



Ohio Legislative Service Commission

Bill Analysis

Joe McDaniels, Sam Benham, and
Mackenzie Damon

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Reps. Scherer, Amstutz, McClain

BILL SUMMARY

Sales and use tax

- Authorizes vendors and others required to hold a sales or use tax license whose business and home address is the same to apply to the Tax Commissioner to keep the street name and number confidential.

Cigarette and tobacco excise taxes

- Shifts the duty of selling cigarette tax stamps and receiving cigarette tax returns from the Treasurer of State to the Tax Commissioner.
- Eliminates provisions in current law authorizing the use of a metering device in lieu of tax stamps to show that the excise tax has been paid.
- Changes the due date for reporting and paying the "other tobacco product" (i.e., noncigarette) excise tax.

Elimination of Tobacco Settlement Enforcement Fund

- Eliminates the Tobacco Settlement Enforcement Fund.

Motor fuel excise tax

- Authorizes the Commissioner to impose and assess a penalty on persons that are required to file motor fuel reports but are not required to pay motor fuel excise tax for the failure to file timely reports.

- Authorizes the Tax Commissioner to require all or a class of motor fuel dealers to remit tax payments electronically, including through the Department of Taxation's website.
- Modifies the penalty for a motor fuel dealer's failure to remit tax payments electronically.
- Requires the monthly report the Commissioner is required to prepare showing information about motor fuel dealers to include each dealer's address and tax identification number.
- Allows the Commissioner to provide retail dealers with certain information about wholesaler dealers for the purpose of the retailer receiving a motor fuel tax refund for fuel lost through shrinkage and evaporation.
- Removes the requirement that a person apply to the Tax Commissioner for a refund permit before receiving certain motor fuel tax refunds.

Petroleum activity tax

- Renames the tax levied on the basis of gross receipts from the first sale of motor fuel in the state from the "motor fuel receipts tax" to the "petroleum activity tax" (PAT).
- Requires the Tax Commissioner to prepare a list of suppliers holding a PAT license each month and allows for public inspection of that list.

Tax credits

- Permits the Director of Development Services to reduce the amount, percentage, or term of a research and development loan tax credit if the loan recipient fails to comply with the terms of the loan agreement.
- Shortens the minimum holding period of investments, from five to two years, necessary for the investment to qualify for the small business investment income tax credit.
- Authorizes job creation and retention tax credits to be claimed against the PAT.
- Allows the recipient of a nonrefundable job retention tax credit to claim a credit initially awarded against the CAT against the PAT instead.
- Eliminates the part-year computation of the base used to compute the increase in an employer's Ohio income tax withholdings for the purpose of the job creation tax credit.

- Specifies that municipal corporations may award job creation or retention municipal income tax credits to taxpayers not awarded a corresponding state credit.

Tax administration and compliance

- Authorizes the Tax Commissioner to adopt rules requiring returns for any tax or fee administered by the Commissioner to be filed electronically or telephonically and for payments to be made electronically.
- Prescribes the date a document or payment sent by mail or electronically or delivered in person is considered to have been received by the Tax Commissioner.
- Prescribes the date a document sent by the Tax Commissioner by mail is considered to have been received by another person.
- Requires the Tax Commissioner to include interest when refunding any overpayments of natural gas distribution tax, kilowatt-hour tax, and tire fees.
- Authorizes the Department of Taxation to disclose information to the Development Services Agency that is necessary to ensure compliance with tax laws or to verify information provided to DSA regarding tax credits or other financial assistance.

PUCO for-hire motor carrier tax receipts

- Requires the Public Utility Commission of Ohio (PUCO) to provide to for-hire motor carriers, instead of a single receipt, a tax receipt for each of the carrier's motor vehicles for which a tax has been paid under the for-hire motor carrier law.
- Requires that the appropriate tax receipt be kept in each motor vehicle operated by the carrier.
- Requires the carrier to maintain records that track to which motor vehicle each tax receipt is assigned.

