DEPARTMENT OF TAXATION (TAX)

Tax exemptions for privatized state services

- Exempts from taxation private contractors contracting to operate the turnpike and the liquor merchandising function (JobsOhio); affected taxes are commercial activity tax and state and local income and sales/use taxes.

- Continues tax exemption of real property used by such contractors if the state continues to own the property during the contract.

Local Government Fund and Public Library Fund

- Reduces the amount of state tax revenue credited to the Local Government Fund (LGF) to 75% of fiscal year 2011 levels for each month between August of 2011 and June of 2012 and to 50% of fiscal year 2011 levels for all months in fiscal year 2013.

- Reduces the amount of state tax revenue credited to the Public Library Fund (PLF) for all months between August of 2011 and June of 2013 to 95% of fiscal year 2011 levels.

- Provides that distributions to the LGF and PLF after fiscal year 2013 will depend on the total amount allocated to the respective funds in fiscal year 2013 as a percentage of total state tax revenue credited to the General Revenue Fund (GRF) in that fiscal year.

- Requires, beginning in August of 2011, pro rata distributions from the LGF to county undivided LGFs and municipal corporations based on the proportionate share each subdivision received from the LGF in fiscal year 2011, and reflecting the 25% (FY 2012) and 50% (FY 2013) reductions in the tax revenue credited to the LGF.

- Requires minimum distributions to county LGFs in fiscal years 2012 and 2013, such that a county that received a total distribution of over $750,000 in fiscal year 2011 may not receive less than $750,000, while county LGFs that would receive less than $750,000 because of the reductions must receive at least the same amount the county LGF received in fiscal year 2011.

- Provides a supplemental payment to county LGFs in FY 2012 in a total amount of $49,270,000, to be distributed on a pro rata basis according to each county LGF's share of the FY 2011 LGF.

- Authorizes, for the period between July and December of 2011, pro rata distributions from the PLF to counties based on the proportionate share each county received in 2010 and, for the period between January of 2012 and June of 2013, pro rata distributions to counties based on the proportionate share each county received in 2011.

- Provides that county undivided local government funds shall no longer receive 5/8 of the revenue from the dealers in intangibles tax on unaffiliated dealers, and instead allocates all revenue from that tax to the GRF.

Tangible personal property tax reimbursements

- Decreases the portion of commercial activity tax and kilowatt-hour tax revenue earmarked for reimbursing school districts and other taxing units for business and public utility personal property tax losses, and increases the GRF portion.

- Requires all natural gas distribution tax revenue to be credited to the GRF.

- Replaces the previous business and public utility property reimbursement schedules for fixed-rate levy losses with ones that:

  --Over the FY 2012-2013 fiscal biennium, terminate payments if a taxing unit's reimbursement for calendar year 2010 (non-school taxing units) or fiscal year 2011 (school districts) fails to exceed an annually increasing "threshold" percentage of the taxing unit's total resources (a fixed measure of its state aid and local levy revenues);

  --Over the FY 2012-2013 fiscal biennium, reduce payments for taxing units whose 2010 or 2011 reimbursement exceeds the threshold percentage by paying the unit its 2010 or 2011 reimbursement minus the threshold percentage of its total resources; and

  --After the biennium, reimburse taxing units at FY 2013 (schools) or tax year 2013 (others) levels indefinitely for taxing units that received payments in FY 2013 or tax year 2013.

- Reduces the reimbursements for non-current expense fixed-rate levy losses over the biennium for school districts and municipal corporations. (Other taxing units' non-current expense, fixed-rate levies, if any exist, are disregarded.)

- Retains the prior law reimbursements for unvoted debt levies and fixed-sum levies (i.e., school district "emergency" and similar fixed-dollar levies, and voted debt levies).

- Requires debt levies authorized by a municipal charter to be levied without a vote of municipal electors to be reimbursed as an unvoted debt levy.

- Reduces the business personal property reimbursement frequency for school districts from three payments per year (one-third in August, October, and May) to two payments per year (two-thirds in November and one-third in May).

- Changes the business property reimbursement installment fractions for non-school taxing units to one-seventh in May and six-sevenths in November through 2013, and thereafter to one-half in both May and November.

- Terminates payments of "surplus" public utility property reimbursement money remaining in the Local Government Property Tax Replacement Fund after all reimbursement is paid; previously the surplus was distributed among counties on a per-capita and prorated utility property tax loss basis and was paid to taxing units in the counties in proportion to current property taxes.

- Changes the manner of apportioning reimbursement payments among school districts that have transferred or merged territory to reflect the changes in the factors for computing reimbursement payments and to apportion payments on the basis of the per-pupil values of those factors.

- Changes the default method for apportioning reimbursement payments among other local governments for mergers or annexations from a property value basis to a square mileage basis.

- Phases out the county administrative fee losses caused by the tangible personal property tax phase-out from 2012 to 2016. The reimbursement equals a percentage of the 2010 administrative fee loss reimbursement (80% for 2012 and declining to 0% in 2016 in 20% increments).

- Repeals the law creating, as of January 1, 2011, the Public Utility Tax Study Committee, which was to study the extent to which school districts had been compensated by the tax loss reimbursements.

Job retention, investment tax credits and other credits

- Expands the job retention tax credit (JRTC) program, which includes both a permanent nonrefundable and a temporary refundable credit program, to provide for a new, separate refundable tax credit available to certain eligible businesses for a limited time.

- Requires recipients of the new refundable credit to have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same jurisdiction as that in which the business has its principal place of business, and meet other JRTC program requirements.

- Modifies the JRTC eligibility requirement that a business must retain at least 500 employees by instead requiring a business to either meet the 500-employee retention requirement or have an annual payroll of $35 million.

- Authorizes the new credit only temporarily by providing that the Tax Credit Authority may only enter agreements for the new credit between July 1, 2011 and December 31, 2013.

- Provides a new annual credit limit applicable to both the pre-existing and new refundable JRTC credits by allowing the authorization of up to $25 million of new refundable credits in 2011 and 2012 combined, and up to $25 million of new credits in 2013, for a total limit of $50 million in annual credits claimable in 2013 and every year thereafter for up to 15 years.

- Grants an income tax credit for investments in small businesses with a specified minimum business presence in Ohio.

