DEPARTMENT OF TAXATION

Income tax

- Reduces income tax rates in all brackets by 6.3%.
- Restricts the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit to taxpayers whose individual or joint adjusted gross income (less personal exemptions) for the taxable year is less than $100,000.
- Exempts the first $250,000 of an income taxpayer's business income ($125,000 for spouses filing separate returns) and imposes a flat 3% tax on all business income in excess of the amount exempted.
- Extends an existing deduction for active duty military personnel pay to persons serving in the Commissioned Corps of the national Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS).
- Creates an income tax refund contribution check-off for the benefit of nonprofit organizations whose primary purpose is to grant the wishes of children diagnosed with life-threatening illnesses.
- Requires the Tax Commissioner to reduce income tax rates based upon any savings realized if the Governor vetoes substantial appropriations and expenditures included in the bill.

Sales and use taxes

- Defers the first date that the Director of Budget and Management is required to transfer new remote seller use tax collections to the income tax reduction fund (ITRF) to the last day of January or July following the effective date of federal Marketplace Fairness-like legislation.
- Modifies the computation of new use tax collections for the purposes of the ITRF transfers to include only collections from sellers that register with the Tax Commissioner after the effective date of federal Marketplace Fairness-like legislation.
- Creates a presumption that all sellers that register with the Commissioner after that date are remote sellers, unless the Commissioner or the seller present evidence that the seller has substantial nexus with Ohio.

- 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.

- Subjects to sales and use tax hotel intermediary services – i.e., arranging for the sale of hotel lodging.

- Eliminates a requirement that counties and transit authorities compensate vendors for the expense of adjusting cash registers when a county or transit authority sales and use tax rate is increased or a new tax is imposed.

- Allows new and used motor vehicle dealers licensed in Ohio to remit sales and use tax collected on vehicle sales and leases on the dealer's monthly sales and use tax return rather than to the Clerk of Courts when applying for a certificate of title.

- Exempts from sales and use tax the provision of sanitation services to a meat slaughtering or processing operation necessary for the operation to comply with federal meat safety regulations.

- Exempts from sales and use tax the provision of a rental vehicle while another vehicle is being repaired or serviced and the cost of the rental is reimbursed by certain parties, and abates any previously accrued penalties and interest charged for prior failures to pay taxes on those transactions.

Other state taxes

- Increases the rate of the cigarette excise tax from $1.25 per pack to $1.65 per pack.

- Increases the rate of the excise tax levied on tobacco products other than cigarettes and little cigars from 17% to 22.5% of such products' wholesale price.

- Requires the Tax Commissioner to prepare a quarterly report to the General Assembly that details the Department of Taxation's tobacco tax-related enforcement, investigations, and violations.

- Modifies the date the Treasurer of State is required to issue a domestic insurance premium tax bill, the due date for payment by the insurance company, and the computation of penalties for late payment.

- Explicitly exempts production credit associations (PCAs) and agricultural credit associations (ACAs) from the financial institutions tax.

- Lengthens the period of time during which wholesale dealers may buy cigarette tax stamps on credit but requires dealers to pay for such stamps no later than a week before the end of each fiscal year.

- Specifies that, when a company generates electricity but donates all of that electricity to a political subdivision, the property used to generate or supply that electricity is not subject to property taxation and the donated electricity is not subject to the kilowatt-hour tax.

- Requires a special payment for a municipal corporation where a user of a substantial amount of wind-generated electricity is located, which must be passed through to the user in some form of financial assistance.

- Specifies that the market price for propane, rather than the market price for diesel, shall be used to determine the petroleum activity tax in regard to propane used as a motor fuel.

- Authorizes a petroleum activity tax (PAT) deduction on the basis of PAT receipts derived from the sale of tax-paid blend stocks or additives for blended fuel.

- Authorizes a reduction in the commercial activity tax for railways' purchases of dyed diesel fuel.

- Extends the Ohio Grape Industries earmark of wine excise tax revenue (2%) for two more years.

- Limits information the Tax Commissioner may require a person to verify for the purpose of confirming the person's identity.

- Requires the Tax Commissioner to evaluate and report to the General Assembly on the effectiveness of identity-verification measures employed to reduce personal income tax fraud.

- Establishes a seven-member commission to review Ohio's tax structure and policies and make recommendations to the General Assembly on how to maximize Ohio's competitiveness by the year 2020, how to transition to a flat personal income tax by

2018, and, separately and by October 1, 2015, how to reform the state's severance taxes.

- Creates a permanent joint legislative committee of four legislators, one gubernatorial appointee, and two agency heads to biennially review existing and newly enacted "tax expenditures."
- Requires any act creating a new tax expenditure to include information about the expenditure, such as its purpose and the class of taxpayers it will benefit.
- Authorizes a temporary "amnesty" for taxpayers owing delinquent taxes whereby penalties and one-half the interest charges otherwise due are waived, along with criminal or civil action, if the taxpayer pays the outstanding liability and one-half the interest due.

TPP reimbursements

- Resumes the phase-out of reimbursement payments to most school districts and other taxing units for tangible personal property tax losses.
- Increases the portion of CAT revenue and kilowatt-hour excise tax revenue to be credited to the GRF and reduces the portion used to reimburse school districts and other taxing units for tangible personal property tax losses.

Tax credits and exemptions

- Revises computation of the job creation and retention tax credits so that the credit equals an agreed-upon percentage of the taxpayer's Ohio employee payroll rather than Ohio income tax withholdings.
- Removes the 75% cap on the percentage of Ohio employee payroll (or, under current law, Ohio income tax withholdings) a taxpayer and the Tax Credit Authority (TCA) may agree to for the purposes of computing the job retention tax credit.
- Authorizes the TCA to require taxpayers to refund all or a portion of job creation or job retention tax credits if the taxpayer fails to substantially meet the job creation, payroll, or investment requirements included in the tax credit agreement or files for bankruptcy.
- Reduces from 60 to 30 days the amount of time a taxpayer has to submit a copy of a job creation or job retention tax credit certificate.

- Revises the role of the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance in evaluating applications for job retention tax credits and data center sales tax exemptions.

- Authorizes the TCA, upon mutual agreement of the taxpayer and DSA, to revise JCTC agreements originally approved in 2014 or 2015 to conform with the bill's revisions to the JCTC.

- Requires the TCA to adjust how JCTC and JRTC credits are computed under agreements approved before 2014 to account for increases or decreases in state income tax rates since June 29, 2013.

- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax.

- Bases the calculation of the Ohio New Markets Tax Credit on the full amount paid for a qualified equity investment, but requires most of that investment to be made in low-income businesses in Ohio.

- Authorizes the Ohio New Markets Tax Credit to be claimed against the retaliatory tax levied on foreign insurance companies.

- Exempts from sales and use tax the purchase by certain interstate logistics businesses of forklifts used primarily to move completed products from a manufacturing facility to the products' shipping location.

- Retroactively excludes, for purposes of calculating the CAT base, certain intra-supply chain receipts of a manufacturer or distributor of health and beauty products, if the vendor is located in the same county as another such vendor in the supply chain.

Property taxes

- Authorizes any school district that contains, in its territory, a community school with an "exemplary" sponsor to propose a levy for the current operating expenses of the school district and the community school.

- Authorizes school districts other than the Cleveland Metropolitan School District to allocate 100% of the proceeds of such a levy to partnering community schools.

- Exempts electric company generation equipment and "other" electric company tangible personal property that is not transmission and distribution or energy conversion equipment from property taxation.

- Requires the Tax Commissioner to annually calculate an increased assessment rate on transmission and distribution property and energy conversion equipment and use the revenue from that increase to reimburse local governments for the revenue they will lose due to the exemption of generation equipment and other property.

- Permits the electric companies to recover from customers, through a reconcilable rider, the payment of the increased tax on transmission and distribution property and energy conversion equipment that results from the bill's changes.

- Requires that all new water-works company tangible personal property first subject to taxation in tax year 2015 or thereafter be assessed at 25% of its true value, instead of 88% as required under existing law.

- Requires the rules for real estate appraisal, established by the Tax Commissioner, to include any definitions necessary to clarify appraisal methods and specifies that, if the Commissioner has not explicitly designated a rule, "The Appraisal of Real Estate, 14th Edition" and "The Dictionary of Real Estate Appraisal, 5th Edition" published by the Appraisal Institute are controlling.

- Prescribes specific valuation methods to be applied to golf courses for which there has been no recent arm's length transaction.

- Designates as "business fixtures" – and therefore exempt from property taxation – the following: cart paths, irrigation systems, and structures that consist of soil and natural materials requiring regular maintenance and that are depreciable under the Internal Revenue Code.

- Allows unproductive farmland to continue to be valued for property tax purposes according to its current agricultural use value for up to five years if it is used to store materials dredged from Ohio's waters under a contract with certain agencies.

- For the first tax bill due after a mortgage is paid off, requires any property tax late payment penalties to be waived if the mortgage lender fails to notify the county auditor that the mortgage has been satisfied and the tax bill is not mailed to the property owner.

- Requires the county treasurer to maintain a record of the person or agent to whom each tax bill is sent.

- 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 to qualify for an ongoing real and tangible personal property tax exemption.

- Lengthens, to any number of years or for a continuing period of time, the maximum term of a property tax levy to pay for operating and maintaining public cemeteries.

- Expands eligibility for the fraternal organization property tax exemption to include property used to provide educational or health services, and not just for meetings and administration.

- Authorizes townships to extend pre-1995 tax increment financing property tax exemptions for 15 more years if the township's population is at least 15,000.

- Establishes a temporary procedure by which a municipal corporation may apply for tax exemption and the abatement of unpaid taxes, penalties, and interest charged and payable in 2000 and thereafter for a submerged land lease.

Municipal income tax

- Permits a publicly traded partnership to elect to be taxed as if the partnership were a C corporation for municipal income tax purposes.

- Changes the annual return filing deadline for municipal income taxpayers that are not individuals to the 15th day of the fourth month following the end of the taxpayer's taxable year.

- Requires a municipal tax administrator to grant a taxpayer a six-month filing extension for a municipal income tax return even if the taxpayer did not request a corresponding federal extension.

- Permits a person to file an affidavit notifying a municipal corporation that the person no longer expects to be subject to the municipal corporation's income tax.

- Allows a municipal corporation that has adopted Ohio adjusted gross income as its tax base to make adjustments to that tax base with respect to resident individuals and to require individual taxpayers to file a copy of their Ohio tax return.

- Requires municipal corporations to tax an individual's foreign income under certain specified circumstances.

- Authorizes a municipal corporation that shares at least 70% of its territory with a school district to enter into an agreement to share income tax revenue with the school district, provided that a portion of the remaining 30% of the school district territory lies within another municipality with a population of 400,000 or more.

- Allows the municipal corporation to levy the revenue-sharing income tax on both residents and nonresidents.

- Clarifies a municipal income tax law, effective January 1, 2016, that requires all municipalities to allow a deduction for net operating losses (NOLs) but temporarily reduces the deduction allowed for any NOL incurred after 2016 and claimed for taxable years 2018 through 2022 to 50% of the amount otherwise allowed.

- Requires municipal corporations to publish a summary of taxpayers' rights and responsibilities online.

Other local taxes

- Authorizes a county meeting certain requirements to levy an additional 1% lodging tax for the purpose of constructing and maintaining county-owned sports facilities.

- Authorizes certain counties to levy a lodging tax of 3% or less for up to 5 years to pay for permanent improvements at sites where a county or independent agricultural society conducts fairs or exhibits.

- Authorizes Erie County to increase its general lodging tax rate by 1% to pay the costs of constructing and maintaining a sports park and promoting tourism.

- Authorizes Erie County to enter into a cooperative agreement with port authorities, nonprofit corporations, and operating companies governing the construction, financing, and operation of a sports park.

- Authorizes a county located on the Lake Erie shore to levy an additional lodging tax of up to 2% to fund the construction of port authority facilities located within one mile of Lake Erie.

- Authorizes townships and municipal corporations located in Stark County to designate a special district of not more than 200 acres as a tourism development district (TDD) before 2019 in which a gross receipts tax, admissions tax, or certain rental fees may be imposed to fund the promotion of tourism.

- Authorizes certain counties to levy a lodging tax to finance permanent improvements.

- Requires that local lodging taxes be levied on hotel lodging transactions conducted through a provider of hotel intermediary services and that the tax be imposed on the total price paid by the consumer as advertised by the hotel intermediary service provider.

Administration of county 9-1-1 assistance

- Requires the Tax Commissioner to transfer funds remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund at the direction of the Statewide Emergency Services Internet Protocol Network Steering Committee rather than after monthly disbursements are made to counties.
- Requires that any shortfall in monthly disbursements to counties from the Wireless 9-1-1 Government Assistance Fund be remedied in the following month.

Income tax

Rate reduction

(R.C. 5747.02)

The bill reduces income tax rates for all income tax brackets by 6.3% for taxable years beginning in 2015 and thereafter compared to the rates in effect for 2014.

For taxable years beginning in 2014, the income tax currently is levied at rates ranging from 0.528% for taxable income up to $5,200 to 5.333% for taxable income above $208,500. There are nine income brackets with increasingly greater rates assigned to higher income brackets.

