.B. 3 allocation." The 2011 current expense S.B. 3 allocation is the portion of the utility TPP loss reimbursement that a school district received in fiscal year 2011 for current expense fixed-rate levy losses. 2010 S.B. 3 allocation is the portion of the reimbursement that a non-school local taxing unit received in tax year 2010 for fixed-rate levy losses. (For ease of explanation, both reimbursements will be referred to as "S.B. 3 allocation.")

To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for a fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's TPP allocation and S.B. 3 allocation must exceed a threshold percentage of its "total resources," which is the unit's total receipts over a single fixed period from certain state and local sources.[16] For school districts, the threshold percentage is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 4% for tax year 2012 and 6% for tax years 2013 and thereafter.

Reimbursement of business TPP fixed-rate levy losses

If a taxing unit's TPP allocation does not exceed a threshold percentage of its total resources, it is not entitled to reimbursement of business TPP fixed-rate levy losses. If a taxing unit's TPP allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference between its TPP allocation and the threshold percentage of its total resources.

[16] "Total resources" is defined separately for each taxing unit. For a detailed discussion of the revenue included in a taxing unit's "total resources," see the LSC Final Analysis of Am. Sub. H.B. 153 of the 129th General Assembly (2011), http://www.lsc.state.oh.us/analyses129/11-hb153-129.pdf.

Changes to the reimbursement of utility TPP fixed-rate levy losses

Under prior law, a taxing unit was entitled to reimbursement of utility TPP fixed-rate levy losses only if one-half of the unit's S.B. 3 allocation exceeded a threshold percentage of the unit's total resources. The act instead provides that, similar to the calculation of business TPP fixed-rate levy loss reimbursements, the taxing unit may receive a reimbursement if the taxing unit's full S.B. 3 allocation exceeds a threshold percentage of the taxing unit's total resources. Consequently, it would appear that taxing units that did not qualify for reimbursement under former law because one-half of a unit's S.B. 3 allocation did not exceed the threshold may qualify under the act, if the unit's full S.B. 3 allocation does exceed that threshold. However, the intent of the act may be to correct the language as modified by H.B. 153.

Similarly, under prior law, when a taxing unit was entitled to reimbursement of utility TPP fixed-rate levy losses, the taxing unit received two semiannual payments equal to the difference between one-half of the taxing unit's S.B. 3 allocation and the threshold percentage of its total resources. The act instead provides that each semiannual payment must equal 50% of the difference between the taxing unit's S.B. 3 allocation and the threshold percentage of its total resources.[17]

New reimbursement formula for library tax levy losses

The act introduces a new formula for calculating and making fixed-rate levy loss reimbursements specifically for losses attributable to a tax levied on behalf of a public library under R.C. 5705.23. Under the act, such levy losses must be considered separately from the other fixed-rate levy losses of a taxing unit and reimbursed directly to the public library. The effect of the new formula is to cause the amount and continuation of a library's reimbursements to depend on its own budget (i.e., its own total resources) and the percentage of its budget that its recent reimbursements represent, instead of depending on the total resources and recent reimbursements of the taxing unit that levies the reimbursed tax on behalf of the library. Thus, a library's reimbursements are not influenced by the taxing unit's recent reimbursements as a percentage of the taxing unit's total resources, which is likely to be a higher or lower percentage than the library's percentage (and therefore causing the library to receive, respectively, more reimbursement for a longer period or less reimbursement for a shorter period).[18]

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[17] R.C. 5727.86.

[18] Although the act changes the language of the statute, it is not clear whether the changes are intended merely to align the language with the current library reimbursement practice as modified by H.B. 153 or to actually change the reimbursement practice. Data published by the Department of Taxation indicate

Under continuing law, the board of library trustees of a county, municipal, school district, or township public library may request, pursuant to R.C. 5705.23, that the subdivision's taxing authority propose a tax levy for the library board. To make the request, the library board must pass a resolution requesting the taxing authority to submit the question of the levy to electors in the library's jurisdiction. Upon receiving such a resolution, the taxing authority must pass a resolution placing the tax levy question on the ballot of the election specified by the library board. (Taxing authorities also have the ability to levy a tax for a public library, independent of a library board's request, under R.C. 5705.19 and 5750.191.)

Under prior law, levy losses attributable to a tax levied under R.C. 5705.23 were treated similarly to the other TPP levy losses of a taxing unit. Any reimbursement that resulted from such levy losses was included in the calculation of a taxing unit's TPP allocation, S.B. 3 allocation, and total resources. If the taxing unit was eligible for reimbursement, the taxing unit received the portion of the reimbursement attributable to the R.C. 5705.23 tax levy and forwarded that portion to the public library.

The act excludes reimbursements for levy losses attributable to an R.C. 5705.23 tax levy from the calculation of a taxing unit's TPP allocation, S.B. 3 allocation, and total resources. Instead, the act introduces a parallel formula for calculating reimbursements for levy losses attributable to such a tax. The act also requires that such reimbursements be made directly to the public library for which the tax was levied, instead of to the taxing unit that levied the tax.

