



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 508

129th General Assembly  
(As Introduced)

Rep. Beck

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## BILL SUMMARY

### Commercial Activity Tax

- Removes the requirement that receipts "contribute to the production of gross income" of a business in order to be considered gross receipts subject to the CAT.
- Requires a commercial activity taxpayer that pays on a quarterly basis must exclude the taxpayer's first \$1 million of taxable gross receipts in the first quarter of a year and may 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.
- Removes current law provisions that refer 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 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 will be 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.

### **Public Utility Taxation**

- Specifies that tangible personal property of an electric distribution utility used to generate, transmit, or distribute electricity is not "phase-in-recovery property" for the purposes of the law governing such a utility's authority to recover certain as-yet uncompensated costs by securitizing the costs, and therefore the property is not exempted from taxes on public utility tangible personal property.
- States that the existing tax exemption for phase-in-recovery property and phase-in-recovery revenues does not "prohibit" the state from levying the Commercial Activity Tax.

### **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 current law, must 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 be used to calculate state aid to schools.

### **Tax Administration**

- Reduces the statutory interest rate charged for tax underpayments and payable on some tax refunds from the "federal short-term rate" plus 3% to the federal short-term rate plus 1%.
- Increases, by 1%, the interest rate for estate tax underpayments and refunds and for any remaining business tangible personal property tax underpayments or refunds.
- Eliminates the 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.
- Provides that interest does not accrue on any portion of a taxpayer's income, corporation franchise, or commercial activity tax refund to the extent that the refund results from the allowance of a refundable credit.
- Removes a provision of current law that requires interest on a tax refund that results from an illegal or erroneous income tax assessment to accrue from the date the taxpayer paid the assessment until the date the refund is paid.
- Specifies that, when an income or pass-through entity withholding tax refund arises from the filing of an amended return, interest on the refund accrues from the date the amended return is filed until the date the refund is paid.
- 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.
- 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 the 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 current 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 current 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 current law provision that requires alcoholic beverage taxpayers to submit monthly reports to the Tax Commissioner.
- Creates the Peace Officer Training Academy Fund and the Criminal Justice Services Casino Tax Revenue Fund to receive the portion of casino tax proceeds (2%) currently allocated for the purpose of supporting law enforcement training efforts of the Peace Officer Training Academy and the Department of Public Safety's Division of Criminal Justice Services.
- Specifies how the portion of casino tax proceeds currently allocated to the Ohio State Racing Commission Fund and the Problem Casino Gambling and Addictions Fund are to be used.

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## CONTENT AND OPERATION

### I. Commercial Activity Tax

#### Definition of gross receipts subject to the CAT

Under current law, a business' "gross receipts" subject to the commercial activity tax equals the total amount realized by the business, without deduction for the cost of goods sold or other expenses incurred, from activities that contribute to the production of gross income. The bill removes the requirement that receipts "contribute to the production of gross income." As a result, any receipts realized by a business, regardless of whether those receipts contribute to the production of the gross income of the business, will be considered "gross receipts" unless otherwise exempted.<sup>1</sup>

#### CAT: application of exclusion amount

The bill 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.

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<sup>1</sup> R.C. 5751.01(F).

## **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, current law requires 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 has less than \$250,000 of taxable gross receipts in a quarter, any leftover exclusion amount may be carried forward to the three following quarters, regardless of whether the quarters are in the same calendar year. Consequently, it is 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 bill 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 bill 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 bill prevents situations in which taxpayers may exclude more than \$1 million of taxable gross receipts in any calendar year.<sup>2</sup>

## **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

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<sup>2</sup> R.C. 5751.03.

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 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. Current law authorizing the test periods no longer has any effect as the final test period ended on June 30, 2011.

The bill repeals current 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%.<sup>3</sup>

### **References to CAT annual filing election**

Under continuing law, 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.

The bill removes language in current law that refers 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 bill removes references to annual taxpayer "elections" that were not removed in that act.<sup>4</sup>

### **Listing of cancelled CAT accounts**

Continuing law requires the Tax Commissioner 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. Current law also 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.