The income tax currently is levied on individuals, estates, and some trusts. The tax base for individuals is federal adjusted gross income (FAGI) 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.

Means test for retirement income and senior tax credits

(R.C. 5747.05, 5747.055, 5747.08, 5747.71, and 5747.98; Section 803.70)

The bill restricts the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit to taxpayers whose individual or joint adjusted gross income (less personal exemptions) for the taxable year is less than $100,000. Under current law, the credits are available to taxpayers aged 65 years and older regardless of income. The income limits apply to taxable years beginning in or after 2015.

Calculation of the retirement income credit varies depending on whether the retiree (aged 65 years and older) claims the credit on an annual basis or on the basis of a lump-sum distribution of income. For retirees who claim the annual credit, the credit ranges from $25 for retirement income of at least $500, to $200 for retirement income of at least $8,000. The $200 credit is equivalent to exempting at least $15,000 of retirement income from taxation. Retirees who receive a lump-sum distribution of retirement income may claim a one-time credit equivalent to receiving the annual credit each year of the retiree's expected remaining life according to actuarial tables. Retirees who claim the one-time lump-sum distribution credit may not claim the annual retirement income credit in that taxable year or in any subsequent taxable years.

The senior citizen credit is an annual credit for taxpayers aged 65 years and older equal to $50; receiving retirement income is not necessary to claim the credit. As an alternative, a taxpayer aged at least 65 years who receives a lump-sum distribution of retirement income may claim a one-time credit equivalent to $50 for each year of their expected remaining life. As is the case with the retirement income tax credit, taxpayers that claim the one-time senior citizen credit may not claim the annual credit in that taxable year or in any subsequent taxable years.

The means test for the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit, and the senior citizen credit applies to taxable years beginning on or after January 1, 2015.

The bill also moves language relating to those credits and strikes obsolete language.

Business income tax exemption and flat tax

(R.C. 5747.01(A)(31) and 5747.02; Sections 757.120 and 803.70)

The bill exempts the first $250,000 of an income taxpayer's business income (or $125,000 for spouses filing separate returns) and imposes a flat 3% tax on all business income in excess of the amount exempted.

Under current law, individuals may deduct 50% of their business income, up to $125,000 per year (or $62,500 for spouses filing separate returns). The tax rates applicable to the remaining income are identical to the rates applicable to other types of income – based upon income tax bracket, the rates range from 0.528% to 5.333%. The current deduction was first available in 2013. For taxable years beginning in 2014, the deduction was temporarily increased to 75% of business income, up to $187,500 per year (or $93,750 for spouses filing separate returns) (see Section 757.80 of H.B. 483 of the 130th General Assembly).

Under continuing 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. It is deductible to the extent it is apportioned or allocated to Ohio, in cases of taxpayers who have business income attributable to other states. The deduction is not available to estates or trusts subject to the income tax. 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 (as opposed to just earned income).

NOAA and PHS commissioned corps active duty pay deduction

(R.C. 5747.01(A)(24))

The bill extends the deduction for active duty military personnel pay to persons serving in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS). Continuing law permits such a deduction for active duty pay of persons serving in the U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps., their respective reserve components, or the National Guard. Collectively, these branches of the armed forces and the NOAA and PHS Commissioned Corps are referred to as the uniformed services. "Uniformed services," has the same definition under continuing state and federal law. The deduction, both currently and as proposed, does not apply to persons while stationed in Ohio.

Under continuing law, a deduction is available for retirement pay of retired members of all the uniformed services and their survivors. The retirement pay deduction was extended to persons serving in the NOAA and PHS Commissioned Corps by H.B. 59 of the 130th General Assembly.

Wishes for Sick Children Income Tax Refund Contribution Fund

(R.C. 3701.602 and 5747.113; Section 803.300)

The bill authorizes taxpayers to contribute all or a part of their Ohio income tax refund to a nonprofit organization whose primary purpose is to grant the wishes of children diagnosed with life-threatening illnesses. Contributions are credited to the

Wishes for Sick Children Income Tax Contribution Fund, which is created by the bill. Individuals may also contribute directly to the Fund.

All contributions to the new Fund must be used to grant the wishes of individuals who are under the age of 18, who are residents of the state, and who have been diagnosed with a life-threatening medical condition. A nonprofit organization is eligible to receive and distribute money from the Fund if (1) it is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, (2) for the past ten years, the primary purpose of the organization has been to grant the wishes of children with life-threatening illnesses, and (3) for each of the last three years, the organization spent at least $1 million for that purpose.

Under continuing law, there are five income tax refund contributions or "check-offs." They benefit the Natural Areas and Preserves Fund, the Nongame and Endangered Wildlife Fund, the Military Injury Relief Fund, the Ohio Historical Society, and the Breast and Cervical Cancer Project. As with the existing check-offs, the new check-off would authorize taxpayers to direct that all or part of their refund be credited to the new Fund. The designation is made on the annual income tax return. The designation may not be revoked once the designation is made and the return is filed.

The bill requires the Director of Health to distribute contributed funds to eligible nonprofit corporations and to submit a biennial report to the General Assembly on the effectiveness of the check-off in January of every odd-numbered year. The report must include information about how the money was spent and the amount of money contributed (including the amount contributed through the refund check-off and the amount contributed directly). Each report must provide this information for each of the five preceding years.

The Department of Taxation is entitled to reimbursement for its costs of administering the check-offs. Under current law, reimbursement is paid from the existing four check-off funds in equal one-fifth shares. The total reimbursement cannot exceed 2.5% of the total amount contributed. Under the bill, the reimbursement would be divided in equal one-sixth shares among the five existing funds and the Wishes for Sick Children Income Tax Contribution Fund. The reimbursement would continue to be limited to 2.5% of contributions.

Continuing law requires that any new check-off category created by the General Assembly be effective for no more than two years. The bill creates an exception to this rule for the Wishes for Sick Children Income Tax Contribution Fund, thereby allowing the Fund to exist beyond the two-year limit.

Taxpayers may contribute their income tax refunds to the Wishes for Sick Children Income Tax Contribution Fund beginning with taxable years that begin in or after 2015.

Income tax rate reduction based on vetoed provisions

(Section 757.100)

The bill provides for a reduction in income tax rates based upon the savings realized if the Governor vetoes appropriations and expenditures included in the bill. Under the bill, the Tax Commissioner, in consultation with the Director of Budget and Management, must (1) determine the total amount of vetoed appropriations and expenditures that would have cost at least $5 million in FY 2016 and $6 million in FY 2017 and (2) reduce income tax rates by the same proportion that that amount bears to the total amount of income revenue they estimate will be received in the 2014-2015 biennium.

The income tax rate reduction would be permanent and would apply beginning with the 2015 taxable year. However, withholding tax rates would not be adjusted to reflect the reduction until July 1, 2017.

Sales and use taxes

Use tax collection by remote sellers

(R.C. 5741.01 and 5741.03; Section 812.20)

The bill defers the first date that the Director of Budget and Management is required to transfer new remote seller use tax collections to the income tax reduction fund (ITRF) from July 1, 2015, to the last day of January or July following the effective date of any federal law that authorizes states to require sellers that lack substantial nexus with a state to collect and remit use tax. A bill proposing such a law currently is pending in Congress – the "Marketplace Fairness Act of 2015," (S. 698). Similar legislation has been introduced in prior Congresses but was never enacted.

Generally, use tax collections are credited to the state General Revenue Fund, with a portion of the revenue earmarked for the Local Government Fund and Public Library Fund. H.B. 59 of the 130th General Assembly required the Director to make biannual deposits of new use tax collections from remote sellers to the ITRF. Revenue in the ITRF is 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.

The bill also postpones the biannual deadline for ITRF transfers in each year thereafter from the first day of January and July to the last day of January and July. The Director, along with the Tax Commissioner, would still be required to compute the new remote seller use tax collections for a preceding six-month period (June to November and December to May, respectively) by the first day of January and July each year following the effective date of federal Marketplace Fairness-like legislation.

The bill modifies the computation of new remote seller use tax collections for the purpose of making the required transfers to the ITRF. Current law requires the Director and the Tax Commissioner to compute "new" use tax collections by reference to the amounts that were voluntarily remitted in FY 2013 by sellers that did not have substantial nexus with the state. Specifically, new use tax collections currently are the collections remitted by remote sellers in excess of (1) remittances by sellers that collect use tax under the Streamlined Sales and Use Tax Agreement, (2) refunds issued to remote sellers, and (3) one-half of the use tax voluntarily remitted in FY 2013. Under the bill, only use tax remittances from sellers that register with the Commissioner after the effective date of federal Marketplace Fairness-like legislation would count as "new" use tax collections destined for the ITRF.

The bill creates a presumption that sellers that register with the Commissioner after the effective date of such federal legislation are "remote sellers" for the purposes of computing new use tax collections. The seller or Commissioner may rebut that presumption by presenting evidence that the seller has substantial nexus with the state.

"Substantial nexus" standards

(R.C. 5741.01 and 5741.17; Section 803.260)

Under continuing law, state and local sales tax applies to every retail sale conducted in Ohio. State use tax applies to sales of tangible personal property or taxable services made outside Ohio in which the property or service is used or received 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.[209] Otherwise, a state cannot require a seller to collect and remit use tax. In instances where

[209] *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).

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."

(5) The seller provides hotel intermediary services for lodging at a hotel located in Ohio (see "**Sales and use taxation of hotel intermediary services**," above).

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, rents, leases, or offers on approval tangible personal property to Ohio customers, or is affiliated with a person that has substantial nexus with Ohio. For this purpose, affiliation is determined by stock ownership (50% for closely held corporations, 80% for others).

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 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.

Eliminate cash register adjustment compensation

(R.C. 5739.212 (repealed); Section 803.170)

Eliminates an existing requirement that counties and transit authorities compensate vendors for the expense of adjusting cash registers when a county or transit authority sales and use tax rate is increased or a new tax is imposed. Compensation would no longer be required for taxes increased or imposed on or after July 1, 2015.

Currently, when a county or transit authority levies a new sales and use tax or increases the tax rate, it must compensate vendors by up to $50 per cash register or, if only one register is in a place of business, up to $100.

Sales and use taxation of hotel intermediary services

(R.C. 5739.01(B)(3)(v) and (TTT); Section 803.330)

Beginning October 1, 2015, the bill subjects to sales and use tax the sale of hotel intermediary services. A person provides such services if the person, other than a hotel itself, arranges for the sale of hotel lodging, e.g., Internet and travel agent hotel booking services.

Remission of tax on vehicle sales and leases

(R.C. 4505.06, 5739.029, 5739.13, and 5741.12)

Under continuing law, applications for certificates of title for motor vehicles are filed with the Clerk of the Court of Common Pleas. Currently, the Clerk collects sales and use taxes along with the application for a certificate of title for the vehicle. The Clerk may not issue the title before collecting the taxes stemming from the sale of the motor vehicle.

Under the bill, a new or used motor vehicle dealer licensed in Ohio may elect to remit the sales and use tax collected on vehicle sales and leases directly to the state on the dealer's monthly sales or use tax return rather than remitting the tax to the Clerk. A motor vehicle dealer that makes such an election must submit to the Clerk, along with the application for a certificate of title, a certificate that acknowledges the sale or lease of the motor vehicle, stating the purchaser's county of residence, and pledging that the dealer will report and remit the tax due to the state on the dealer's monthly return. In effect, the bill allows motor vehicle dealers to defer remission of sales and use taxes for up to one month from the date of the sale or lease. The bill does not prohibit motor vehicle dealers from continuing to remit sales and use tax to the Clerk along with the application for a certificate of title.

The bill requires the Tax Commissioner to remit the Clerk's poundage fee to the appropriate county Certificate of Title Administration Fund upon collecting the tax. Under continuing law, the poundage fee equals 1.01% of the tax collected and is to be used to defray the expenses of processing titles for automobiles and other titled vehicles and, in the case of a surplus, to fund the county general fund.

Sales and use tax exemption for meat sanitation services

(R.C. 5739.01(II); Section 803.330)

Continuing law imposes the state's sales and use tax on the provision of "building maintenance and janitorial" services – i.e., cleaning services. Beginning October 1, 2015, the bill exempts from sales and use tax the provision of such services to a meat slaughtering or processing operation if the services are necessary for the operation to comply with federal meat safety regulations.[210]

Exempt rental vehicles provided by warrantor

(R.C. 5739.02(B)(42); Section 757.110)

The bill exempts from sales and use tax any transaction by which a rental vehicle is provided to someone whose motor vehicle is undergoing repair or maintenance. The exemption applies only if the cost for the rental vehicle is reimbursed by the manufacturer, warrantor, or other provider of maintenance or service contract or agreement, with respect to the vehicle being repaired or maintained. Currently, a sales tax exemption is available only for sales of "things" that are needed to fulfill a warranty or similar contractual obligation that was included in the price of the original thing purchased or that was purchased as a separate warranty or service contract.

The bill also requires the Tax Commissioner to abate all unpaid sales and use taxes and corresponding penalties and interest stemming from the provision of rental vehicles before the effective date of the exemption. The Commissioner would be prohibited from making an assessment for such unpaid taxes, penalties, and interest.