To determine whether a public library may receive such reimbursements, the act applies a formula similar to that used to calculate reimbursements for the fixed-rate levy losses of taxing units. If the amount reimbursed to the public library in 2010 for levy losses attributable to an R.C. 5705.23 tax levy (defined in the act as "TPP allocation for library purposes," in the case of business TPP levy losses, or "S.B. 3 allocation for library purposes," in the case of utility TPP levy losses) does not exceed a threshold percentage of the public library's "total library resources," the library is no longer entitled to reimbursement for that levy loss. If the library's TPP allocation for library resources or S.B. 3 allocation for library purposes exceeds a threshold percentage of the library's total library resources, its reimbursement for the tax year equals the difference between TPP allocation for library resources or S.B. 3 allocation of library resources and the threshold percentage of its total library resources.

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that libraries receive reimbursements for TPP losses, but it is not clear whether the figures represent direct reimbursement separately from the taxing unit levying the tax or indirect reimbursement passed through the taxing unit.

Under the act, a library's total library resources includes: the library's 2010 reimbursement for fixed-rate levy losses attributable to a tax levied under R.C. 5705.23, the library's share of the county undivided local government fund for calendar year 2010, and the amount of the tax levied under R.C. 5705.23 that was charged and payable for tax year 2009. The threshold percentage used to calculate the separate library reimbursement is the same as that used to calculate reimbursements for taxing units (4% for tax year 2012 and 6% for tax years 2013 and thereafter).[19]

Municipal corporation reimbursement for current expense levy losses

Under continuing law, municipal corporations and school districts receive a separate reimbursement for fixed-rate levy losses that result from taxes levied for purposes other than current expenses. These separate reimbursements are made according to a different formula than that which compares a taxing unit's TPP allocation or S.B. 3 allocation to its total resources.[20] In order to separate the levy losses reimbursed through this different formula from the calculation of a municipal corporation's current expense levy losses, the act clarifies that the municipal corporation's total resources includes only the 2010 business or utility TPP reimbursements that the municipal corporation received for fixed-rate current expense levy losses, rather than for all fixed-rate levy losses.[21]

Reimbursement for charged and payable tax levies

The act clarifies that, for purposes of calculating reimbursements for business or utility TPP losses, a fixed-rate levy is reimbursed only to the extent that the levy continues to be charged and payable against property, so that a reduction in the levy will cause a corresponding reduction in the reimbursement. Under prior law, the value

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[19] R.C. 5727.84, 5727.86, 5751.20, and 5751.22; Section 812.20.

[20] The separate reimbursement is based upon the amount reimbursed to a municipal corporation or school district for non-current expense levy losses in 2010. Continuing law provides that, for municipal corporations, the 2010 reimbursement amount must be reduced by 25% for the payments made in 2011, by 50% for the payments to be made in 2012, and by 75% for the payments to be made in 2013 and thereafter.

[21] R.C. 5751.20(A)(29). Although the act amends the definition of a municipal corporation's total resources, it does not amend continuing law that includes the reimbursements a municipal corporation received for all fixed-rate levy losses in the calculation of the municipal corporation's TPP allocation and S.B. 3 allocation. By comparison, the two formulas used to calculate reimbursements for school district fixed-rate levy losses (current expense vs. non-current expense levy losses) use different values (e.g., "current expense TPP allocation" and "non-current expense TPP allocation"), so that no current expense levy losses are considered in the calculation of reimbursements for non-current expense levies, and vice versa.

of a fixed-rate levy is subtracted from a taxing unit's total reimbursement amount if the levy is no longer "imposed."[22]

Reimbursement of unvoted debt levy losses

Law generally unchanged by the act provides that, for purposes of calculating utility TPP reimbursements to non-school taxing units, a tax levied within the ten-mill limitation for debt purposes may be reimbursed at 100% of the levy loss through 2016 as long as the tax continues to be imposed for debt purposes. If such a levy is no longer imposed for debt purposes, the reimbursement must be calculated according to the formula used for fixed-rate levies, described above under "**Fixed-rate levy loss reimbursement**."

The act clarifies that such losses will continue to be reimbursed at 100% only if the tax continues to be "charged and payable" for debt purposes. Similarly, if such a levy becomes charged and payable for a purpose other than debt, the reimbursement must be calculated according to the formula used for fixed-rate levies.[23]

Reimbursement of fixed-sum levy losses

Under former law, taxing units received reimbursements for fixed-sum levy losses equal to 100% of the taxing unit's fixed-sum levy loss. The act provides that, beginning in 2012, the amount to be reimbursed to a non-school taxing unit for business TPP fixed-sum levy losses equals 50% of the unit's fixed-sum levy loss. The act does not alter the calculation of business TPP fixed-sum levy loss reimbursements for school districts or of utility TPP fixed-sum levy loss reimbursements for either school districts or non-school taxing units.[24]

Timing of reimbursements of business TPP levy losses

The act modifies one of the dates for making reimbursements to non-school taxing units for their loss of business TPP tax revenue. Continuing law provides for two semiannual reimbursement payments for such losses. The first of the two reimbursements must be made on or before May 31, and, formerly, the second had to be made on or before November 20. The act moves the date for making the second semi-annual reimbursement from November 20 to November 30.[25]

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[22] R.C. 5727.84, 5727.86, 5751.20, and 5751.22.