- Extends perpetually the credit for rehabilitating an historic building.

- Requires credits to be awarded after the rehabilitation or a stage in the rehabilitation is complete, depending on the length of the rehabilitation period.

- Requires a credit recipient to repay any credit if the project is not completed.

- Allows the Department of Development and Ohio Historic Preservation Office to charge reasonable fees for the administration of the credit.

- Requires expenditures of projects with costs over $200,000 to be certified by an accountant.

- Requires the adoption of administrative rules for conducting cost-benefit analyses of each rehabilitation project.

- Permits the Director of Development to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.

- Allows foreign and domestic insurance company taxpayers to be eligible for a refundable historic rehabilitation tax credit equal to 25% of the dollar amount indicated on a rehabilitation tax credit certificate.

- Extends the final date on which horse racing permit holders are eligible for tax reductions to recover the costs that they incurred in certain renovation, reconstruction, or remodeling projects at their tracks.

- Authorizes the Tax Credit Authority to grant a full or partial sales and use tax exemption for equipment purchased by a business for use at an "eligible computer data center," provided that the business agrees to make a capital investment of at least $100 million and maintain an annual payroll of at least $5 million at the center.

- Requires the Tax Commissioner to grant a direct payment permit to businesses that enter into an agreement with the Tax Credit Authority for a computer data center equipment sales and use tax exemption.

Estate tax

- Repeals estate tax for the estates of individuals dying on or after January 1, 2013.

Tax amnesty

- Requires the Tax Commissioner to administer a temporary tax amnesty program from January 1, 2012, to February 15, 2012, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes.

- Requires the Commissioner to administer a separate temporary use tax amnesty program specifically for consumers with outstanding use tax obligations.

- Reduces the time within which the Commissioner must issue an assessment for unpaid use tax from ten to seven years when no shorter time limit applies.

- Permits taxpayers assessed for unpaid use tax between four and seven years after the tax was due to file a refund claim for overpaid sales or use tax for up to seven prior years.

Tax administration

- Authorizes the Tax Commissioner to adopt rules requiring employer income tax withholding, use tax, motor fuel tax, cigarette and tobacco product excise tax, or severance tax returns or reports to be filed, or payments made, electronically, unless exempted for good cause.

- Authorizes the Commissioner to issue notices and orders using delivery means other than certified mail or personal service if the alternative means records when the notice or order is placed with the delivery service and when it is accepted from a recipient, and if the delivery service is available to the general public and is as timely and reliable as the U.S. Postal Service.

- Authorizes the Commissioner to use a change of address service offered by such an alternative delivery service to attempt to deliver notices or orders if certified mail is returned undelivered.

- Authorizes the Commissioner to provide notice of retail license suspension or revocation by a delivery service other than certified mail.

- Eliminates requirement that the Department of Taxation include mail-in voter registration materials with income tax returns.

- Requires all claims and inquiries regarding the repealed Ohio Inheritance Tax to be submitted to the Department before 2013.

Miscellaneous

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

- Extends to joint vocational school districts the same terms of compensation and the same notification regarding pending tax increment financing arrangements that currently apply to city, local, and exempted village school districts.

- Extends by one year the authority of local governments to offer Enterprise Zone economic development incentives.

- Authorizes a property tax exemption for a convention center owned by the largest city in a county with a population between 700,000 and 900,000; incidentally applies an existing sales and use tax exemption for building materials incorporated into the convention center.

- Provides for the abatement of unpaid taxes with respect to the convention center for any tax year at issue in a tax exemption application or appeal proceeding pending on September 29, 2011.

- Creates an income tax refund "check-off" contribution for the benefit of the Ohio Historical Society.

- Authorizes school districts, with voter approval of a single ballot question, to levy both a property tax for a fixed amount of revenue and an income tax.

- Excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for the vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

- Modifies the statutory language governing the agricultural "use on use," "direct use," and agricultural land tile sales and use tax exemptions by applying them to tangible personal property used "primarily" rather than "directly" for such purposes.

- Authorizes a sales and use tax exemption for building materials and related services incorporated into a structure for keeping fish, horses, or captive deer for food or other agricultural purposes.

- Allows school districts to transfer surplus money in a bond fund or bond retirement fund to a specific permanent improvement fund with the approval of the county budget commission.

- Expands the purposes for which a political subdivision may propose a police or fire services property tax levy to include the payment of salaries and retirement fund contributions for EMS personnel, part-time police personnel, and police and fire communications and administrative personnel.

- Clarifies that the ballot for a school property tax levy for cultural center purposes must state that the levy is for cultural center purposes.

- Authorizes county treasurers that sell delinquent property tax certificates to shorten the deadline by which certificate holders must initiate foreclosures to as few as three years.

- Authorizes tax certificates being sold at public auction to be advertised electronically.

- Extends by one year the authority of the prosecuting attorney or treasurer of Hamilton County to appropriate up to 50% of delinquent tax and assessment funds above the amount necessary to collect additional delinquent taxes and assessments and to use the excess to pay operating expenses of the respective office otherwise paid from the general fund.

- States that, for the purpose of the existing corporation franchise (i.e., financial institution) tax credit for research expenses incurred by one or more members of a commonly owned or controlled group of corporations, an insurance company may be included in the group, even though insurance companies are not subject to the corporation franchise tax.

- Divides each county's Delinquent Tax and Assessment Collection Fund into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney.

- Authorizes the county treasurer or prosecuting attorney to suspend the crediting of delinquent tax collections to the respective officer's fund if the balance of the fund reaches a specified threshold.

- Authorizes a commercial activity tax exemption for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner.

- Changes the composition of the Ohio Business Gateway steering committee by increasing the number of business representatives and decreasing the number of municipal tax administrator representatives.

Tax exemptions for privatized state services

(R.C. 126.60, 126.604, 718.01(A)(1), 4313.02(A), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff))

Privatized state services

The act provides a municipal and state income tax deduction, a sales tax exemption, and an exclusion from "gross receipts" for the purposes of calculating commercial activity tax for an entity that operates facilities and services previously operated by the state. The two parties covered by the tax exemptions authorized by the act are a contractor operating the turnpike under the act's authority for the state to contract for such services (R.C. 126.60 through 126.605), and JobsOhio with regard to the transfer of state liquor merchandising operations as authorized by the act (R.C. 4313.02). Privatized correctional facilities are not covered.

