DEPARTMENT OF TAXATION

Income tax

- Creates a new income tax deduction for individuals receiving business income as a sole proprietor or through a pass-through entity whereby 50% of such income is deductible, with the deduction limited to $375,000 (or $187,500 for each spouse if spouses file separately), 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 and the Commissioned Corps of the Public Health Service.

- 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 and use taxes

- 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 new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund (in excess of refunds and deposits to the Remote Seller Administration 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.

- Authorizes a sales and use tax exemption for goods and services used in aerospace vehicle research and development.

- Allows the Tax Credit Authority to enter into a single agreement authorizing a sales and use tax exemption for computer data center equipment purchased by multiple businesses operating at a single data center.

- Authorizes a business to join an existing computer data center equipment exemption agreement between the Tax Credit Authority and another business.

- Allows a business to receive the computer data center equipment exemption if the business leases a facility to a person that qualifies as a "computer data center business" under current law.

- Provides that, in order to qualify for the computer data center equipment exemption, a business or group of businesses need only maintain an annual payroll at the data center of $1.5 million, instead of the $5 million required in current law.

- Authorizes a sales and use tax exemption for purchases made by a nonprofit organization that leases a professional or minor league sports facility from Lucas County and that remits its net revenue from operating the facility to the county.

Other excise taxes

- 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.

- Increases the motor fuel tax reimbursement for school districts and educational service centers from 6¢ per gallon to 10¢ per gallon.

- 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.

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 CAT exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the total 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.

- Beginning July 1, 2014, replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax, the motor fuel receipts tax (MFRT), that is modeled on the CAT and that applies solely to such receipts.

- Provides that the MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio.

- Defines a supplier as a person that imports motor fuel for sale or distribution by the person within the state or that acquires motor fuel from a terminal or refinery rack and distributes that fuel within the state.

- Imposes a tax rate equal to 0.65% on a supplier's gross receipts and, similar to the CAT, requires suppliers to pay the tax on a quarterly basis.

- Requires suppliers to obtain a license from the Tax Commissioner and to renew the license annually.

- Prescribes several procedures and requirements for the MFRT that are similar to the CAT, including provisions related to assessments, refunds, penalties, joint liability, and the electronic filing of returns.

- Specifies that MFRT revenue, and CAT liability accruing before July 1, 2014, arising from the sale of motor fuel used on public highways may be credited first to the GRF to pay debt service on state-issued bonds whose proceeds the Ohio Public Works Commission (OPWC) awarded to fund local highway-related infrastructure projects, and the balance to the Highway Operating Fund.

- Excludes from the gross premiums of a mutual or stock insurance company for the purposes of the franchise tax workers' compensation insurance premium deposits exceeding the cost of the insurance if the excess is returned to policyholders.

- Creates a temporary committee of General Assembly members, the Tax Commissioner or the Commissioner's designee, and the Director of Budget and Management or the Director's designee to review and recommend reforms and improvements to the 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.

- Authorizes school districts to levy a property tax exclusively for school safety and security purposes.

- 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.

- Limits Hamilton County from extending a partial property or manufactured home tax exemption, authorized by virtue of the county's approval of a 1996 "piggyback" sales and use tax, to a homestead or manufactured home that is tax-delinquent or subject to pending foreclosure proceedings.

- Increases the maximum amount of income that may be generated by a veterans' organization's real property before the property becomes disqualified from property tax exemption, from $10,000 to $36,000, and specifies that only rental income counts towards the maximum income limit.

- Authorizes the transfer of a tax-delinquent cemetery to a county, municipal corporation, or a township if foreclosed through an expedited nonjudicial foreclosure procedure currently allowed for disposing of abandoned lands.

- Prohibits the sale by public auction of any tax-delinquent cemeteries foreclosed through the expedited nonjudicial foreclosure procedure.

- Specifies that a political subdivision, school district, or county land reutilization corporation that obtains tax-forfeited land takes title to the land free and clear of all taxes, assessments, charges, penalties, interest, and costs.

Local Government Fund and other revenue distributions

- Clarifies the method of calculating the tax revenue credited to the General Revenue Fund for the purposes of determining Local Government Fund and Public Library Fund allocations.

- 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 revenue from the new motor fuel receipts-based tax or from the 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 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.

- Allows CAT taxpayers to claim a historic rehabilitation tax credit of up to $5 million against the CAT.

- Permits corporations to claim the credit against the CAT for calendar year 2013 or 2014 so long as the credit could have been claimed against the corporation franchise tax for 2014 or 2015 under the law prior to H.B. 510 of the 129th General Assembly.

