- Local Government Funds were frozen at FY 2001 levels.
- Implementation of corporate franchise tax credits was delayed.

Tax Policy and Revenue

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INTRODUCTION

H.B. 94 made numerous tax law changes. These changes included the establishment of a tax amnesty program for three months of FY 2002, the exemption from the sales tax of certain local calls made from coin-operated telephones, the delay in implementation of some corporate tax credits established in the previous budget bill, and the transfer of certain tax collection and processing functions from the office of the Treasurer of State to the Department of Taxation. While many of these changes have both administrative and policy aspects, the changes that predominantly affect the Department of Taxation's budget (such as the transfer of functions from the Treasurer of State) are discussed under the Department of Taxation, and to a lesser extent under the Treasurer of State. Those changes that significantly affect taxpayers and/or state revenues are discussed in this section. Finally, some changes predominantly affect the Department of Natural Resources or the Racing Commission. Those changes are discussed in the sections dealing with those agencies.

Table 1 lists the most significant tax law changes in H.B. 94. For the most part, the changes increase revenue to the GRF over the FY 2002-2003 biennium. The provision with the greatest projected impact is the local government fund distribution freeze, which freezes the amounts deposited into and distributed from the three local government distribution funds at FY 2001 levels. This provision affects the distribution of revenue by fund of the personal income tax, the sales and use tax, the corporate franchise tax, the public utility excise tax, and the kilowatt-hour tax. (The freeze also affects local revenues, reducing combined distributions to the Local Government Fund, the Local Government Revenue Distribution Fund, the Library and Local Government Fund by the same amount that it increases the GRF.) The tax amnesty program also affects several different tax revenue sources.

Table 1 – Tax Law Changes In Am. Sub. H.B. 94			
Section 1 - State Tax Issues			
Issue	**Description**	**Estimated GRF Revenue Gain Due to Change**	
		2002	**2003**
Multiple Tax Sources			
Tax Amnesty	Grants an "amnesty" period during FY 2002, during which taxpayers with liabilities that are not known to the state can report the liability and pay outstanding tax without penalty.	$17 Million	$5 Million
Local Government Distribution Funds Freeze	Freezes amounts deposited into and distributed from local government distribution funds at FY 2001 levels	$42.8 million	$117.7 million
Corporate Franchise Tax			
Job Training Expenses Tax Credit	Delays for two years the corporate increased job training expenses tax credit.	$20 Million	$20 Million
Research and Development Tax Credit	Delays commencement of the corporation franchise tax credit for qualified research expenses until tax year 2004.	$17 Million	$25.5 Million
Franchise Tax Base for Certain Multistage Financial Institutions	Extends through tax year 2003 the option given to certain multistage financial institutions to base their corporation franchise taxes on their deposits rather than on an apportionment of their sales, property, and payroll factors.	No revenue estimate made.	
Corporation Franchise Tax and Corporation Transfers	Modifies the transfer and exit tax provisions and clarifies that transferring assets to another corporation is a "transfer" under the transfer tax provision only if it qualifies for nonrecognition of gain or loss under the Internal Revenue Code.	Technical change, no revenue estimate made.	
Corporation Franchise Tax (Litter Taxes)	Modifies procedures for transferring moneys into the Recycling and Litter Prevention Fund from corporate franchise "litter" taxes and surcharges.	Decrease of $2.6 million	Decrease of $2.6 million
Personal Income Tax			
Personal Income Tax- Nonresident Credit	Clarifies exclusion relating to investment in pass-through entities	Technical change, no revenue estimate made.	
Investment Pass-Through Entity's Management Fee Exclusion	Disallows the exclusion of net management fees from an investment pass-through entity's withholding tax base if the fees exceed 5% of its net income.	Technical change, no revenue estimate made.	
Sales and Use Tax			
Sales Tax- Coin-Operated Telephone Calls	Provides that local telephone calls made with coins from coin-operated telephones are not "sales" for purposes of the sales tax law.	Decrease of $1.5 million	Decrease of $1.5 million