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<sup>3</sup> R.C. 5751.03 and 5751.032.

<sup>4</sup> R.C. 5751.05, 5751.051, and 5751.12.

The bill retains the Commissioner's requirement to list taxpayers with cancelled accounts but requires the Commissioner to instead list the effective date of a taxpayer's cancellation rather than the date the taxpayer requested cancellation.<sup>5</sup>

## **Registration and fees**

### **Registration fees**

Under current 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). A taxpayer registering for the CAT must 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 are 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. Fees must be remitted before the due date of the taxpayer's first return. Fees paid are credited against the taxpayer's first tax payment. The fees are credited to the Commercial Activity Tax Administrative Fund and are used to defray the state's cost of administering the tax.

The bill eliminates the separate CAT registration fee payment requirement. Instead of a separate fee payment that is credited against the first tax payment, the bill specifies that a portion of each taxpayer's first tax payment is to be earmarked for CAT administration and "tax reform implementation." The bill sets the amount to be earmarked at \$20 per taxpayer for CAT registration and retains current law's fee scheme for CAT registrations for combined and consolidated elected taxpayers. The earmarked money is to be credited to the new "Revenue Enhancement Fund" created by the bill.

The "Revenue Enhancement Fund" will be composed of the current "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.<sup>6</sup>

### **Registration information**

The bill modifies the information a taxpayer is required to provide on CAT registration forms. Under the bill, a taxpayer is no longer required to identify the state

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<sup>5</sup> R.C. 5751.12.

<sup>6</sup> R.C. 5751.01(F)(2)(z), 5751.011, 5751.012, 5751.04, 5751.051, and 5751.20(B).

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 are required under current law. However, the bill requires the taxpayer to additionally 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.<sup>7</sup>

## **II. Sales and Use Tax**

### **Elimination of special sales tax vendor license categories**

Existing 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.

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.

A service vendor's license authorizes a "service vendor" to sell certain taxable services. A service vendor who also makes sales of other services or of tangible

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<sup>7</sup> R.C. 5751.04.

personal property must also apply for a vendor's license, a transient vendor's license, or a delivery vendor's license, whichever is appropriate.

A delivery vendor's license authorizes a delivery vendor to make retail sales throughout the state with the caveat that all sales must be reported under the delivery license. A delivery vendor is 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 bill eliminates the vendor license categories of "service vendor" and "delivery vendor," but authorizes the Tax Commissioner to create specific classes of vendor licenses. The bill retains standard vendor's licenses and transient vendor's licenses.<sup>8</sup>

### **Notification of Tax Commissioner upon moving a fixed place of business**

Existing 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 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 current law does not prescribe a penalty for a vendor who fails to notify the Commissioner upon moving the existing fixed place of business. The bill 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.<sup>9</sup>

### **Display of vendor's license**

The current law requires transient vendors to display the transient vendor's license issued to them, or a copy thereof, prominently in plain view at every place of business. The bill requires all vendors to display their vendor's licenses, not just transient vendors.<sup>10</sup>

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<sup>8</sup> R.C. 5739.01(O) and 5739.17.

<sup>9</sup> R.C. 5739.17(B).

<sup>10</sup> R.C. 5739.17(E).

## **Notification of changes in local sales tax rates**

Under the current law, the Tax Commissioner is required to notify all vendors and sellers registered through the Streamlined Sales Tax Central Electronic Registration System when local sales tax rates change due to a modification of a county's jurisdictional boundaries or a transit authority's territory. This 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.

The bill requires the Tax Commissioner to notify all vendors and sellers of such a change regardless of whether they are registered through the Streamlined Sales Tax Central Electronic Registration System.<sup>11</sup>

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

The bill 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.<sup>12</sup>

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

The bill 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.

Currently, 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 bill retains this concept and extends it 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

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<sup>11</sup> R.C. 5739.04 and 5741.08.