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CONTENT AND OPERATION

Sales and use tax

Confidentiality of vendor information

(R.C. 5703.21, 5703.212, 5715.49, and 5715.50)

The bill authorizes vendors and others required to hold a sales or use tax license whose business and home address is the same to apply to the Tax Commissioner to keep the address confidential. Current law prohibits the Tax Commissioner, Department of Taxation, county auditors, county boards of revision, and employees and agents of the foregoing from divulging most taxpayer information. However, the business address, vendor's license number, and active or inactive status of a vendor's license is excluded from this confidentiality requirement.

Under the bill, the holder of a vendor's license or a direct payment permit or a seller having a use tax account may apply to the Tax Commissioner to keep the street name and number associated with the license, permit, or account confidential. Upon the Commissioner's receipt of an application, the general confidentiality requirement begins to apply to the applicant's street name and number. Accordingly, the Commissioner, Department of Taxation, county auditors, county boards of revision, and employees and agents of the foregoing are prohibited from divulging the applicant's street name and number. The Commissioner is required to review the application within 30 days and determine whether the business address is the same as the address of the primary residence of the license holder, permit holder, account



holder, or any shareholder thereof. If the Commissioner determines that the address is the same, the confidentiality requirement continues to apply to the street name and number associated with the license, permit, or account. The Commissioner may remove confidentiality protection from that street name and number only if the Commissioner determines that the two addresses are not the same.

Cigarette and tobacco excise taxes

Ohio currently levies an excise tax on the sale, distribution, or use of cigarettes at a rate of \$1.25 per pack. In addition, any county government may levy a tax of up to 4.5¢ per pack for the purpose of funding the operation or servicing of debt of a sports facility, and Cuyahoga County may levy a tax of up to 30¢ per pack to support arts and cultural activities and facilities (Cuyahoga County currently levies both taxes at the maximum allowable rates; no other county levies a cigarette excise tax). The tax is paid primarily by wholesale dealers through the purchase of stamps that are affixed to packs of cigarettes. Retail sellers must pay the tax on cigarettes that are not taxed at the wholesale dealer level. A separate tax currently is levied on tobacco products other than cigarettes at the rate of 17% of the wholesale price. Revenue from the state cigarette and other tobacco product taxes is credited to the GRF.

Tax stamps and returns

(R.C. 5743.01, 5743.021, 5743.024, 5743.025, 5743.03, 5743.04, 5743.05, 5743.051, 5743.06 (repealed), 5743.112, 5743.52, and 5743.65)

The bill shifts the duty of selling cigarette tax stamps and receiving cigarette and tobacco product tax returns from the Treasurer of State to the Tax Commissioner. Under current law, cigarette tax stamps are sold by the Treasurer of State and by county treasurers that are appointed as deputies of the Treasurer of State for that purpose. Wholesale dealers, persons with untaxed cigarettes, and distributors and importers of other tobacco products are required to file returns with the Treasurer of State who, after marking the date of receipt, is required to transmit the return to the Commissioner. The bill instead requires that the Commissioner exclusively sell the cigarette tax stamps and that returns be made and filed directly to the Commissioner. Unlike current law with respect to sales by the Treasurer of State, the bill does not permit the Commissioner to sell cigarette tax stamps through designated agents.

In conjunction with the Commissioner assuming the role of selling the stamps and receiving the returns, the bill requires that amounts collected from charges for the costs of shipping cigarette tax stamps to wholesale dealers be credited to the cigarette tax enforcement fund rather than the cigarette tax administrative fund. Furthermore,



the bill eliminates provisions in current law authorizing the use of a metering device in lieu of tax stamps to show that the cigarette excise tax has been paid.

Tobacco product excise tax filing and payment

(R.C. 5743.52)

The bill changes the due date for reporting and paying the "other tobacco product" (i.e., noncigarette) excise tax from the last day of each month to the 23rd day of each month. The bill also requires reports and payments to be made to the Tax Commissioner instead of to the Treasurer of State.

Elimination of Tobacco Settlement Enforcement Fund

(R.C. 183.35, repealed)

The bill eliminates the Tobacco Settlement Enforcement Fund. The Fund is used by the Tax Commissioner to enforce provisions of law related to the sale of tobacco products that are not covered by the Tobacco Master Settlement Agreement, which settled various government lawsuits against the tobacco industry covering most major manufacturers.

