DEPARTMENT OF TAXATION

Income tax

- Reduces income tax rates in all brackets by 7% beginning with taxable years that begin in 2013.

- Prohibits an individual income taxpayer from claiming a personal exemption or a personal exemption credit for a taxable year if another taxpayer may claim the individual as a dependent.

- Specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf.

- Extends an income tax deduction for retired military personnel pay to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS).

- Reconciles a timing issue related to the annual inflation indexing adjustment of income tax brackets and personal exemption amounts.

- Requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment of Ohio-sourced income to submit the request with a return or amended return filed on or before the due date.

- Clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable allocation and apportionment of business in the state.

Sales, use, and lodging taxes

- Prescribes a method for the collection of sales and use tax on lodging sold by a hotel intermediary – i.e., a person other than a hotel that contracts with hotels to sell lodging.

- Prohibits counties, townships, or municipal corporations from enacting or amending a lodging tax until the subdivision extends its lodging tax base to include services provided by a hotel intermediary and prescribes a method for collection of the tax.

- Prescribes new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and therefore required to register with the Tax Commissioner and collect and remit use tax, including sellers that enter into an agreement with Ohio residents to refer potential customers to the seller.

- Allows a seller presumed to have substantial nexus with Ohio to rebut that presumption.

- Requires a person or that person's affiliates, before selling or leasing tangible personal property or services to a state agency, to register with the Commissioner and collect and remit use tax.

- Expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" Internet sales and use tax legislation by Congress.

- Specifies that a "remote" seller is not legally required to collect use tax if the seller has $1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax.

- Creates the Remote Seller Administration Fund, made up of 0.5% of voluntary Ohio use tax collections by out-of-state sellers that currently are not legally required to collect the tax ("remote sellers"), to offset the cost of administering taxes collected by remote sellers.

- Earmarks all voluntary Ohio use tax collections by remote sellers, which are not deposited to the Remote Seller Administration Fund, for deposit in the Income Tax Reduction Fund.

- Specifies that Ohio sales tax does not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution.

Other excise taxes

- Exempts from "gross casino revenue," for the purpose of calculating the casino tax, bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period.

- Extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

- Allows the Tax Commissioner to deny the license application of a cigarette dealer, manufacturer, or importer if the applicant has not submitted tax returns, payments, or information that, to the Commissioner's knowledge, are due at the time of the license application.

- Requires that the motor fuel excise tax on liquid natural gas be measured in pounds, rather than gallons, and specifies a gallon-equivalent standard for pounds of liquid natural gas for the purpose of calculating the tax.

- Requires a motor fuel dealer that sells or discontinues the dealer's business to notify the Tax Commissioner that the business has been sold or discontinued and of the purchaser's contact information.

- Specifies that, for the purpose of an agreement to pledge county cigarette or alcoholic beverage tax revenue for the construction or renovation of a sports facility, tax revenue includes revenue from taxes levied by the legislative authority of a charter county.

Commercial activity tax

- Excludes from the taxable gross receipts base of the commercial activity tax (CAT) receipts of licensed agricultural commodity handlers from the sale of agricultural commodities.

- Eliminates the $500,000 penalty on operators of distribution centers that improperly qualified its suppliers for the commercial activity tax exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the unpaid supplier tax liability.

- Authorizes the Tax Commissioner to request from a distribution center that improperly qualified as QDC a list of all suppliers of the distribution center along with the corresponding costs of property that is used to determine the improper exclusion.

- Creates a temporary committee of General Assembly members to review and recommend reforms and improvements to the commercial activity tax (CAT) on or before October 31, 2013.

Property taxes

- Allows a school district that levies an existing combined levy for current expenses and permanent improvements to replace or renew that levy solely for the purpose of funding general permanent improvements.

- Authorizes a school district to replace an existing combined levy for a term of years different from the term for which the original tax was levied.

- Specifies that all new combined levies must be levied for current expenses and general (not specific) permanent improvements.

- Creates a tax exemption for real property used primarily for meetings and administration of long-standing fraternal organizations that provide financial support for charitable purposes.

- Extends by five years the deadlines by which the owner of a qualified energy project must submit a property tax exemption application, begin construction, and place into service an energy facility using renewable energy resources or advanced energy technology to qualify for an ongoing real and tangible personal property tax exemption.

Local Government Fund and other revenue distributions

- Requires that, for fiscal year 2014 and thereafter, distributions to each county from the Local Government Fund must be at least $750,000 or the amount distributed to the county in FY 2013, whichever is less.

- Authorizes the Director of Budget and Management (OBM) to use commercial activity tax (CAT) revenue derived from receipts from the sale of motor fuel to compensate the GRF for GRF-sourced debt service on state-issued bonds whose proceeds the Ohio Public Works Commission (OPWC) awarded to fund local infrastructure projects that are highway-related.

- Requires the Director of OBM to transfer to the Highway Operating Fund CAT revenue derived from receipts from the sale of motor fuel remaining after the GRF is compensated for that debt service.

- Imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund.

- Permits the Commission to retain up to 5% of the share of casino tax revenue transferred to the fund for operating expenses necessary for the administration of the fund.

- Requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically.

- Changes the date by which the Tax Commissioner must certify to county auditors the estimated amount each county is to receive from the Public Library Fund.

- Postpones the due date for November tangible personal property tax "replacement payments" to school districts to the last day of the month.

Tax credits; administration and compliance

- Increases the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee from $5 million to $10 million.

- Eliminates the requirement that the owner of a historic building who has entered into a pass-through agreement with a qualified lessee for purpose of the federal rehabilitation tax credit must attribute qualified rehabilitation expenditures to the qualified lessee.

- Provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount.

- Requires the Tax Commissioner to calculate interest charged after an assessment has been issued, but before the assessment has been certified to the Attorney General for collection, based on tax liability only.

- Requires the Tax Commissioner to deliver a tax notice to a person by ordinary mail, instead of by certified mail or personal or delivery service, if the person does not timely access the notice electronically.

- Requires the Department of Taxation, to publish a method of online registration for electronic income tax filing that is accessible to all individuals, trusts, and pass-through entities required to file income tax returns.

- Requires annual taxpayers of the CAT, like quarterly taxpayers, to pay the tax electronically and, if required by the Tax Commissioner, file electronic returns.

- Prescribes minimum penalties for the failure to submit an electronic CAT return or payment, equal to $25 for each of the first two violations and $50 for each subsequent violation, that apply if the current law penalties of 5% or 10% of the tax due, respectively, do not exceed those amounts.

- Expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and filing of returns for, the CAT and financial institutions tax.

- Requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically.

- Specifies that payment for severance tax refunds be derived from the proceeds of the same severance tax against which the refund is claimed.

- Authorizes the Department of Natural Resources to publicly disclose otherwise confidential tax information furnished by the Department of Taxation to enforce oil and gas regulatory laws.