[23] R.C. 5727.86.

[24] R.C. 5751.22.

[25] R.C. 5751.22(C).

Local taxing unit allocation of business TPP reimbursements

Under continuing law, the state deposits all reimbursement payments calculated for every non-school taxing unit in a county into the county's undivided income tax fund. Formerly, the county treasurer was required to distribute the payments related to the reimbursement of business TPP levy losses to the appropriate taxing units within 40 days after the county received the payments. (Continuing law does not prescribe a time limit for the distribution of reimbursement payments related to utility TPP levy losses.) The act instead requires that distributions of business TPP tax loss payments be made within 30 days after the county receives the payments.[26]

IV. Property Tax

Extending county appraisal cycles

Law generally retained by the act requires reappraisals of property in each county for the purpose of assessing property tax at least once every six years, although the Commissioner may grant a one-year extension for good cause. The Commissioner also must update the values, based on local property market data, three years after the reappraisal.

The act authorizes the Commissioner, beginning in 2014 and continuing for five years, to extend the reappraisal or update period of real property in a county by not more than one year "for the purpose of equalizing and regionalizing real property assessment cycles."[27]

Waiver of property tax value certifications used to calculate school aid

Continuing law requires the Tax Commissioner to certify certain property tax information to the Office of Budget and Management and to the Department of Education, which uses the information to calculate the amount of state aid that will be provided to school districts. The act excuses the Tax Commissioner from certifying certain information that, if not for recent changes to the school funding formula, would be used to calculate state aid for the 2013 fiscal year.

The act specifically excuses the Tax Commissioner from issuing three certifications related to valuation changes of taxable property and three certifications related to exempt property located within a school district. Continuing law requires the

[26] R.C. 5751.22(C).

[27] Section 757.10.

Tax Commissioner to make the remaining required certifications on or before either May 15, 2012, or June 1, 2012.[28]

School funding formula background

Am. Sub. H.B. 153 of the 129th General Assembly enacted a temporary formula to fund schools for the 2012 and 2013 fiscal years. In doing so, the act repealed the previous school funding formula, known as the "Evidence Based Model," enacted in H.B. 1 of the 128th General Assembly. The temporary formula provides for payments to school districts that are based on the per pupil amount of funding paid to a district for fiscal year 2011, adjusted by the district's share of a statewide per pupil adjustment amount that is indexed to the district's relative tax valuation per pupil. Under the formula, a district's relative tax valuation per pupil is based on property tax values used to determine the district's state aid for the 2011 fiscal year. Since the temporary formula relies upon property tax information certified for the 2011 fiscal year, the updated Tax Commissioner certifications excused by the act will not be required to determine fiscal year 2013 state aid to schools.

Park district levy proposal millage cap

Under continuing law, a board of park commissioners is authorized to submit to voters a property tax for the benefit of the park district. Law retained in part by the act provides that the maximum rate that the board may request at any one time cannot exceed two mills per dollar of taxable valuation. The act increases the maximum property tax levy rate that may be submitted from two mills to three mills if some of the levy proceeds provide operating revenues to a metropolitan zoo.[29]

Convention center property tax exemption

The act authorizes a property tax exemption for a convention center or arena owned by the largest city in a county with a population between 235,000 and 300,000. Under the act, the convention center or arena may be leased to or operated or managed by another person and still qualify for exemption, as long as it is owned by a qualifying city. For purposes of the exemption, the population of a county is determined by reference to the most recent federal decennial census at the time of the construction of the convention center or arena.[30]

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[28] Section 757.20.

[29] R.C. 1545.21.

[30] R.C. 5709.084.

The act also provides for the abatement of unpaid taxes due in regard to an application for exemption of a qualifying convention center or arena if the application, or an appeal from the denial of an application, is pending on the act's effective date.[31]

Use of inside millage foregone by a county that increases a sales tax

Under continuing law, a county that levies or increases a county sales tax may choose to correspondingly reduce the rate of an unvoted ("inside") county property tax for current expenses by the number of mills that would raise up to the same amount of revenue that the sales tax is expected to generate. Formerly, if a county so reduced its inside millage, no other taxing unit could levy any part of that foregone inside millage.