Other state taxes

Cigarette and tobacco excise taxes

Ohio levies an excise tax on the sale, distribution, or use of cigarettes at the current rate of $1.25 per pack. The tax is paid primarily by wholesale dealers through the purchase of stamps that are affixed to packs of cigarettes. Retail sellers must pay the

[210] 21 U.S.C. 608.

tax on cigarettes that are not taxed at the wholesale dealer level. A separate tax is levied on tobacco products other than cigarettes at the current rate of 17% of the wholesale price, or 37% of wholesale price for "little cigars" – which are noncigarette, filtered smoking rolls wrapped in any substance containing tobacco, other than natural leaf tobacco. (This tax is often referred to as the other tobacco products (OTP) tax.) Revenue from the cigarette and OTP tax is credited to the GRF.

Cigarette excise tax rate

(R.C. 5743.02 and 5743.32; Sections 803.220 and 803.230)

The bill increases the rate of the cigarette excise tax from the current $1.25 per pack to $1.65 per pack beginning July 1, 2015. On a per-cigarette basis, the increase is from 8.25¢ to 11.25¢. All revenue from the cigarette excise tax will continue to be credited to the GRF.

The rate increase also applies to cigarettes in wholesale and retail dealers' inventories and tax stamps in wholesale dealers' inventories on July 1, 2015. Dealers must pay a "net additional tax" on those inventories. The net additional tax is the additional tax resulting from the rate increase for all cigarette packs bearing a tax stamp and for all unaffixed tax stamps in the dealer's possession at the beginning of business on that day. All dealers owing additional tax must file a return with the Tax Commissioner and pay the tax by September 30, 2015. A late charge applies for late payments or returns equal to $50 or 10% of the tax due, whichever is greater.

Tobacco products excise tax rate

(R.C. 5743.01, 5743.51, 5743.62(A), and 5743.63; Section 803.280)

The bill increases the rate of the OTP tax by 32% from the current 17% of the wholesale price to 22.5% beginning July 1, 2015. All revenue from the OTP tax will continue to be credited to the GRF.

The bill places a ceiling on the amount of excise tax on "premium cigars" of 50¢ per cigar, effective July 1, 2015. The bill specifies that the maximum tax on premium cigars is 50¢ per cigar. Premium cigars are defined to be rolls of tobacco with (1) a binder and wrapper consisting entirely of leaf tobacco, (2) no tip or filter or mouthpiece that is not made of tobacco, and (3) a weight of at least six pounds per 1,000 rolls. The Tax Commissioner must annually adjust the 50¢ maximum tax to account for any increase in the Consumer Price Index (CPI) for urban consumers.

Domestic insurance premium tax

(R.C. 5725.22; Section 803.07)

Under continuing law, foreign and domestic insurance companies are subject to a franchise tax based on the company's gross premiums, subject to certain exclusions. For an insurance company that is a health insuring corporation, and for the health insuring corporation line of business of an insurer that is not a health insuring corporation, the tax is equal to 1% of all premium rate payments received. An insurance company that is not a health insuring corporation must pay a franchise tax equal to 1.4% of the gross amount of premiums received from policies covering risks within Ohio.[211]

Payment date

The bill requires the Treasurer to issue a final tax bill to each domestic insurance company on or before May 15 of each year. In case of an emergency situation, the Treasurer may issue the tax bill later than May 15 and may grant the taxpayer an extension for paying the amount due. Under current law, the Treasurer is required to issue the tax bill within 20 days after receiving the final assessment of taxes from the Department of Insurance. Continuing law requires the Department of Insurance to certify the tax liability of each insurance company to the Treasurer on or before the first Monday of May.

The bill requires domestic insurance companies to pay the franchise tax liability on or before June 15 of each year. If June 15 is a Saturday, Sunday, or legal holiday, payment is due on the next business day. Under current law, payment is due within 30 days of the date the Treasurer mails the tax bill.

Penalties

The bill also adjusts the penalties associated with late payment of the domestic insurance premiums tax. The penalty would equal $500 for each month the taxpayer fails to pay all taxes and interest due. (This equals the penalty for failure to pay foreign insurance company taxes. R.C. 5729.11.) If the taxpayer fails to demonstrate a good faith effort to pay the taxes and interest on time, the Treasurer may assess an additional penalty not exceeding 10% of the taxes and interest due. Under current law, the penalty for late payment is 5% of the taxes and interest due if the payment is made within ten days of the due date and escalates to 10% of the taxes and interest due if the payment is more than ten days late.

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[211] R.C. 5725.18.

The bill's changes to domestic insurance premium tax due dates and penalties apply to taxable years ending in or after 2016.

Financial institutions tax: exempt PCAs and ACAs

(R.C. 5726.01; Section 757.140)

The bill exempts production credit associations (PCAs) and agricultural credit associations (ACAs) from the financial institutions tax (FIT), thereby subjecting both types of organizations to the commercial activity tax. Under current law, PCAs are explicitly subject to the FIT. ACAs are neither explicitly subject to, nor exempt from, the FIT.

A PCA is an institution organized under the Farm Credit Act of 1933 to provide short- or intermediate-term loans to farmers, ranchers, and farm-related businesses, and to rural residents for housing. Currently, all PCAs are subsidiaries of ACAs. An ACA is formed through the combination of a PCA and either a Federal Land Credit Association (FLCA) or a Federal Land Bank Association (FLBA), and has similar functions to that of a PCA, except that an ACA may also make long-term loans. Under current law, FLBAs are exempt from the FIT, while FLCAs are neither explicitly subject to, nor exempt from, the tax.

The bill applies the exclusions to tax years beginning on and after January 1, 2014, the date the FIT took effect. The bill further states that the changes are intended to be "remedial in nature" and to "clarify" existing law.

Cigarette tax stamp purchase credit

(R.C. 5743.05)

Under continuing law, wholesale cigarette dealers pay the cigarette excise tax by purchasing tax stamps from the Tax Commissioner and affixing those stamps to packages of cigarettes the dealer sells. Between July 1 and May 1 of each fiscal year, current law authorizes a dealer that does not file a surety bond with the Commissioner to buy cigarette tax stamps on credit with a value up to 110% of its monthly average purchases if the dealer pays for the stamps within 30 days. The 110% limit does not apply if the dealer files a surety bond with the Commissioner, though the 30-day payment deadline does.

The bill lengthens the period of time during which dealers may purchase cigarette tax stamps on credit to between July 1 and June 23 of each fiscal year. The bill generally maintains the 30-day payment deadline, but requires dealers to pay for stamps purchased on credit no later than June 23 if the stamps are purchased within 30 days before that date.

Cigarette and other tobacco tax enforcement report

(R.C. 5703.85)

The bill requires the Tax Commissioner to prepare a quarterly report, beginning September 1, 2015, that details each of the following:

(1) The number of tobacco tax-related inspections and investigations conducted during the preceding four months.

(2) The number of tobacco tax-related violations found during those months.

(3) The number of prosecutions brought during those months in relation to tobacco tax-related violations.

(4) The number of agents designated to enforce tobacco tax-related violations in those months.

The Commissioner must submit the report to the chairpersons of the House and Senate standing committees that are normally responsible for tax legislation.

Kilowatt-hour excise and personal property tax: donated electricity

(R.C. 5727.031 and 5727.80; Section 757.90)

Under continuing law, most property used to supply electricity to other persons is subject to property taxes imposed by local taxing units. In addition, most companies that distribute electricity to end users in Ohio, and some large end users, are subject to a kilowatt-hour tax based on the amount of kilowatt-hours of electricity distributed to or consumed by the end user each month.

The bill specifies that, when a company generates electricity but donates all of that electricity to a political subdivision, the property used to generate or supply that electricity is not subject to property taxation and the donated electricity is not subject to the kilowatt-hour tax. The bill states that this provision is intended to "clarify and be declaratory of" existing law.

Kilowatt-hour tax reimbursement for wind-generated electricity

(R.C. 5709.93(A)(22), (E), and (F)(2))

The bill creates a special set of payments for a municipal corporation where a user of a substantial amount of wind-generated electricity (7,000,000 kwh/year) is located. The payment is incorporated into the bill's proposed tangible personal property tax reimbursement scheme, payable from the Local Government Tangible Property Tax Replacement Fund, although it is not related to the loss of property tax revenue from tangible personal property. The payment equals the amount of kilowatt-hour excise tax paid on the basis of wind-generated electricity received by the user. Payments would be made semiannually in any fiscal year following a calendar year in which kilowatt-hour tax is paid for the electricity. The payments would continue indefinitely as long as the electricity is distributed to the user and the tax is being paid on the basis of that electricity. The municipal corporation must credit the payment to a special fund to be used to provide grants, tax reductions, or other financial assistance to the user of the wind-generated electricity.

Petroleum activity tax – propane

(R.C. 5736.01 and 5736.02(C); Sections 757.150, 757.160, and 803.350)

The bill changes the base on which the petroleum activity tax is imposed in the case of liquid petroleum gas (a.k.a., LPG or propane) by using the market price of such gas, instead of the market price of diesel, to calculate taxable gross receipts. The change takes effect July 1, 2015.

Currently, PAT gross receipts are calculated separately for gasoline and for all other motor fuels, including diesel, propane, kerosene, and biodiesel. The distinction allows the market price of gasoline to be used to calculate gross receipts from gasoline sales, but uses the market price for diesel to be the basis for calculating gross receipts for diesel and other motor fuels (diesel being by far the most common such fuel other than gasoline).

Continuing law requires that, for purposes of calculating the PAT, the Department of Taxation must publish the average market prices of gasoline and diesel at least 15 days before the first day of each quarterly tax period. The bill applies this same requirement to the posting of propane average market prices, but creates an exception for the first tax period after the bill's changes take effect. The exception allows the Department additional time – until July 30, 2015 – to post the average market price of propane for the tax period beginning on July 1, 2015.

Petroleum activity tax credit for tax on blend stocks

(R.C. 5736.51; Section 803.190)

The bill authorizes a petroleum activity tax (PAT) deduction on the basis of receipts derived from selling blend stocks or additives used for blending with motor fuel, if the PAT has already been paid with respect to the blend stocks or additives. A supplier may rely upon an invoice issued by the seller of the blend stocks or additives as evidence that the PAT has already been paid with respect to the blend stocks or additives, provided that the seller is a licensed Ohio motor fuel supplier that complies with the recordkeeping requirements prescribed by the Tax Commissioner and the invoice lists the tax as a separate charge. Blend stocks are additives that are sold for blending with motor fuel, such as ethanol.

Continuing law levies the PAT on suppliers of motor fuel on the basis of each supplier's "calculated gross receipts" – the volume of the supplier's first sales of motor fuel in the state multiplied by the average price for unleaded gasoline or diesel fuel, as applicable. Essentially, the deduction ensures that the sale of blend stocks incorporated into motor fuel is subject to the PAT only once, i.e. the blend stock is taxed at its point of first sale, but not a second time after it is incorporated into and sold as blended motor fuel.

Offsetting CAT reduction for railway purchases of dyed diesel

(R.C. 5751.01(F)(2)(kk); Section 803.310)

The bill authorizes a reduction in the commercial activity tax (CAT) for railways' purchases of dyed diesel fuel. The reduction compensates for the difference between the petroleum activity tax (PAT) payable on account of such fuel and the CAT that would have been owed on account of the fuel if the CAT applied to receipts from selling the fuel. (The PAT is levied at a rate of 0.65% of the receipts that fuel suppliers receive from selling motor fuel, including dyed diesel. The CAT is levied at a rate of 0.26%, and does not apply to receipts from selling motor fuel.) The difference between the PAT payable on account of the fuel and the CAT that would be payable (because of the tax rate difference) is translated into a reduction in a railway's overall CAT taxable gross receipts. The reduction applies only if a railway purchases the dyed diesel fuel directly from a fuel supplier subject to the PAT. The reduction applies to a railway's CAT tax periods beginning on or after July 1, 2015.

Wine excise tax

(R.C. 4301.43)

Continuing law levies an excise tax on manufacturers, importers, and wholesale distributors who sell and distribute wine in and to Ohio. The tax is due monthly. All revenue is credited to the General Revenue Fund except for a percentage of the wine tax revenue (2%) earmarked for the Ohio Grape Industries Fund. Currently, the 2% earmark is set to expire June 30, 2015. The bill extends the earmark for another two years, until June 30, 2017.

Tax identity verification

(R.C. 5703.057, 5703.36, and 5703.361; Sections 757.40 and 803.180)

Beginning January 1, 2016, the bill limits information the Tax Commissioner may require a person to verify for the purpose of confirming the person's identity. Continuing law empowers the Commissioner to (1) take measures to inform the Commissioner on matters necessary to discharge the Commissioner's duties and (2) require that any person filing a tax document also provide identifying information to the Commissioner. The bill limits the scope of this existing authority by prohibiting the Commissioner from requesting that a person verify information created or compiled more than five years earlier.

Additionally, the bill requires the Commissioner to report on the effectiveness of any identity-verification measures the Commissioner employs to reduce personal income tax fraud. This report must be submitted by August 30, 2016, to the Speaker of the House of Representatives and the President of the Senate, as well as each member of the House and Senate standing committees dealing with taxation.