- Excuses the Tax Commissioner from issuing any tax refund if the amount of the refund is $1 or less, and excuses taxpayers from paying a tax if the total amount due with the taxpayer's return is $1 or less.

- Provides a single rule for the accrual of interest on income tax refunds, and removes two provisions of current law that provide separate rules for the accrual of interest on refunds arising from overpayments under certain circumstances.

- Eliminates the Discovery Project Fund, which currently finances the Department of Taxation's implementation and operation of the Tax Discovery Data System, which is devoted to identifying noncompliant taxpayers and analyzing revenue.

- Eliminates the requirement that tax refunds be paid from sales tax receipts if current receipts from another tax do not exceed refunds required to be paid against that tax.

- Includes estate taxes among other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax.

- Beginning in 2014, applies the interest on an assessment for wireless 9-1-1 charges to only the portion of the assessment that consists of wireless 9-1-1 charges due.

- Removes provisions specifying how the interest on an assessment for wireless 9-1-1 charges and assessments are to be remitted.

- Renames the fund receiving income tax contribution (refund "check-off") funds the "Income Tax Contribution Fund."

Income tax

The bill reduces income tax rates, bars the same person from claiming more than one personal exemption or credit, revises filing requirements for some pass-through entity investors, and corrects the timing of inflation indexing adjustments.

Currently, the income tax is levied on individuals, estates, and some trusts. The tax base for individuals is federal adjusted gross income after several deductions and a few additions; for estates and trusts, the base is federal taxable income after several additions and deductions. An $88 credit is granted for individuals filing a return (joint or individual) showing tax due, after personal and dependent exemptions, of $10,000 or less; the effect of the credit is to exempt such filers from the income tax. The tax applies to residents, and to nonresidents who have income that is attributable to Ohio under statutory attribution rules. For residents who have income taxable by another state with an income tax, a credit is available to offset the tax paid to other states; for nonresidents who have income attributable to Ohio and another state, a credit is allowed to the extent the income is not attributable to Ohio.

Rate reductions

(R.C. 5747.02(A); Section 803.80)

The bill reduces income tax rates in all brackets by 7% beginning with taxable years that begin in 2013.

Under current law, the income tax is levied at rates (for 2012) ranging from 0.587% for taxable income up to $5,200 to 5.925% for taxable income above $208,500. There are nine income brackets with increasingly greater rates assigned to higher income brackets.

Limits on personal exemptions and $20 credit

(R.C. 5747.022 and 5747.025; Section 803.80)

Continuing law allows an income tax taxpayer to claim a personal exemption for the taxpayer, the taxpayer's spouse (if filing a joint return), and the taxpayer's dependents. The personal exemption amount is adjusted each year; for 2012, the amount is $1,700. In addition, the taxpayer may claim a $20 credit for each personal exemption claimed (e.g., a taxpayer who claims three personal exemptions may claim a credit equal to $60).

Under current law, individuals who are claimed as a dependent on another taxpayer's return may also claim a personal exemption and exemption credit for themselves on their own tax return. The bill eliminates this option, and instead specifies that, beginning with taxable years beginning in or after 2013, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

The limitation applies to taxable years beginning in 2013 or thereafter.

Composite returns of pass-through entities

(R.C. 5747.08(D); Section 803.80)

The bill specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf. This apparently includes nonresident investors with no other Ohio-source income who currently are not permitted to file an individual return if the entity includes them in a composite return. The provision applies to taxable years beginning in or after 2013.

Currently, investors who are Ohio residents or who are nonresidents with other Ohio-source income, and on whose behalf the pass-through entity files a composite return (IT 4708), may file an individual return and claim the credit, but nonresident investors with no other Ohio-source income may not unless the Tax Commissioner allows. When a composite return is filed, all the income of investors included in the return is taxed at the highest marginal tax rate (5.925%) and the investors are not allowed the personal and dependent exemptions or the $20 exemption credit; the only credits available to them are business-related credits (which do not include the nonresident credit). Also, net operating loss carryforwards are not reflected in the composite return, as they are on an individual investor's return. By filing an individual return, an investor is able to claim the personal and dependent exemptions (or $20 credit), claim any nonbusiness credits otherwise available to the investor, reflect NOL carryforwards in Ohio taxable income, and pay tax on the basis of a lower net effective tax rate because not all the investor's taxable income is taxed at the highest rate as it is in the composite return. When the individual return is filed, the investor also may claim a refundable credit for the investor's share of the tax the entity paid with the composite return which yields a refund to the extent the investor's share of the composite tax exceeds the investor's tax computed on an individualized basis.

NOAA and PHS commissioned corps retirement pay deduction

(R.C. 5747.01(A)(26) and (GG); Section 803.80)

Ohio's income tax law permits a taxpayer to deduct from adjusted gross income amounts received as retired military personnel pay for service in the U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps, their respective reserve components, or the National Guard. A surviving spouse or former spouse of such a taxpayer receiving benefits under the survivor benefit plan on account of the taxpayer's death also may deduct those benefits.

The bill extends the deduction to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration and to retirees of the Commissioned

Corps of the Public Health Service by permitting retirees of all the "uniformed services" to claim the deduction. Surviving spouses and former spouses covered by a survivor benefit plan of such retirees also qualify for the deduction.

In the bill, "uniformed services" has the same meaning as in federal law: the Armed Forces, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service. Under federal law, "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Taxpayers qualifying for the deduction may claim it for taxable years that end on or after the bill's effective date.

Inflation indexing adjustment

(R.C. 5747.02 and 5747.025; Section 803.80)

The bill reconciles a timing issue related to the annual inflation indexing adjustment of income tax brackets and personal exemption amounts. The bill requires the Tax Commissioner to adjust both items, and calculate the factor used to make the adjustments, in August. The provision applies to taxable years beginning in or after 2013.

Current law requires the Tax Commissioner to adjust the tax brackets each July, but does not require the Tax Commissioner to compute the adjustment factor (the percentage by which the federal gross domestic product deflator increased during a calendar year), or to adjust personal exemption amounts, until September.

Requests for alternative apportionment of income

(R.C. 5747.21; Section 803.80)

Under continuing law, nonresidents who have Ohio-source income may claim a tax credit equal to the Ohio tax on any income that is not allocated or apportioned to Ohio under statutory guidelines. Generally, business income is apportioned to Ohio on the basis of three factors: (1) property used in business in Ohio, (2) payroll paid in Ohio, and (3) sales made in Ohio. Each of these factors is used as an indication, for tax purposes, of a taxpayer's business activity in Ohio as compared to business activity everywhere. The factors are weighted such that property used in Ohio and payroll paid in Ohio each account for 20% of the taxpayer's business activity in Ohio and sales made by the taxpayer in Ohio accounts for the remaining 60% of the taxpayer's activity. Nonbusiness income generally is allocated to Ohio on the basis of where the property or activity giving rise to the income is located.