The act provides that a county budget commission may allocate all or a portion of the county's foregone inside millage to accommodate a subdivision levy for debt charges not provided for by voted levies outside the ten-mill limitation.[32]

Background

Under the Ohio Constitution, the aggregate amount of taxes levied on any piece of property without the approval of voters may not exceed 10 mills on each dollar of the property's taxable value. This restriction is commonly referred to as the "ten-mill limitation," and a tax levied within the ten-mill limitation is referred to as "inside millage."[33]

Because several overlapping subdivisions simultaneously tax the same property, inside millage is divided between them. This prevents the total unvoted millage on any property from exceeding 10 mills.

The county budget commission allocates inside millage among subdivisions in the county according to a formula based primarily upon historical amounts allocated to those subdivisions. Subject to a few exceptions, every political subdivision that was in existence between 1929 and 1933 receives a guaranteed annual share of inside millage equal to two-thirds of the average annual millage amounts received between 1929 and 1933, the years in which a 15-mill limitation was in effect. A county budget commission may modify these prescribed minimum levy allocations when the amount of inside millage a subdivision requires for either of the following exceeds the subdivision's minimum allocation: debt charges not provided for by outside millage and mandatory payments to fire and police pension funds.

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[31] Section 757.30.

[32] R.C. 5705.313.

[33] Article XII, Section 2 of the Ohio Constitution; R.C. 5705.02.

Under the act, a county budget commission may allocate inside millage foregone by a county in situations in which this statutory formula requires the commission to modify minimum levy allocations to accommodate a subdivision levy for debt charges not provided for by outside millage.[34]

V. Corporation Franchise Tax

The act authorizes certain financial institutions to elect to use a single sales factor, instead of the normally required three factors, to calculate taxable net worth for the Corporation Franchise Tax.[35] To qualify to use the single sales factor, a financial institution must be at least 80% owned by a "grandfathered" unitary savings and loan holding company. Under federal law, such a holding company may hold only one savings and loan subsidiary institution and may continue (after 1999) to be engaged in a broad range of nonfinancial business activities unlimited by restrictions on nonfinancial business activities that, without the grandfathering, would apply under the Bank Holding Company Act of 1956.[36]

Under law largely unchanged by the act, the Corporation Franchise Tax is levied at a rate of 1.3% (13 mills per dollar) of a financial institution's net worth after adjusting net worth by deducting certain items, including the value of goodwill, appreciation, and abandoned property. Adjusted net worth is further adjusted to reflect the institution's business presence in Ohio by a formula employing three factors – property, payroll, and sales. On a 100-point scale, the sales factor is weighted at 70 and the property and payroll factor are each weighted at 15.

The property factor reflects both (1) the proportion of real and tangible personal property rented to or owned by the institution and located or used in Ohio and (2) the proportion of its loans and credit card receivables attributed to Ohio. The location of a loan or credit card receivable is attributed on the basis where the preponderance of "substantive contacts" are assigned, with the assignment based on such factors as where the initial contact between the institution's employees and the borrower or cardholder occurred, where its employees assessed the borrower's or cardholder's creditworthiness, where the loan's or card's terms were negotiated, where the loan or card was finally approved, and where the loan or card is administered.[37]

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[34] R.C. 5705.31.

[35] R.C. 5733.056(A)(21), (C), and (I).

[36] 12 U.S.C. 1467a(c)(9)(C).

[37] R.C. 5733.056(D).

The payroll factor reflects the proportion of employee compensation based generally on where an employee performs services for the institution.[38]

The sales factor reflects the proportion of various receipts the institution receives from certain activities based on rules attributing those receipts to Ohio or elsewhere, including: (1) rental receipts from renting real property depending on whether the property is located in Ohio, (2) rental receipts from renting tangible personal property depending on where the property is first placed in service or (for transportation property) where it is used, (3) interest from loans securing real property depending on whether the property is in Ohio or, for other loans, where the borrower is located, (4) net positive gains from selling loans and loan servicing fees, apportioned in the same manner as in (3), (5) interest on credit card receivables and annual fees depending on where the cardholder's billing address is, (6) net gains from selling credit card receivables and credit card reimbursement fees apportioned in the same manner as in (5), (7) credit card merchant discount receipts from merchants depending on the merchant's domicile, (8) receipts from other services depending on where the service was performed, (9) investment and trading income is apportioned generally on the basis of whether it is attributed to a regular place of business in Ohio or elsewhere (based, in turn, on where the "day-to-day decisions" regarding investments and trading occur) and, in the case of dividends or interest paid to the institution by a majority-owned subsidiary, in proportion to the net book value of the subsidiary's property owned in Ohio versus elsewhere, and (10) all other receipts are apportioned on the basis of where the activity producing the receipts is performed, with the majority of the cost of performance determining where an activity occurs when the activity occurs in Ohio and another state.

Under continuing law, at least one financial institution is permitted to use an alternative single-factor apportionment formula based solely on the proportion of its deposits that are assigned to branches located in Ohio versus elsewhere, with assignment to a branch determined by banking regulations. The institution may elect to use the deposits factor apportionment for any year. To qualify for the deposits factor apportionment, a financial institution must satisfy all of the following: (1) it completed at least one merger with a bank having a home state other than Ohio under a 1994 Congressional act authorizing such interstate mergers, (2) it completed at least one interstate acquisition under Ohio banking law that results in its branches being located in more than one state, and (3) at least 9% of its deposits are located in Ohio.[39]

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[38] R.C. 5733.056(E).