Ohio 2020 Tax Policy Study Commission

(Section 757.50)

The bill creates the Ohio 2020 Tax Policy Study Commission to review the state's tax structure and policies and make recommendations to the General Assembly on how to maximize Ohio's competitiveness by the year 2020. Specifically, the commission must make recommendations on how to transition Ohio's personal income tax to a 3.50% or 3.75% flat tax by tax year 2018 and how to reform Ohio's severance tax in a way that maximizes competitiveness and enhances the general welfare of the state.

The commission is to consist of three members of the House appointed by the Speaker, three members of the Senate appointed by the Senate President, and the Director of the Office of Budget and Management. With respect to the House members, two must be members of the majority party, one of whom is the Chairperson of the House Ways and Means Committee, and one must be a member of the minority party. With respect to the Senate members, two must be members of the majority party, one of whom is the Chairperson of the Senate Ways and Means Committee, and one must be a member of the minority party. The Chairpersons of the House and Senate Ways and Means Committees are to serve jointly as Co-chairpersons of the commission.

The bill directs the commission to utilize "dynamic analytical tools" and the Legislative Service Commission to provide any necessary services. (The bill does not define "dynamic analytical tools." In the context of analyzing tax policies, reference to "dynamic" analysis generally implies employing models intended to estimate how a change in policy affects revenue directly or indirectly through the policy's effect on macroeconomic factors such as employment, capital stock, and output.)

The commission must publish its findings and recommendations on Ohio's severance tax not later than October 1, 2015. The commission is required to publish its findings and recommendations on all other matters not later than October 1, 2017. The commission will cease to exist upon publication of both such reports.

Tax Expenditure Review Committee

(R.C. 5703.95, 5703.951, 5703.952, 5703.953, and 5703.954; Sections 757.163 and 757.165)

The bill creates a permanent committee – composed of four legislators, one gubernatorial appointee, and two agency heads – to review every existing and newly enacted tax expenditure once every two years. The Committee is named the Tax Expenditure Review Committee.

The bill adopts existing law's definition of "tax expenditure," which currently is used to define the content of the Department of Taxation's Tax Expenditure Report that accompanies the Governor's proposed biennial operating budget. Under that definition, a tax expenditure is "any tax provision in the Revised Code that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the Revised Code, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates."[212] According to the most recently issued Tax Expenditure Report, there are currently 128 tax expenditures.

The Tax Expenditure Review Committee is required to establish a schedule for reviewing each tax expenditure once every two years. The Committee is required to

[212] R.C. 5703.48.

divide in half all the tax expenditures existing on April 15, 2015, pursuant to a list of such expenditures furnished by the Tax Commissioner, reviewing one-half in 2016 and every subsequent even-numbered year and the other half in 2017 and every subsequent odd-numbered year.

The Committee is also required to review each tax expenditure enacted in an odd- or even-numbered year after April 15, 2015, in every subsequent odd- or even-numbered year, respectively.

In the process of reviewing each expenditure, the Committee must hold at least one public hearing on each tax expenditure scheduled for review in that year, during which the Committee must allow persons to present testimony or evidence related to that tax expenditure. The Tax Commissioner is required to publish advance notice of those hearings in the *Register of Ohio*.

In advance of these hearings, the Commissioner or any other official responsible for administering a tax expenditure, e.g., the Director of Development Services, is required to furnish the Committee with the following information about the expenditure:

(1) The expenditure's purpose;

(2) The official's opinion as to the public need for the expenditure;

(3) The official's opinion whether the expenditure's effectiveness is impeded or enhanced by existing statutes;

(4) How, if at all, the expenditure promotes economic growth and development;

(5) An estimate of the revenue forgone each fiscal year as a result of the expenditure;

(6) The official's opinion whether the tax expenditure should be discontinued;

(7) Any other information relevant to the Committee's review.

After the hearing, the bill requires the Committee to review each tax expenditure. In doing so, the Committee is required to consider the information submitted by state officials, as well as information furnished to the Committee by the Legislative Service Commission (LSC). The Committee may request additional information that would assist in the Committee's review from state agencies, and those agencies are required to furnish requested information.

The Committee is required to issue to the Governor and each member of the General Assembly a report by November 1 of each year, beginning in 2016, containing the following information related to each reviewed tax expenditure:

(1) The expenditure's purpose;

(2) The effectiveness of the expenditure;

(3) Whether the expenditure serves a public need;

(4) Whether the expenditure's effectiveness is impeded or enhanced by existing statutes;

(5) Whether the expenditure promotes economic growth and development;

(6) An estimate of the revenue forgone each fiscal year as a result of the expenditure;

(7) The Committee's recommendation whether the tax expenditure should be discontinued;

(8) Any other relevant information.

In addition to the information required above, the report may include drafts of proposed bills that would discontinue or improve the effectiveness of reviewed tax expenditures. The report is subject to disclosure under Ohio's Public Records Law.

The bill requires LSC to annually submit to the Committee, beginning in 2016, a report describing each existing tax expenditure's purpose and, if the legislation creating the expenditure prescribed standards to evaluate its effectiveness, evaluating whether the expenditure meets those standards.

Proposed tax expenditures

The bill requires any act of the General Assembly that creates a new tax expenditure to state each of the following:

(1) The expenditure's purpose;

(2) Whether the expenditure is to be reviewed in an odd- or even-number year;

(3) The class of taxpayers that will benefit from the expenditure;

(4) Methods to be used to evaluate the expenditure's effectiveness in serving its purpose.

Tax amnesty

(Section 757.130)

The bill requires the Tax Commissioner to administer a temporary tax "amnesty" from January 1 to February 15, 2016, with respect to delinquent state taxes, county and transit authority sales and use taxes, school district income taxes, and taxes on business tangible personal property.[213] It also covers delinquent income tax withholding remittances by employers. The amnesty applies only to taxes that were due and payable as of May 1, 2015, that were unreported or underreported, and that remain unpaid on January 1, 2016. The amnesty does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending.

If, during the amnesty, a person pays the full amount of delinquent taxes owed and one-half of any accrued interest, the Commissioner must waive all penalties and the other one-half of accrued interest. The bill authorizes the Commissioner to require a person to file returns or reports, including amended returns or reports. Persons owing tangible personal property taxes are required to file a return with the Commissioner listing all taxable personal property not previously listed by the person on a tangible personal property tax return; the taxes would be collected by county treasurers in the same manner as the taxes originally due.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who pays the amount due and one-half accrued interest is immune from criminal prosecution or any civil action with respect to the tax paid, and no assessment may be issued against the person.

The Commissioner must issue forms and instructions for the amnesty, must publicize the amnesty so as to maximize public awareness and participation, and may take any other actions necessary to implement the amnesty.

Taxes and interest collected under the amnesty will be distributed in the same manner as the underlying tax liability would have been distributed had it been paid as required by law. Thus, collections related to state taxes will be credited to the General Revenue Fund unless a different fund is specified by law (e.g., motor fuel taxes to the various highway funds), with the portion attributable to county and transit authority sales and use taxes being credited to the appropriate county or transit authority and the

[213] Tangible personal property used in business has not been subject to taxation since 2008 (2010 in the case of telecommunications property). Presumably, the amnesty applies to taxes on such property to the extent the property was not listed in those prior years and the taxes remain unpaid on May 1, 2015.

portion attributable to school district income taxes being distributed to the appropriate school district. Collections related to tangible personal property taxes will be distributed to the appropriate taxing unit, but no payment will be made for a prior reimbursement by the state for a $10,000 exemption from such taxes.

The most recent general tax amnesty was conducted in 2012.

Tangible personal property tax reimbursements

Background

The bill resumes the phase-out of payments currently being made to school districts and other local taxing units to partly reimburse them for the loss of property tax revenue resulting from previously legislated reductions in local property taxes on tangible personal property. Beginning in 2001, the taxable value of some electric utility tangible personal property (TPP) was reduced by legislation that partly deregulated electric utilities. Subsequent utility deregulation legislation in following years reduced the taxable value of natural gas utility TPP and telephone utility TPP. In 2005, legislation eliminated taxes on TPP used in business over a five-year period. These reductions caused locally levied property taxes to decline accordingly. The legislation provided initial reimbursement for most of the revenue loss and gradual phase-out of the reimbursement over several years. In 2011 and 2012, reimbursement payments were immediately reduced by about 25% and 50%, respectively, and the phase-out of the reduced payments accelerated relative to the original phase-out schedule.[214]

School district reimbursement

(R.C. 5709.92, 5727.84, 5727.85, 5751.20, and 5751.21)

Under current law, reimbursement payments are generally constant for those districts whose reimbursements have not already been phased out under the 2011-2012 changes. The bill's resumption of the reimbursement phase-out begins in FY 2016 on the basis of a district's combined business and utility property tax replacement payments received in FY 2015. (The bill includes an offsetting provision, effective for FY 2016 and 2017 only, requiring a supplemental payment ensuring that each school district receives combined state aid and TPP reimbursement for fixed-rate current expense levies at least equal to its combined FY 2015 state aid and TPP reimbursement for fixed-rate current expense levies. See Section 263.325, entitled "School District TPP Supplement.")

[214] A complete description of the 2011-2012 changes to the reimbursement scheme is available in the LSC bill analysis for H.B. 153 of the 129th G.A., pp. 655-665.

Under the bill, different phase-out schedules are prescribed for different classes of tax levies, as follows:

Current expense levies: Payments for most current expense-purpose levies are phased out according to the amount of a district's FY 2015 current expense levy replacement payment ("current expense allocation") relative to its total operating revenue from state and local sources ("total resources"). Payments are phased out more quickly for districts whose current replacement payments are a relatively small percentage of their total resources. The phase-out also incorporates a tax-raising capacity factor designed to continue relatively greater payments for more years for districts that have relatively lower personal income and per-pupil property wealth. For districts in the middle 20% (third quintile) of tax capacity, the replacement payment will be made in FY 2016 only if and to the extent that the FY 2015 payment represents more than 1.5% of the district's total resources; in FY 2017, the percentage increases from 1.5% to 3%, and it increases by an increment of 1.5% each year thereafter. The percentage for each quintile, both the initial and annual increment, is as follows:

Quintile	Percentage
Fifth (highest capacity)	2%
Fourth	1.75%
Third	1.5%
Second	1.25%
First (lowest capacity)	1%

As each percentage increases incrementally each year, the amount of the payment decreases until the payments eventually end.

The percentage for all joint vocational school districts is 2% initially, with a 2% incremental increase each year.

Currently, school districts and JVSDs receive payments for such current expense levies only if the district's FY 2011 payment for those levies exceeds 4% of its total resources for the corresponding year. The annual payment equals the amount by which a district's FY 2011 payment for those levies exceeds 4% of its total resources for the corresponding year.

Noncurrent-expense, nondebt levies: Replacement payments for levies funding purposes other than current expenses or debt payment (e.g., permanent improvement levies) are made in FY 2015 in an amount equal to 50% of a district's FY 2015 payment.

No payments for such levies will be made after FY 2016. Current law provides for annual payments equal to 50% of the payment a district received in FY 2011.

Emergency and other fixed-sum levies: Replacement payments for emergency levies and other levies designed to raise a fixed amount of revenue for current expenses or other purposes (except debt levies) are phased out in one-fifth increments over five years. The phase-out begins in 2017 for utility property-based replacement payments and in 2018 for business property-based payments. Currently, payments for nondebt fixed-sum levies are scheduled to end in 2017 for utility TPP-based reimbursements and in 2018 for business TPP-based reimbursements.

Debt levies: Replacement payments for voter-approved fixed-sum debt levies will continue to be paid in the same amount paid in 2014 until the levy is no longer imposed. Payments for debt levies imposed without the need for voter approval (i.e., within the 10-mill limitation on unvoted taxes) and that qualified for reimbursement in FY 2015 will be reimbursed through FY 2016 (for utility TPP-based payments) or through FY 2018 (for business TPP-based payments). This is a continuation of current law.

Other local taxing unit reimbursement

(R.C. 5709.93, 5727.84, 5727.86, 5751.20, and 5751.22; Section 757.10)

Similar to school district reimbursements, reimbursement payments for other local taxing units currently are generally constant for those still receiving payments after the 2011-2012 changes. The bill's resumption of the phase-out of reimbursements begins in FY 2016 on the basis of a district's combined business and utility property tax replacement payments received in FY 2015.

As with school district reimbursements, different phase-out schedules are prescribed for different classes of tax levies, as follows:

Current expense levies: Most current expense-purpose levies are phased out according to the amount of a taxing unit's FY 2015 current expense levy replacement payments ("current expense allocation") relative to its total operating revenue from state and local sources ("total resources"). Payments are phased out more quickly for taxing units whose FY 2015 replacement payments are a relatively small percentage of their total resources. Replacement payments for most current expense levies will be made in FY 2016 only if and to the extent that the FY 2015 payment represent more than 2% of the district's total resources. In FY 2017, the percentage increases from 2% to 4%, and it increases by 2% each year thereafter. As the percentage increases incrementally each year, the amount of the payment decreases until the payments eventually end.