Tax exemptions

Under the act, a contractor operating the turnpike ("turnpike contractor") may deduct, for the purpose of calculating the contractor's state and municipal income tax, any income realized by the contractor from the services provided by the contractor. JobsOhio may deduct income realized from state liquor merchandising operations or from the transfer of those operations from JobsOhio's adjusted gross income, assuming JobsOhio or its involved subsidiaries are otherwise subject to such taxes (JobsOhio is to be organized as a nonprofit corporation, although its subsidiaries might not be nonprofit). (R.C. 718.01 and 5747.01.)

A transfer or lease of tangible personal property between a turnpike contractor and the state is exempted from state and local sales and use taxes. The transfer of state liquor merchandising operations to JobsOhio is exempt from state and local sales and use taxes. (R.C. 5739.02.)

Receipts directly attributed to providing highway (i.e., turnpike) services pursuant to a contract with the state are excluded from "gross receipts" for the purpose of calculating a contractor's commercial activity tax. Receipts directly attributed to a transfer agreement regarding state liquor merchandizing operations between JobsOhio and the state and receipts directly attributed to the liquor operations are excluded from JobsOhio's gross receipts. (R.C. 5751.01. As with the income tax deduction, the effect of this provision on JobsOhio, if any, is uncertain because the CAT does not apply to nonprofit organizations.)

Privatized public services and property tax

The act exempts from property taxation any property used by a turnpike contractor under contract with the state to perform highway (i.e., turnpike) services if the property is still owned by the state. (R.C. 126.604.) Also exempted from property taxation is any property transferred to JobsOhio as part of the transfer of the liquor merchandizing operations to the extent the property would be exempted if it had not been transferred. (R.C. 4313.02(A).)

Local Government Funds

(R.C. 131.44, 131.51, 5747.46 to 5747.48, and 5747.50 to 5747.51; Section 757.10)

The act reduces the amount of state tax revenue credited to the Local Government Fund (LGF) and the Public Library Fund (PLF), and thus the amount of revenue available for distribution to counties, municipalities, townships, public library systems, and other special-purpose political subdivisions receiving revenue sharing payments through each county's undivided LGF. However, the act includes a limited hold-harmless provision that guarantees minimum payments to some county LGFs in fiscal years 2012 and 2013. Specifically, any county undivided LGF that received over $750,000 in fiscal year 2011 must receive a minimum of $750,000 in each of those fiscal years, even if the act's reductions would otherwise result in a lower distribution.

Similarly, any county undivided LGF that received $750,000 or less in fiscal year 2011 must continue to receive at least the same amount distributed to the fund in that year.

State funding of the Local Government Fund (LGF)

(R.C. 131.51(A); Section 757.10)

Continuing permanent law requires monthly allocations to the LGF to be made from any or all GRF tax sources. Under prior law, 3.68% of the total of all those tax sources were allocated to the LGF. The act reduces the amount of the allocation to reflect the reductions in the distributions to local governments, first by reducing the allocation for FY 2012 and 2013 (beginning in August 2011; the July 2011 allocation is unaffected by the act), and then by permanently reducing the percentage of tax sources allocated to the LGF beginning in FY 2014. The act specifies that, between August 2011 and June 2013, only personal income tax revenue will be used to make allocations to the LGF.

The monthly allocation of personal income tax revenue to the LGF from August 2011 through the end of FY 2013 will be composed of two components, with a third supplemental component allocated only from August 2011 through the end of FY 2012. The first component will be whatever amount is required to pay each county undivided LGF and each municipal corporation receiving direct LGF distributions a fixed percentage of the amount the county LGF or municipal corporation received in the corresponding month of FY 2011: 75% in FY 2012 and 50% in FY 2013.

The second component is to guarantee a minimum distribution level for county LGFs that receive relatively small shares of total state LGF distributions. The allocation amount is sufficient to ensure that county LGFs that received $750,000 or less in FY 2011 receive the same amount in FY 2012 and FY 2013, and that county LGFs whose FY 2012 or FY 2013 distribution would fall below $750,000 because of the act's 25% and 50% reductions will receive at least $750,000 in FY 2012 and FY 2013. (In determining whether a county LGF qualifies for this allocation in FY 2012, payments to the county from the third component, described below, are counted.)

The third component of the monthly allocation is a supplemental amount payable only for the 11 months from August 2011 through the end of FY 2012. It is about $4,479,091 per month (i.e., one-eleventh of $49,270,000). This allocation is to be divided pro rata among all county undivided LGFs based on their respective shares of total LGF distributions for the corresponding month in FY 2011.

Beginning with FY 2014, allocations from the LGF to county undivided LGFs and to municipal corporations will revert to continuing permanent law, except that the total amount of state GRF tax revenue devoted to making those allocations will no longer be the fixed 3.68% of GRF tax revenue. Instead, the total allocation will be whatever percentage of those revenues are required to freeze the post-FY 2013 allocations at the FY 2013 levels, which reflect the 50% reduction (compared to FY 2011 levels) and the amount of the minimum distributions to county undivided LGFs receiving guaranteed minimum distributions.

State funding of the Public Library Fund (PLF)

(R.C. 131.51(B); Section 757.10)

Under continuing permanent codified law, the state Public Library Fund (PLF) receives monthly allocations equal to 2.22% of total GRF tax revenue credited in the preceding month. However, that percentage was temporarily reduced to 1.97% for all months between August of 2009 and June of 2011 in Am. Sub. H.B. 1 of the 128th G.A. (see Section 381.20 of that act). The act further reduces these monthly allocations beginning in August of 2011.

Under the act, between August of 2011 and June of 2013, each month's PLF allocation equals 95% of the allocation made in that month in fiscal year 2011. These reduced allocations must be made from income arising from the sales tax and kilowatt-hour tax, rather than from any state tax revenue credited to the GRF. Beginning in July of 2013, the percentage of state tax revenue allocated to the PLF in any month will be based on the total percentage of state tax revenue allocated to the PLF in fiscal year 2013. PLF allocations after June of 2013 may be made from any state tax revenue credited to the GRF.