[39] R.C. 5733.056(A)(15) and (G).

VI. Motion Picture Tax Credit

Continuing law authorizes a motion picture company that produces at least part of a motion picture in Ohio to apply to the Director of Development to receive a certificate entitling the company to refundable credits against the corporation franchise tax or personal income tax. (Because the corporation franchise tax no longer applies to nonfinancial corporations, in effect the credit against that tax is not subtracted from any tax liability; it is essentially a means of awarding the credit amount in the form in which a refundable tax credit would be paid if the tax still applied to all corporations.) The credit amount is a percentage of Ohio-sourced expenditures for goods, services, and payroll. The percentage is 25% of goods and services and 35% of payroll of Ohio resident cast and crew.

Former law limited the Director from issuing more than $20 million in credit certificates in each fiscal biennium (the limit was $30 million for the FY 2010-2011 biennium). For the first fiscal year of the biennium, former law limited the Director to issuing no more than $10 million in credit certificates.

Beginning with the FY 2012-2013 biennium, the act increases the overall credit limit to $40 million per fiscal biennium and requires that the Director authorize not more than $20 million in the first year of a fiscal biennium.[40] Continuing law limits each company to no more than $5 million in credits per tax credit-eligible production.

VII. Tax Administration

Notice of interest rate

The act eliminates a requirement under prior law that the Tax Commissioner notify, in writing, each county auditor of the statutory interest rate charged for tax underpayments and payable on some tax refunds.[41]

Electronic filing requirements for income tax preparers

Under continuing law, individuals who prepare income tax returns on behalf of others for profit must comply with certain electronic filing requirements. The act makes changes to these requirements that apply to returns prepared during 2013 and thereafter.

Formerly, tax return preparers who prepared more than 75 income tax returns per year were required to file all returns prepared in that year electronically. The 75-

[40] R.C. 122.85.

[41] R.C. 5703.47.

return limitation applied only to original returns; amended returns were not counted towards the threshold. A return preparer was exempt from the mandatory electronic filing requirement for a year if, during the previous year, he or she prepared 25 or fewer returns. If a return preparer was not exempt, and if he or she prepared more than 75 returns that were not filed electronically, the return preparer was required to pay a $50 fee for each return over the 75-return threshold that was not filed electronically.

The act lowers the mandatory electronic filing threshold for tax return preparers from 75 returns to 11 returns. Accordingly, the act also modifies the exception for tax preparers who file 25 or fewer returns in a preceding year to provide that a return preparer will be exempt from the new electronic filing requirement only if, during the previous year, he or she prepared ten or fewer returns. Under the act, if a return preparer is not exempt, and if he or she prepares more than 11 original returns that are not filed electronically, the $50 fee applies to each return over the 11-return threshold that was not filed electronically.[42]

Cancellation of certain tax-related debts

The act authorizes the Tax Commissioner to cancel certain debts arising from unpaid taxes. In order to qualify for cancellation, the total amount of the debt, including the unpaid taxes and any related penalties or interest, must not exceed $50. The total debt must also consist only of unpaid taxes and related penalties or interest due for a single reporting period. The length of a taxpayer's reporting period will depend upon the tax and the frequency with which the taxpayer must file tax returns (i.e., a year in the case of the income tax, a calendar quarter in the case of certain commercial activity taxpayers, a month in the case of certain sales and use taxpayers). Finally, the Commissioner may not cancel a debt that has been certified to the Attorney General for collection or that is subject to an appeal filed with the Board of Tax Appeals.[43]

Under continuing law, when the Tax Commissioner is unable to collect unpaid taxes, the debt must be certified to the Attorney General for collection. The Attorney General may cancel a claim with the approval of the Tax Commissioner, but only if the Attorney General determines that the debt is uncollectible. The Attorney General and Tax Commissioner may also enter into a compromise agreement with the taxpayer,

[42] R.C. 5747.082(C) and (D).

[43] R.C. 5703.061.

including an agreement that allows the taxpayer to pay the debt over a certain period of time.[44]

Taxes due when a corporation dissolves voluntarily

The act makes changes to the tax information that a corporation is required to provide to the Secretary of State when seeking a voluntary dissolution.

Law largely unchanged by the act allows a corporation, whether for-profit or nonprofit, to dissolve voluntarily under certain circumstances, such as when the corporation has been adjudged bankrupt or when the period of existence specified in the corporation's articles of incorporation expires. In order to dissolve, the corporation must file a certificate of dissolution with the Secretary of State. With the certificate, the corporation must provide documentation showing that that the corporation is current on, or has guaranteed payment of, all workers' compensation premiums, unemployment compensation contributions, and personal property, franchise, sales, use, and highway use taxes owed by the corporation. The corporation must also provide a list of the counties in which it has personal property subject to local personal property taxes, if any.