Table 1 – Tax Law Changes In Am. Sub. H.B. 94			
Section 2 - Local Tax Issues			
Issue	**Description**	**Estimated Revenue Gain Due to Change**	
		2002	**2003**
Property Tax			
Sale of Property Tax Certificates	Permits the county treasurer of any county having a population of at least 200,000 persons (rather than 1.4 million as specified in current law) to sell tax certificates for delinquent property taxes through negotiations with one or more persons instead of by public auction.	Permissive	
County Special Tax Levy	Authorizes a county special tax levy for the combined purposes of a 9-1-1 system and a countywide public safety communications system.	Permissive	
Tax Exemption-Certain Tangible Personal Property	Exempts from taxation certain tangible personal property held by the federally chartered Corporation for the Promotion of Rifle Practice and Firearms Safety.	This provision has the potential to create a loss in potential revenue for school districts and local governments where this property is located. There is currently no tangible personal property owned by the Corporation for the Promotion of Rifle Practice and Firearm Safety held in Ohio.	
Miscellaneous Local Taxes			
County Motor Vehicle License Tax	Allows a board of county commissioners, with a resolution from a board of township trustees, to annually increase or decrease the allocation of the second additional county motor vehicle license tax to a percentage greater than 30%, which is required by current law.	Permissive. This provision has the potential to shift revenue from counties to townships.	
Late-Payment Lodging Tax Penalty and Hotels with Fewer Than Five Rooms	Permits counties, municipal corporations, and townships to adopt regulations imposing a penalty and interest for late payment of lodging taxes, and grants them the option of applying the lodging tax to hotels having fewer than five rooms. (The definition of hotel to include establishments with fewer than five rooms is to be used only for lodging, not sales, tax purposes.)	This provision has the potential to create additional revenue for local governments.	

OTHER TAX LAW CHANGES

The provisions noted in Table 1 are discussed in more detail in subsequent sections. H.B. 94 also makes numerous clarifications and technical changes to the law. These provisions are noted below. Most have little or no impact on state or local revenues, and LSC did not make any revenue estimates for these provisions.

H.B. 94 made changes to the personal income tax non-resident credit and to the investment pass-through entity's management fee exclusion. The bill provides that, for the purpose of computing a nonresident owner's tax credit, if a taxpayer has an investment in an investment pass-through entity and that entity, in turn, has an investment in any other pass-through entity, the existing exclusion of income items (income, gain, deduction, or loss) received by the nonresident taxpayer does not apply to income items received directly or indirectly through (1) a distributive share of income or gain from a pass-through entity that does not qualify as an investment pass-through entity, or (2) a pass-through entity's income or gain that is not a fee excluded from taxation under existing law. With respect to the management fee exclusion, H.B. 94 disallows the exclusion of net management fees from an investment pass-through entity's withholding tax base if the fees exceed five percent of its net income.

H.B. 94 extends through tax year 2003 the option given to certain multistage financial institutions to base their corporation franchise taxes on their deposits rather than on an apportionment of their sales, property, and payroll factors. (In order to avail itself of this option, a financial institution must have at least 10 percent of its deposits in Ohio and have been involved in a merger.)

H.B. 94 makes a technical change to the estate tax, so that all estates that are exempted from the estate tax are not required to file an estate tax return. It also clarifies provisions related to the excise tax on natural gas (established by S.B. 287 of the 123rd General Assembly) and the excise tax on self-assessing purchasers of electricity (established by S.B. 3 of the 123rd General Assembly). With respect to the excise tax on natural gas, the bill provides that the tax will first be applied to the measurement period that includes July 1, 2001, rather than on and after July 1, 2001.

The bill requires self-assessing purchasers to apply annually for the privilege of self-assessing; it provides that the registration period begin on May 1 of each year; and it allows an electricity user to apply as a self-assessing purchaser any time during the registration year for the remainder of the year. It also clarifies that the per-kilowatt-hour excise tax on self-assessing purchasers of electricity is to be $.00075 per kilowatt-hour on the first 504 million kilowatt-hours distributed to a meter or location during the registration year rather than $.00075 per kilowatt-hour on not more than 504 million kilowatt-hours.