The Tax Commissioner may adopt rules providing for alternative methods of computing business and nonbusiness income applicable to all taxpayers and pass-through entities, to classes of taxpayers and pass-through entities, or only to taxpayers and pass-through entities within a certain industry. Furthermore, nonresident taxpayers and pass-through entities are permitted to petition the Tax Commissioner for alternative apportionment if the method of apportionment prescribed by law or by rule does not fairly represent the extent of Ohio business activity of the taxpayer or pass-through entity.

The bill requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment to submit the request with a return or amended return filed by the due date. Current law does not expressly mandate that the return or amended return be filed by the due date. The bill also clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable apportionment of business in the state. Current law references only equitable allocation.

Sales, use, and lodging taxes

Hotel intermediary sales and use tax

(R.C. 5739.01, 5739.12, 5741.01, and 5741.12; Section 803.190)

Under continuing law, state and local sales and use tax applies to transactions by which lodging by a hotel is or is to be furnished to transient guests, and the tax is collected from a customer at the time the price is paid and remitted by a vendor to the state. The bill prescribes a method by which sales and use tax is collected and remitted when lodging is furnished through a customer's use of a hotel intermediary. A hotel intermediary is a person other than a hotel, such as a web site service, that contracts with hotels to sell reservations for lodging to transient guests.

The bill requires a hotel intermediary to collect from a customer the sales or use tax on amounts paid by the customer to book a hotel room.[160] The intermediary must remit to the state all tax collected by the intermediary. However, if the intermediary fails to collect or remit the full amount of tax, the hotel in which the transient guest will lodge is required to collect from the guest and remit the uncollected or unremitted tax.

[160] The "As Introduced" version of the bill expanded the sales and use tax base to include most services, which would have included services provided by a hotel intermediary beyond the amount paid for a hotel room, which is already subject to the tax under continuing law. As a result of the subsequent removal of the sales and use tax base expansion provisions, the current bill inadvertently does not expand the sales and use tax to include services provided by a hotel intermediary.

Hotel intermediary lodging tax

(R.C. 5739.01, 5739.081, and 5739.09; Section 803.190)

Under continuing law, counties, townships, and municipal corporations are authorized, by resolution or ordinance, to levy taxes on transactions by which lodging by a hotel is or is to be furnished to transient guests. The bill requires counties, townships, or municipal corporations, before amending or enacting a lodging tax ordinance or resolution, to also levy the tax on any amount paid by a transient guest to a hotel intermediary for the intermediary's services.

Similar to the collection procedures for sales and use tax, the bill requires a hotel intermediary to collect from a customer the lodging tax on amounts paid by the customer for the intermediary's services and amounts paid by the customer to book a hotel room. The intermediary must remit to the subdivision or subdivisions that levy the applicable lodging tax all tax collected by the intermediary. If the intermediary fails to collect or remit the full amount of tax, the hotel in which the transient guest will lodge is required to collect from the guest and remit to the subdivision or subdivisions the uncollected or unremitted tax.

"Substantial nexus" standards

(R.C. 5741.01 and 5741.17; Section 803.190)

Under continuing law, state and local sales tax applies to every retail sale conducted in Ohio. State and local use tax applies to sales of tangible personal property or taxable services made outside Ohio in which the property or service is used or stored in Ohio and on which sales tax was not collected. Sales and use taxes are levied at the same rate. Under U.S. Supreme Court precedent, only sellers that have a "physical presence" with a state may be required to and remit sales or use tax from a customer in that state.[161] Otherwise, a state cannot require a seller to collect and remit use tax. In instances where use tax is not collected by the seller, continuing Ohio law requires that the consumer remit use tax directly to the state.

Continuing law codifies the physical presence requirement by requiring sellers with a "substantial nexus" with Ohio to collect and remit use tax from Ohio customers. Current law provides several explicit examples of circumstances under which an out-of-state seller has a substantial nexus with Ohio.

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[161] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (catalog seller that delivered products to North Dakota customers by an out-of-state common carrier outside the state did not have a physical presence with North Dakota and was not required to collect and remit the state's sales tax).

The bill prescribes new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and are therefore required to register with the Tax Commissioner to collect and remit use tax. A seller is presumed to have substantial nexus with Ohio in any of the following circumstances:

(1) The seller uses a place of business in Ohio operated by the seller or another person, other than a common carrier. Current law includes such a seller if the place of business is operated by the seller, a franchisee, a member of an affiliated group, or an employee or agent of the seller.

(2) The seller regularly uses employees or other agents and persons to conduct the seller's business or that use similar trademarks or trade names as the seller, or that sell a similar line of products under a business with the same industry classification as the seller. Current law includes only a seller that regularly employs or engages individuals in Ohio to conduct the seller's business.

(3) The seller uses any person, other than a common carrier, to receive or process orders, promote, advertise, or facilitate customer sales, perform maintenance, delivery, and installation services for the seller's Ohio customers, or facilitate delivery by allowing Ohio customers to pick up property sold by the seller. Current law includes a seller who uses a person in Ohio to receive or process the seller's orders.

(4) The seller is a hotel intermediary that furnishes lodging in hotels located in Ohio (see section on hotel intermediaries).

(5) The seller enters into an agreement to pay one or more Ohio residents to refer potential customers to the seller if gross sales to customers referred to the seller by all such residents exceed $10,000 during the preceding 12 months. The customer may be referred by a link on a web site, an in-person oral presentation, or through telemarketing. This nexus relationship has been referred to as "click-through nexus."

A seller is presumed to have substantial nexus with Ohio if, as under current law, the seller makes regular deliveries of tangible personal property to Ohio other than by a common carrier or the seller rents, leases, or offers on approval tangible personal property to Ohio customers. In addition, the bill eliminates the following bases in current law that would cause a seller to have substantial nexus with Ohio:

(1) The seller is registered to do business in Ohio. Current law includes such sellers, except sellers registering with the streamlined sales tax central registration system.

(2) The seller is a member of an affiliated group of entities, at least one other member of which has substantial nexus with Ohio. Current law includes such sellers.

(3) The seller has any other contact with Ohio that forms the basis of substantial nexus as allowed under the U.S. Constitution's Commerce Clause. Current law includes such sellers.

Substantial nexus presumption

Current law provides several explicit examples of when a remote seller has substantial nexus with Ohio. The bill transforms the examples to rebuttable presumptions. A seller that has substantial nexus with Ohio, except for a seller that has click-through nexus, may rebut that presumption by demonstrating that the activities conducted by a person on the seller's behalf are not significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales.

For a seller presumed to have click-through nexus with Ohio, the presumption may be rebutted by submitting proof that each Ohio resident the seller engaged to refer potential customers on the seller's behalf did not engage in activity significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales during the preceding 12 months. The proof may consist of sworn written statements from each resident stating that the resident did not engage in solicitation in Ohio on behalf of the seller in the preceding 12 months, provided the statements were obtained and provided in good faith.