The act amends these requirements to provide that a corporation, whether for-profit or nonprofit, must show that it is current on all state taxes, rather than on only the personal property, franchise, sales, use, and highway use taxes. The act also removes the requirement that a dissolving nonprofit corporation provide a list of the counties in which it has personal property. (The personal property tax on business property was completely phased-out in 2011.) Dissolving for-profit corporations still must provide such a list.[45]

Electronic notice or order

Continuing law generally requires that the Tax Commissioner deliver tax notices and orders to a recipient using personal service, certified mail, or a delivery service. Additionally, the Commissioner may deliver notices or orders to the recipient through secure electronic mail if the recipient consents to this electronic means of delivery.

The act prescribes a method by which the Commissioner may deliver notices or orders by secure electronic means. Upon receiving the recipient's permission, the Commissioner must inform the recipient, electronically or by mail, that a notice or order is available for electronic review and provide instructions to allow the recipient to

[44] R.C. 131.02.

[45] R.C. 1701.86 and 1702.47.

access and print the notice or order. If the recipient fails to access the notice or order electronically within ten business days, the Commissioner is required to deliver the notice or order to the recipient using personal service, certified mail, or a delivery service.[46]

Declined or dishonored electronic payment fee

Continuing law authorizes the Department of Taxation to impose a $50 penalty on dishonored checks.

The act extends this $50 penalty for declined, returned, or dishonored electronic payments by, for example, credit, debit, or prepaid value card or electronic check. The act limits the penalty to being imposed no more than one time per check or electronic payment.[47]

Horse-racing tax revenue distribution and filing requirement

Revenue distribution procedure

In addition to the general state horse-racing tax on pari-mutuel wagering and "exotic" wagering (bets on results other than win, place, or show), Ohio levies an additional pari-mutuel wagering tax solely for the benefit of the municipal corporations or townships in which a horse-racing meet is held. The additional tax is levied at a rate of 0.10% on the first $5 million wagered at a meet and 0.15% of the amount wagered above $5 million, with a maximum tax liability per meet of $15,000. Like the general state horse-racing tax, the additional tax is paid by the racing permit holder to the Department of Taxation.

Under law retained in part by the act, all revenue from the additional tax is collected within ten days after the end of a horse-racing meet and sent back to the permit holder who paid the tax. The permit holder then forwards the tax revenue to each municipal corporation or township in which any part of the meet was held. A municipal corporation or township may distribute any portion of the tax revenue it receives to other political subdivisions that incurred expenses related to the meet.

The act eliminates the step in this distribution procedure that involves returning tax collections to the permit holder who paid the taxes. Instead, the Tax Commissioner must forward the taxes collected directly to the appropriate municipal corporations and townships.

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[46] R.C. 5703.37.

[47] R.C. 5703.261.

The act also specifies that tax payments sent to the Commissioner must be made payable to the municipal corporations and townships that will receive the tax revenue.

Final report requirement

The act codifies an existing administrative rule that requires racing permit holders to submit a final report to the Tax Commissioner within ten days after the end of each horse-racing meet. The report must show the total amount wagered at the meet and be signed by the permit holder or an authorized agent of the permit holder.[48]

Estate asset transfer permission requirement

With respect to decedent's dying on or after January 1, 2013, the act eliminates an estate tax law requirement that written permission of the Tax Commissioner be obtained before certain assets of a decedent held by a corporation, safe deposit company, trust company, life insurance company, or financial institution may be transferred to another person. This requirement continues to apply with respect to the assets of decedents dying before January 1, 2013.

By prior legislation, Ohio's estate tax is scheduled to be terminated for decedents dying on or after January 1, 2013.[49]

Taxpayer exemption from motor fuel tax surety bond requirement

The motor fuel tax is levied on motor fuel dealers that use, distribute, or sell motor fuel in the state. To aid in the administration of the tax, continuing law requires every motor fuel dealer operating in Ohio to hold an unrevoked license issued by the Tax Commissioner. In order to receive such a license, the dealer must submit an application to the Tax Commissioner in which the dealer agrees to pay taxes on the motor fuel that the dealer sells or distributes in the state. Under law generally unchanged by the act, the dealer's application must be accompanied by a surety bond of at least $5,000 securing the dealer's payment of the motor fuel tax. The dealer may alternatively provide a cash deposit in lieu of the bond.

The act allows the Tax Commissioner to exempt a motor fuel dealer from the surety bond requirement if the dealer only sells or distributes motor fuel for which motor fuel taxes have already been paid or for which payment of the tax is not required. (The tax does not apply to certain sales of motor fuel, such as motor fuel that is sold for uses other than the operation of motor vehicles on public highways, or motor fuel sold

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[48] R.C. 3769.28.