CORPORATE FRANCHISE TAX

Am. Sub. H.B. 94 delays tax credits for job training and qualified research expenses, and makes other changes to the corporate franchise tax.

JOB TRAINING EXPENSES TAX CREDIT

Am. Sub. H.B. 94 delays a new, non-refundable job training expenses tax credit created by Am. Sub. H.B. 283 of the 123rd General Assembly that was expected to have negative revenue impact in FY 2002. Am. Sub. H.B. 94 postpones the claiming of this credit to 2004, 2005, and 2006, with a change in the manner in which the credit is claimed for 2004. The credit will be equal to one-half of the incremental training costs defined as the training expenses above the average training cost for the previous three years, except for claims for credit applied to 2004. For 2004, the credit will be claimed on the basis of job training costs incurred in 1999, 2000, and 2001 (or in the case of insurance companies and dealers in intangibles, on the basis of expenses in 1998, 1999, and 2000). There are several caps on the credit amount. For any corporate taxpayer, the credit is capped at $1,000 times the number of employees trained and $100,000 per corporation. The tax credit has a carry forward provision of three years after it was first claimed. Statewide, the credit cannot exceed $20 million in any calendar year. LSC had estimated the revenue loss from the jobs training expenses for Am. Sub. H.B. 283, based on extrapolations from data on jobs training credit in several other states. The cap of $20 million per year for this tax credit would have been attained in FY 2002 and FY 2003, had this credit been claimed in these fiscal years. Therefore, delaying the tax credit increases GRF revenue by the same amount, $20 million, in each year of the current biennium.

RESEARCH AND DEVELOPMENT TAX CREDIT

Am. Sub. H.B. 94 also delays the commencement of the new corporation franchise tax credit for qualified research expenses until 2004. This tax credit was also created by Am. Sub. H.B. 283 of the 123rd General Assembly and was to have first taken effect during taxable year 2001. In fact, corporations with taxable years that ended prior to July 1, 2001 are allowed to claim the tax credit for tax year 2002. For corporations that have a taxable year ending after July 1, 2001, the tax credit claim will be delayed until 2004. This tax credit is for 7 percent of qualified research expenses in Ohio, over and above the average annual research expenses for the past three years. The credit may be carried forward for seven years. LSC estimated from federal corporate returns that this tax credit could cost anywhere from $20 million to $34 million per year. However, some corporations that could claim this credit would also be using most or all of their tax liability with the existing investment tax credit. According to the Department of Taxation, the delay will improve GRF revenues by $17.0 million in FY 2002 and $25.5 million in FY 2003.

TRANSFER OF CERTAIN PROCEEDS OF CORPORATE FRANCHISE TAXES AND SURCHARGES TO THE RECYCLING AND LITTER PREVENTION FUND

Am. Sub. H.B. 94 revises certain procedures for transferring moneys into the Recycling and Litter Prevention Fund from corporate franchise “litter” taxes and surcharges. Previous law required the Treasurer of State to credit $5 million every six months to the Recycling and Litter Prevention Fund from reported corporate tax liability under the “litter” taxes. The budget bill removes these earmarks. The total amount of “litter” taxes received (minus amounts retained by the Department of Taxation to administer the “litter” taxes) will be credited to the Recycling and Litter Prevention Fund. This revision is expected to decrease GRF revenues by $2.6 million each year of the current biennium.

TAXATION OF CERTAIN CORPORATIONS FOLLOWING A TRANSFER OF ASSETS

Am. Sub. H.B. 94 also makes a slight change regarding the taxation of certain transferor/transferee corporations when all of their assets are transferred to another corporation. This change follows the revisions made by Am. Sub. S.B. 287 of the 123rd General Assembly. Am. Sub. S.B. 287 reconciled the franchise “exit” tax (for a transferor corporation whether or not it ceases to exist as a going concern) and the requirement that a transferee corporation add to its income, the transferor’s income (if the transferor’s income was not taxed under the “exit” tax). Am. Sub. H.B. 94 provides that this change would not apply to any transfer of assets for which negotiations began prior to January 1, 2001, and that was commenced in and completed during calendar year 2001, unless the taxpayer makes an election prior to December 31, 2001. The fiscal impact of these changes is expected to be minimal.