Out-of-state seller doing business with the state

The bill requires an out-of-state seller and the seller's affiliates, before the seller sells or leases tangible personal property or services to a state agency, to register with the Tax Commissioner to collect and remit use tax, even if that seller would not otherwise have substantial nexus with Ohio.

"Marketplace Fairness Act of 2013"

(Section 757.50)

The bill expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" legislation (or other similar legislation) by U.S. Congress. H.R. 684 and S. 336, which were introduced in the U.S. House of Representatives and Senate, respectively, would authorize qualifying states to compel online and catalog retailers to collect sales tax at the time of a transaction regardless of whether the retailer has a "substantial nexus" with the state.

The authority created under the federal bill would extend only to states that are members of the Streamlined Sales and Use Tax Agreement or that meet a statutorily-prescribed alternative standard for sales and use tax simplicity. Ohio is an associate member of the Streamlined Sales and Use Tax Agreement, meaning that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively. As such, Ohio does not qualify as a "member state" under the federal legislation. It appears that legislative action by the General Assembly would be necessary for Ohio to qualify under the "alternative standard." However, since the federal "Marketplace Fairness" legislation is currently pending in Congress and is not law, it is not yet clear what that action would eventually entail.

The bill also specifies that the intent of the conforming legislation is not to create a nexus between Ohio and remote sellers for any tax other than those imposed under Chapters 5739. and 5741. of the Revised Code (sales and use tax). The federal "Marketplace Fairness" legislation explicitly states that it does not "create any nexus between a person and a State or locality."

The bill does not exempt any person from collecting use tax that is required to do so under current law. The provisions pertaining to remote small sellers appear to anticipate the application the "Marketplace Fairness" legislation if it is enacted in its current form. Specifically, the bill codifies the small seller exception found in subsection (c) of that legislation into Ohio sales and use tax law.

Remote Seller Administration Fund

(R.C. 5741.032)

The bill creates the Remote Seller Administration Fund to offset the cost of administering taxes collected and remitted by remote sellers. The fund is made up of 0.5% of voluntary Ohio use tax collections by out-of-state sellers that are not legally required to collect the tax (i.e., "remote sellers"). The treasurer of state must transfer this amount to the Fund before July 31 each year.

Use tax collections by remote sellers for Income Tax Reduction Fund

(R.C. 5741.03)

The bill earmarks all voluntary Ohio use tax collections by remote sellers, which are not deposited to the Remote Seller Administration Fund, for deposit in the Income Tax Reduction Fund. The deposit is required within 45 days after the end of each month. The revenue would be added to the surplus revenue for which an income tax rate reduction may be determined. Under continuing law, the amount of the tax rate reduction is based on the amount of "surplus revenue" that is available after the balance in the Budget Stabilization Fund equals 5% of annual General Revenue Fund expenditures and certain inter-year fund carryovers are made.

Under current law, all use tax collections are deposited to the state General Revenue Fund.

Remote small sellers

(R.C. 5741.01(R) to (T) and 5741.17)

The bill specifies that a seller is not legally required to collect Ohio use tax if the seller has $1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax (which the bill defines as "remote small sellers"). For the purpose of calculating gross annual receipts of a remote small seller, all related persons must be aggregated, and persons with one or more owner relationships must be aggregated if those relationships were designed for the purpose of qualifying as a remote small seller. (Relationships would be determined under certain federal income tax provisions that describe relationships between family members, trust fiduciaries and beneficiaries, and persons holding majority ownership or control in other persons.) The purchaser's liability for any use tax that a seller has not collected and remitted to the state is not affected.

Under continuing law, use tax applies to sales made outside Ohio to a purchaser for use in Ohio. The location where a sale is made is generally deemed to be where the order is received by the seller. Out-of-state sellers lacking a "substantial nexus" with Ohio – i.e., lacking one of several specified forms of physical presence in Ohio – are not required under state or federal law to collect use tax for the state, but some may voluntarily collect the tax and remit it to the state.

Sales tax exemption for sales not taxable under federal law or the Ohio Constitution

(R.C. 5739.02(B)(10))

The bill specifies that Ohio sales and use taxes do not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution. Current law refers only to the U.S. Constitution. The effect, if any, is not clear, because federal and state constitutional provisions, and federal laws, prohibitions or limitations on the state's power to tax apply even in the absence of this provision.

Other excise taxes

Gross Casino Revenue Tax exemption for bad debts

(R.C. 5753.01)

A casino operator is required to pay a tax of 33% of the operator's gross casino revenue received at a casino. Under the bill, "gross casino revenue" does not include bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period to the extent not previously excluded. "Bad debts" are any debts that have become worthless or uncollectible in a prior tax period, have been uncollected for at least six months, and may be claimed as an itemized deduction for wholly worthless or partially worthless debt under federal income tax law, or could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" do not include repossessed property, uncollectible amounts on property that remains in the possession of the casino operator until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The bill extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape and wine industry, and the remainder is credited to the General Revenue Fund (GRF). The amount credited to the Ohio Grape Industries Fund is scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2013.

Cigarette license approval

(R.C. 5743.15)

Under continuing law, cigarette manufacturers, dealers, and importers must obtain a license to operate in the state. Before issuing such a license, the Tax Commissioner must verify that the applicant is in compliance with Ohio's tax laws. The bill specifically requires the Tax Commissioner to confirm that the applicant has filed any tax returns, paid any outstanding taxes or fees, and submitted any required information that, to the Tax Commissioner's knowledge, are due at the time of application.

Motor fuel excise tax on liquid natural gas

(R.C. 5735.012 and 5735.013; Section 803.180)

Ohio levies an excise tax on all motor vehicle fuel used, distributed, or sold within Ohio and used to generate power for the operation of motor vehicles. The rate of the tax is 28¢ per gallon.

Under current law, the tax on liquid natural gas, like all other forms of motor fuel, is measured in gallons. The bill instead requires that the tax on liquid natural gas be measured in pounds. In order to apply the per-gallon tax rate to liquid natural gas, the bill establishes a gallon-equivalent standard equal to either (1) the diesel gallon-equivalent standard for liquid natural gas adopted by the National Conference on Weights and Measures or (2) if no such standard has been adopted, 6.06 pounds of liquid natural gas. The provision begins to apply in the first month that begins after the provision takes effect.

Notice of fuel dealer sale or closing

(R.C. 5735.34)

Continuing law requires a motor fuel dealer that sells or discontinues the dealer's entire business to file a final motor fuel tax return within 15 days after the sale or discontinuance. The bill additionally requires the dealer, within that time period, to notify the Tax Commissioner in writing that the dealer's business has been sold or discontinued and, if the business was sold, of the contact information of the purchaser.