- 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.

- Extends the date by which a county and a business may enter into an agreement under which the business agrees to construct an "impact facility" and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility.

- Modifies two of the criteria a facility must meet to qualify as an "impact facility."

- Modifies the existing relocation prohibition to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location.

- Allows credit eligible investments to be made in low-income community businesses that derive 15% or more of their annual revenue from renting or selling real estate.

- Eliminates the requirement that a taxpayer receive a federal New Markets Tax Credit in order to qualify for the state New Markets Tax Credit.

- 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 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."

- Specifies that the "first" 2% of motor fuel tax revenue generated each month is credited to the Highway Operating Fund only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds.

- Changes the date for crediting the first 2% of motor fuel tax revenue to the Highway Operating Fund from the first to the last day of each month.

Income tax

The bill creates a new deduction for business income, bars the same person from claiming more than one personal income tax 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.

Business income deduction

(R.C. 5747.01(A)(32), 5747.22, and 5748.01; Section 803.80)

The bill creates a new state income tax deduction for individuals receiving business income as a sole proprietor or as an owner of a pass-through entity. The deduction equals 50% of business income included in a taxpayer's federal adjusted gross income and not otherwise deducted in computing Ohio taxable income, and to the extent apportioned to Ohio. The amount of the deduction is limited to $375,000 per taxpayer per year, except for spouses who file separately and who each report business income; in that case, each spouse's separate deduction is limited to $187,500. The deduction may first be applied to taxable years that begin in 2013. The deduction is not available to estates or trusts subject to the income tax, and is not available to pass-through entities as such.

The deduction does not affect the school district income tax base. Any taxpayer making the deduction for state income tax purposes must add the deducted amount back into the taxpayer's school district taxable income if the school district's income tax base is based on state taxable income.

Under ongoing law, "business income" is income from the regular conduct of a trade or business, including gains or losses, and includes gains or losses from liquidating a business or from selling goodwill.

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 2014, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

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 (NOAA) and to retirees of the Commissioned Corps of the Public Health Service (PHS) 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, NOAA Commissioned Corps, and PHS Commissioned Corps. 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 and use taxes

"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.[215] 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.

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 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."

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[215] *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).

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 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 of 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 Ohio use tax collections by out-of-state sellers that currently 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 new Ohio use tax collections by remote sellers (except for the portion deposited to the Remote Seller Administration Fund or refunded to remote sellers) for deposit in the Income Tax Reduction Fund. The deposit is required semiannually by January 1 and by July 1 each year. The "new" remote seller use tax collections are the collections remitted by remote sellers in excess of such remittances during fiscal year 2013 by remote sellers that voluntarily registered to collect use taxes under continuing law. 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 and reserves are made.

Under current law, all use tax collections are deposited to the state General Revenue Fund, and a portion of such revenue is earmarked for the Local Government Fund and Public Library 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. (See R.C. 5741.17.)

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.

Sales and use tax exemption for items used in aerospace vehicle research

(R.C. 5739.02(B)(49) and Section 803.190)

The bill authorizes a sales and use tax exemption for goods and services used in aerospace vehicle research and development. Under the bill, an "aerospace vehicle" is any manned and unmanned airplane, helicopter, missile, rocket, space vehicle, or similar aviation device. To qualify for the exemption, the purchased services or items must be used in the research or development of such vehicles, human performance equipment and technology associated with operating such vehicles, or the parts and components of such vehicles. Exempt items may include, among other items, materials, parts, equipment, software, tools, and fuel.

Computer data center equipment sales and use tax exemption

(R.C. 122.175)

Continuing law authorizes a sales and use tax exemption for purchases of certain personal property that will be used at an eligible computer data center. Under current law, a business qualifies for the exemption if the business agrees (1) to invest at least $100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least $5 million at the center. To receive the exemption, the business must submit an application and enter into an agreement with the Tax Credit Authority authorizing the exemption.

Eligibility for the exemption

The bill makes several changes to the requirements for receiving the computer data center equipment exemption. First, the bill allows multiple businesses that operate at the same computer data center to submit a single exemption application. For the purposes of meeting the capital investment and annual payroll requirements, the total investment and payroll of all of the participating businesses are combined.

Second, the bill lowers the annual payroll requirement, from $5 million to $1.5 million, and provides that the recipient or recipients of the exemption are not required to meet this lower threshold until the third year of the exemption agreement.