Currently, taxing units and libraries receive payments for such current expense levies only if their CY 2010 payment for those levies exceeds 6% of its total resources for the corresponding year. The annual payment equals the amount by which the CY 2010 payment for those levies exceeds 4% of total resources for the corresponding year.

Unvoted debt levies: Replacement payments for debt levies imposed without the need for voter approval (i.e., within the 10-mill limitation on unvoted taxes) and that qualified for reimbursement in CY 2015 will be reimbursed through CY 2016 (for utility TPP-based payments) or through CY 2017 (for business TPP-based payments).

Nuclear power plant-affected taxing units

(R.C. 5709.92 and 5709.93)

Replacement payments for certain school districts and other taxing units are exempted from the bill's phase-out of TPP replacement payments for fixed-rate current expense levies. In fiscal year 2016 and thereafter those districts and taxing units will continue to receive the same payment amount they received for such levies in fiscal year 2015. To be exempted from the phase-out, the district or taxing unit must have a nuclear power plant located in its territory and its FY 2015 TPP reimbursement payment for fixed-rate current expense levies ("current expense allocation") must equal at least 10% of its total resources. (The exempted school districts and taxing units are designated "qualifying school districts" and qualifying taxing units.") Reimbursement for other kinds of levies is phased out as the bill provides for other school districts and taxing units.

Library total resources certification

The bill requires each county auditor to certify to the Tax Commissioner the amount of money distributed from the County Public Library Fund in 2014 to each public library system that received a TPP reimbursement in 2014. Certification must be made by July 31, 2015. The certification is to enable the Commissioner to compute a library system's total resources used in the computation of new reimbursements.

Appeal of reimbursement computation

(Section 757.20)

The bill authorizes school districts and other local taxing units affected by the bill's TPP reimbursement changes to contest how the Tax Commissioner has classified a levy or calculated its total resources for the purpose of computing the reimbursement payments. Appeals must be filed with the Commissioner and the Commissioner may adjust the classification or computation if warranted by the appeal's merits. The

Commissioner's decision is final and not appealable. No adjustments may be made after June 30, 2016.

CAT revenue to GRF

(R.C. 5751.02 and 5751.20)

The bill increases the percentage of commercial activity tax revenue to be credited to the GRF beginning July 1, 2015, and reduces the percentages to be credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund. Aside from the small percentage of CAT revenue (0.85%) that will continue to be earmarked for CAT administration expenses and to implement unspecified "tax reform measures," the percentage of CAT revenue credited to the GRF increases from 50% to 75%. The percentage credited to the school district replacement fund decreases from 35% to 20%, and the percentage credited to the local government replacement fund decreases from 15% to 5%.

The bill also moves language related to the use of CAT revenue from one section of law (R.C. 5751.20(B) and (J)) to another (R.C. 5751.02(C) to (F)) without changing the substance of the language other than to change the allocation of revenue between the GRF and the replacement funds as described above.

Under continuing law, the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund are used to make payments to school districts and other local taxing units to partially reimburse them for the phase-out and eventual repeal (2009) of property taxes on business tangible personal property.

Kilowatt-hour excise tax revenue to GRF

(R.C. 5727.81, 5727.811, and 5727.84)

The bill directs that nearly all revenue from the kilowatt-hour excise tax be credited to the General Revenue Fund beginning July 1, 2015. Currently, almost all revenue from the tax is apportioned among the GRF and two other funds, as follows: 88% to the GRF, 9% to the School District Property Tax Replacement Fund, and 3% to the Local Government Property Tax Replacement Fund. The latter two funds are used to make payments to school districts and other local taxing units to partially reimburse them for previously legislated reductions in property tax assessments on tangible personal property of electric and natural gas utilities as part of the deregulation of some aspects of such utilities. In accord with the change in the revenue distribution, the bill changes the statement of the purpose of the tax.

Kilowatt-hour tax revenue that currently is payable to a municipal electric utility on the basis of electricity distributed to end users in the municipal corporation will continue to be payable to the municipal corporation. Currently, tax revenue payable on the basis of electricity provided by a municipal electric utility to end users in the municipal corporation is payable to the municipal corporation (if the user is a self-assessing user) or is retained by the municipal corporation (in the case of other users).

The kilowatt-hour excise tax is levied on the basis of electricity distributed to electricity meters in Ohio. In most cases it is payable by the company that distributes the electricity. Consumers that receive electricity directly from suppliers outside Ohio and large-volume commercial and industrial consumers (using at least 45 million kwh annually at a single site) must pay the tax directly.

Tax credits and exemptions

Job creation and retention tax credits

(R.C. 122.17, 122.171, 5725.98, 5726.50, 5729.98, 5733.0610, 5736.50, 5747.058, and 5751.50; Section 803.250)

The bill makes several revisions to the computation and administration of the job creation tax credit (JCTC) and the job retention tax credit (JRTC). Under continuing law, the Tax Credit Authority (TCA) is authorized, upon the application of a taxpayer and the recommendation of JobsOhio and the Director of Development Services, to enter into JCTC and JRTC agreements with the taxpayer to foster job creation, job retention, and capital investment in this state.

The bill revises the computation of JCTCs so that the amount of the credit equals an agreed-upon percentage of the taxpayer's Ohio employee payroll minus baseline payroll. For JRTCs, the amount of the credit would equal an agreed-upon percentage of the taxpayer's Ohio employee payroll. The bill defines "Ohio employee payroll" as the compensation paid by an employer and used in computing the employer's withholding requirements (an inexact figure which may be greater than taxable income). It includes compensation paid in the form of retirement and other benefits as well as compensation paid to nonresident employees that are not exempt from Ohio income tax under a reciprocity agreement with another state. The bill defines "baseline payroll" as the employer's Ohio employee payroll during the 12 months preceding the agreement.

Under current law, both credits are calculated as a percentage of the taxpayer's Ohio income tax withholdings. The bill's change to the credit base would prevent a reduction in the credit amount due to declining Ohio income tax rates.

The bill also removes the 75% cap currently placed on the JRTC percentage. The JRTC percentage is multiplied by the taxpayer's Ohio employee payroll (or, under current law, the taxpayer's Ohio income tax withholdings) to determine the amount of the credit. Under continuing law, the JRTC percentage is negotiated by the TCA and the taxpayer as part of the JRTC agreement.

With respect to agreements approved on and after January 1, 2014, the bill authorizes the TCA to require the taxpayer to refund all or a portion of a JCTC or JRTC if the taxpayer fails to substantially meet the job creation, payroll, or investment requirements included in the tax credit agreement or files for bankruptcy. Under continuing law, the TCA may seek to recoup all or a portion of the credit if the taxpayer fails to maintain operations at the project site (generally, the business's place of operations in Ohio) for the period of time specified in the tax credit agreement.

The bill reduces from 60 to 30 days the amount of time a taxpayer has to submit a copy of a JCTC or JRTC certificate after a request of the Tax Commissioner or the Superintendent of Insurance. Continuing law permits the Tax Commissioner or Superintendent of Insurance to request a copy of the certificate only when the taxpayer fails to include a copy with their return as required by continuing law.

The TCA, upon mutual agreement of the taxpayer and the Development Services Agency, may revise JCTC agreements originally approved in 2014 or 2015 to conform with the bill's revisions to the credit. Otherwise, the bill's Ohio employee payroll formula applies to JCTC and JRTC agreements entered into after the bill's 90-day effective date.

The bill also changes the formula for computing the credits awarded under JCTC and JRTC agreements approved by the TCA before 2014. Each year, beginning in 2016, TCA is required to compute a withholding adjustment factor for the purpose of accounting for increases and decreases in state income tax rates since June 29, 2013 (the effective date of the second most recent reduction in income taxes). The withholding adjustment factor would apply to a JCTC or JRTC in each year that the employer satisfied its employment, payroll, and investment commitments. The failure of an employer to meet its commitments in one reporting period does not preclude the application of the withholding adjustment factor in ensuing reporting periods if the employer achieves compliance during those periods.

With the recent, post-June 2013 income tax reductions, the withholding adjustment factor would result in a greater credit for taxpayers subject to existing agreements. However, if income tax rates ever were to exceed 2013 levels, the withholding adjustment factor would result in a lesser credit for such taxpayers.

Evaluation of JRTC and data center sales tax exemption applications

(R.C. 122.171 and 122.175)

The bill revises the role of the Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance in evaluating applications for JRTCs and data center sales tax exemptions. Continuing law authorizes the Ohio Tax Credit Authority (TCA) to grant JRTCs to qualifying businesses that complete a capital investment project and agree to retain a specified number of full-time equivalent employees or maintain a certain threshold payroll. The TCA is also authorized to exempt purchases of certain personal property that will be used at an eligible computer data center by a business, or group of businesses, that agrees to invest at least $100 million in the data center and maintain a minimum payroll of $1.5 million.

Under current law, the Director of Budget and Management, the Commissioner, and the Director of Development Services are required to review JRTC and data center sales tax exemption applications and determine the economic impact of proposed projects on state and the affected political subdivisions. These determinations must be sent, along with a recommendation on the application, to the TCA to assist in its determination of whether to grant the credit or exemption. The Superintendent is required to complete this process with respect to JRTC applications submitted by insurance companies.

The bill eliminates the requirement that such government officials' submission to the TCA include a recommendation on the application. The Director of Development Services would still be required to determine the local economic impact of proposed projects and submit recommendations to the TCA.

Temporary historic rehabilitation CAT credit

(Section 757.170)

The bill extends, to July 1, 2017, a provision authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2017 ("qualifying certificate owner"). Uncodified law enacted by H.B. 483 of the 130th General Assembly authorizes certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015, provided the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2015.

Continuing law authorizes a certificate holder to claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

Under the bill, a qualifying certificate owner may claim the credit against the CAT for the calendar year specified in the certificate, but only for CAT tax periods ending before July 1, 2017. The amount of the CAT credit equals the lesser of 25% of the owner's rehabilitation costs listed on the certificate or $5 million. Although the credit is refundable, if an amount would be refunded to the owner in a calendar year, the owner may not claim more than $3 million of the credit for that year. However, the owner may carry forward any unused credit for up to five years. The bill requires the certificate owner to retain the tax credit certificate for four years after the last year the owner claims the CAT credit for possible inspection by the Tax Commissioner.

As under the existing provision, the bill authorizes corporate owners of a qualifying certificate owner that is a pass-through entity that are not themselves pass-through entities to claim the credit against the owners' CAT according to mutually agreed-upon proportions if the certificate so permits or if the owners are part of the same consolidated elected or combined taxpayer as the pass-through entity.

Additionally, the bill authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than $150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or a nonprofit organization, to claim a tax "credit" as if the business or organization were a CAT taxpayer.

Ohio New Markets Tax Credit

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

The bill makes several changes to Ohio's New Markets Tax Credit, which is a nonrefundable tax credit authorized under continuing law against the insurance and financial institution taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

Federal law provides a 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 United States 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."[215]

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. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. Under the federal program, a CDE can make qualified investments in any state. Under current law related to Ohio's credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. Under continuing law, a qualified equity investment is an equity investment in a qualified CDE.

Under rules adopted by the Director of Development Services to administer the Ohio New Markets Tax Credit, a qualified CDE applies to the Director for an allocation of the credit, which would authorize the qualified CDE's investors to claim a credit for their qualified equity investments in the CDE.[216] Under continuing law, an investor eligible to receive tax credits for its investment in a qualified CDE must be an insurance company subject to the state's insurance company premiums taxes or a financial institution subject to the state's financial institution tax. To be a qualified equity investment for purposes of the state's credit, 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.

Instead of basing the amount of a credit on the percentage of qualified investments made in Ohio businesses, the bill bases the credit on the full amount paid for a qualified investment approved as eligible for the credit by the Director of Development Services, even if a portion of that investment was made in businesses outside Ohio. However, under a separate requirement, a credit is allowed for a

[215] 26 U.S.C. 45D.

[216] O.A.C. 122:22-11-02.

qualified investment only if, in general, at least 85% of the proceeds of the investment are made in Ohio businesses.

Under current law, a foreign insurance company is authorized to claim the Ohio New Markets Tax Credit against the foreign insurance company franchise tax. In addition to the franchise tax, a foreign insurance company may be subject to a "retaliatory" tax, which is levied on insurance companies organized in a state whose insurance franchise tax rate as charged against Ohio insurance companies exceeds the tax rate charged in Ohio against that other state's companies. The rate of the retaliatory tax is the difference between that state's and Ohio's insurance franchise tax rate.

The bill authorizes a foreign insurance company to claim the Ohio New Markets Tax Credit against this retaliatory tax.

The bill specifies that a credit allowed to a pass-through entity may be allocated to the owners of the entity for each owner's direct use in accordance with an agreement between such owners. Continuing law does not prohibit the credit from being allocated in such a manner.

Sales and use tax exemption: certain forklifts

(R.C. 5739.02(B)(54); Section 803.270)

Beginning October 1, 2015, the bill exempts from sales and use tax the purchase of forklifts used primarily to move completed products from the products' manufacturing facility to the point at which the products will be shipped from that facility. But the exemption is available only for forklifts purchased by logistics businesses primarily engaged in transporting products to destinations outside Ohio with the business' own commercial freight trucks.