<sup>12</sup> R.C. 5739.021, 5739.023, and 5739.026.

company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.<sup>13</sup>

### **Correction of typographical errors**

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

### **Sales tax exemption for water for residential use**

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

Under current 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" are also currently exempted from sales tax. However, under current law, bottled water, distilled water, mineral water, carbonated water, and ice are explicitly excluded from the exemption. The bill removes specific references to bottled water, distilled water, mineral water, carbonated water, and ice from R.C. 5739.02(B)(25). The effect is to align the "residential use" exemption with the "food" exemption. The bill does not create a new sales tax exemption; rather, it brings the statutory language in line with current practice of the Department of Taxation.<sup>14</sup>

## **III. Personal Property Tax Reimbursements**

### **Tangible personal property tax loss reimbursements**

Continuing law provides for 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

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<sup>13</sup> R.C. 5739.01(B)(6).

<sup>14</sup> R.C. 5739.02(B)(25).

property. The bill makes several changes to the method for calculating and making these reimbursements.

## **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, current 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 10-mill limit or a municipal charter limit). The bill makes three changes to the formula used to calculate reimbursements for fixed-rate levy losses.

### **Current law formula**

Under current law, 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.<sup>15</sup> 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.

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

Under current law, a taxing unit is entitled to reimbursement of utility TPP fixed-rate levy losses only if one-half of the unit's S.B. 3 allocation exceeds a threshold percentage of the unit's total resources. The bill 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 do not currently qualify for reimbursement because one-half of a unit's S.B. 3 allocation does not exceed the threshold may qualify under the bill, if the unit's full S.B. 3 allocation does exceed that threshold. However, the intent of the amendment may be to correct the language as modified by H.B. 153.

Similarly, under current law, when a taxing unit is entitled to reimbursement of utility TPP fixed-rate levy losses, the taxing unit receives 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 bill instead provides that each

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<sup>15</sup> "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>.

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.<sup>16</sup>

### **New reimbursement formula for library tax levy losses**

The bill 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 bill, 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 would no longer be 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).<sup>17</sup>

Under current 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.)

Levy losses attributable to a tax levied under R.C. 5705.23 are treated similarly to the other TPP levy losses of a taxing unit. Any reimbursement that results from such levy losses is included in the calculation of a taxing unit's TPP allocation, S.B. 3 allocation, and total resources. If the taxing unit is eligible for reimbursement, the

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<sup>16</sup> R.C. 5727.86.

<sup>17</sup> Although the bill 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 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.

taxing unit receives the portion of the reimbursement attributable to the R.C. 5705.23 tax levy and forwards that portion to the public library.

The bill 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 bill introduces a parallel formula for calculating reimbursements for levy losses attributable to such a tax. The bill 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 bill 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 bill 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.

Under the bill, 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).<sup>18</sup>

#### **Municipal corporation reimbursement for current expense levy losses**

Under current 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.<sup>19</sup> In order to separate the levy losses reimbursed

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<sup>18</sup> R.C. 5727.84, 5727.86, 5751.20, and 5751.22.

<sup>19</sup> The separate reimbursement is based upon the amount reimbursed to a municipal corporation or school district for non-current expense levy losses in 2010. Current law provides that, for municipal

through this different formula from the calculation of a municipal corporation's current expense levy losses, the bill 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.<sup>20</sup>

### **Reimbursement for charged and payable tax levies**

The bill clarifies that, for purposes of calculating reimbursements for business or utility TPP losses, a fixed-rate levy will be 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 current law, the value of a fixed-rate levy is subtracted from a taxing unit's total reimbursement amount if the levy is no longer "imposed."<sup>21</sup>

### **Reimbursement of unvoted debt levy losses**

Current law provides that, for purposes of calculating utility TPP reimbursements to non-school taxing units, a tax levied within the 10-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 bill 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.<sup>22</sup>

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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.

<sup>20</sup> R.C. 5751.20(A)(29). Although the bill 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.

<sup>21</sup> R.C. 5727.84, 5727.86, 5751.20, and 5751.22.

<sup>22</sup> R.C. 5727.86.