LGF distributions to local governments

Permanent codified law

(R.C. 5747.50 to 5747.51)

Continuing permanent codified law provides for the distribution of LGF funds to county undivided local government funds in every county of the state. Local governments in the county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In a few counties, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

Distributions to a particular county undivided LGF or municipal corporation general fund depend on the amounts distributed to those funds in 2007. Each county and municipal corporation must receive at least the same amount distributed to their respective fund in that year. If revenue in the state LGF is insufficient to meet these minimum distributions, then each county and municipal corporation must receive a reduced share prorated according to their share of 2007 distributions. However, if there is excess revenue in the state LGF after making the minimum distributions, each county undivided LGF may receive a prorated share of the excess based on the county's proportionate share of the state population, according to U.S. Census Bureau estimates from the previous year. No additional revenue is allocated to municipal corporations.

The act

(Section 757.10(E))

The act adjusts the LGF allocation method to provide for distributions to county undivided LGFs and directly to municipal corporation general funds based on the amounts distributed to those funds in fiscal year 2011. In each month between August of 2011 and June of 2013, the initial amount credited to the state LGF must be distributed to county LGFs and municipal corporations on a pro rata basis based on the proportionate share of state distributions each fund received in fiscal year 2011. For each county LGF, this initial distribution amount equals the fund's proportionate share of the LGF distributions made to all county LGFs in that month in fiscal year 2011 (however, any dealers in intangibles taxes received by a county undivided LGF in FY 2011 would not be counted in the county's proportionate share). Similarly, each municipal corporation that receives direct LGF distributions will receive a share equal to its proportionate share of all municipal corporation direct distributions made in that month in fiscal year 2011.

A county undivided LGF will receive an additional amount in any month that the fund's initial distribution amount falls below the applicable minimum distribution level. Any county LGF that received total distributions of $750,000 or less in fiscal year 2011 must receive an additional amount calculated to ensure that the fund will receive the same total amount the fund received in that fiscal year. A county LGF that received total distributions of over $750,000 in fiscal year 2011 will receive an additional amount only if the total amount to be distributed to that fund in either fiscal year 2012 or 2013 would be less than $750,000. (In determining the total amount distributed to a county undivided LGF for this purpose, payments received from the supplemental component of LGF distributions in FY 2012 – i.e., from the additional $49,270,000 allocated that year – are included.) In such a case, the fund must receive an additional amount calculated to ensure that the fund's total distributions for the respective fiscal year will equal $750,000. The act's minimum distribution levels do not apply to direct municipal corporation distributions.

PLF distributions to local governments

Permanent codified law

(R.C. 5705.32, 5705.321, and 5747.46 to 5747.48)

Under continuing permanent codified law, county undivided public library funds in every county receive a distribution from the state PLF. Agreements among local governments (and, in a few cases, a statutory formula) determine the amounts to be allocated to libraries within the county, and county treasurers distribute the amounts accordingly. (In a few counties, other kinds of local governments receive a share of the county PLF.)

The amount a county undivided PLF receives in a given year under permanent law depends upon the fund's "guaranteed share" and its "share of the excess." A fund's "guaranteed share" is the amount the fund received in the previous year after an adjustment for inflation. In any year, if the guaranteed shares of all counties exceed the total balance of the state PLF, then the share of county funds must be reduced proportionately. Alternatively, if the balance of the state PLF exceeds the guaranteed shares of the counties, then each county may receive a "share of the excess." That share is calculated by determining an equalization ratio for each county that is based on the county's population and its guaranteed share from the previous year.

The act

(Section 757.10(F) and (G))

Under the act, a county undivided PLF's distribution would be based on the fund's proportionate share of distributions in prior years, rather than on the actual amounts received in those prior years, thus reflecting the 5% reduction in the state PLF. In each month between July and December of 2011, each county undivided PLF will receive a share of the state PLF equal to the county's proportionate share of all state PLF distributions it received in 2010. Similarly, between January of 2012 and June of 2013, each fund's share would be based on that fund's proportionate share of all distributions it received in 2011.

Tax Commissioner estimates

(Section 757.10(H))

Under continuing permanent law, the Tax Commissioner must periodically certify estimates of the amount of revenue that each county undivided LGF and PLF will receive in the following year. For county undivided LGFs, the estimates for a distribution year must be provided by July 25 of the preceding year. The Commissioner must provide three separate estimates to county undivided PLFs for a given year: one each in July and December of the preceding year and one in June of the distribution year.

The act excuses the Commissioner from compliance with these certification requirements in the 2012 and 2013 distribution years. Instead, the Commissioner must send to each county only one estimate of the total amount to be received from the LGF and the PLF by July 20 of the preceding year. The Commissioner may provide additional revised estimates at any time.

Dealers in intangibles tax

(R.C. 5707.03, 5725.01, 5725.151, 5725.18, and 5725.24)

Prior law allocated ⅝ of the tax revenue from most dealers in intangibles to county undivided local government funds. Under the act, counties will no longer receive that portion of tax revenue after December 31, 2011; all revenue will be allocated to the General Revenue Fund (GRF).

Background

Continuing law provides for the taxation of shares in and capital employed by dealers in intangibles. The tax applies to businesses that operate in Ohio and engage in certain financial and lending activities (e.g., stockbrokers, mortgage companies, nonbank loan companies). The tax also applies to "qualifying dealers," which are generally dealers in intangibles that are subsidiaries of a financial institution or insurance company. The tax is levied on the fair value of capital employed by or value of shares of dealers of intangibles at a rate of .8% (8 mills).

Under continuing law, all tax revenue collected from qualifying dealers is paid into the GRF. However, under prior law the revenue collected from all other dealers in intangibles was divided between the GRF and county undivided local government funds. The GRF received ⅜ of those receipts, while counties received ⅝. The act instead allocates all revenue collected from any dealer in intangibles to the GRF.

Local taxing unit reimbursement for business personal property tax losses

(R.C. 5751.20, 5751.21, and 5751.22)

The act replaces the prior schedule for phasing out the reimbursements paid to school districts and other local taxing units for their loss of business tangible personal property tax revenue caused by the previously legislated repeal of those taxes. The general effect is to accelerate the pace of the phase-down during the FY 2012-2013 biennium and to pay reimbursements after the biennium at the reduced level paid at the end of FY 2013. The new phase-out is scaled according to a taxing unit's reliance on those reimbursements as a percentage of the taxing unit's total budget. The prior reimbursement was based primarily on a fixed fractional reduction each year through 2017 or 2018 (depending on the type of taxing unit) without regard to a percentage-of-budget factor.