Exclusion for health and beauty product supply chain receipts

(R.C. 5751.01(F)(2)(jj); Section 803.310)

Continuing law levies the CAT on the basis of a business' taxable gross receipts. The bill retroactively excludes, for purposes of calculating the base of the CAT, receipts from sales of beauty, health, personal care, or aromatic products, or packaging or components of those products, between businesses or a retailer within an integrated supply chain.

Under the bill, an integrated supply chain is defined as two or more businesses that do not share a common owner and have a location within a 100-500 acre parcel or parcels of land in a county with a population between 150,000 and 200,000, provided each business is primarily involved in manufacturing, assembling, or packaging retail goods and coordinates its operations with a retailer to improve the long-term financial performance of the business and its entire supply chain. Currently, such counties include Clermont, Delaware, Greene, Licking, Medina, and Portage counties.

Under the bill, a retailer includes not only a person making retail sales, but any member of the same group of businesses grouped with the retailer for purposes of paying CAT as a single taxpayer (referred to as a consolidated elected or combined taxpayer), even if that grouped business is not engaged in making retail sales.

The bill states that the exclusion applies retroactively, for tax periods beginning on or after July 1, 2005 – the date the CAT was first levied – and is to be construed as "clarifying" the law, subject to existing statutes of limitations that generally impose a four-year limit on claiming CAT refunds or issuing CAT assessments.

Property taxes

Current expense levies allocated to partnering community schools

(R.C. 5705.21 and 5705.212)

Continuing law authorizes certain school districts to propose and levy a property tax for current operating expenses and allocate a portion of the proceeds to one or more "partnering" community schools. The tax may be levied for up to ten years or for a continuing period of time. It may be renewed or replaced, imposed as an "incremental levy," or combined with a bond levy for permanent improvements. If combined with such a bond levy, only the current expense levy revenue may be shared; the bond levy is solely for the purpose of the school district. A levy imposed for a continuing period of time may be reduced by initiative petition in the same manner as any school district continuing expense levy.

The resolution and ballot language proposing such a levy must specify the portion of the proceeds allocated to the school district and the portion allocated to partnering community schools. The revenue allocated to the partnering community schools is credited to a "partnering community schools fund" created by the school district board of education and distributed to the partnering community schools on a per-pupil basis. Only pupils residing in the school district levying the tax are counted for the purposes of determining a partnering community school's share of the revenue deposited to the partnering community schools fund.

The bill extends the authority to levy property taxes for community schools to any school district that contains a community school sponsored by an "exemplary" sponsor according to the annual ratings published by the Department of Education.[217] Current law limits this authority to the Cleveland Metropolitan School District and the Columbus City School District.

The bill retains all provisions in current law pertaining specifically to the Cleveland Metropolitan School District, but removes criteria that were enacted specifically to enable the Columbus City School District to seek approval of such a levy. A proposed tax in the Columbus district was rejected by voters in 2013.

The bill revises the qualifications for community schools that are allocated levy revenue in school districts other than the Cleveland Metropolitan School District. Under the bill, the community school must be located within the territory of the school district and be sponsored by a sponsor rated "exemplary" in the ratings most recently published before the resolution proposing the levy is certified to the board of elections. Under continuing law unchanged by the bill, a community school located in the Cleveland Metropolitan School District must be sponsored by the district or be a party to an agreement with the district whereby the district and the community school endorse each other's programs.

The bill authorizes school districts other than the Cleveland Metropolitan School District to levy a property tax solely for and on behalf of one or more partnering community schools. Current law does not cap the percentage of levy revenue that may be allocated to community schools, but could imply that at least a portion must be levied for the school district's own expenses. The resolution and ballot language proposing such a levy would be required to specify that all of the levy proceeds are allocated to partnering community schools.

Tax exemption for electric generation property

(R.C. 321.24, 4909.161, 5705.34, 5709.92, 5709.93, 5709.94, 5727.031, 5727.06, 5727.09, 5727.11, 5727.111, 5727.15, and 5727.75; Sections 375.10, 757.20, and 803.353)

The bill exempts from property taxation electric company generation equipment and "other" electric company tangible personal property that is not transmission and distribution ("T&D") or energy conversion equipment. Correspondingly, the bill requires the Tax Commissioner to annually calculate an increased assessment rate on T&D property and energy conversion equipment and use the revenue from that

[217] Continuing law requires the Department to annually rate all entities that sponsor community schools as either "exemplary," "effective," or "ineffective" based on academic performance of students, adherence to quality practices prescribed by the Department, and compliance with laws and administrative rules. R.C. 3314.016.

increase to reimburse local governments for the revenue they will lose due to the exemption.

Under current law, electricity generation property is assessed at 24% of its true value, while all other property, including T&D property, is assessed at 85% of its true value.

Local government reimbursements

The bill requires the Tax Commissioner each year to determine the amount of tax revenue that all taxing units would have collected with respect to generation equipment and "other" property for the tax year if the tax on such property were still in effect. The Commissioner must then determine the amount by which the baseline 85% assessment rate must be increased in order to raise enough additional revenue to fully reimburse the taxing units for their lost revenue. The increased assessment rate applies to all T&D property and energy conversion equipment statewide.

Once taxes are collected at the county level, each county treasurer must forward to the Treasurer of State the amount of tax revenue collected on T&D property and energy conversion equipment that is attributable to the difference between the increased assessment rate and the baseline 85% assessment rate. The Treasurer deposits all of the amounts forwarded into a newly created Production Equipment Property Tax Replacement Fund. From that fund, the Tax Commissioner reimburses taxing units for their lost revenue. The reimbursements are made twice per year, according to the same timeline used for existing local government tangible personal property tax reimbursements.

Recovery of the increased tax through electric rates

The bill permits the electric companies to recover from customers, through a reconcilable rider, the payment of the increased tax on transmission and distribution property and energy conversion equipment that results from the provisions described above. To initiate the recovery, the company is to file a request for the rider with the Public Utilities Commission (PUCO) outside of a rate case. The PUCO must then promptly approve the rider. The payment may then be recovered in accordance with the PUCO's order.

Water-works tangible personal property tax assessment

(R.C. 5727.111)

Continuing law imposes a property tax on the tangible personal property of public utilities. The tax is calculated by determining the taxable value of a company's property, allocating that value among the jurisdictions in which the property is located, and multiplying the apportioned values by the property tax rates in effect in the respective jurisdictions. The taxable value of a company's tangible personal property equals its "true" value (the cost of the property as capitalized on the company's books, less composite annual allowances prescribed by the Tax Commissioner), multiplied by an assessment percentage specified in law.

Under current law, the tangible personal property of a water-works company is assessed at 88% of its true value. The bill reduces the assessment rate for all new water-works property first subject to taxation in tax year 2015 or thereafter to 25% of the property's true value.

Uniform rules for appraisal of real estate

(R.C. 5715.01)

The bill requires the rules for real estate appraisal, established by the Tax Commissioner, to include any definitions necessary to "clarify" appraisal methods. Under continuing law, all real property is subject to reappraisal once every six years and to reevaluation in the third year after an appraisal. The Commissioner is required to direct and supervise this process. Part of this duty includes adopting rules for the determination of the true value and taxable value of real property, including rules that prescribe the methods of making appraisals. In effect, the bill requires a higher degree of detail with respect to the Commissioner's rules of appraisal.

The bill specifies that, if the Commissioner has not explicitly designated a rule, "The Appraisal of Real Estate, 14th Edition" and "The Dictionary of Real Estate Appraisal, 5th Edition" published by the Appraisal Institute are controlling. The Appraisal Institute is an association of real estate appraisers. It generates several publications that provide appraisal guidelines, offers appraisal courses to persons involved in the field, and is involved in advocacy efforts at the state and federal level with respect to real estate appraisal industry issues.[218]

The bill requires that appraisal rules established by the Commissioner be applied uniformly to all parcels. Current law requires that the Commissioner establish "uniform rules." The Commissioner's rules currently describe several methods of valuation and allow the appraiser flexibility in determining the best approach to arrive at an accurate approximation of the value of the property.

The valuation of real property for tax purposes is governed generally by Article XII, Section 2 of the Ohio Constitution (which requires all property to be taxed "be

[218] "About Us," *Appraisal Institute*, available at http://www.appraisalinstitute.org/about/.

uniform rule, according to value") and judicial construction of that provision, as well as pertinent statutes and administrative rules.

Golf course property valuation

(R.C. 5713.031)

Real property valuation: background

Under continuing law, real property is valued at its "true value in money" or "fair market value," the price for which real property would sell on the open market. A recent sale price in an arm's length transaction is considered the best evidence of true value but, failing such a recent sale, an appraisal must be conducted.[219] Under the administrative rules governing appraisals for taxation, three approaches are recognized: the market data, income, and replacement cost approaches. Generally, the market data approach compares properties with similar ones that have recently sold; the income approach estimates value based on discounted net income from the property; and the replacement cost approach estimates the current cost of replacing property with a similar improvement. The rules encourage the application of a combination of approaches.

Golf course valuation

The bill prescribes specific valuation methods to be applied to golf courses for which there has been no recent arm's length transaction, and for which appraisal based on use as a golf course is justified either as the highest and best use or as a special purpose use. The valuation method to be applied depends on whether or not a golf course is operated for profit and on a daily-fee basis.

If a golf course is operated for profit on a daily-fee basis, the income approach prescribed in the state's tax assessment rules is to be used. The value of all tangible and intangible personal property that contributes to the net operating income of the taxable property is to be deducted from the value obtained from the income approach. The bill specifies that the capitalization rate is to reflect all anticipated risks of operating a golf course, including weather-related risks and competition from tax-exempt golf courses.

For all other golf courses (i.e., those that are not for-profit and daily-fee basis courses), the valuation methods to be applied are the market data approach in combination with the replacement cost approach.

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[219] See *State, ex rel. Park Investment Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

The bill authorizes county auditors to request income and expense data from the owner of a for-profit, daily-fee basis golf course to enable auditors to determine the golf course's value based on the income approach. If an owner of a golf course does not provide the required data and the auditor is unable to determine the true value in money of golf course real property using the income approach, then the auditor is to use a combination of the market data approach and the cost approach. Under the bill, income and expense information provided by the owner of a golf course in connection with the request by a county auditor is confidential and exempt from public disclosure under the public records law.

Golf course property as "business fixtures"

(R.C. 5701.03)

Current law distinguishes real property from tangible personal property for the purpose of taxation. For property tax purposes, real property is taxable, and tangible personal property is taxable only if it is used to render a public utility service. For sales and use tax purposes, transactions involving tangible personal property are taxable (unless specifically exempted or excluded), whereas sales of real property are not. Further, the person who is liable for paying sales or use tax may depend on whether tangible personal property is incorporated into real property, as may occur in a construction contract or other manner of installing tangible personal property so that it becomes part of real property. For example, if a construction contractor purchases tangible personal property to incorporate into real property, the construction contractor is the consumer of the property and owes sales or use tax on the price of the property.

Business fixtures are a form of tangible personal property. Business fixtures include, but are not limited to, "machinery, equipment, signs, storage bins and tanks, and broadcasting, transportation, transmission, and distribution systems" that primarily benefit the business and not the building. Business fixtures do not include fixtures that are common to buildings such as heating, ventilation, and air conditioning systems to control the environment for people, and other systems that primarily benefit the property rather than the business conducted by the occupant.

The bill specifies that cart paths, irrigation systems, and structures that consist of soil and natural materials requiring regular maintenance and that are depreciable under Section 167 of the Internal Revenue Code are business fixtures for Ohio tax purposes. The property tax effect of the bill would be to make such property nontaxable, if it is currently considered to be real property. And, since such property is defined as a business fixture – and, therefore, as tangible personal property – its contribution to the net operating income of a golf course would be deducted in appraising the true value of the golf course when the income approach is applied as prescribed by the bill (see above).

The bill also appears to shift sales and use tax liability for sales involving such property (or materials used in the construction or installation of such property) from the person that constructed or installed the property or materials (e.g., the construction contractor) to the person for whom the property is constructed or installed (i.e., the property owner or lessee), because the property, being a business fixture, does not become real property. Further, repairs to the property appear to become taxable.[220]

Tax valuation for farmland storing dredged material

(R.C. 5713.30; Section 803.140)

Beginning with tax year 2015, the bill allows unproductive farmland intended to later be returned to productivity to remain valued at its current agricultural use value (CAUV) for property tax purposes, provided the land is used to store dredged material pursuant to a contract between the land's owner and the Department of Natural Resources or the Army Corps of Engineers. Such farmland may maintain its CAUV status for the lesser of five tax years or the last tax year in which dredged material is stored on the land pursuant to that contract. Dredged materials are materials excavated or dredged from Ohio waters, but do not include materials obtained as a result of normal farming activities.

Pursuant to authority granted in the Ohio Constitution, productive farmland may be valued at its CAUV value rather than its fair market value for property tax purposes. Under continuing law, unproductive farmland that is intended to later be used as farmland may retain its CAUV status for one year, and for up to two additional years for good cause as proven by the landowner to the county board of revision. Thereafter, the land is considered to have been converted from agricultural use to nonagricultural use and a recoupment charge is imposed to recoup the CAUV tax savings for the preceding three years.