Cuyahoga County alcoholic beverage and cigarette tax revenue

(R.C. 307.673)

Continuing law authorizes the board of county commissioners of a county that levied a local cigarette or alcoholic beverage tax in 1995 (Cuyahoga County) to pledge revenue from such taxes for the construction or renovation of a sports facility. The bill adds that such a pledge may include revenue from cigarette or alcoholic beverage taxes levied by the "legislative authority of a charter county." (Since 2011, Cuyahoga County has operated as a charter county.)

Under continuing law, references in the Revised Code to a board of county commissioners also refer to the legislative body of a charter county if that body exercises the same functions as a board of county commissioners under the county's charter.[162]

Commercial activity tax

CAT exclusion for grain sold by grain handlers

(R.C. 5751.01; Section 803.90)

The bill excludes from the taxable gross receipts base of the CAT the receipts of agricultural commodity handlers licensed by the Department of Agriculture from the sale of agricultural commodities.

Under continuing law, agricultural commodities include grains such as barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, or speltz, or any other crop designated by the Director of Agriculture, excluding grains or other crops used for seed. Generally, an agricultural commodity handler is a person that purchases agricultural commodities from producers in excess of 30,000 bushels annually or operates a facility for the receiving, storing, shipping, or conditioning of agricultural commodities.

The CAT is an annual excise tax imposed on businesses for the privilege of doing business in Ohio that is based on a business' taxable gross receipts. Taxable gross receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. There are currently over 35 other categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.

Penalties for improperly excluded qualified distribution center receipts

(R.C. 5751.01(F)(2)(z))

The bill replaces the $500,000 penalty enacted earlier in 2013 by S.B. 28 of the 130th General Assembly on operators of distribution centers that improperly qualify as a qualified distribution center (QDC). Instead of the $500,000 penalty, the operator of such a QDC would be liable for the operator's "supplier tax liability," which equals the commercial activity tax that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate, less the tax actually paid by such suppliers. The penalty is substantially similar to the penalty imposed under the law prior to S.B. 28 of the 130th General Assembly. The difference is that, prior to S.B. 28, the law required ineligible QDC operators to pay all tax, interest, and penalties on the improperly excluded receipts of the QDC's suppliers. Under the

[162] R.C. 1.62.

bill, supplier tax liability explicitly excludes any interest or penalties on the unpaid amount.

The bill authorizes the Commissioner to request from a distribution center that is improperly issued a qualifying certificate a list of all suppliers of the distribution center along with the corresponding costs of qualified property for the qualifying year at issue. The purpose of the list is to assist the Commissioner in calculating the operator's supplier tax liability. The operator of such a distribution center is required to provide such information within 60 days of the Commissioner's request.

Existing QDC exclusion

The CAT is an annual excise tax imposed on businesses for the privilege of doing business in Ohio. The tax base or measure for the CAT is "taxable gross receipts." Generally, taxable gross receipts are a company's gross receipts that are attributed to the company's Ohio business activity as prescribed under the "situsing" or attribution rules. Taxable gross receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income.

Continuing law excludes from the CAT base a percentage of receipts suppliers of a QDC derive from property they ship to the QDC. A QDC includes a warehouse or other similar facility in Ohio that has obtained a certificate from the Tax Commissioner indicating that the facility's suppliers qualify for the exemption. To qualify as a QDC, all persons operating the center must have had more than 50% of the cost of the property shipped from the center to locations sitused outside Ohio, using existing CAT situsing rules, for a 12-month period and must have had cumulative costs from its suppliers of at least $500 million for that period. To qualify for the associated CAT exclusion, a supplier must deliver property to the QDC certificate holder solely for further shipping by the center to another location inside or outside Ohio. The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or process at the distribution center.

The QDC operator must submit an annual fee of $100,000 for each year the QDC is issued a qualifying certificate. Under current law, the Commissioner may assess this annual fee in the same manner as taxes, penalties, and interest due under the CAT may be assessed. The bill eliminates the Commissioner's authority to assess the fee in this manner.

Commercial activity tax review committee

(R.C. 757.30)

The bill creates a temporary committee composed of eight members of the General Assembly to review and recommend reforms and improvements to the CAT. The members include two minority and two majority members of the House of Representatives, including the chair of the House Ways & Means Committee, and two minority and two majority members of the Senate, including the chair of the Senate Ways & Means Committee. The House committee members are appointed by the Speaker of the House, and the Senate members are appointed by the President of the Senate.

The committee, which is a public body for purposes of Ohio's open meetings law (R.C. 121.22) and may accept testimony, is chaired jointly by the House and Senate Ways & Means Committee chairs and meets monthly beginning in July 2013. On or before October 31, 2013, the committee is required to submit a report with the committee's recommendations for reforming and improving the CAT to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House.

The committee terminates by operation of law after October 31, 2013.

Property taxes

School district combined levies for current expenses and improvements

(R.C. 5705.192, 5705.217, 5705.218, and 5705.25)

Continuing law allows a school district to levy a property tax for both current expenses and permanent improvements through a single ballot question. The tax may be levied for a term of up to five years or, if the levy is for current expenses and "general" permanent improvements, for a continuing period of time. The resolution proposing the combined levy must apportion the tax rate between the two purposes, although the apportionment need not be the same for each year the tax is levied.

Under current law, a combined levy may be used for specific permanent improvements, general permanent improvements, or both. The bill instead specifies that all new combined levies must be levied only for current expenses and general permanent improvements. A specific permanent improvement is an improvement or group of improvements that the school district may include in a single bond issue, while a general permanent improvement is an improvement to which that limitation does not apply.

Renewal or replacement of combined levies

Continuing law allows a school district to renew or replace a combined levy for the same purposes and the same term for which the original tax was levied. The bill gives districts the additional option of renewing or replacing an existing combined levy solely for the purpose of funding general permanent improvements. The bill also authorizes school districts to replace the levy for a term of years different than the term for which it was originally levied.

Property tax exemption for fraternal organizations

(R.C. 5709.17; Section 803.170)

The bill creates a tax exemption for real property held or occupied by fraternal organizations that provide financial support for charitable purposes and have been operating in Ohio for at least 100 years. To qualify for the exemption, the fraternal organization must also qualify for exemption from federal income tax under section 501(c)(5), 501(c)(8), or 501(c)(10) of the Internal Revenue Code. Such federal exemptions apply to labor, agricultural, or horticultural organizations; fraternal beneficiary societies, orders, or associations operating under the lodge system for the exclusive benefit of the members of a fraternity itself or operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents; and domestic fraternal societies, orders, or associations operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.

The exempted property must be used primarily for the meetings and administration of the fraternal organization.

The exemption begins to apply for tax year 2013.

Qualified energy project tax exemption

(R.C. 5727.75)

The bill extends by five years the deadlines by which the owner or lessee of a qualified energy project must submit a property tax exemption application, submit a construction commencement application, begin construction, and place into service an energy facility using renewable energy resources (wind, solar, biomass, etc.) or advanced energy technology (clean coal, advanced nuclear, or cogeneration) to qualify for an ongoing real and tangible personal property tax exemption.