Motor fuel excise tax

Excise taxes are imposed at a total rate of 28¢ per gallon of gasoline, diesel, and other forms of motor fuel sold or distributed in Ohio by fuel dealers, with the revenue devoted to highway-related purposes. The bill makes several changes to the law imposing the taxes.

Penalty for failure to file reports

(R.C. 5735.12)

The bill authorizes the Tax Commissioner to impose a penalty on a person that is required to file motor fuel reports but is not required to pay motor fuel excise tax, such as a person that transports motor fuel, for the person's failure to file timely reports. The penalty may be up to \$50. If the person does not pay the full amount of the penalty, the Commissioner may assess the person for the unpaid amount. An assessment is a formal notice of an unpaid liability and instructs the recipient how to appeal; it also establishes the beginning of the time period during which appeals may be made.

Under continuing law, the Commissioner may impose and assess a similar penalty on a motor fuel dealer for failing to timely file reports or pay motor fuel excise



tax, but the penalty for a motor fuel dealer may equal up to the greater of \$50 or 10% of the dealer's tax liability for the month reflected by the report or payment.

Electronic payments

(R.C. 5735.062)

The bill authorizes the Tax Commissioner to require any motor fuel dealer to remit motor fuel excise tax payments electronically under rules adopted by the Treasurer of State or through the Department of Taxation's website. The bill also modifies the penalty the Commissioner may impose for a dealer's failure to remit tax electronically if so required.

Electronic payment requirements

Under current law, if the amount of motor fuel tax remitted by a dealer exceeds \$600,000 in a calendar year, the dealer is required to make all future tax payments by electronic funds transfer, in accordance with rules adopted by the Treasurer of State. The Commissioner is required to certify a list of the dealers required to remit tax payments by electronic funds transfer to the Treasurer. The Treasurer may excuse a dealer from making payments by electronic funds transfer for good cause shown.

The bill removes the mandatory electronic funds transfer requirement and instead authorizes the Commissioner to adopt rules requiring dealers or any class of dealers to remit tax electronically, either in accordance with rules adopted by the Treasurer or through the Department of Taxation's website. The bill removes the requirement that the Commissioner certify to the Treasurer a list of dealers required to remit tax electronically. The bill also authorizes the Commissioner, instead of the Treasurer, to excuse a dealer from making payments electronically.

Penalty for failing to file electronically

Under current law, if a dealer required to make tax payments by electronic funds transfer fails to do so, the Commissioner may impose a penalty on the dealer not to exceed \$5,000 or 5% of the payment. The bill modifies this penalty. For the first reporting period the dealer fails to pay tax electronically, the penalty is the greater of \$25 or 5% of the amount of the payment. For each subsequent period of noncompliance, the penalty is the greater of \$50 or 10% of the payment.



Dealer's report

(R.C. 5735.07)

Under continuing law, the Tax Commissioner is required to report monthly certain information about motor fuel dealers that remit motor fuel tax and make that information available for public inspection. The bill modifies the required content of the monthly reports by requiring reporting of motor fuel dealers' addresses and tax identification numbers. Additionally, the bill authorizes the Commissioner to post the report on the Department of Taxation's website.

Evaporation and shrinkage allowance administration

(R.C. 5735.141)

The bill authorizes the Tax Commissioner to provide retail fuel dealers with information about "wholesale dealers" for the purpose of the retailer receiving a refund of motor fuel tax for fuel lost by the retail dealer through shrinkage and evaporation. Specifically, the Commissioner is authorized to furnish a wholesale dealer's federal identification number or other motor fuel tax account number to a retail dealer upon request. "Wholesale dealer" is not defined in the context of the motor fuel excise tax, but presumably refers to the dealers that are required to pay the tax.

Continuing law provides a shrinkage and evaporation allowance to retail dealers. Under continuing law, the allowance equals 0.5% of the tax on the motor fuel purchased by a retail dealer.¹

Vendee refund permit

(R.C. 5735.16 (repealed) and 5735.23)

The bill removes the requirement that a person obtain a permit before receiving certain motor fuel excise tax refunds. Current law requires a person to apply to the Tax Commissioner for a permit before receiving certain refunds of the tax. The permit is required before a person may receive any of the following motor fuel excise tax refunds:

- (1) A shrinkage and evaporation allowance.
- (2) A refund on fuel not used for the operation of a motor vehicle on Ohio highways or waters.
- (3) A refund on fuel used in transit buses.