Property tax bill records and penalty waiver

(R.C. 323.13 and 5715.39)

The bill adds a circumstance under which a county auditor is required to waive late payment penalties when property taxes are not paid on time. The circumstance is when a property owner satisfies a mortgage, the lender fails to notify the county auditor that the mortgage has been satisfied, and the tax bill is not mailed to the property owner

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[220] *See* R.C. 5739.01(B)(3)(a) and *Funtime, Inc. v. Wilkins,* 105 Ohio St.3d 74, 75 (2004).

(i.e., the bill is instead mailed to the lender). The penalty waiver applies only to the first tax bill after the mortgage is satisfied.

Continuing law requires county auditors to waive late payment penalties under certain circumstances, including when the taxpayer is incapacitated, mail delivery fails, the county auditor or treasurer errs, or the taxpayer does not receive the bill but tries, in good faith, to obtain the bill within 30 days after the due date. In all other cases, the failure to receive a tax bill does not excuse a taxpayer from having to pay taxes on time or prevent the imposition of late payment penalties, unless the county board of revision finds that the lateness is "due to reasonable cause and not willful neglect."

The bill also requires the county treasurer to maintain a record of the person or agent to whom each tax bill is sent. Under continuing law, county treasurers are required to mail property tax bills to the address provided by the property owner at least 20 days before the due date. If the property owner has designated an agent to pay the taxes (e.g., a mortgage lender), the bill is to be mailed to the agent. If the agent is a mortgage lender, a bill does not have to be mailed; instead, the lender and the county treasurer may arrange for payment of the taxes directly through the lender without a bill having to be mailed.[221]

Renewable 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.) 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 (DSA), 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 2016. The law also requires the owner or lessee to place the energy facility into service before 2017. The bill extends each of these deadlines by five years.

[221] R.C. 323.134, not in the bill.

Term of tax levies benefitting cemeteries

(R.C. 5705.19)

The bill lengthens the maximum term of a property tax levy to pay the operating and maintenance expenses of public cemeteries. Continuing law allows board of township trustees or municipal legislative authorities to propose and, with the approval of voters, levy a property tax for maintaining and operating a cemetery. Under current law, such a levy may be imposed for a term of up to five years. The bill instead allows such a levy to be imposed for any number of years or for a continuing period of time.

Townships and municipal corporations have authority to acquire land for public cemeteries and to own and operate them with public funds, separately or jointly.[222] The expenses of operating and maintaining public cemeteries may be paid from taxes, gifts and bequests, sale of plots, general fund money, or, in the case of a municipal corporation, any other funds lawfully available for the purpose.

Fraternal organization exemption

(R.C. 5709.17(D); Section 757.190)

The bill expands eligibility for property tax exemption for property held or occupied by certain kinds of fraternal organizations by permitting the exemption if the property is used to provide educational or health services on a not-for-profit basis. Currently, the property must be used primarily for meetings or administration of the organization. Another qualification – not affected by the bill – is that annual gross income from renting the property to others may not exceed $36,000.

For the purpose of the tax exemption both currently and under the bill, a fraternal organization must be a domestic fraternal society, order, or association that operates under the lodge, council, or grange system, qualifies for federal income tax exemption under Internal Revenue Code section 501(c)(5), 501(c)(8), or 501(c)(10), provides financial support for charitable purposes, and has been operating in Ohio with a state governing body for at least 85 years.

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[222] R.C. Chapter 517. for townships; R.C. 759.27 to 759.43 for township-municipal "union" cemeteries. Municipal corporations' authority derives from their home rule powers.

Township tax increment financing extension

(R.C. 5709.73(L))

The bill authorizes the board of trustees of a township with a population of at least 15,000 to extend property tax exemptions originally granted under a pre-1995 tax increment financing resolution. The tax exemptions may be extended for up to 15 additional years. The board would have to notify the affected school board and the board of county commissioners of the extension at least 14 days before taking formal action to approve the extension.

Under continuing law, townships, counties, and municipal corporations may grant property tax exemptions under "tax increment financing" (TIF) legislation that enables the subdivision to essentially divert the property tax revenue from increased property values on parcels (i.e., the increment) to finance public infrastructure improvements that benefit the parcels. The tax exemptions may be for up to 30 years. TIF legislation adopted before July 22, 1994, had to comply with a 14-day notice requirement, and affected school boards were allowed to "comment" on the tax exemption. However, TIF legislation adopted on or after that date must be approved by the affected school board if the exemption is to last longer than ten years or exempt more than 75% of the increased property value, and school boards may exchange approval for compensation from the subdivision granting the TIF exemption; a 45-day notice also is required for the 75%-plus and ten-year-plus exemptions. Compensation was allowed under the pre-July 1994 law, but school boards lacked the authority to approve any TIF exemption in exchange. Compensation also is required under continuing law for counties in the case of a township-initiated TIF, but was not required as of December 31, 1994. (See 5709.73(D), 5709.82, and 5709.83 as amended by S.B. 19 of the 121st General Assembly.)

Property tax abatement for submerged land leases

(Section 757.180)

The bill establishes a temporary procedure by which a municipal corporation may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest charged and payable in 2000 and thereafter for a submerged land lease held by a municipal corporation pursuant to an assignment of the lease from a previous lessee. To qualify for the exemption and abatement, the unpaid charges must exceed the assessed value of the property for 2014 and the property must currently be used for an exempt purpose. No taxes, penalties, or interest may be abated for any tax year in which the property was used in the operation of a business.

The application for exemption and abatement must be filed with the Tax Commissioner before January 1, 2016.

Under continuing law, municipally owned property is tax-exempt if it is used "exclusively for a public purpose," but such property may not be exempted if more than three years' worth of taxes remain unpaid. Submerged land leases are agreements by which the state leases submerged land within the state's territory in and along Lake Erie for development and improvement. Submerged land leases are administered by the Department of Natural Resources through the submerged lands program.

Municipal income tax

Municipal corporations' authority to levy taxes is an aspect of their home rule powers conferred by Article XVIII, Section 3, Ohio Constitution. Although the General Assembly does not grant municipal corporations the authority to tax, it may limit their taxing authority or prohibit municipal taxes by express acts; however, it cannot command a municipal corporation to impose a tax when the municipal corporation chooses not to do so. The limits on municipal income taxes are codified in Chapter 718. of the Revised Code. H.B. 5 of the 130th General Assembly modified many of the limits previously codified in that chapter and imposed new limits and procedures. The changes enacted in H.B. 5 generally apply to taxable years beginning on and after January 1, 2016.

Publicly traded partnership tax status election

(R.C. 718.01)

The bill permits a publicly traded partnership to elect to be taxed as if the partnership were a C corporation for municipal income tax purposes. Under recently enacted legislation, an entity's federal tax status as a C corporation or a non-C corporation determines how its net profit is treated for municipal income tax purposes: beginning in 2016, municipal corporations must tax net profit from pass-through entities (like partnerships) at the owner (e.g., partner) level, and must tax net profits of C corporations at the corporate entity level (H.B. 5 of the 130th G.A.). The bill permits publicly traded partnerships to choose to have its net profit taxed at the entity level instead of at the level of its partners even though its net profit is taxed as a partnership – i.e., at the partner level – for federal income tax purposes. If the election is made, the partners' shares of net profit from the partnership is not treated as the partners' net profit for municipal income tax purposes. This would have implications for, among other things, the extent to which the partners' net profit is taxable by the municipal corporation where a partner lives and partners' reporting obligations.

If the election is made in any municipal corporation, it would have to be made for every municipal corporation where its net profits are taxed. The election would have to be made on the annual return filed with each such municipal corporation.

The bill defines a publicly traded partnership as any partnership for which partnership interests are publicly traded on an established securities market. This is similar, but not identical, to the definition of publicly traded partnerships for federal income tax purposes (I.R.C. 7704). Under federal law, publicly traded partnerships are taxed as corporations unless at least 90% of its annual gross income consistently arises from interest, dividends, real property, natural resources, capital assets held to produce income, and certain other sources, in which case the partnership may elect to not be treated as a corporation.

Due date for returns

(R.C. 718.05(G)(1); Sections 803.03 and 803.160)

H.B. 5 requires that all municipal income tax returns for all taxpayers – individuals and entities – are required to be filed on or before the date prescribed for filing individual state income tax returns (April 15). The bill changes the annual return filing deadline for municipal income taxpayers that are not individuals to the 15th day of the fourth month following the end of the taxpayer's taxable year. This change would affect nonindividual taxpayers whose taxable year does not correspond with the calendar year. The change applies to taxable years beginning on or after January 1, 2016.

Filing extensions

(R.C. 718.05(G)(2); Section 803.03)

Beginning January 1, 2016, the bill requires a municipal income tax administrator to grant a taxpayer a six-month extension for filing the taxpayer's municipal income tax return even if the taxpayer did not request a corresponding federal extension. The taxpayer is required to request the extension not later than the date the return is otherwise due. The bill does not specify the manner of that request.

Under current law scheduled to apply on and after January 1, 2016, municipal income tax returns are due the same day as state income tax returns – generally by April 15. However, a taxpayer that requests a six-month extension for filing the taxpayer's federal income tax return automatically receives a six-month extension for filing any of the taxpayer's municipal income tax returns.

For both the new and existing extension procedures, a taxpayer's receipt of a filing extension does not also extend the time to pay any tax due, unless the tax administrator also grants an extension of that date.

Alternative municipal income tax base adjustments

(R.C. 718.01(A)(1); Section 803.01)

The bill allows a municipal corporation that has adopted Ohio adjusted gross income as its tax base (a "qualified municipal corporation") to make adjustments to that tax base with respect to resident individuals. Such a municipal corporation is still prohibited from exempting income of nonresident individuals and businesses unless it did so before 2013.

Under continuing law, a municipality that adopted Ohio adjusted gross income as the municipality's tax base before January 1, 2012, may continue to use that tax base instead of the tax base prescribed in Chapter 718. of the Revised Code. However, under current law, the tax base that may be used is that which was in effect on December 31, 2013 – no further adjustments may be made.

Former taxpayer affidavit

(R.C. 718.05(N))

The bill authorizes a person who has been subject to a municipal corporation's income tax to file an affidavit notifying a municipal corporation that the person no longer expects to be subject to the municipal corporation's income tax. To be eligible to file such an affidavit, the person must have been required to file a tax return with the municipal corporation for the preceding year on the basis of having performed services there, must no longer provide services there, and must not expect to be subject to the tax in the current year. Once the affidavit is filed, the municipal tax administrator may not require the person to file a return unless the administrator has information conflicting with the representations in the affidavit. The administrator retains the authority to audit the person, however. The affidavit must explain the person's circumstances, indicate the place in the municipal corporation where the person previously provided services, and the most recent date the services were performed or sales were made by the person in the municipality. Signing the affidavit is subject to the penalty of perjury.

Under continuing law, municipal income taxes apply to residents, and to nonresidents who work or otherwise perform services in a municipal corporation or make sales there.

Documents submitted with municipal income tax returns

(R.C. 718.05(F)(2); Section 803.03)

The bill allows the municipal tax administrator of a municipal corporation that adopted Ohio adjusted gross income as the municipality's tax base before January 1, 2012, to require an individual taxpayer to submit their Ohio individual income tax form (IT-1040) along with the individual's municipal income tax return. Under current law to take effect in 2016, an administrator may require an individual to submit only the individual's federal 1040 return and W-2 statements and, if the individual files an amended return or refund request, the documentation needed to support the refund request or adjustments in the amended return.

Municipal income taxation of foreign income

(R.C. 718.01(R)(2)(f))

Beginning January 1, 2016, the bill requires a municipal corporation to tax an individual's foreign income under the following conditions:

(1) The income is compensation paid to an employee for services;

(2) The income either (a) is included in the taxpayer's federal gross income or (b) would have been included in the taxpayer's federal gross income if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code. (I.R.C. 911 authorizes U.S. citizens and residents living abroad for an extended period to elect to exclude foreign-earned income from their U.S. gross income for federal tax purposes under certain conditions.)

(3) The amount was not subject to federal or municipal income tax withholding in any previous taxable year;

(4) The amount will not be subject to federal income tax withholding in any future year.

Current law makes no specific reference to foreign earned income. Consequently, under municipal income tax law in effect until January 1, 2016, a municipal corporation may tax such income at its discretion, subject to any other limits in federal or state law. Beginning January 1, 2016, municipal corporations must adopt a uniform definition of taxable income, as specified in state law.

Municipal corporation and school district revenue-sharing income tax

(R.C. 718.04(G); Sections 803.160 and 803.290)

The bill allows a municipal corporation that shares at least 70% of its territory with a school district to enter into an agreement to share municipal income tax revenue with the school district, provided that a portion of the remaining 30% of the school district territory lies within another municipal corporation with a population of 400,000 or more. Under current law, municipal corporations may enter into a similar agreement if the municipality and school district have at least 95% of their territories in common, or if 90% of the territories are in common and the remaining 10% of school district territory lies entirely within another municipality with a population of 400,000 or more.

The new authorization is similar to the existing authority to levy revenue-sharing taxes, with two exceptions: first, current law requires that the municipality share at least 25% of the tax revenue with the school district. The bill includes no such requirement. Second, under current law, revenue-sharing taxes first levied after 2005 may apply only to residents of the municipality. The bill allows the newly authorized tax to be levied on both residents and nonresidents.