With respect to an energy facility using renewable energy resources, current law requires the owner or lessee to submit an exemption application to the Director of Development Services, to submit a construction commencement application to the Power Siting Board (or, for smaller projects, to any other state or local agency having jurisdiction), and to commence construction before 2014. The law also requires the owner or lessee to place the energy facility into service before 2015. The bill extends each of these deadlines by five years.

With respect to an energy facility using advanced energy technology, current law requires the owner or lessee to submit an exemption application to the Director of Development Services before 2016 and to place the energy facility into service before 2019. The bill extends each of these deadlines by five years.

Local Government Fund and other revenue distributions

Local Government Fund

(R.C. 5747.501; Section 757.10)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF is whatever percentage of those revenues are required to freeze the allocation at the FY 2013 levels (including the amount of the minimum distributions to county undivided LGF's receiving guaranteed minimum distributions). For example, if the total FY 2013 LGF allocation is 1.7% of the total FY 2013 GRF revenue, 1.7% of monthly FY 2014 GRF revenue is to be credited each month of FY 2014 to the LGF (*see* R.C. 131.51).

Continuing law provides that LGF funds are distributed to the county undivided LGFs of every county. Local governments in each county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In the several counties where an allocation formula has not been agreed on, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

During FY 2013, LGF distributions were reduced by 50% compared to FY 2011 amounts for almost all counties and for all municipal corporations receiving direct distributions. But the proportionate share of the reduced LGF received by these counties and municipal corporations was held at the FY 2011 level. A few counties that received relatively little in LGF distributions in FY 2011 were guaranteed a minimum distribution: if the county LGF was less than $750,000, that county's distribution was not reduced; if the 50% reduction would reduce a county's LGF below $750,000, the county received $750,000.

Minimum distributions

The bill permanently extends the FY 2013 minimum distribution for county LGFs that received the minimum in FY 2013. If necessary, the proportionate shares of other counties may be adjusted to produce the funds needed to meet the minimum distribution requirement. The minimum distribution levels do not apply to direct municipal corporation distributions. Counties not receiving a minimum guaranteed distribution would receive their respective proportionate shares of the LGF (based on FY 2011 shares and accounting for any adjustments because of minimum distributions), as would municipal corporations receiving direct distributions. For the July 2013 distribution, each county undivided LGF and each municipal corporation receiving direct LGF distributions will receive the same amount as it received in July 2012.

Use of commercial activity tax (CAT) revenue related to motor fuel receipts

(Section 757.20)

The bill authorizes the Director of OBM to use CAT revenue derived from taxable gross receipts attributable to the sale of motor fuel ("CAT motor fuel revenue") to compensate the GRF for debt service paid from the GRF for state-issued bonds whose proceeds are used by the Ohio Public Works Commission (OPWC) to fund local infrastructure projects that are highway-related. A recently issued Ohio Supreme Court decision held that spending CAT motor fuel revenue on nonhighway purposes violates the constitutional provision prohibiting money derived from excises relating to motor vehicle fuel from being spent on nonhighway purposes (Ohio Constitution, Article XII, Section 5a).[163]

The bill requires the Director of OPWC to certify for fiscal years 2013 and 2014 the amount of debt service paid from the GRF for bonds issued to finance or assist in the financing of local subdivision public infrastructure capital improvement projects that were used for highway purposes – i.e. the construction or repair of public highways and bridges. The infrastructure bonds are or have been issued under Sections 2k, 2m, and 2p of Article VIII, Ohio Constitution.[164] The OPWC is required to categorize

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[163] *Beaver Excavating Co. v. Testa*, Slip Opinion No. 2012-Ohio-5776.

[164] Section 5a requires revenue from taxes relating to motor vehicle fuels to be used solely for highway purposes. Since the OPWC uses proceeds from Section 2k, 2m, and 2p bonds to fund some infrastructure projects that are not highway-related, such as water and sewer system improvements, presumably only the portion of bonds that fund infrastructure projects related to highways may be serviced by CAT motor fuel revenue.

the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

The bill authorizes the Director of OBM, on or before the last day of fiscal year 2014 or 2015, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund to the GRF, presumably compensating the GRF for GRF money that had been used to service such bonds.[165] The Commercial Activity Tax Motor Fuel Receipts Fund receives and holds CAT motor fuel revenue.

The OBM Director must, on or before the end of each applicable fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund to the Highway Operating Fund after making the GRF transfer described above. Under continuing law, money in the Highway Operating Fund supports the operations of the Department of Transportation and may be used solely for highway purposes.

Quarterly distributions of Ohio State Racing Commission Fund revenue

(R.C. 5753.03)

The bill imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund. Continuing law imposes a 33% tax on gross casino revenue. Article XV, Section 6 of the Ohio Constitution includes specific directives as to how the proceeds of the casino tax must be distributed. One such directive is that the Ohio State Racing Commission Fund must receive 3% of casino tax revenue "to support purses, breeding programs, and operations at all existing commercial horse racetracks permitted as of January 1, 2009."

Current law does not expressly require the Ohio State Racing Commission to distribute the money in the Ohio State Racing Commission Fund directly to the qualifying commercial horse race tracks nor is there a deadline for when such a distribution must occur. However, the current practice of the Commission is to distribute the revenue directly to the qualifying commercial horse race tracks according to a formula developed by the Commission. The bill codifies a requirement that all revenue in the fund be distributed at the end of each quarterly period. The Commission retains discretion as to the formula utilized for distribution of the revenue.

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[165] The bill authorizes the OBM Director to use CAT motor fuel revenue to service Section 2p bonds. However, Section 2p expressly prohibits Section 5a revenue from being used to service bonds issued under the authority of that section: "Moneys referred to in Section 5a of Article XII of the Ohio Constitution may not be . . . used for the payment of debt service on those obligations." Section 2p(C), Article VIII, Ohio Constitution.

The bill also specifies that the Ohio State Racing Commission may retain up to 5% of the share of casino tax revenue transferred to the Ohio State Racing Commission Fund for operating expenses necessary for the administration of the fund. Current law does not expressly authorize or limit the use of casino tax revenue for this purpose.

Electronic payments to local governments and political parties

(R.C. 5703.76)

The bill requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically. Under continuing law, the Commissioner makes various payments to local governments, including distributions of county sales tax revenue, payments from the LGF, and reimbursements for the 10% rollback, 2.5% rollback, and homestead exemption. The Commissioner makes payments to political parties from the Ohio Political Party Fund, which is comprised of $1 donations that some individuals make to the Fund on their income tax returns.

Public Library Fund certification date

(R.C. 5747.47)

Under continuing law, the Tax Commissioner is required to annually certify to county auditors the estimated amount each county is to receive from the Public Library Fund in the following year. The bill changes the date by which the Commissioner must make this certification from July 20 to July 25.