Third, the bill allows a person to receive the exemption if the person leases a computer data center to other businesses that operate at the center. Under current law, a business qualifies for the exemption only if the business itself provides "electronic information services," which involves providing access to computer equipment for the purpose of acquiring, examining, or placing data.

Exemption application

Under current law, the Tax Credit Authority may enter into an agreement authorizing a sales and use tax exemption only if it determines all of the following: (1) the business' capital investment in the proposed computer data center will increase payroll and the amount of Ohio income taxes that will be withheld from the compensation paid to employees of the center, (2) the business has the ability to complete the proposed capital investment, (3) the business intends to and has the ability to maintain operations at the eligible computer data center for the term of the agreement, and (4) receiving the exemption is a major factor in the business' decision to begin, continue, or complete the capital investment.

The bill specifies that, if multiple businesses apply to enter into a single exemption agreement, only the business that submits the application is required to meet the requirements described in (2), (3), and (4) above. The requirement described in (1) applies to the combined capital investment made by all of the businesses.

Agreement with Tax Credit Authority

Continuing law requires that an agreement for a computer data center equipment sales and use tax exemption describe the proposed data center project, state the percentage of the approved exemption and length of time the exemption will apply, and include other provisions related to annual reporting, a limit on employment relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement. The bill specifies that, if multiple businesses enter into a single exemption agreement, these requirements must apply to all businesses subject to the agreement.

Under current law, an exemption agreement must also require that the business maintain operations at the eligible computer data center for the term of the agreement. The bill provides that, if an agreement covers multiple businesses, this requirement applies only to the business that submitted the exemption application. In addition, the bill modifies the requirement to allow such a business to cease operations at the computer data center for up to 18 months. In such a case, the exemption agreement is not void, but no business may claim the sales and use tax exemption allowed under the agreement during the period the applicant business ceased operations.

Addition of businesses to existing agreement

The bill allows a business to be made a party to an existing exemption agreement between the Tax Credit Authority and another business. In such a case, the business is entitled to the exemption authorized in the existing agreement and bound by all requirements specified in law and the agreement.

Agreement compliance

Under continuing law, the Tax Credit Authority may terminate an agreement if a business does not meet the capital investment and annual payroll requirements specified in the agreement. In such instances, the Authority may require the business to pay all or a portion of the sales and use taxes that would have been owed on equipment exempted under the agreement.

The bill provides that, if a terminated agreement covered multiple businesses, the Tax Credit Authority may require each of the businesses to pay a portion of the taxes that would have been owed. When determining the amount of unpaid taxes to charge each business, the Authority may consider the level of each business' responsibility for the noncompliance.

Direct payment permit

The bill specifies that, if multiple businesses enter into a single exemption agreement, the Tax Commissioner must provide direct payment permits to each of the businesses. Under continuing law, the Tax Commissioner must grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. This permit allows the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center.

Sales and use tax exemption for sales to a nonprofit sports facility operator

(R.C. 5739.02(B)(52); Section 803.230)

The bill authorizes a sales and use tax exemption for purchases made by a nonprofit corporation that satisfies all of the following criteria:

(1) The nonprofit corporation leases a sports facility used by a professional athletic team or minor league affiliate from an "eligible county." An "eligible county" is a county that had a population of between 400,000 and 800,000 according to the 2000 federal census and that borders another state. (Lucas County is the only county that satisfies these criteria.)

(2) The lease requires that substantially all of the net revenue from the nonprofit corporation's operations at the facility be paid to the county at least once per year.

(3) Upon dissolution of the corporation, all of the corporation's net assets are distributable to the county's board of commissioners.

The exemption applies both to sales that occurred before the provision's effective date and to sales that occur on or after that effective date. The bill does not expressly state whether a refund must be issued for prior sales or how that refund would be administered.

Other excise taxes

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 on January 1, 2014.

Motor fuel tax refund for school districts

(R.C. 5735.142; Section 803.270)

The bill increases the motor fuel tax reimbursement for city, local, exempted village, and joint vocational school districts and educational service centers for motor fuel purchased and used for school district and service center operations from 6¢ per gallon to 10¢ per gallon. Under continuing law, the overall motor fuel tax rate is 28¢ per gallon.

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.

Commercial activity tax (CAT)

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 "ineligible operator's supplier tax liability," which equals the CAT that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate. 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 bill, the ineligible operator's supplier tax liability explicitly excludes any interest or penalties on the amount that would have been owed by the suppliers.

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 ineligible 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.