## **Reimbursement of fixed-sum levy losses**

Under current law, taxing units receive reimbursements for fixed-sum levy losses equal to 100% of the taxing unit's fixed-sum levy loss. The bill 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 bill 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.<sup>23</sup>

## **Timing of reimbursements of business TPP levy losses**

The bill modifies one of the dates for making reimbursements to non-school taxing units for their loss of business TPP tax revenue. Current 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 the second must be made on or before November 20. The bill moves the date for making the second semi-annual reimbursement from November 20 to November 30.<sup>24</sup>

## **Local taxing unit allocation of business TPP reimbursements**

Under current 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. The county treasurer must distribute the payments related to the reimbursement of business TPP levy losses to the appropriate taxing units within 40 days after the county receives the payments. (Continuing law does not prescribe a time limit for the distribution of reimbursement payments related to utility TPP levy losses.) The bill instead requires that distributions of business TPP tax loss payments be made within 30 days after the county receives the payments.<sup>25</sup>

## **IV. Public Utility Taxation**

### **Tax status of electricity distribution company phase-in-recovery property**

The bill specifies that tangible personal property of an electric distribution utility that is used to generate, transmit, or distribute electricity is not "phase-in-recovery property" for the purposes of the law governing such a utility's authority to recover certain as-yet uncompensated costs by securitizing the costs (i.e., by issuing securities to

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<sup>23</sup> R.C. 5751.22.

<sup>24</sup> R.C. 5751.22(C).

<sup>25</sup> R.C. 5751.22(C).

cover the costs and repaying security holders over time from charges on ratepayers). Under that law, phase-in-recovery property includes the irrevocable right to impose, adjust, and collect charges from ratepayers to retire the securities, all according to a PUCO order issued for that purpose. The money arising from the exercise of those rights is defined as "phase-in-recovery revenues." That law exempts from all state and local taxes the transfer or ownership of phase-in-recovery property and the receipt of phase-in-recovery revenues.

In the current statute that exempts phase-in-recovery property and revenues from state and local taxation, the amendment adds the following statement: "Nothing in this section prohibits the levy of the tax imposed under Chapter 5751. of the Revised Code" – i.e., the Commercial Activity Tax, which is imposed on persons doing business in Ohio on the basis of gross receipts. Under the CAT law, "gross receipts" means "the total amount realized by a person . . . that contributes to the production of gross income of the person, including the fair market value of any property . . . received, and any debt transferred . . . as consideration" and also includes "amounts realized from the sale, exchange, or other disposition of the taxpayer's property . . . or from [another person's] use of the taxpayer's property or capital." The statement being added by the amendment does not specify how or if it is to be applied specifically to phase-in-recovery revenue.<sup>26</sup>

## **V. Property Tax**

### **Extending county appraisal cycles**

Current law 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 bill 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."<sup>27</sup>

### **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

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<sup>26</sup> R.C. 4928.23 and 4928.2314.

<sup>27</sup> Section 757.10.

Education, which uses the information to calculate the amount of state aid that will be provided to school districts. The bill 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 bill 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. Current law requires the Tax Commissioner to make these certifications on or before either May 15, 2012, or June 1, 2012.<sup>28</sup>

### **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 bill 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. Consequently, because the temporary formula relies upon property tax information certified for the 2011 fiscal year, the updated certifications that the bill excuses the Tax Commissioner from making will not be required to determine fiscal year 2013 state aid to schools.

## **VI. Tax Administration**

### **Reduction in interest rate per annum**

The bill reduces the statutory interest rate charged for tax underpayments and payable on some tax refunds from the "federal short-term rate" plus 3% to the federal short-term rate plus 1%. Under current law, the Tax Commissioner is required to calculate the interest rate each year by determining the "federal short-term rate," rounding to the nearest whole number, and adding 3%. (The rate for 2012 is 3%.) "Federal short-term rate" is defined as the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code of 1986. The bill changes the computation of the interest rate by requiring the Tax Commissioner to add 1% to the "federal short-term rate" rather than

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<sup>28</sup> Section 757.20.

3%. The interest rate change affects the interest charged for many other sums due to the state or, in certain cases, to private parties, and affects the discount rate used to value oil and gas reserves for property tax purposes.

The bill increases, by one percentage point, the interest rate for underpayments and refunds of estate tax and any remaining business tangible personal property tax. Under current law, the interest rate for those taxes equals the federal short-term rate rounded to the nearest whole number.