¹ See Section 757.10 of Am. Sub. H.B. 51 of the 130th General Assembly.



(4) A refund on fuel used for school district, educational service center, or county board of developmental disability operations.

Petroleum activity tax

Name of tax

(R.C. 5736.06, 5736.09, 5736.13, and 5751.20; Section 5)

Beginning July 1, 2014, the commercial activity tax (CAT), as that tax currently applies to receipts from the sale or exchange of motor fuel, is replaced with a separate tax – referred to under current law as the "motor fuel receipts tax " (MFRT). The MFRT was enacted in 2013 by H.B. 59.

The bill changes the name of the MFRT to the "petroleum activity tax" (PAT).

The PAT is modeled on the CAT, but is based solely on receipts from one sale or exchange of motor fuel. Unlike the CAT, which may apply to multiple sequential transactions involving the same motor fuel, the PAT is designed to apply to only one transaction in the motor fuel distribution chain – the first transaction in which motor fuel is sold for delivery to a location in the state. The rate of the PAT is 0.65% of a taxpayer's receipts. Revenue from the tax is used to fund the same highway-related purposes motor fuel excise tax revenue is used to the extent the MFRT arises from fuel to be used on roads or waterways (after 1% is earmarked for administrative expenses). The remainder is credited to the GRF.

PAT supplier list

(R.C. 5736.041)

The bill requires the Tax Commissioner to prepare a list of suppliers holding an active PAT license each month. The Commissioner must allow public inspection of the list and may post the list on the Department of Taxation's website. The list must include each supplier's name, address, and PAT account number.

Continuing law requires suppliers subject to the PAT to obtain from the Commissioner and hold a license before distributing or importing motor fuel for Ohio consumption. Upon request, the supplier may cancel the license. The Commissioner may revoke the license if the supplier does not comply with the supplier's PAT obligations.

Tax credits

Research and development loan tax credit noncompliance

(R.C. 166.21)

Continuing law authorizes the Director of Development Services to provide low-interest loans to businesses engaged in research and development projects.² A business that receives such a loan may also claim a nonrefundable credit against the income tax or commercial activity tax for the amount of loan payments (principal and interest) the business made during the previous year, up to \$150,000.

The bill permits the Director to reduce the amount, percentage, or term of a research and development loan tax credit if the loan recipient does not comply with the terms of the loan agreement, including any terms related to job creation or job retention. Under current law, the Director must certify that each loan recipient is in compliance with its loan agreement each year, but is not explicitly authorized to disallow or reduce a credit in instances of noncompliance.

Business investment tax credit holding period

(R.C. 122.86; Section 3)

The bill shortens the minimum holding period of investments in smaller businesses, from five to two years, necessary for the investment to qualify for an income tax credit. Currently, investments made on or after July 1, 2013, must be held for at least five years. (There is a two-year holding period for investments made between July 1, 2011, and June 30, 2013.) Shortening the holding period also shortens the period during which the business must hold any assets it must acquire after receiving a qualifying investment.

Continuing law grants income tax credits for investors in businesses having not more than \$50 million in assets or \$10 million in annual sales and having specified minimum employment in Ohio (50 full-time equivalent employees in Ohio or at least one-half of its U.S. employment in Ohio). Within six months after an investment, a business must spend at least the amount of the investment to purchase or acquire assets or to pay employees (new or existing) in Ohio.

² "Eligible research and development projects" include projects "undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved product, process, technique, formula, or invention, a new product or process based on new technology, or the creative application of existing technology." R.C. 166.01.



Job creation and retention credits against the PAT

(R.C. 122.17, 122.171, and 5736.50; Section 4)

The bill authorizes job creation and retention tax credits to be claimed against the tax on the first sale of motor fuel in the state (currently known as the motor fuel receipts tax but renamed by the bill as the petroleum activity tax or PAT).