[49] R.C. 5739.39.

by one wholesale dealer to another wholesale dealer.) (R.C. 5735.05(A)(1) to (10).) Under prior law, the Tax Commissioner was permitted to increase or reduce the amount of a required bond, but did not have authority to completely exempt a dealer from the requirement of providing a bond or cash payment in lieu of a bond.[50]

Personal liability for the motor fuel tax

The act expressly extends to all kinds of business organizational forms the already existing provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax. Former law referred only to such individuals relative to corporations and business trusts.[51]

Tobacco product excise tax

Continuing law imposes a tax on tobacco products other than cigarettes that are received by a distributor or sold by a manufacturer to a retailer in Ohio. The tax equals 17% of the wholesale price of the product. Persons subject to the tax must be registered with the Department of Taxation.

Unlicensed distributor penalty

The act imposes a penalty of up to $1,000 for distributing tobacco products without having a distributor's license, and requires any person doing so to obtain a distributor's license within ten days after being notified of the registration requirement. The person also must pay the annual $1,000 distributor's license fee for each location where the person acts as a distributor.[52] Failure to obtain a license and pay the license fee appears to be punishable as a fourth degree misdemeanor offense.[53]

"Brokers"

The act eliminates statutory references to cigarette and tobacco product "brokers" in the law governing the cigarette and tobacco product excise taxes. Unlike the other kinds of persons subject to the taxes, such as manufacturers and importers, "brokers" is not defined in either prior law or the act.[54]

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[50] R.C. 5735.02 and 5735.03.

[51] R.C. 5735.35.

[52] R.C. 5743.61(E).

[53] R.C. 5743.99(F).

[54] R.C. 5743.20 and 5743.66.

Alcoholic beverage tax: S liquor permit holders

Tax liability

Am. Sub. H.B. 114 of the 129th General Assembly amended the S liquor permit to allow a beer brand owner, importer, or designated agent of either to sell beer directly to personal customers in Ohio. (The permit could previously be issued only for direct sales of wine.) That bill also provided, in the statute that authorizes the permit, that S permit holders are responsible for applicable state and local taxes on the sale of the beer, including the alcoholic beverage tax on bottled and canned beer. The act amends a separate Revised Code provision, the statute that levies the bottled and canned beer tax, to similarly provide that S permit holders are subject to the tax.[55]

Monthly report

The act requires an S permit holder to submit a monthly report to the Tax Commissioner showing the amount of beer the permit holder sold in the state in the previous month. The report must accompany the permit holder's payment of the alcoholic beverage tax. A similar requirement applies to other alcoholic beverage taxpayers. Under continuing law, S permit holders must already provide certain information to the Tax Commissioner, including beer shipment invoices and an annual report listing each personal customer that received a beer shipment from the permit holder and the amount of beer the customer received.[56]

VIII. New Community Authorities

New Community Authority community development charges

Continuing law authorizes "New Community" districts to be established by developers by petition to the board of county commissioners. A board of county commissioners may approve the petition if it finds that creation of a district "will be conducive to the public health, safety, convenience, and welfare" and is intended to result in development of facilities for industrial, commercial, residential, cultural, educational, and recreational activities. If a petition is approved, a New Community Authority (NCA) is established to develop land in the district, provide services in the district, and to raise revenue by levying community development "charges" in the district. NCA is governed by a board of trustees initially composed of a local government representative and representatives of the developer and (in an equal number) of residents.

[55] R.C. 4301.42.

[56] R.C. 4303.33.

Under continuing law, any NCA has among its powers the authority to levy a community development charge upon land, on resident income, or business profit within the district to cover all or part of the cost of the acquisition, construction, operation, maintenance, and debt service charges of "land, land development, and community facilities."

NCAs created after March 22, 2012, but before March 23, 2015, are authorized to impose a community development charge based on the income of the residents of real property in the New Community district if the property is devoted to residential uses or on the profits or gross receipts of businesses operating in the district, in addition to the other allowable bases. Charges levied by such an NCA on the basis of income or profits may be based on all or part of such income or profits.

The act expressly permits such NCAs to include rentals received from leases of real property located in the district as part of such income, profits, or gross receipts.[57]

Tax increment financing

If an NCA imposes a community development charge determined on the basis of rentals received from leases of real property, improvements of any real property located in the New Community district and subject to the charge may not be exempted from taxation under a tax increment financing (TIF) arrangement.[58] TIF law authorizes municipal corporations, townships, and counties to finance public infrastructure improvements and, under certain circumstances, residential rehabilitation. Under a TIF, the increase in the assessed value of the real property is exempted from taxation and the property owner typically is required to make a payment in lieu of taxes to the authorizing local government, which generally must use the payments to finance the infrastructure improvements.

IX. Accountancy Board

The act makes several changes to the law related to the registration requirements of the Accountancy Board.

Peer review requirements

Continuing law requires public accounting firms to undergo peer review upon initial registration and when that registration is renewed, which is done on a triennial basis. The act allows the Board to hire an agent to administer all or part of the Board's

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[57] R.C. 349.03.