TAX AMNESTY

Am. Sub. H.B. 94 established an amnesty period during FY 2002 during which taxpayers with liabilities that are not known to the state can report the liability and pay outstanding tax without penalty and without paying one-half of any accrued interest. The amnesty applies to liabilities for the following taxes: state personal income, corporation franchise, pass-through entity, sales and use (state, county, and transit), public utility excise (gross receipts), and business tangible personal property. It includes liabilities for income taxes withheld by employers but never reported or remitted to the state, and for sales or use taxes that have been collected by a vendor but not reported or remitted to the state. Am. Sub. H.B. 299 extended the tax amnesty to school district personal income taxes.

Collections arising from the amnesty for state taxes are to be credited to the GRF. Collections arising from county or transit authority sales and use taxes are to be distributed to the county or the transit authority that is owed the taxes, and collections arising from tangible personal property taxes are to be distributed among the taxing districts as are other property tax collections. Collections arising from school district personal income taxes are to be distributed to the school district from which the tax originated.

The amnesty does not apply to unpaid taxes if a notice of assessment has been issued, a bill has been served, or an audit has been conducted with respect to those taxes on or before May 1, 2001.

The amnesty is estimated to yield $17 million in revenues to the GRF in FY 2002 and $5 million in FY 2003. Due to the LGF freeze, all net state revenue from the amnesty will be deposited into the GRF. Estimated revenue yields for other taxing jurisdictions are not available.

TEMPORARY STABILIZATION OF LOCAL GOVERNMENT DISTRIBUTIONS

The budget freezes, for FY 2002 and FY 2003, amounts of state tax receipts that are deposited into and distributed from the Local Government Fund and the Local Government Revenue Assistance Fund at the levels of FY 2001. Although June 2001 deposits and July 2001 distributions are to be made under existing law (amounts credited one month are distributed the next), the bill makes adjustments to the July 2001 deposits and August 2001 distributions so that the freeze effectively begins with the June 2001 deposits and July 2001 distributions. The same freeze applies to amounts deposited into and distributed from the Library and Local Government Support Fund (LLGSF), except that distributions to each county undivided library and local government support fund are further reduced by the county's pro-rata share of any transfers made from the LLGSF to the Ohio Public Library Information Network (OPLIN) Technology Fund.

The freezes affect deposits of receipts from the personal income tax, the sales tax, the use tax, the corporate franchise tax, the public utilities excise tax, and the kilowatt-hour tax. Tax receipts that would otherwise have been credited to the local funds will instead be credited to the General Revenue Fund (an adjustment is made to capture for the GRF the June 2001 deposit of kilowatt-hour taxes). Amounts that would have been transferred from the Income Tax Reduction Fund to the local government funds will also be transferred to the GRF.

The freezes are estimated to add $59.4 million to the GRF in FY 2002 and $132.5 million in FY 2003.

PERSONAL INCOME TAX – NONRESIDENT CREDIT

The bill provides that, for the purpose of computing a nonresident owner's tax credit, if a taxpayer has an investment in an investment pass-through entity and that entity, in turn, has an investment in any other pass-through entity, the existing exclusion of income items (income, gain, deduction, or loss) received by the nonresident taxpayer does not apply to income items received directly or indirectly through (1) a distributive share of income or gain from a pass-through entity that does not qualify as an investment pass-through entity, or (2) a pass-through entity's income or gain that is not a fee excluded from taxation under existing law.

PROPERTY

DELINQUENT TAX CERTIFICATES

Am. Sub. H.B. 94 permits the county treasurer of any county having a population of at least 200,000 to sell tax certificates from delinquent property taxes through public auction and negotiations with one or more persons. Prior law required the population of the county to be at least 1.4 million in order to sell tax certificates for delinquent taxes through negotiations. Under the 1990 Census, only Cuyahoga County was able to sell certificates through negotiations; however, its population fell to 1.3 million under the 2000 census. The counties affected by this change are Butler, Cuyahoga, Franklin, Hamilton, Lake, Lorain, Lucas, Mahoning, Montgomery, Stark, Summit, and Trumbull.