From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Under prior law, the schedule reimbursed taxing units in full for their levy losses each year until tax year 2011 (non-school taxing units) or fiscal year 2013 (school districts), when the payments themselves were to begin being phased out.[261] The schedule terminated payments as of fiscal year 2019 for school districts or tax year 2018 or 2019 for non-school taxing units, depending on the type of personal property.

Commercial activity tax revenue allocation

Replacement payments are made from commercial activity tax (CAT) revenue, which, for fiscal year 2011, was credited as follows: 0% to the General Revenue Fund (GRF), 70% to the School District Tangible Property Tax Replacement Fund (SDRF), and 30% to the Local Government Tangible Property Tax Replacement Fund (LGRF). Over fiscal years 2012 through 2018, prior law reduced the amount credited to the LGRF and increased the amount credited to the GRF correspondingly. In fiscal years 2019 and thereafter, no CAT revenue was to be credited to the LGRF. The amount credited to the SDRF, however, was not scheduled to decline, even though prior law terminated school district reimbursement payments as of fiscal year 2019. The amount credited to the SDRF that was not distributed was reserved for unspecified "school purposes."

As shown in the table below, the act reallocates the portion of CAT revenue credited to the GRF, SDRF, and LGRF over the FY 2012-2013 fiscal biennium. It also eliminates the reservation of undistributed SDRF money for "school purposes."

Fiscal Year	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
2012	~~5.3%~~ 25.0%	~~70.0%~~ 52.5%	~~24.7%~~ 22.5%
2013 and thereafter	~~10.6%~~ 50.0%	~~70.0%~~ 35.0%	~~19.4%~~ 15.0%

[261] A "tax year" is the same as the calendar year. For example, tax year 2011 means January 1, 2011 through December 31, 2011.

TPP loss reimbursement

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for legislated personal property tax reductions are divided into three types: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal its 2004 personal property taxable values multiplied by the sum of the effective tax rates for its fixed-rate levies in effect in tax year 2004 or applicable to tax year 2005 (so long as the levy was approved by voters before September 1, 2005). For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the loss of its personal property tax base. (The offset is discussed in more detail below under "**Transfers to GRF for school districts' state aid**.")

Prior law. Under prior law, fixed-rate levies that did not apply to a tax year after 2010 did not qualify for reimbursement beginning with the later of 2011 or the first tax year to which the levy did not apply. With respect to all other fixed-rate levies, the losses were reimbursed in full through October 2010 for non-school taxing units and through May 2013 for school districts and, as shown below, and with one exception, were reduced to zero by fiscal or tax year 2018.

School Districts Prior law	
Fiscal Year	Percentage of Loss Reimbursed
2011, 2012, and 2013	100%
2014	9/17 (~ 53%)
2015	7/17 (~ 41%)
2016	5/17 (~ 29%)
2017	3/17 (~ 18%)
2018	1/17 (~ 6%)
2019 and thereafter	0%

Non-school Taxing Units Prior law		
Tax Year	Percentage of Loss Reimbursed (Machinery and equipment, inventory, and furniture and fixtures fixed-rate levy losses)	Percentage of Loss Reimbursed (Telephone property fixed-rate levy losses)
2011	14/17 (~ 82%)	100%
2012	11/17 (~ 65%)	87.5%
2013	9/17 (~ 53%)	75%
2014	7/17 (~ 41%)	62.5%
2015	5/17 (~ 29%)	50%
2016	3/17 (~ 18%)	37.5%
2017	1/17 (~ 6%)	25%
2018	0%	12.5%
2019 and thereafter	0%	0%

New law. The act changes the manner in which fixed-rate levy loss reimbursements are computed. Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "current expense TPP allocation" and, for non-school taxing units, the unit's "TPP allocation." Current expense TPP allocation is the portion of the reimbursement the school district received in fiscal year 2011 relating to fixed-rate current expense levies, excluding any portion relating to levies that have expired. TPP allocation is the sum of the reimbursements the non-school taxing unit received in tax year 2010 relating to fixed-rate and fixed-sum levies. (For ease of explanation, current expense TPP allocation will be referred to hereafter as "TPP allocation.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for a fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's TPP allocation is compared to its "total resources," which, as described below in "**Total Resources**," is the unit's total receipts over a single fixed period from certain state and local sources. If the taxing unit's TPP allocation does not exceed a threshold percentage of its total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If its TPP allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference of its TPP allocation minus the threshold percentage of its total resources. The foregoing can be symbolized as follows:

TPP Allocation ≤ Th% of Total Resources:	**Reimbursement = $0.00**
TPP Allocation > Th% of Total Resources:	**Reimbursement = TPP Allocation – Th% of Total Resources**

For school districts, the threshold percentage is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for tax year 2011, 4% for tax year 2012, and 6% for tax years 2013 and thereafter.

Reimbursement for fixed-rate levies for purposes other than current expenses (as the act defines "current expenses") will be reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY 2012 and by 50% in FY 2013 and thereafter; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. Only school districts and municipal corporations will receive this reimbursement. The payments are computed on the basis of the reimbursement received under the prior reimbursement formula in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Total resources

"Total resources" is the measure employed in the act's new reimbursement method to calculate the phase-out of fixed-rate current expense levies (by comparing the TPP allocation to total resources). "Total resources" is defined separately depending on the type of taxing unit: school districts, joint vocational school districts, counties, municipal corporations, townships, and all other taxing units. With respect to counties, total resources is defined separately for different county functions: mental health and disabilities, senior services, children's services, public health, and all other functions.

As described more fully in the table below, "total resources" for a city, local, or exempted village school district equals the sum of its 2010 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and current expense property and income taxes (including emergency property taxes):

Total Resources (City, local, and exempted village school districts)
• The district's fiscal year 2010 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and non-debt fixed-sum levy losses due to (1) the phase-out of business tangible personal property taxes ("business TPP"), and (2) the reduction in assessment rates for electric and gas utility personal property ("utility TPP"), excluding the portion attributable to levies for joint vocational school district purposes;[262] • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which school districts are reimbursed by the state), excluding taxes levied for joint vocational school district purposes, and including emergency levies; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009 (taxes on the personal property of a telephone telegraph, or interexchange telecommunications company had not been fully phased out by tax year 2009); • The district's fiscal year 2009 receipts from a school district income tax levied for current expenses (except for certain receipts allocated to a state-assisted classroom facilities project); • The district's receipts during calendar year 2009 from a municipal income tax levied for municipal and school district purposes.