[58] R.C. 5709.40, 5709.41, 5709.73, and 5709.78.

peer review program and allows the agent to assess a reasonable fee to firms to cover the costs of program administration.[59]

Law retained by the act establishes that the Board's peer review process is overseen by a Peer Review Committee, consisting of accounting professionals. The act removes the Board's authority to establish compensation for this Committee.[60]

Under prior law, if a peer review found that a public accounting firm had not complied with the standards and practices set by the Board, then the Board was permitted to hold a hearing to review the peer review findings. Upon review, the Board was permitted to issue a remedial order, a disciplinary order, or both. Under the act, the Board, prior to holding a hearing or issuing a disciplinary order, must first make a remedial order. If the public accounting firm in question does not comply with this order, or if the Board determines that the firm in question has a history of noncompliance with the standards and practices of the Board, the Board may then hold a hearing to determine the extent of the firm's noncompliance and may issue a disciplinary order.

Under continuing law, when the Board issues a remedial order, a public accounting firm must submit an affidavit to the Board certifying its completion of the required remedial actions. The act provides that, in addition to this affidavit, firms may be required to supply supporting documentation of the completed actions.[61]

The act specifies that remedial orders are not subject to the Administrative Procedure Act.[62] Also, the act authorizes the Board to use documents related to peer reviews in a disciplinary hearing to determine a history of noncompliance with standards and practices.[63]

Finally, the act specifies that the generally accepted accounting principles, auditing standards, and other technical standards used in the peer review process be ones defined by the Board in rule.[64]

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[59] R.C. 4701.04(F) and (G).

[60] R.C. 4701.04(G)(1).

[61] R.C. 4701.04(H)(1)(b).

[62] R.C. 4701.04(H)(1), (2), and (3).

[63] R.C. 4701.04(L)(2).

[64] R.C. 4701.04.

Peer review requirement exemptions

Continuing law allows for a public accounting firm to be exempted from the peer review requirement if certain circumstances apply. One of these circumstances is that the public accounting firm, within the last three years, has already been subject to a peer review that was conducted pursuant to standards that are no less stringent than those promulgated by the American Institute of Certified Public Accountants. The act adds a caveat to this exemption, specifying that a peer review that does not comply with the standards and practices adopted by the Board, and that may subject a firm to remedial or disciplinary action, does not qualify as an acceptable peer review for the purposes of the exemption.[65]

A public accounting firm may qualify to be exempted from the peer review requirement if the firm has never practiced public accounting in Ohio, any other state, or a foreign country, and agrees to undergo a peer review within 18 months of initial registration with the Board. The act adds to this, requiring a public accounting firm to further agree to review its registration with the Board two years after initial registration according to rules adopted by the Board.[66]

A firm may qualify to be exempted from the peer review requirement if the firm does not undertake any engagement that will result in the issuance of an attest report, does not intend to take any such engagement for the next three years, and agrees to notify the Board and to undergo a peer review if it does take such an engagement. The act expands this qualification to include other engagements that would be subject to peer review and removing the three-year time period for forgoing engagements.[67]

Finally, prior law enabled the Board to exempt a public accounting firm from the peer review requirement for reasons of personal health, military service, or other good cause. The act modifies this avenue for exemption to state that a firm may qualify for the exemption for a good cause, as defined in rules adopted by the Board.[68]

General changes

Former law required that the chief executive of any office of a public accounting firm located or doing business in Ohio hold an Ohio permit or a foreign certificate to practice public accounting. The act requires instead that a firm designate a person who

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[65] R.C. 4701.04(J)(1).

[66] R.C. 4701.04(J)(3).

[67] R.C. 4701.04(J)(4).

[68] R.C. 4701.04(J)(5).

holds an Ohio permit to be responsible for the proper registration of the firm and requires the firm to identify this individual to the Accountancy Board.[69] The act limits to public accountancy firms located in Ohio the prohibition against public accountancy firms engaging in the practice of public accountancy in Ohio unless it registers with the Accountancy Board and pays the registration fee.[70]

Continuing law prescribes a list of requirements that an individual who does not hold an Ohio permit or foreign certificate to practice public accounting must meet in order to own an equity interest in a public accounting firm. The act removes the former requirement that such a person have received a baccalaureate or higher degree from a college or university approved by the Board.[71]

Definition changes

The act clarifies that the definition of foreign certificate includes, in addition to a certificate, a license, permit, or registration issued by another state that authorizes the holder to practice public accounting in that state and requires a foreign certificate to be valid, in good standing, and not expired.[72]

HISTORY

ACTION	DATE
Introduced	04-12-12
Reported, H. Ways & Means	04-24-12
Passed House (92-4)	04-25-12
Reported, S. Ways & Means & Economic Development	05-17-12
Passed Senate (29-2)	05-22-12
House concurred in Senate amendments (96-0)	05-24-12

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[69] R.C. 4701.04(C)(2).

[70] R.C. 4701.04(A).

[71] R.C. 4701.04(D)(5).

[72] R.C. 4701.01(R).