Due date for tangible personal property tax replacement payments to school districts

(R.C. 5751.21(C)(12) and (E)(1))

The bill postpones the due date for November tangible personal property tax "replacement payments" to school districts to the last day of the month. From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. The replacement payments are reduced each year on a schedule scaled according to the taxing unit's reliance on the reimbursements as a percentage of the taxing unit's total budget. Under current law, replacement payments for both fixed-rate and fixed-sum levies are due annually on May 31 and November 20.

Tax credits; administration and compliance

Historic Building Rehabilitation Tax Credit

The bill increases the maximum historic rehabilitation tax credit that may be claimed in a year and eliminates a requirement with respect to the attribution of qualified rehabilitation expenditures paid or incurred by an owner of a historic building who leases the building to a qualified lessee.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit that may be claimed against the income tax, corporation franchise tax, dealers in intangibles tax, or insurance company gross premiums tax. The credit equals 25% of the qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as determined by the State Historic Preservation Officer. A person seeking the credit is required to apply to the Director of Development Services, who evaluates the application and may approve a credit by issuing a tax credit certificate.

Annual credit limit

(R.C. 5725.34, 5726.52, 5729.17, and 5747.76)

The bill increases the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee of a historic building, from $5 million to $10 million. Continuing law allows a refund of up to $3 million if the credit exceeds the tax otherwise due for any year and permits any balance in excess of the credit claimed to be carried forward for up to five years.

Attribution of qualified rehabilitation expenditures

(R.C. 149.311(B))

Either the owner (holding a fee simple interest in the historic building) or a "qualified lessee" (subject to a lease agreement for the historic building and eligible for the federal rehabilitation tax credit as a lessee) may apply for a rehabilitation tax credit. Under current law, if the owner of a historic building enters into a pass-through agreement with a qualified lessee for purposes of the federal rehabilitation tax credit, the qualified rehabilitation expenditures paid or incurred by the owner after April 4, 2007, are attributed to the qualified lessee.

The bill eliminates this attribution requirement but permits expenses incurred by the owner after April 4, 2007, to be attributed to the qualified lessee for the purpose of the state historic rehabilitation tax credit.

General authority to issue tax assessments

(R.C. 5703.90, 5726.20, and 5751.014)

The bill provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount. This authority expressly extends to assessments against persons that are jointly and severally liable for an income tax, school district income tax, commercial activity tax, or financial institutions tax liability; the partners in a partnership; and the directors, shareholders, and officers of a corporation that has dissolved or had its articles of incorporation cancelled. The Tax Commissioner must issue the assessment in accordance with the same requirements and procedures applicable to assessments for the tax for which the person is liable.

Calculation of post-assessment interest

(R.C. 3734.907(E), 3769.088(C), 4305.131(C), 5726.20(D)(3), 5727.26(C), 5727.89(C), 5728.10(C), 5733.11(C), 5735.12(C), 5739.13(C), 5743.081(C), 5743.56(E), 5745.12(C), 5747.13(C), 5749.07(C), 5751.09(C)(3), and 5753.07(A)(5))

Continuing law authorizes the Tax Commissioner to make assessments on taxpayers for failure to pay various taxes and the penalties and interest thereon. Unless the taxpayer files a petition for reassessment within 60 days after notice of the assessment is served, the amount due on the assessment becomes final and is due and payable from the taxpayer to the Treasurer of State. Under current law, any portion of the assessment not paid within 60 days after the assessment was issued, including interest and penalty, bears interest at the statutory rate for unpaid taxes (currently 3%) until the assessment is paid in its entirety.

The bill requires the Tax Commissioner to calculate interest charged after an assessment has been issued based on tax liability only; penalties and interest are not included. If an assessment is certified to the Attorney General for collection, the interest calculation reverts to current law and the entire unpaid portion of the assessment is included.

Service of tax notices and orders

(R.C. 5703.37)

Continuing law authorizes the Tax Commissioner, with the recipient's consent, to serve a tax notice or order upon a person through secure electronic means. Under current law, if a person does not access the electronic notice or order within ten business days after the Commissioner serves the notice or order, the Commissioner is required to serve the notice or order by certified mail, personal service, or delivery service.

The bill requires the Tax Commissioner to deliver a tax notice or order to the intended recipient by ordinary mail if the recipient does not access an electronic notice or order within ten business days after the Tax Commissioner serves the notice or order electronically a second time and the recipient does not access the notice or order within ten business days.

Online registration for electronic income tax filing

(R.C. 5703.59(E))

The bill requires the Department of Taxation, beginning July 1, 2014, to publish a method of online registration for electronic income tax filing that is accessible to all individuals, trusts, and pass-through entities required to file income tax returns. Currently, the Department requires first time taxpayers to fax a copy of the taxpayer's social security card or federal taxpayer identification number assignment letter and at least one other piece of identification that includes the taxpayer's date of birth in order to file electronically over the Internet.

Electronic payment and filing requirements

(R.C. 113.061 and 5703.059; Section 803.90)

Under continuing law, quarterly taxpayers of the CAT must pay the tax electronically and, if the Tax Commissioner requires, file electronic returns. The bill extends this requirement to annual taxpayers. Annual taxpayers are those whose taxable gross receipts are $1 million or less; all other taxpayers must file and pay the tax quarterly.

In addition, the bill expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and the filing of returns for, both the CAT and the financial institutions tax (FIT). The electronic payments must also comply with any applicable Treasurer of State regulations that govern such payments.

CAT electronic filing penalties

Under current law, when a taxpayer fails to submit an electronic CAT payment or return, the Tax Commissioner may assess a penalty equal to 5% of the tax due for each of the first two violations and 10% of the tax due for each subsequent violation. The bill modifies these penalties to require that the taxpayer pay the greater of $25 or 5% of the tax due for each of the first two violations and $50 or 10% of the tax due for each subsequent violation.

Electronic filing and payment of severance tax, related penalties, and refunds

(R.C. 113.061 and 5749.06; Section 803.120)

The bill makes several changes related to the reporting and payment of severance taxes. Under continuing law, a severer is required to file returns four times per year on a quarterly basis. The four calendar quarters run from January-March, April-June, July-September, and October-December. The Tax Commissioner may prescribe a different schedule for a taxpayer. Severers are required to file returns for each quarter by the 45th day after the last day in each quarter. The bill imposes a specific penalty for the failure to file or timely file a complete return or pay the full amount of tax due, up to the greater of $50 or 10% of the tax due for the quarter. Current law allows the Commissioner to extend the due date of filing a return for good cause. The bill limits the duration of any extension to 30 days.