Motor fuel receipts tax

(R.C. 113.061, 715.013, 5703.052, 5703.053, 5703.19, 5703.50, 5703.70, 5736.01 to 5736.14, 5736.99, 5751.01, 5751.02, 5751.051, and 5751.20; Sections 395.10 and 803.120)

Beginning July 1, 2014, the bill replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax – the "motor fuel receipts tax" (MFRT). The MFRT is modeled on the CAT, but is based solely on receipts from one sale or exchange of motor fuel.

Under current law, the CAT applies to receipts from most transactions involving the sale or exchange of motor fuel. Certain receipts from exchanges between licensed motor fuel dealers are excluded from the CAT base; in addition, a taxpayer may deduct state and federal excise taxes paid on motor fuel.

Unlike the CAT, which may apply to multiple transactions involving the same motor fuel, the MFRT 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. Because the MFRT applies to fewer transactions, the rate of the MFRT, 0.65% of a taxpayer's receipts, is higher than the current CAT rate of 0.26%.

Taxpayers

The MFRT is imposed on "suppliers." A supplier is any person that:

(1) Sells, transfers, or otherwise distributes motor fuel from a terminal or refinery "rack" to a point outside of a "distribution system," if the person distributes that motor fuel within the state;

(2) Imports motor fuel for sale, transfer, or other distribution by the person to a point outside of a distribution system in the state.

A "rack" is a mechanism that transfers motor fuel from a refinery, terminal, or marine vessel into a truck, supply tank, railroad car, or other point outside of a distribution system. A "distribution system" is a bulk transfer or terminal system that consists of refineries, terminals, marine vessels that transport motor fuel to a refinery or terminal, and pipelines; motor fuel that is not in any of those locations is outside of a distribution system.

Tax base

The MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio. As with the CAT, "gross receipts" generally includes all amounts received from the transaction, without deduction for the cost of the goods sold or the supplier's expenses.

The bill excludes four specific items from the MFRT base, which are also excluded from the CAT base:

(1) Receipts from the sale of motor fuel exported to another state;

(2) An amount equal to the state and federal excise taxes paid by a supplier on any motor fuel that contributed to the supplier's gross receipts;

(3) Bad debts on the basis of which the supplier paid the MFRT in a previous tax period;

(4) Receipts from the sale of an account receivable, to the extent that the gross receipts from the transaction that gave rise to the account receivable are already included in the supplier's gross receipts.

Tax rate

The MFRT rate equals 0.65% of a supplier's gross receipts. The rate is higher than the CAT rate of 0.26%; however, the structure of the MFRT is designed to require the taxation of motor fuel only once as it is distributed throughout the state, whereas the CAT may apply to multiple transactions occurring in the state. Consequently, the higher rate is expected to apply to a lower amount of gross receipts.

Allocation of tax revenue

The bill segregates MFRT revenue attributable to sales of motor fuel used for propelling vehicles on public highways and waterways from other gross receipts and requires the Director of Budget and Management to credit the revenue attributable to those receipts to a separate fund. In general, receipts in that fund – the Motor Fuel Receipts Tax Public Highways Fund – must be used solely to maintain the state highway system, fund traffic law enforcement, and cover the costs of hospitalization of indigent persons injured in motor vehicle accidents on public highways.

Under the bill, all revenue from the MFRT is initially deposited in the Motor Fuel Receipts Tax Fund. On or before the last date of March, June, September, and December of each year, the Director of Budget and Management, after deducting an amount from the Motor Fuel Receipts Tax Fund to cover the Department's administrative costs and refunds of tax overpayments, must transfer an amount to the Motor Fuel Receipts Tax Public Highways Fund that is equal in proportion to the proportion of total MFRT revenue that is attributable to motor fuel used for propelling vehicles on public highways and waterways. Any revenue remaining after that transfer is credited to the General Revenue Fund.

Allocation of motor-fuel related CAT revenue

On December 7, 2012, the Ohio Supreme Court held that spending motor fuel-related CAT 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).[216] Under prior

[216] *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565 (2012).

law, all revenue from the CAT was credited to the GRF and to two other funds to provide tangible personal property tax replacement payments to some local governments and school districts. The Court enjoined CAT motor fuel revenue from being spent for those purposes after December 7, 2012.

To address the disposition of motor fuel-related CAT taxes imposed since the Supreme Court's decision, the General Assembly enacted H.B. 51 of the 130th General Assembly. That act requires that Department of Taxation to determine the amount of such taxes that were remitted between December 7, 2012, the date of the Court's decision, and June 30, 2013. The Director of OBM must transfer the certified amount from the GRF to the Commercial Activity Tax Motor Fuel Receipts Fund, which the act creates. After June 30, 2013, the act provides for quarterly transfers of motor fuel-related CAT revenue to the Commercial Activity Tax Motor Fuel Receipts Fund.