[262] Prior law terminated reimbursements for fixed-sum levies that expire and are not renewed, substituted, or converted. (See "**Fixed-sum and unvoted debt levy loss reimbursement**.")

For a joint vocational school district, "total resources" equals the sum of its 2010 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and property taxes:

Total Resources **(Joint vocational school districts)**
• The district's fiscal year 2010 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and fixed-sum levy losses due to (1) the phase out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP; • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which taxing units are reimbursed by the state); • The average of the real and public utility taxes charged and payable for tax year 2008 and 2009 from city, local, or exempted village school district levies devoted to the joint vocational school district; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009.

For counties, "total resources" is defined separately for mental health and disability functions, senior services functions, children's services functions, public health functions, and, finally, for all other functions.[263] Total resources for mental health and disability, senior services, children's services, and public health functions equals the sum of the specified function's portion of (1) the calendar year 2010 reimbursement for unexpired business and utility TPP fixed-rate levy losses and business TPP fixed-sum levy losses and (2) property taxes:

Total Resources **(Each for county mental health and disability, senior services, children's services, and public health functions)**
• The portion of the county's calendar year 2010 reimbursement attributable to the

[263] The effect of this separation on the comparison of TPP allocation to the threshold percentage of total resources is not clear. The counties' TPP allocation is not similarly separated, and the act does not indicate whether a county's total resources equals the sum of the subsidiary total resources or whether a separate comparison of TPP allocation to some percentage of total resources should be made for each subsidiary total resources.

Total Resources (Each for county mental health and disability, senior services, children's services, and public health functions)
specified function for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the business TPP tax phase-out; • Real and public utility taxes charged and payable for the specified function for tax year 2009.

The total resources for the county catch-all category is the same as for the function-specific total resources, except the referenced function is "all other purposes," taxes charged and payable for debt is not counted, and the following amounts are added:

- The county's share of Local Government Fund and Dealers in Intangibles Tax allocations from the count undivided local government fund for calendar year 2010;

- The county's receipts in calendar year 2010 from the county sales and use tax that may be levied at a rate of up to 1% and used for general purposes or for criminal and administrative justice services in the county.

For municipal corporations, total resources equals the sum of the municipality's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and property, municipal income, admissions, and estate taxes:

Total Resources (Municipal corporations)
• The municipality's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business tangible personal property taxes; • The municipality's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The municipality's receipts directly from the Local Government Fund for calendar year 2010; • The municipality's current expense real and public utility taxes charged and payable for tax year 2009; • The municipality's admissions tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year

Total Resources (Municipal corporations)
before 2008 for which the municipality has reported data to the Commissioner; • The municipality's income tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year before 2008 for which the municipality has reported data to the Commissioner; • The median estate tax distribution to a municipality for the period 2006 through 2009.[264] If a municipality received no distributions in any of such years, its median estate tax distribution equals zero.

For townships, total resources equals the sum of the township's 2010 business and utility TPP reimbursement for fixed-rate losses and for business TPP fixed-sum losses (excluding fixed-rate and fixed-sum debt levies), its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and its 2009 real and public utility property taxes charged and payable (except from debt levies):

Total Resources (Townships)
• The township's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business TPP taxes, excluding the portion attributable to fixed-rate or fixed-sum debt levies; • The township's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The township's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt).

Total resources for all other taxing units equals the sum of the unit's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, property taxes (except for debt repayment), transit authority sales and use taxes, and certain allocations for state community college districts.

Total Resources (All other taxing units)
• The taxing unit's calendar year 2010 reimbursement for fixed-rate levy losses (excluding

[264] Presumably, the distributions will be ordered according to value and not chronologically.

Total Resources (All other taxing units)
the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP, and for fixed-sum levy losses due to the phase-out of business TPP taxes; • The taxing unit's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The taxing unit's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt); • A transit authority's calendar year 2010 receipts from transit authority sales and use taxes; • For state community college districts receiving property tax revenue, the district's final state share of instruction allocation for fiscal year 2010.

Fixed-sum and unvoted debt levy loss reimbursement

Losses from fixed-sum levies and from unvoted debt-purpose levies (i.e., levies within the 10-mill limit for debt purposes) are computed in the same manner as fixed-rate levy losses, except there is no deduction for state education aid increases, and, for fixed-sum levies, one-half mill is subtracted from the sum of the effective fixed-sum tax rates. Under prior law, fixed-sum levy losses were reimbursed in full until the levy (or, in the case of school districts, its successor fixed-sum levy) expired. (School district fixed-sum levies include "emergency," "substitute," "renewal," and "conversion" levies.) Losses on unvoted debt levies were to be reimbursed in full through fiscal year 2018. No reimbursement was scheduled to occur thereafter. If the unvoted levy was no longer used for debt purposes, it became subject to the phase-out schedule for fixed-rate levy losses.

The act retains the reimbursement for fixed-sum and unvoted debt levy losses, although the timing and weighting of payments is altered. (See "**Reimbursement payments**," below.) The act also specifies that debt levies that have been imposed pursuant to a municipal charter and that do not have to be approved by voters (so-called "charter millage") will, like other unvoted debt levies, continue to be reimbursed at 100% as long as the levy was still being levied to pay debt in 2010 and as long as it continues to be levied to pay debt.

Appeal

A school district or local taxing unit is permitted to appeal how a levy has been classified for the purpose of the new reimbursement method or how its total resources have been computed. The appeal must be filed in writing with the Tax Commissioner (including electronic mail). The Commissioner must consider any appeal and make any changes the Commissioner deems warranted. The Commissioner's decision is final and not appealable. No changes are permitted after June 30, 2013. (Section 757.20.)