Municipal income taxation of net operating losses

(R.C. 718.01(E)(8)(e))

The bill clarifies a provision of H.B. 5 of the 130th General Assembly that requires all municipal corporations to adopt a uniform law related to the deduction of net operating losses (NOLs). The provision, which takes effect January 1, 2016, requires all municipalities to allow businesses to deduct new NOLs, but temporarily reduces the deduction allowed for any NOL incurred after 2016 and claimed for taxable years 2018 through 2022 to 50% of the amount otherwise allowed.

Under continuing law, if an NOL is not fully utilized due to this temporary limit, it may be carried forward for up to five future taxable years. The bill specifies that, if the amount is carried forward to the 2019, 2020, 2021, or 2022 taxable year, the 50% limit continues to apply to that carried-forward amount.

Electronic publication of municipal income tax information

(R.C. 718.07)

Under continuing law, municipal corporations must publish electronic versions of income tax ordinances, rules, instructions, and forms online. The bill provides that, in addition to these documents, municipal corporations must also publish online a summary of taxpayer's rights and responsibilities.[223] Current law also requires that documents be posted on a site created by the Department of Taxation or on the municipal corporation's own website. The bill instead requires that the required documents be posted on both websites if the municipal corporation has established a website for its municipal income tax.

H.B. 5 of the 130th General Assembly, which made significant changes to the Municipal Income Tax Law, included a provision identical to that described above, but the provision was inadvertently removed before the act's enactment due to a technical drafting error.

Other local taxes

Lodging tax

Counties, townships, municipal corporations, and certain convention facilities authorities are authorized to levy lodging taxes. In general, the maximum lodging tax rate permitted in any location is 6%. Municipalities and townships may levy a lodging tax of up to 3%, plus an additional 3% if they are not located, wholly or partly, in a county that already levies a lodging tax. Counties may levy a lodging tax of up to 3%, but only in municipalities or townships that have not already enacted an additional 3% levy. On occasion, the General Assembly has authorized certain counties to levy additional lodging taxes for special purposes.

Unless specifically authorized otherwise, a county that levies a lodging tax must return up to one-third of its net lodging tax revenue to the municipalities and townships within the county that do not levy a lodging tax. The remaining revenue must be used to support a convention and visitors' bureau. The bureau must generally use the revenue for tourism sales, marketing, and promotion.

For sports facilities

(R.C. 305.31 and 5739.09(A)(8))

The bill authorizes a county with a population between 175,000 and 225,000, that has an amusement park with an average annual attendance over two million, and that levied a 3% lodging tax on December 31, 2014, to levy an additional 1% lodging tax for the purpose of constructing and maintaining county-owned sports facilities and

[223] H.B. 5 of the 130th General Assembly defined a "taxpayer's rights and responsibilities" to include certain duties of both the taxpayer and the municipal corporation. The "rights and responsibilities" include, for example, a taxpayer's right to appeal a tax assessment or refund denial and a taxpayer's responsibility to file returns or produce certain records at the request of the tax administrator.

funding efforts by the convention and visitors bureau to promote travel and tourism with respect to the sports facilities. A county levying this lodging tax would not be required to return any portion of the additional revenue to townships or municipal corporations.

Currently, only Warren County appears to qualify to levy the tax under the bill's requirements.

For county agricultural societies

(R.C. 1711.15, 1711.16, and 5739.09(L))

The bill authorizes a county with a county or independent agricultural society that hosts an annual harness horse race with at least 40,000 one-day attendees to levy, subject to the approval of county voters, a lodging tax of up to 3% for up to five years. Revenue from this tax must be used by the county to pay for the construction or maintenance of permanent improvements at sites where the agricultural society conducts fairs or exhibits. Similar to other lodging taxes, the bill requires the county to adopt rules necessary to administer the tax, but limits the amount of penalties and interest the county may charge for late payments.

For sports park financing and tourism promotion

(R.C. 133.07, 307.679, and 5739.09(A)(9))

The bill authorizes a county with a 2010 population between 75,000 and 78,000 – Erie County – to increase the rate of its general lodging tax by 1% to pay the cost of constructing and maintaining a "sports park" and promoting county tourism. A county would not be required to return any portion of the revenue from this increased lodging tax to townships or municipal corporations. The tax must be levied by a resolution adopted by the county not later than October 15, 2015.

Under the bill, a sports park is an entertainment and recreation venue that hosts athletic events and teams, and includes related parking facilities and walkways.

The bill also authorizes the Erie County board of commissioners to enter into a cooperative agreement with a port authority, nonprofit corporation, operating company, or another person for the purpose of financing, constructing, maintaining, and operating a sports park. Each party to the agreement is authorized to agree to perform some or all of the following obligations:

Obligation	Erie County	Port authority	Nonprofit corporation	Operating company
Increase the rate of its lodging tax (see above)	X			
Construct a sports park	X	X	X	
Acquire, convey, or lease real property for the sports park project	X	X	X	X
Issue bonds to fund sports park construction or maintenance	X	X		
Finance sports park bonds using lodging tax revenue and other sources	X	(Erie County is required to service port authority bonds)		
Authorize another person to administer on its behalf contracts related to a sports park	X	X	X	
Lease a sports park, including an agreement to purchase a sports park for $1 following the end or the lease or retirement of sports park bonds				X
Operate and maintain a sports park				X

Any such agreement terminates if no sports park bonds are issued within two years after the agreement takes effect.

For Lake Erie shoreline improvements

(R.C. 305.31, 4582.56, and 5739.09(M))

The bill authorizes a county located on the Lake Erie shore to levy an additional lodging tax of up to 2%. The county must pledge the revenue from the tax to a port authority, which must use the revenue to fund the construction of port authority facilities under an agreement between the county and port authority. The facilities must be located within one mile of Lake Erie.

Under the bill, the port authority is authorized to issue bonds supported by the lodging tax revenue. Bond proceeds may be used to make eligible port authority facility improvements. The bonds would have a maximum maturity of 30 years.

For permanent improvements

(R.C. 133.07, 305.31, and 5739.09(A)(10))

The bill authorizes two counties, Defiance and Hancock, each to levy a lodging tax specifically to finance permanent improvements. The lodging tax increase would be subject to a referendum if a petition is signed by at least 10% of the number of people who voted for the office of Governor and is filed within 30 days after the board of county commissioners adopts the tax. Defiance County qualifies by having a 2010 population of between 39,000 and 40,000 and by not currently levying a lodging tax. Hancock County qualifies by having a 2010 population of between 71,000 and 75,000 and by currently levying a 3% lodging tax to fund a convention and visitors bureau. The tax would apply throughout the county, including in any township or municipal corporation that levies its own lodging tax. If the county issues bonds and pledges the tax revenue to the payment of the associated debt charges, the bonds do not count toward the county's statutory debt limit.

Under continuing law, a permanent improvement is any property, asset, or improvement having an estimated life of at least five years.

Hotel intermediary lodging tax

(R.C. 351.021, 353.06, 5739.08, and 5739.09; Section 803.330)

Under continuing law, counties, townships, municipal corporations, convention facilities authorities, and lake facilities authorities are authorized, by resolution or ordinance, to levy taxes on transactions by which lodging by a hotel is or is to be furnished to transient guests. The bill requires that lodging taxes imposed by such subdivisions and taxing authorities apply to transactions conducted through a provider of hotel intermediary services. Furthermore, the bill requires that the tax apply to the total price paid by the consumer for lodging as advertised by the provider of the hotel intermediary service.

Tourism development districts

The bill authorizes certain townships and municipal corporations to designate a special district of not more than 200 contiguous acres, within which the municipal corporation or township may levy certain taxes or fees or receive certain revenue to fund tourism promotion and development in that district. These districts are referred to as "tourism development districts" (TDD).

Creation of TDD

(R.C. 503.56 and 715.014)

Under the bill, only a township or municipal corporation located in a county that meets certain qualifications may create a TDD. In particular, the subdivision must be located in a county with a population between 375,000 and 400,000 and that levies county sales taxes, the aggregate rate of which do not exceed 0.50%. Only Stark County currently is capable of meeting both requirements.

Before a subdivision may create a TDD, it must hold two public hearings on the creation of the proposed TDD and receive a petition signed by every person owning land in the proposed TDD and the owner or agent of every business operating in the TDD. A business is a sole proprietorship or business entity or corporation, and also includes the federal government, the state, political subdivisions, nonprofit organizations, and school districts. However, a business only operates within the proposed TDD if it would be subject to a special gross receipts tax levied in the proposed TDD (see "**TDD gross receipts tax**," below).

That petition must include an explanation of the taxes and fees that may be levied in the TDD (see below). After holding those hearings and receiving that petition, the subdivision may adopt a resolution designating the area of the subdivision to be included in the TDD.[224] The area cannot be more than 200 contiguous acres. The subdivision must submit this resolution, which the subdivision must adopt before 2019, to the Tax Commissioner within five days after its adoption, along with a description of the boundaries of the TDD.

A subdivision may enlarge an existing TDD before 2019 by following the same procedures for creating a new TDD subject to the 200-acre limit.

TDD gross receipts tax

(R.C. 5739.101, 5739.102, and 5739.103)

The bill authorizes a subdivision creating a TDD to levy a gross receipts tax of up to 2% on business' gross receipts derived from making sales in the TDD (excluding food sales). Under the bill, a subdivision levying the tax must do so before 2019.

A TDD gross receipts tax is administered and collected by the Tax Commissioner in the same manner as a gross receipts tax authorized to be levied by certain "resort

[224] References to resolutions include ordinances if ordinances are the form by which a municipal legislative authority adopts its laws.

areas" under continuing law. However, the bill specifies that a business subject to a TDD or resort area gross receipts tax may separately or proportionately bill or invoice the tax to another person, e.g., a consumer as part of the price of the good or service sold.

TDD admissions taxes

(R.C. 503.57 and 715.014(D))

The bill authorizes a township creating a TDD to levy up to a 5% tax on admissions to places located in the TDD, including ticket purchases, cover charges, golf course membership fees and green fees, and parking charges.

The bill requires every person receiving an admission payment to collect the tax from the person making the payment. The township levying the tax may prescribe all rules necessary to administer the tax. However, late penalties may not exceed 10% of the amount due and interest may not accrue on unpaid amounts in excess of the interest rate charged by the state for unpaid taxes – the federal short-term rate plus 3%. Revenue a township collects from the admissions tax must be used exclusively to promote and develop tourism in the TDD and pay the expenses of administering the tax.

The bill specifies that it does not prohibit a municipal corporation from levying an admissions tax in a TDD pursuant to the municipal corporation's constitutional home rule authority.

TDD lessee fee

(R.C. 503.56(C) and 715.014(C))

Once a TDD is created, the bill authorizes lessors leasing real property in the TDD to impose and collect a uniform fee on each parcel of leased property. The fee is imposed on the lessees (i.e., renters or tenants) of such property. However, the fee may be imposed only if the leave includes a provision stating the amount of the fee and if the lessor files a copy with the subdivision's fiscal officer. Lessors charging the fee must remit all collections to the subdivision pursuant to rules prescribed by the subdivision. Similar to the township TDD admissions tax, late penalties may not exceed 10% and interest is limited to the federal short-term rate plus 3%. Fee revenue must be used exclusively to promote and develop tourism in the TDD and pay the expenses of administering the fee.

TDD bonds

(R.C. 133.01, 133.04, 133.05, 133.083, and 133.34)

The bill authorizes a subdivision creating a TDD to issue bonds to be repaid with revenue from taxes or fees levied for the purpose of developing and promoting tourism in the TDD. The bonds may be supported by TDD gross receipts taxes, admissions taxes, or lessee development fees. All bond proceeds must be used for the same purposes as the supporting revenue sources – to develop and promote tourism in the TDD.

Administration of county 9-1-1 assistance

(R.C. 128.54 and 128.55; conforming changes in R.C. 128.57)

Transfers to the Next Generation 9-1-1 Fund

The bill requires the Tax Commissioner to transfer funds remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund *at the direction of the Statewide Emergency Services Internet Protocol Network Steering Committee*. Current law requires these transfers to be made on a monthly basis after disbursements are made to counties from the Wireless 9-1-1 Government Assistance Fund. Under continuing law, the Next Generation 9-1-1 Fund is used for costs associated with phase II wireless systems and a county's migration to next generation 9-1-1 systems and technology.[225]

Remedying shortfalls in monthly county disbursements

The bill requires that any shortfall in monthly county disbursements from the Wireless 9-1-1 Government Assistance Fund be remedied in the following month. Under continuing law, counties receive monthly disbursements from the fund based on how much was distributed to each county in the year 2013. The funds come from a 25-cent monthly charge on Ohio wireless subscribers (and a charge of 0.5% of the sale price of prepaid wireless services).[226] Under continuing law, if the amount available in the Wireless 9-1-1 Government Assistance Fund is insufficient to make the required monthly disbursements, each county's share is proportionately reduced for the month. Current law does not provide for this shortfall to be remedied.

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[225] R.C. 128.022, not in the bill.

[226] R.C. 128.42, not in the bill.