The bill requires the continued transfer of motor fuel-related CAT revenue from tax periods ending before July 1, 2014, to be transferred to the Commercial Activity Tax Motor Fuel Receipts Fund. Thereafter, receipts from the MFRT are distributed in accordance with the Supreme Court's decision as provided above.

Use of tax revenue for Ohio Public Works Commission bond payments

Under the bill, tax revenue allocated to either the Commercial Activity Tax Motor Fuel Receipts Fund or the Motor Fuel Receipts Tax Public Highways Fund may first be used 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 highway-related infrastructure projects.

For each fiscal year beginning with fiscal year 2013, the bill requires the Director of OPWC to certify 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.[217] The OPWC is required to categorize the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

[217] 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 bill authorizes the Director of OBM, on or before the last day of each fiscal year, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund to the GRF, presumably compensating the GRF for GRF money that had been used to service such bonds.[218] (The transfer for fiscal year 2014 will be made solely from the Commercial Activity Tax Motor Fuel Receipts Fund; transfers for subsequent fiscal years may be made from either Fund, to the extent that any revenue remains in the Commercial Activity Tax Motor Fuel Receipts Fund.)

The OBM Director must, by the end of each fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund after making the GRF transfers described above to the Highway Operating Fund. 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.

Tax returns and payment

Each supplier subject to the MFRT must file quarterly returns. Similar to the CAT, returns are due on the tenth day of May, August, November, and February. Each return must state the supplier's gross receipts and indicate the portion of those gross receipts, if any, that are attributable to motor fuel used to propel vehicles on public highways.

As with the CAT, suppliers must pay the MFRT electronically and, if required by the Tax Commissioner, file electronic returns. The Commissioner may excuse a supplier from the electronic payment or filing requirement for good cause.

Licensing

Under the bill, a person may not engage in business activities that subject the person to the MFRT without a supplier's license. To obtain the license, a supplier must apply to the Tax Commissioner on or before March 1, 2014, or thirty days after the supplier becomes subject to the tax, whichever is earlier. After obtaining a license, the supplier must renew the license annually. Renewal applications are due March 1 of each year.

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[218] 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.

If a supplier is engaged only in the importation of motor fuel that the supplier itself will sell or distribute, the fee for each initial or renewal application is $300. The application fee for all other suppliers is $1,000. However, if a supplier files an initial license application after September 1 of any year, the fee is reduced by one-half.

The Tax Commissioner may deny a license application if (1) the applicant has previously had a license cancelled for cause by the Commissioner, (2) the Commissioner believes that the application was not filed in good faith or was filed as a subterfuge in an attempt to procure a license for another person, or (3) the applicant has violated any provision of the MFRT law. If the Commissioner denies an applicant's license, the applicant is entitled to a refund of the application fee.

The Commissioner may revoke a supplier's license if the supplier files a false return, fails to file a return, or fails to pay the tax. The Commissioner must notify the supplier of the revocation by certified mail. In addition, if a person engages in activities that subject the person to the MFRT without holding a supplier's license, the person is subject is a penalty of up to $1,000 or up to 180 days of imprisonment.

If a supplier is no longer subject to the tax, the supplier may request the cancellation of the supplier's license. In such a case, the supplier must first pay any tax, penalty, and interest due at the time of the cancellation.

Administration and enforcement

The act includes provisions for the administration and enforcement of the MFRT that are substantially the same as similar provisions under the CAT. Those provisions cover the following topics:

- Penalties for failure to report or pay the tax as required by law.
- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Interest on unpaid taxes and refund payments.
- Assessments to collect unpaid tax, penalty, or interest.
- Procedures for tax payment by taxpayers that discontinue operations in the state.
- The cancellation of the authority of a noncompliant taxpayer to continue doing business in Ohio, including through a quo warranto action.
- Records retention and inspection.

Officer and employee liability

Under the bill, the employees or officers of a supplier can be held personally liable for the supplier's failure to file returns or pay the MFRT if the officer is responsible for the supplier's fiscal responsibilities or if the employee is responsible for, or has control or supervision of, the filing of returns or the payment of taxes. The dissolution or bankruptcy of the supplier does not discharge such liability.

Tax avoidance provision

The bill prohibits any person from avoiding the MFRT by receiving motor fuel outside of the state and transferring the motor fuel into the state within one year. In such a case, the person is considered to have received the fuel in this state and must include as gross receipts the value of the motor fuel transferred into the state within the one year. This analogous to an anti-avoidance provision of the CAT (see R.C. 5751.013).