Reimbursement payment schedule

Under prior law, reimbursement payments were to be made on the last day of August, October, and May. For school district fixed-sum levy losses, one-third of the reimbursement for a fiscal year was distributed in each payment. For all other loss types, the reimbursement for a fiscal or tax year was distributed as follows: 3/7 (August), 3/7 (October), and 1/7 (May). Beginning in fiscal year 2012, however, reimbursements for school district fixed-rate and unvoted debt levy losses were to be distributed in one-third installments.

The act eliminates the August and October payments and replaces them with a payment to be made on or before November 20. Beginning in fiscal year 2012, one-half of fiscal year reimbursement for school district fixed-rate and unvoted debt levy loss reimbursement is to be distributed in November and May. For school district fixed-sum levy losses, two-thirds of the fiscal year reimbursement is to be paid in November and one-third in May. For non-school taxing units, 1/7 of the calendar year reimbursement for all losses is to be distributed in May and 6/7 in November for years 2011 through 2013. For years 2014 and thereafter, one-half is to be distributed in May and one-half in November.

School district mergers and territory transfers

Continuing law establishes a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements are computed when a school district or joint vocational school district merges with or transfers territory to another district. The act amends this procedure as follows:

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss
Complete merger of two or more districts	**Prior law:** Successor district received the sum of the fixed-rate levy losses for each district merged. **Act:** The total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation of the successor district equals the sum of such items from the merging districts.	**Prior law:** Successor district received the sum of the fixed-sum levy losses for each district merged. **Act:** No change.
Transfer of part of a district's territory to an existing district	**Prior law:** The recipient district received a pro rata share of the transferring district's total fixed-rate levy loss based on the value of business tangible personal property on the land being transferred. **Act:** The recipient district received a pro rata share of the transferring district's total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation based on the ADM being transferred as compared to the total ADM of the district from which the territory is transferred.	**Prior law:** The Department of Education, in consultation with the Tax Commissioner, made an equitable division of the fixed-sum levy loss reimbursements. **Act:** No change.
Transfer of part of a district's territory to a newly created district	**Prior law:** No fixed-rate levy losses were transferred. **Act:** No total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation are transferred.	**Prior law:** The Department of Education, in consultation with the Tax Commissioner, made an equitable division of the fixed-sum levy loss reimbursements. **Act:** No change.

Taxing unit mergers and annexations

Under prior law, if all or a part of the territories of two or more non-school taxing units were merged, or if territory of a township was annexed by a municipal corporation, the Tax Commissioner was required to adjust the reimbursement payments "in proportion to the tax value loss apportioned to the merged or annexed territory," or as otherwise provided by a written agreement between the taxing units.

The act requires the reimbursement payments to be apportioned according to the square mileage of the merged or annexed territory as a percentage of the total square mileage of the jurisdiction from which the territory originated.

County administrative fee loss reimbursement

(R.C. 5751.23)

Under continuing law, county auditors and treasurers are entitled to a percentage of the property taxes collected to help cover the cost of administering and collecting property taxes, including the percentage credited to the real estate assessment fund to defray the cost of assessing real property. When business tangible personal property taxes were phased out, county auditors and treasurers were to be compensated for the loss of those administrative fees through 2017. The compensation is paid from current collections of real property taxes. Under prior law, the fee reimbursement for a county equaled its 2010 reimbursement multiplied by the fractions used to phase out local taxing unit fixed-rate levy losses:

2011	14/17 (~ 82%)
2012	11/17 (~ 65%)
2013	9/17 (~ 53%)
2014	7/17 (~ 41%)
2015	5/17 (~ 29%)
2016	3/17 (~ 18%)
2017	1/17 (~ 6%)
2018	0%

The act changes the manner in which fee losses are computed and phases reimbursements out by 2016. The losses for a county equal 14/17 (~ 82%) of the county's 2010 fee loss for 2011, and is reduced by one-fifth of the 2011 payments each year thereafter.

Transfers to GRF for school districts' state aid

(R.C. 5751.21(A)(1)(c))

Prior law adjusted some school districts' reimbursement for fixed-rate levy losses to account for the fact that those districts' state aid increased as the taxable value of their business tangible personal property was phased out. The increase in state aid arising from the reduction in taxable business personal property value was subtracted from a school district's reimbursement payment to avoid overcompensating the tax loss; this subtraction is the "state education aid offset." The total amount of the offset for all school districts is transferred from the School District Tangible Property Tax Replacement Fund to the GRF on a quarterly basis to cover the increased state formula aid paid from the GRF.

The act specifies that this quarterly transfer is to end with the June 2013 transfer. For the purpose of computing the amount of the transfer until then, the act fixes the amount of the offset for fiscal years 2012 and 2013 equal to the fiscal year 2011 offset.

Local taxing unit reimbursement for utility personal property tax losses

(R.C. 5727.84, 5727.85, and 5727.86)

In tax year 2001, the assessment rates for taxes levied by school districts and other taxing units against electric and rural electric company personal property were reduced.[265] In tax year 2002, assessment rates for natural gas property also were reduced.[266] To compensate taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Under prior law, the schedule reimbursed school districts in full for their levy losses through 2016. Thereafter, no payments were to be made. Non-school taxing units were reimbursed in full through 2006. In 2007, payments to non-school taxing units began to be phased out. The prior schedule terminated payments as of 2017.

Kilowatt-hour tax and natural gas tax revenue allocation

Replacement payments are made from kilowatt-hour tax and natural gas distribution tax revenue. Revenue from these taxes is allocated among three funds: the General Revenue Fund, the School District Property Tax Replacement Fund, and the Local Government Property Tax Replacement Fund. (Payments are made from the replacement funds.) The act reallocates the revenue as follows, beginning in FY 2012:

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[265] S.B. 3 of the 123rd General Assembly.

[266] S.B. 287 of the 123rd General Assembly.

Tax	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
Kilowatt-hour tax	~~63%~~ 88%	~~25.4%~~ 9%	~~11.6%~~ 3%
Natural gas tax	~~0%~~ 100%	~~68.7%~~ 0%	~~31.3%~~ 0%

TPP loss reimbursement

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for public utility personal property tax losses are divided into three types for the purposes of reimbursement: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal the difference between electric and natural gas personal property taxes due using the old (higher) assessment rates and the taxes due using the new (lower) assessment rates.[267] For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the reduction of its public utility personal property tax base. If a school district's offset exceeds its fixed-rate levy loss (i.e., its loss is compensated wholly by state aid increases), no fixed-rate levy reimbursement is paid. For all taxing units, if the unit is entitled to reimbursement for a particular fixed-rate levy, it continues to be reimbursed even if the levy expires.