Under continuing law, the Tax Credit Authority, upon the application of a taxpayer and the recommendation of JobsOhio and the Director of Development Services, may enter into an agreement with a taxpayer to authorize the taxpayer to claim refundable credits for increasing the taxpayer's payroll (job creation credit). The Authority may also enter into an agreement with a taxpayer to authorize the taxpayer to claim a nonrefundable or, under certain circumstances, refundable tax credit for retaining jobs and making a capital investment in the state (job retention credit). Under current law, both credits may be claimed against the CAT, financial institutions tax, domestic or foreign insurance company premiums taxes, or personal income tax.

The bill authorizes the Authority to award job creation or retention credits that a taxpayer may claim against the PAT for tax periods beginning on or after July 1, 2014. The bill also permits the recipient of a nonrefundable job retention tax credit to claim a credit that the Authority initially awarded against the CAT against the PAT to the extent the taxpayer could not claim the full amount of that credit against the CAT.

Job creation tax credit computation

(R.C. 122.17(A))

The bill eliminates the part-year computation of the base used to compute the increase in an employer's Ohio income tax withholdings for the purpose of the job creation tax credit. Currently, an employer's credit amount depends on how much its annual Ohio income tax withholdings for employees exceeds those withholdings for a 12-month base period that ends when the credit agreement is approved (or, in some cases, recommended for approval). But if the credit is approved after the beginning of the employer's annual tax period, the base period for the first year's credit is shortened proportionately. The bill eliminates this part-year computation.

Municipal job creation and retention tax credits

(R.C. 718.15 and 718.151)

The bill specifies that a municipal corporation may award a job creation or retention credit against its income tax even if a state job creation or retention tax credit



is not awarded to the employer. Current law states that a municipal corporation may offer such a credit to an employer that receives a state job creation or retention credit.

Municipal corporations' authority to levy municipal income taxes is an aspect of their home rule powers conferred by Article XVIII, Section 3, Ohio Constitution.³ Although the General Assembly does not grant municipal corporations the authority to tax, it may limit their taxing authority or prohibit municipal taxes by express acts.⁴ Since the General Assembly has not enacted any law that expressly prohibits a municipal corporation from authorizing a municipal job creation or retention tax credit to an employer that was not awarded a state job creation or retention tax credit, it is not clear what effect, if any, the bill's amendment would have on municipal authority.

Tax administration and compliance

Electronic and telephonic tax filing

(R.C. 5703.059)

The bill authorizes the Tax Commissioner to adopt rules requiring returns for any tax or fee administered by the Commissioner to be filed electronically, filed through the online Ohio Business Gateway portal, or filed telephonically using the "televise" system. Additionally, the bill authorizes the Commissioner to adopt rules requiring payments for any of those taxes or fees to be made electronically or in another prescribed manner. The bill authorizes those rules to apply to returns filed or payments made after the rule's effective date rather than six months after the rule's effective date, as under current law.

Under current law, the Commissioner may adopt such rules only with respect to employer income tax withholding and the motor fuel tax, cigarette and tobacco product excise taxes, severance tax, use tax, CAT, financial institutions tax, motor fuel receipts tax (renamed the PAT under the bill), and horse racing taxes. Under continuing law, a taxpayer may apply to the Commissioner to be excused from the filing and payment methods otherwise required by such rules.

³ See *Zielonka v. Carrel*, 99 Ohio St. 220 (1919), and *Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St.3d 599 (1998).

⁴ Article XIII, Section 6 and Article XVIII, Section 13, Ohio Constitution; *City of Franklin v. Harrison*, 171 Ohio St. 329 (1960).



Receipt of tax payments and documents

(R.C. 5703.056, 5726.08 (repealed), 5727.47, 5733.30 (repealed), 5745.10 (repealed), 5747.08, and 5747.98)

The bill prescribes a date that a document or payment delivered by mail, electronically, or in person is considered to have been received by the Tax Commissioner and when a document mailed by the Commissioner is received by the recipient. Such dates determine whether tax returns, tax payments, and other tax filings are made by the prescribed deadlines, and when various time-limited responses must be made (e.g., a taxpayer's request for an administrative appeal hearing must be made within 60 days after receiving an assessment).