The bill eliminates current law's requirement that the Tax Commissioner notify, in writing, each county auditor of the interest rate.<sup>29</sup>

### **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 bill makes changes to these requirements that apply to returns prepared during 2013 and thereafter.

Current law requires tax return preparers who prepare more than 75 income tax returns per year to file all returns prepared in that year electronically. The 75 returns must be original returns; amended returns are not counted towards the threshold. A return preparer is 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 is not exempt, and if he or she prepares more than 75 returns that are not filed electronically, the return preparer must pay a \$50 fee for each return over the 75-return threshold that was not filed electronically.

The bill lowers the mandatory electronic filing threshold for tax return preparers from 75 returns to 11 returns. Accordingly, the bill 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 bill, if a return preparer is not exempt, and if he or she prepares more than 11 returns that are not filed electronically, the \$50 fee applies to each return over the 11-return threshold that was not filed electronically.<sup>30</sup>

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<sup>29</sup> R.C. 5703.47.

<sup>30</sup> R.C. 5747.082(C) and (D).

## **Cancellation of certain tax-related debts**

The bill 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, may 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).<sup>31</sup>

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, including an agreement that allows the taxpayer to pay the debt over a certain period of time.<sup>32</sup>

## **Accrual of interest on tax refunds**

Under continuing law, when a taxpayer is entitled to a refund of taxes that were erroneously charged or otherwise overpaid, interest may accrue on the refund amount. The bill makes several changes to the law governing the accrual of interest on such refunds.

### **Refunds resulting from the allowance of a refundable credit**

The bill clarifies that interest may not accrue on a refund amount if the refund results from the allowance of a refundable credit against the income, corporation franchise, or commercial activity tax. If a refund results from both a refundable credit and another type of overpayment, interest may accrue on only that portion of the refund that results from the other overpayment.<sup>33</sup>

### **Interest on income tax refunds**

Under current law, interest may accrue on a refund resulting from an income tax overpayment only if the Tax Commissioner does not refund the overpayment within 90

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<sup>31</sup> R.C. 5703.061.

<sup>32</sup> R.C. 131.02.

<sup>33</sup> R.C. 5733.26, 5747.11, and 5751.08.

days after the final due date of the taxpayer's return or the date the return was actually filed, whichever is later. If interest is allowed, the interest accrues from the date of the overpayment or the final due date for the taxpayer's return, whichever is later, until the date the refund is paid. The bill removes a separate, possibly inconsistent provision of the same law that provides that such interest must accrue from 90 days after the final due date of the return until the date the refund is paid.

The bill also removes a provision of current law that provides that interest resulting from an illegal or erroneous assessment accrues from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. The bill does not replace the provision with a different rule for the period during which interest accrues in such situations.

Additionally, the bill provides that, when an income tax or pass-through entity withholding tax refund arises from the filing of an amended return, interest on the tax refund accrues from the date the amended return was filed until the date the refund is paid.<sup>34</sup> Current law does not provide a specific rule for the accrual of interest on refunds arising from the filing of such amended returns.

### **Taxes due when a corporation dissolves voluntarily**

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

Continuing law 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 bill amends these requirements to provide that a corporation 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 bill also removes the requirement that the corporation

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<sup>34</sup> R.C. 5747.11.

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.)<sup>35</sup>

### **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 bill 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 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.<sup>36</sup>

### **Declined or dishonored electronic payment fee**

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

The bill extends this \$50 penalty for declined, returned, or dishonored electronic payments by, for example, credit, debit, or prepaid value card or electronic check.<sup>37</sup>

### **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

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<sup>35</sup> R.C. 1701.86 and 1702.47.

<sup>36</sup> R.C. 5703.37.

<sup>37</sup> R.C. 5703.261.

state horse-racing tax, the additional tax is paid by the racing permit holder to the Department of Taxation.

Under current law, 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 bill 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.

### **Final report requirement**

The bill 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.<sup>38</sup>

### **Estate asset transfer permission requirement**

Current estate tax law requires written permission of the Tax Commissioner 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.