Additionally, beginning January 1, 2014, the bill requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically, either through the Ohio Business Gateway or another means prescribed by the Tax Commissioner. The Tax Commissioner may excuse a severer from the obligation to remit payments electronically for good cause. If a severer fails to remit payments or file returns electronically, the Tax Commissioner may impose a penalty on the severer equal to the greater of $25 or 5% of the amount due for the first two offenses or the greater of $50 or 10% of the amount due for every offense thereafter. Any penalty the Tax Commissioner imposes under the bill may be collected in the manner of an assessment, together with applicable penalties and interest, or waived by the Tax Commissioner.

Severance tax refunds

Current law requires that any severance tax refunds must be certified and paid from the Tax Refund Fund, but does not specify how severance tax revenue is credited to that fund. Beginning October 1, 2013, the bill specifies that all severance tax revenue is initially credited to the Severance Tax Receipts Fund, which is created by the bill. The Director of Budget and Management (OBM) must transfer from that fund to the Tax Refund Fund an amount equal to any refund certified by the Tax Commissioner to provide for the payment of that refund. Any amount so transferred must be derived from receipts of the same natural resource severance tax from which the refund arose.

After making this transfer, but not later than the 15th day of the month after the end of each calendar quarter, the Tax Commissioner must certify to the Director the amount remaining in the Severance Tax Receipts Fund, grouped according to the amount attributable to each natural resource subject to a severance tax, so the Director can credit remaining severance tax revenue to the respective funds as otherwise required under current law.

Disclosure of severance tax information

(R.C. 5749.17; Section 803.120(A))

Current law prohibits any otherwise confidential tax information provided to the Department of Natural Resources (DNR) from the Department of Taxation from being publicly disclosed, except that DNR may share the information with the Attorney General for unspecified law enforcement purposes. The bill allows DNR, beginning October 1, 2013, to disclose otherwise confidential information submitted by the Department of Taxation specifically for the purpose of enforcing oil and gas regulatory laws.

Tax payments and refunds: $1 minimum

(R.C. 5703.75, 5747.08, 5747.10, and 5747.11)

The bill introduces a $1 minimum payment floor for all taxes administered by the Department of Taxation. Under the bill, taxpayers are not required to a pay any such tax if the total amount due with the taxpayer's return is $1 or less. Similarly, the Tax Commissioner is not required to issue a tax refund to any taxpayer if the amount of the refund is $1 or less. Currently, these $1 minimums apply only the income tax and the pass-through entity withholding taxes.

Accrual of interest on income tax refunds

(R.C. 5747.11)

Under current law, interest accrues on a refund resulting from an income tax overpayment only if the Tax Commissioner does not refund the overpayment within 90 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, apparently 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. Instead, interest would accrue on such amounts according to the same rule applicable to other overpayments as described above.

Elimination of the Tax Discovery Project Fund

(R.C. 5703.82)

The bill eliminates the Discovery Project Fund, which was created to finance the Department of Taxation's implementation and operation of the Tax Discovery Data System. The Tax Discovery Data System assists the Department in revenue analysis, discovering noncompliant taxpayers, and collecting taxes from those taxpayers.

Current law requires the Tax Commissioner to request funds quarterly from the GRF to pay the costs of operating and administering the system.

H.B. 153 of the 129th General Assembly appropriated about $2.4 million to the Discovery Project Fund. In FY 2011, spending was $6.2 million. During FY 2011, the Department received Controlling Board approval for appropriation increases totaling $4.5 million from the original appropriation of $2.0 million. These additional appropriations covered incentive-based payments to an outside vendor for increased tax revenue found by the project. In July 2011, the Department received Controlling Board approval for another payment to the outside vendor of $1.3 million, increasing the FY 2012 appropriation to $3.8 million.

Under the bill, the Department would remain responsible for administering the system.

Tax refund payments and estate tax refunds

(R.C. 5703.052)

Under continuing law, refunds for many taxes and fees administered by the Tax Commissioner and Superintendant of Insurance, including sales and use taxes, income tax, CAT, insurance taxes, FIT, alcoholic beverage and cigarette taxes, casino revenue tax, and public utility excise taxes are paid from the Tax Refund Fund. After the Tax Commissioner or Superintendant certifies a refund to the Treasurer of State, the Treasurer is required to credit the amount certified to the fund. The amount credited to the Tax Refund Fund must be derived from current receipts of the same tax or fee.

Under current law, if current receipts of a particular tax or fee are not sufficient to enable the Treasurer to fully credit the fund, then the Treasurer is required to transfer the amount from the current receipts of the sales tax. The bill eliminates the requirement that refunds be paid from sales tax receipts in the event receipts from the refunded tax do not exceed the amount of the required refund, but does not specify from what revenue the refund is drawn in such a situation. Refunds are still required to be paid from the Tax Refund Fund.

Additionally, the bill includes estate taxes among the other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax. Although the estate tax is no longer in effect for individuals dying on or after January 1, 2013, refunds may continue to be due for payments for prior years.[166] The bill does not specify from what receipts the refund is drawn if current estate tax revenues are insufficient to cover the full amount of an estate tax refund.

Interest on assessments for wireless 9-1-1 charges

(R.C. 5507.46)

The bill applies the interest on an assessment, charged by the Tax Commissioner beginning in 2014 for unpaid wireless 9-1-1 charges, to only the portion of the assessment that consists of wireless 9-1-1 charges due. Under continuing law, interest may be charged on an assessment when it is 60 days past due. Wireless 9-1-1 charges are imposed on wireless subscribers in Ohio (both prepaid and nonprepaid) and, beginning in 2014, sales of prepaid wireless services. The charges fund certain aspects of Ohio's 9-1-1 systems. The charges are collected by wireless service providers, wireless resellers, and, beginning in 2014, sellers of prepaid wireless services.[167] The charges are to be remitted to the Tax Commissioner beginning in 2014, at which time the Tax Commissioner is also tasked with auditing the charge collectors and administering assessments for unpaid charges. The Tax Commissioner may also make assessments to collect unpaid interest on assessments.

The bill also removes provisions specifying how assessments and interest on assessments are to be remitted to the Tax Commissioner. Current law appears to require that assessments for unpaid interest and any interest due must be remitted in the same manner as the wireless 9-1-1 charges. The bill removes this provision.

Finally, the bill removes redundant language regarding the issuance of assessments for collecting interest and the rate and remittance of interest.

Rename fund receiving income tax contributions

(R.C. 5747.113)

The bill renames the "Litter Control and Natural Resource Tax Administration Fund" the "Income Tax Contribution Fund." Under continuing law, this fund is credited with a portion of the money received by four existing income tax contribution

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[166] R.C. 5731.02 (not in the bill).

[167] R.C. 5507.42, 5507.53, 5507.54, 5507.55, and 5507.57, not in the bill.

(commonly referred to as refund "check-off") funds to pay the Department of Taxation's costs for administering the income tax contribution system. Under the system, a taxpayer may voluntarily contribute a portion of the taxpayer's refund to benefit up to four separate purposes – natural areas and preserves, nongame and endangered wildlife, military injury relief, or the Ohio Historical Society.