Under the bill, a document or payment is considered to have been received by the Commissioner or the recipient on the following dates:

Method of delivery	Receipt date of document or payment sent to Tax Commissioner	Receipt date of document sent by Tax Commissioner
Mail, including certified or foreign mail and approved delivery service	Date of postmark affixed by the postal or delivery service on the receipt provided to the document or payment's sender. If no postmarked receipt is issued to the sender, the receipt date is the date of the postmark on the package containing the payment or document.	Same. Same.
Electronically or by fax	Date on timestamp assigned by the electronic system first receiving the payment or document.	Not prescribed.
By personal service	Date delivered to the Commissioner's office during business hours.	Not prescribed.

The bill amends several statutory references in current law prescribing delivery dates for such documents and payments to be consistent with the dates of receipt prescribed above.

The bill also specifies that, for any statute that allows or requires a person to deliver a document to the Commissioner or the Board of Tax Appeals by personal



service, that person may, to effectuate that delivery, instead use a delivery service approved by the Tax Commissioner. Under continuing law, the Commissioner may authorize the use of a delivery service if the service meets certain criteria, including that the service is comparable to the United States Postal Service and available to the public.

Tax refund procedures

(R.C. 3734.905 and 5727.91)

The bill changes the refund procedures for overpayments of the natural gas distribution tax, kilowatt-hour tax, and tire fees to conform with the procedures associated with most other state taxes. Specifically, the bill requires the Tax Commissioner to include interest when refunding any overpayment of such taxes and fees. Under current law, interest is included only when the overpayment is due to an illegal or erroneous assessment.

The natural gas distribution tax is an excise tax on natural gas distribution companies for the purpose of raising revenue for the General Revenue Fund and reimbursing taxing authorities for past reductions in public utility property taxes. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company and distributed through the "meter of an end user in this state."⁵

The kilowatt-hour tax is levied on electric distribution companies with end users in Ohio. Revenue funds the GRF and partly reimburses taxing authorities for past reductions in public utility property taxes.⁶

The state currently levies a \$1 per-tire fee on the sale of tires. Fifty cents of the fee is used to fund the scrap tire management program and the remaining 50¢ is credited to the Soil and Water Conservation District Assistance Fund. The fee sunsets on June 30, 2016.⁷

Information sharing: Department of Taxation and Development Services

(R.C. 5703.21(C)(16))

The bill authorizes the Department of Taxation to disclose information to the Development Services Agency that is necessary to ensure compliance with tax laws or

⁵ R.C. 5727.811, not in the bill.

⁶ R.C. 5727.81, not in the bill.

⁷ R.C. 3734.901, not in the bill.

to verify information provided to DSA by applicants for or recipients of tax credits or other financial assistance. Such disclosure is authorized only if it is solely to facilitate the evaluation of tax credits, grants, or loan. Disclosure continues to be prohibited if it would violate federal taxpayer confidentiality law.

Currently, taxpayer information possessed by DOT may not be disclosed to anyone unless the law specifically permits disclosure.

PUCO for-hire motor carrier tax receipts

(R.C. 4921.13 and 4921.19)

The bill requires the PUCO to issue to a for-hire motor carrier a tax receipt for each motor vehicle for which a tax has been paid. The tax receipts are issued if the carrier has done the following:

- Paid the applicable taxes upon issuance of a certificate of public convenience and necessity and the annual taxes imposed thereafter;
- Met the applicable requirements to obtain a certificate of public convenience and necessity;
- Filed with the PUCO a complete and accurate annual update form;
- Provided proof of financial responsibility that remains in effect;
- Paid applicable registration fees under rules adopted by the PUCO pursuant to the federal Unified Carrier Registration Plan and any forfeitures imposed for any violations of the motor carrier law.

The bill also requires the carrier to keep the appropriate tax receipt in each motor vehicle operated by the carrier and to maintain tax receipt records that specify to which motor vehicle each tax receipt is assigned. Currently, after a carrier pays the applicable taxes and meets the above conditions, the PUCO issues a single tax receipt to a carrier for all motor vehicles operated by the carrier. The carrier must maintain the original copy of the tax receipt at the carrier's primary place of business and also must carry a copy in each motor vehicle operated by the carrier.

In a conforming change, the bill specifies that a carrier may not be issued *any tax receipt* rather than *a tax receipt* if the conditions described above are not met.



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