The bill eliminates this requirement with respect to decedents dying on or after January 1, 2013. By prior legislation, Ohio's estate tax is scheduled to be terminated for decedents dying on or after that date.<sup>39</sup>

### **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

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<sup>38</sup> R.C. 3769.28.

<sup>39</sup> R.C. 5739.39.

motor fuel that the dealer sells or distributes in the state. Under current law, 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 bill 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 by one wholesale dealer to another wholesale dealer.) (R.C. 5735.05(A)(1) to (10).) Under current law, the Tax Commissioner may increase or reduce the amount of a required bond, but may not completely exempt a dealer from the requirement of providing a bond or cash payment in lieu of a bond.<sup>40</sup>

### **Personal liability for the tax**

The bill expressly extends to all kinds of business organizational forms the current 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. Current law refers only to such individuals relative to corporations and business trusts.<sup>41</sup>

### **Tobacco product excise tax**

Existing 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 bill 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

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<sup>40</sup> R.C. 5735.02 and 5735.03.

<sup>41</sup> R.C. 5735.35.

where the person acts as a distributor.<sup>42</sup> Failure to obtain a license and pay the license fee appears to be punishable as a fourth degree misdemeanor offense.<sup>43</sup>

## **"Brokers"**

The bill eliminates statutory references to cigarette and tobacco product "brokers" in the law governing the cigarette and tobacco product excise taxes. In current law, "brokers" are not defined, unlike the other kinds of persons subject to the taxes, such as manufacturers and importers.<sup>44</sup>

## **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.) The act 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 bill 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.<sup>45</sup>

### **Monthly report**

The bill 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.<sup>46</sup>

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<sup>42</sup> R.C. 5743.61(E).

<sup>43</sup> R.C. 5743.99(F).

<sup>44</sup> R.C. 5743.20 and 5743.66.

<sup>45</sup> R.C. 4301.42.

<sup>46</sup> R.C. 4303.33.

## Use of casino tax revenue

Existing law imposes a 33% tax on gross casino revenue received by casino operators. (The tax, its rate, and distribution of its proceeds are governed by the constitutional amendment authorizing casino gaming in Ohio. Article XV, Section 6(C).) "Gross casino revenue" is the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid out by the casino operator.

Several funds have been established under current law for the purpose of receiving, distributing, and accounting for proceeds of the tax on gross casino revenue. One such fund is the Ohio Law Enforcement Training Fund, which currently receives 2% of casino tax proceeds to support law enforcement functions in this state. The bill creates two funds to share this allocation of casino tax revenue. Of the amount currently allocated to the Ohio Law Enforcement Training Fund, 85% is to be distributed to the Peace Officer Training Academy Fund, which is created for the purpose of supporting the law enforcement training efforts of the Peace Officer Training Academy. The remaining 15% is to be distributed to the Criminal Justice Services Casino Tax Revenue Fund, which is created for the purpose of supporting the law enforcement training efforts of the Department of Public Safety's Division of Criminal Justice Services. These percentages are already established for use of the Academy and Division; the bill creates special funds to which the revenue is to be credited and held.<sup>47</sup>

## Specifications for use of casino tax proceeds

The bill stipulates that the 3% portion of casino tax proceeds currently allocated to the Ohio State Racing Commission Fund is to be used by the Commission to promote pari-mutuel horse racing. Under current law, this revenue allocation is to be used for the same purpose, but there is no condition as to whether the money is for use by the Commission or some other person or entity. The bill also specifies that the 2% portion of casino tax proceeds currently allocated to the Problem Casino Gambling and Addictions Fund is for use by the Department of Alcohol and Drug Addiction Services. Current law does not specify which person or entity is to utilize the revenue.<sup>48</sup>

The bill provides that these amendments are exempt from the referendum and will take effect immediately when the bill becomes law.<sup>49</sup>

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<sup>47</sup> R.C. 5753.03.

<sup>48</sup> R.C. 5753.03.

<sup>49</sup> Section 812.20.

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## HISTORY

ACTION

DATE

Introduced

04-12-12

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