Municipal taxing authority

The act specifies that municipal corporations may not levy a tax that is "the same as or similar to" the MFRT. Continuing law prohibits municipal corporations from levying most of the kinds of taxes the state currently levies (although the CAT is not currently included on that list). If there were no such prohibition, municipal corporations would be authorized to levy taxes under their home rule authority, without authorization from the General Assembly.[219]

Tax on mutual and stock insurance company premium deposits

(R.C. 5729.04; Section 803.260)

Under continuing law, foreign and domestic insurance companies, including mutual or stock insurance companies, are subject to a franchise tax based on the company's gross premiums, subject to certain exclusions. A mutual insurance company is an insurance company owned by its policyholders. A stock insurance company is an insurance company owned by investors who have purchased company stock, and profits of the company are generally distributed to the investors without necessarily benefiting the policyholders.

Beginning for calendar year 2013, the bill authorizes a mutual or stock insurance company to exclude from its taxable gross premiums any workers' compensation

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[219] The doctrine of implied pre-emption was abandoned by the Ohio Supreme Court in 1998. Before then, if the state levied a certain kind of tax, municipal corporations were held to be impliedly preempted from levying the same kind of tax unless the General Assembly expressly authorized them to levy the tax.

insurance premium deposits, if (1) the company distributes a portion of the premiums it collects during a policy year back to its policyholders, (2) the deposits exceed the net cost of the insurance to the insured, and (3) the excess is returned ratably to the company's policyholders at the end of the policy year. A similar exclusion applies under continuing law to premium deposits received for fire and allied lines insurance and inland marine insurance provided by mutual and stock insurance companies.

CAT review committee

(R.C. 757.30)

The bill creates a temporary committee composed of eight members of the General Assembly, the Tax Commissioner or the Commissioner's designee, and the Director of Budget and Management or the Director's designee to review and recommend reforms and improvements to the CAT. The legislative 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 levy for school safety

(R.C. 5705.21(A))

The bill authorizes school districts to levy a property tax exclusively for school safety and security purposes. The levy must comply with the same requirements that apply to general school district levies in excess of the 10-mill limitation.

Under continuing law, school district boards of education may propose a levy in excess of the 10-mill limitation for any of the following purposes: (1) current expenses, (2) general permanent improvements, (3) specific improvements or a class of improvements that may be included in a single bond issue, (4) the support of a public library, (5) parks and recreational purposes, (6) the construction and operation of a community center, (7) the operation of a cultural center, (8) education technology, or (9) if the district is a municipal school district, for the current operating expenses of both the district and "partnering" community schools. The resolution to levy the tax must be limited to only one of these purposes. If voters approve the levy, revenue from the tax must be used solely for that purpose.

There is a five-year limit on the term of such levies unless the levy is for current expenses or general improvements. The five-year limit applies to the newly authorized school safety levy. The levy may be renewed or replaced as may any other school district levy.

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.

Eligibility for Hamilton County partial property tax exemption

(R.C. 323.158 and 4503.0610; Section 803.250)

Under continuing law, a county that is home to a major league professional athletic team that, in 1996, approved a county "piggyback" sales and use tax for any of several specified purposes, including constructing a major league sports facility, may offer a partial property and manufactured home tax exemption for homesteads and manufactured homes located in the county. The percentage of exempted value is fixed by and may be adjusted by, the board of county commissioners. Hamilton County is the only county that offers such a partial exemption by virtue of the county's voters, in 1996, approving such a sales and use tax.

Beginning tax year 2013 for homesteads and tax year 2014 for manufactured homes, the bill limits eligibility for the partial exemption in two respects. First, the bill disallows Hamilton County from offering the partial exemption to a homestead or manufactured home against which foreclosure or other action to take possession of the homestead or manufactured home has been initiated during any tax year in which such proceedings are pending. This includes foreclosures for property taxes, mortgages, or other security interests enforceable by foreclosure.

Second, the bill disallows Hamilton County from offering the partial exemption to a homestead or manufactured home for any tax year the homestead or manufactured home is listed on the delinquent tax list or delinquent manufactured home tax list for failure to pay property tax or manufactured home tax and related charges.