COUNTY SPECIAL TAX LEVY

The budget bill permits counties to levy a tax to both establish and operate a 9-1-1 system and to support a countywide public safety communications system. Previously counties could only levy taxes for each of these purposes individually. This is permissive and must be voted on by citizens of the county.

TANGIBLE PERSONAL PROPERTY TAX EXEMPTION

Am. Sub. H.B. 94 exempts the federally chartered Corporation for the Promotion of Rifle Practice and Firearm Safety from tangible personal property taxes. This organization, which is associated with Camp Perry in Ottawa County, has not previously stored any personal property in Ohio. Thus, this exemption does not cause any immediate revenue loss. While school districts and local governments in Ottawa County may lose potential revenue as a result of this exemption, without the exemption the corporation is likely to continue to store its tangible property outside of the state.

MISCELLANEOUS TAX CHANGES

COUNTY MOTOR VEHICLE LICENSE TAX

Am. Sub. H.B. 94 enacted section 4504.051 of the Ohio Revised Code, permitting an alteration in the distribution of the county motor vehicle license tax revenues authorized by section 4504.16 of the ORC.

The latter section permits boards of county commissioners to impose a $5 license tax on vehicles registered within the county but outside of a municipality that imposes the license tax authorized under section 4504.171 of the ORC. Prior to passage of H.B. 94, and by default after the bill's passage, 70 percent of the revenues from any tax levied under ORC 4504.16 on a vehicle registered outside of an incorporated area would be distributed to the county and 30 percent of the revenues would be distributed to the township in which the vehicle was registered. H.B. 94 permits county boards of commissioners to increase a township's allocation at the request of that township's board of trustees. It also permits a county board of commissioners to alter the allocation of revenues from this tax, subject to the consent of the board of trustees of any affected townships.

LODGING TAX PENALTY AND LODGING TAXES FOR HOTELS WITH LESS THAN FIVE ROOMS

Am. Sub. H.B. 94 grants local governments (counties, municipal corporations, and townships) permissive authority to extend their lodging taxes to establishments with less than five rooms. Small inns or "bed and breakfast" businesses that had less than five sleeping rooms available to transient guests were previously exempt from permissive local government lodging taxes. The budget bill removes this exemption and thus potentially expands the "bed" tax base. The regulations would have to be voted on by the legislative authority of the county, municipality, or township. This permissive provision has the potential to create additional revenue for local governments. Local government revenues accruing from expanding the bed tax base will depend on the willingness of authorities to inventory lodging units and enforce lodging taxes.

This bill also limits the penalty and interest that counties, townships, and municipal corporations may charge for late or unpaid lodging taxes. The maximum penalty is 10 percent of the amount due, and the rate at which interest accrues will not exceed the "federal short-term rate" (as determined by the Tax Commissioner) plus 3 percent.

LOCAL CALLS MADE FROM COIN-OPERATED TELEPHONES AND PAID WITH COIN

Am. Sub. H.B. 94 exempts from the sales tax local telephone calls made from coin-operated telephone and paid with coin. Long distance phone calls paid with coin will remain taxable. LSC's estimates of the revenue impact are based on extrapolation from data from Ohio's Economic Census of 1997 and data from the Federal Communications Commission (FCC). The number of payphones in Ohio has been decreasing steadily and business receipts have also declined due to competition mainly from cellular phones. FCC's Annual Telecommunications Industry Revenue Report for 1999 reported that payphone coin revenues were $1.66 billion in 1999. Using Ohio's share of payphones (3.8 percent), Ohio's payphones coin revenues were approximately $62.4 million in 1999. These revenues have been decreasing at an annual rate of 10 percent. Thus, 2001 payphones revenues would be about $50.5 million. Local calls generate about half of payphone coin revenues or $25.3 million in sales. State sales tax on these sales would be $1.3 million. GRF revenues loss from this tax exemption would thus be $1.2 million.