Income limit on veterans' organization property tax exemption

(R.C. 5709.17(B); Section 803.170)

Current law exempts property held or occupied by a veterans' organization from property taxation if the organization is exempt from federal income taxation under section 501(c)(19) or (23) of the Internal Revenue Code and if the property is not held for the production of rental or "other income" in excess of $10,000.[220] The bill increases this income limit to $36,000 and removes the reference to "other income." Consequently,

[220] 26 U.S.C. 501(c)(19) and (23) provide tax-exempt status to an organization if at least 75% of its members are past or present members of the Armed Forces, among other qualifying criteria.

only income arising directly from renting the property to others counts towards the income limit. The income limit increase applies to tax year 2013 and thereafter.

Transfer of tax-delinquent cemeteries

(R.C. 1721.10)

Continuing law authorizes a county Board of Revision, on its own initiative or on the complaint of a tax lien holder, to foreclose the lien of the state or the lien holder against tax-delinquent, unoccupied real property ("abandoned" land). The Board is required to order disposition of foreclosed abandoned land by public auction. If the land does not sell at a public auction, a community development organization, school district, municipal corporation, county, or township may request that the property be transferred to the requesting corporation or political subdivision. Under current law, a cemetery, except for certain private cemeteries, may not be transferred or sold to satisfy a judgment or tax lien, and may thus not be foreclosed and transferred by a Board of Revision using the foreclosure process described above.

The bill authorizes a county Board of Revision to transfer a tax-delinquent cemetery to a county, municipal corporation, or township using continuing law's expedited nonjudicial foreclosure process. However, the bill prohibits such a foreclosed cemetery from being sold at a public auction, as is allowed for abandoned lands.

Title of transferred tax-forfeited lands

(R.C. 5723.01)

Continuing law requires title to real property that has been foreclosed through a tax foreclosure proceeding, but that has not been purchased by a bidder at public auction, to be forfeited to the state or, alternatively, to be transferred to a political subdivision, school district, or county land reutilization corporation (CLRC) upon the request of the subdivision, district, or CLRC. Real property forfeited to the state is exempt from taxation from the date of forfeiture, and no taxes or assessments may be assessed against the property while the state holds title to the property.[221]

The bill specifies that a political subdivision, school district, or CLRC that obtains tax-forfeited real property takes title to the property free and clear of all taxes, assessments, charges, penalties, interest, and costs and that all subordinate liens are considered fully and permanently discharged.

[221] R.C. 5723.02, not in the bill.

Local Government Fund and other revenue distributions

Local Government Fund and Public Library Fund allocations

(R.C. 131.51 and 5747.501; Sections 757.10 and 812.20)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) and the Public Library Fund (PLF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF and the PLF is whatever percentage of those revenues are required to freeze the allocation at each fund's respective FY 2013 level (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).

The bill clarifies that the preceding month's GRF revenue allocations to the LGF and the PLF are not deducted in calculating the amount of tax revenue credited to the GRF during the preceding month for the purposes of determining the monthly allocation to the LGF and the PLF. The bill does not change the percentage of GRF revenue allocated to either the LGF or the PLF.

Minimum distributions to county LGFs

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 and PLF 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.

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.

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.

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 against the income tax, the financial institutions tax, and the insurance premiums taxes; 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; and allows historic rehabilitation tax credit certificate owners to claim up to a $5 million credit against the CAT.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit equal to 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 against the income tax, the financial institutions tax, and the insurance premiums taxes, 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.

Application to CAT

(R.C. 149.311, 5751.55, and 5751.98)

The bill allows historic rehabilitation tax credit certificate owners to claim a historic building rehabilitation tax credit of up to $5 million against the CAT. A certificate owner claiming the credit against the CAT may receive a refund up to the full $5 million if the credit exceeds the tax otherwise due. The $60 million annual cap on all historic rehabilitation tax credits is not changed.

As part of replacing the corporation franchise tax (CFT) on financial institutions with the new financial institutions tax, H.B. 510 of the 129th General Assembly prohibited corporations from claiming any CFT credit for tax years 2014 and thereafter. The law prior to H.B. 510 permitted corporations to claim the credit against the CFT even if the certificate owner was no longer liable for the CFT. (The CFT was completely phased out for most corporations in 2010, but continues to apply to financial institutions and certain other financial-related corporations through 2013.) Financial institutions will continue to be eligible for the credit under the financial institutions tax.

By permitting corporations that are not financial institutions to claim the credit against the CAT, the bill preserves credit availability for corporations that are now subject to the CAT. The bill also extends eligibility for the credit to noncorporate CAT taxpayers.

The bill allows corporations that could claim the credit against the CFT for tax year 2014 or 2015 to claim the credit against the CAT for calendar year 2013 or 2014 so long as the credit could have been claimed against the CFT under the law prior to H.B. 510. Continuing law generally requires that the tax credit certificate be claimed in the calendar year or taxable year in which the certificate is issued. This provision of the bill prevents a CAT taxpayer issued a certificate before the effective date of H.B. 510 from losing the benefit of the credit due to the amendments to the CFT.

The bill specifies that a pass-through entity claiming a historic rehabilitation tax credit certificate against the CAT may allocate the credit among the entity's owners in any way they mutually agree. A similar provision applies with respect to certificate owners claiming the credit against the income tax. However, given that the CAT is owed at the entity-level rather than by the shareholders of a pass-through entity, it is unclear why such a provision is necessary in this context.

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.

Sales and use tax subsidy for retail "impact facilities"

(R.C. 333.01, 333.02, 333.03, 333.04, and 333.05)

The bill modifies several provisions of an existing law authorizing counties and businesses to enter into an agreement under which the business agrees to construct an "impact facility" in the county and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility. Under continuing law, an "impact facility" is a facility that meets five criteria, including that at least 150 new jobs will be maintained at the facility.

The bill extends, from June 1, 2007, to June 1, 2015, the date by which such impact facility agreements may be entered into. The bill also modifies two of the criteria a facility must meet to qualify as an impact facility. Under current law, at least $50 million must be invested in the land, building, infrastructure, and equipment at the facility over a two-year period, and at least 50% of the expected customers of the facility must live within 100 miles of the facility. The bill lowers the investment requirement to $30 million and decreases the area in which at least 50% of the facility's expected customers must live to 50 miles.

The bill modifies the existing prohibition against relocating property or employment positions to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location. If the prohibition is violated, remittances to the business are terminated regardless of whether the board of county commissioners consents to the relocation. Current law prohibits relocation of more than ten full-time equivalent positions or more than $2 million in "taxable assets" unless the board of county commissioners consents. (A full-time equivalent position equals the number of employee-hours in a week divided by 40; "taxable assets" is not defined, but presumably the term refers to tangible personal property.)

New Markets Tax Credit

(R.C. 5725.33, 5726.54, 5729.16, and 5733.58)

The bill makes several changes to the New Markets Tax Credit. Continuing law authorizes a nonrefundable New Markets Tax Credit against the insurance premiums taxes and the financial institutions tax for entities that purchase and hold securities to finance investments in businesses located in low-income communities in Ohio. The credit is based largely on the federal New Markets Tax Credit.

Federal credit

Federal law provides a New Markets Tax Credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a U.S. corporation or partnership with the primary mission of serving or providing investment capital for businesses in low-income communities, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities." Federal regulations require CDEs to make the qualified investments within one year after receiving the taxpayer's investment.

Ohio credit

The current Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in CDEs that use substantially all of the proceeds to make investments in qualified active low-income community businesses. Under the federal program, a CDE may make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio.

To be a qualified equity investment, the equity investment must be acquired after October 16, 2009, for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. Credits must be applied over a seven-year period beginning on the date a qualified equity investment is made and continuing for the next six anniversary dates.

Qualified active low-income community businesses

Under federal law, a "qualified active low-income community business" is any partnership or corporation that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.

Current Ohio law also requires that the business derive less than 15% of its annual revenue from the rental or sale of real property. The bill removes this requirement so that the state law definition of "qualified active low-income community business" is identical to the federal definition.

Pairing state and federal credits

Under current law, to obtain the Ohio New Markets Tax Credit, a person must have qualified for the federal credit by holding a qualified equity investment. The bill eliminates this requirement that the investor qualify for the federal credit in order to receive the Ohio credit. The bill retains continuing law's requirement that the CDE into which the investment is made enter into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Department of the Treasury with respect to the federal New Markets Tax Credit.

In effect, the bill allows an investor to obtain the state credit so long as the CDE previously designated a qualified equity investment for the purposes of the federal credit. Investors would no longer be required to pair the federal and state New Markets Tax Credits.

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 fees and 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.

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, the CAT, the financial institutions tax (FIT), and the MFRT created in the bill. 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.[222] The bill

[222] R.C. 5731.02, not in 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.[223] 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 (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.

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

Motor fuel tax refunds and revenue distribution

(Section 605.10)

Under current law, the Treasurer of State is required to credit the "first" 2% of revenue generated from motor fuel tax each month to the Highway Operating Fund on the first day of every month beginning in July 2013.[224]

The bill specifies that the crediting is to occur only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds. The bill also changes the date the crediting is to occur from the first to the last day of each month.

[224] Section 755.30 of Am. Sub. H.B. 51 of the 130th General Assembly.