Under prior law, non-school taxing units experiencing a fixed-rate levy loss currently were reimbursed according to the following schedule:

Non-school taxing units	
Year	Percentage of Loss Reimbursed
2002-2006	100%
2007-2011	80%

[267] For electric and rural electric company property, 1998 taxable values were used; for gas company property, 1999 values were used; and for nuclear power plant property, values for 2000 and 2001 or 2005 and 2006 were used. Losses relating to certain nuclear fuel and assemblies and natural gas were determined using a three-year average. For electric companies, 1998 tax rates were used, and for natural gas companies 1999 tax rates were used.

Non-school taxing units	
Year	Percentage of Loss Reimbursed
2012	66.7%
2013	53.4%
2014	40.1%
2015	26.8%
2016	13.5%
2017 and thereafter	0%

A school district's fixed-rate levy loss was reimbursed through 2016 or until increases in the district's state aid above its 2002 level exceeded its fixed-rate reimbursement in 2002 adjusted for inflation, whichever occurred first.

The act changes the manner in which fixed-rate levy loss reimbursements are computed. The computation is nearly identical to that for reimbursement of business personal property tax losses. (See "**Fixed-rate levy loss reimbursement**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**," above.) Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "2011 current expense S.B. 3 allocation," and, for non-school taxing units, the unit's "2010 S.B. 3 allocation." The 2011 current expense S.B. 3 allocation is the portion of the reimbursement the school district received in fiscal year 2011 for current expense fixed-rate levy losses. 2010 S.B. 3 allocation is the portion of the reimbursement a non-school local taxing unit received in tax year 2010 for fixed-rate levy losses. In both instances, if a levy comprising a portion of the reimbursement has expired, its value is subtracted from the total reimbursement. (For ease of explanation, both reimbursements will be referred to as "S.B. 3 allocation.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for the fiscal year (school districts) or tax year (non-school taxing units), one-half of the taxing unit's S.B. 3 allocation is compared to its "total resources," which is the unit's total receipts over a single fixed period from certain state and local sources. If one-half of the taxing unit's S.B. 3 allocation does not exceed a threshold percentage of the unit's total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If one-half of its S.B. 3 allocation does exceed the threshold, each reimbursement payment (two per year) equals the difference of one-half of its S.B. 3 allocation minus the threshold percentage of its total resources. Reimbursement terminates for all taxing units in February 2030.

A taxing unit's "total resources" is the same as its total resources for purposes of determining its reimbursement for business personal property fixed-rate levy losses. (See "**Total Resources**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**," above.) For school districts, the threshold per cent is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for calendar year 2011, 4% for 2012, and 6% for 2013 and thereafter.

Reimbursement for school district and municipal corporation fixed-rate levies that are not for current expenses is reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY2012 and by 50% in FY2013; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. The reimbursement amount is based on the reimbursement paid for those levies in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Fixed-rate levy loss reimbursement for certain taxing units

Under prior law, the following non-school taxing unit received 100% of its fixed-rate levy losses through 2016: a taxing unit in a county of less than 250 square miles that received 80% or more of its combined general fund and bond retirement fund revenues from property taxes and tax rollback reimbursements based on 1997 actual revenue as presented in its 1999 tax budget, and in which electric and rural electric property comprises over 20% of its property valuation.

The act requires this taxing unit to be reimbursed in the same manner as all other non-school taxing units beginning in 2011.

Fixed-sum and unvoted debt levy loss reimbursement

Fixed-sum levy losses and losses relating to taxes levied within the ten-mill limit for debt purposes are computed in the same manner as fixed-rate levy losses, except there is no deduction for state education aid increases. Fixed-sum levies are reimbursed for all but one-fourth of a mill per dollar (0.025%). Fixed-sum levy losses are reimbursed in full (less one-fourth mill's worth) until the levy expires. School district emergency levies are considered not to have expired if the school district levies another emergency levy that raises an amount equal to or greater than the difference of the amount raised by the expiring levy minus the amount of reimbursement the school district receives for that expiring levy.

Losses on unvoted debt levies are reimbursed in full through fiscal year 2016. No reimbursement is paid thereafter.

The act leaves unchanged the reimbursement provisions for fixed-sum levy losses. With respect to municipal unvoted debt levies within the ten-mill limit, however, it states that if the levy was no longer levied for debt purposes for tax year 2010 or for any tax year thereafter, payments for that levy are to be made under the new reimbursement mechanism for fixed-rate levy losses beginning the earlier of tax year 2012 or the first tax year for which it is no longer levied for debt purposes. (See "**Fixed-rate levy loss reimbursement**" above.)

The act requires losses relating to municipal charter millage for debt purposes to be reimbursed in the same manner as inside-millage debt levies.

Reimbursement payments – timing

Under prior law, reimbursement payments were made in late August and late February. Each payment equaled 50% of the annual fixed-rate, fixed-sum, or unvoted debt levy tax levy losses.

The act requires payments to be made on or before August 31 and February 28.

State education aid offset transfer

Under prior law, the greater of the amount in the SDRF or the aggregate annual amount of state education aid offset was required to be transferred from the SDRF to the GRF in one-half installments near the first of September and in early May.

The act terminates such transfers as of the end of fiscal year 2011.

Appeal

A school district or local taxing unit has the same right to appeal how a levy has been classified or how its total resources have been determined as it does under the business personal property reimbursement scheme.

Taxing unit mergers, territory transfers, and annexations

Prior law established a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements were to be computed when two or more taxing units merged, a portion of a school district's territory was transferred to another district, or if township territory was annexed by a municipal corporation. The procedures generally were the same as those under the provisions of law regarding business personal property tax loss reimbursements. (See "**School district mergers and territory**

transfers" and "**Taxing unit mergers and annexations**" under the primary heading "**Local taxing unit reimbursement for business personal property tax losses**," above.)

The act amends this procedure in the same manner as it does with respect to business personal property tax loss reimbursements.

Distribution of "surplus" LGRF money

The act terminates distributions of "surplus" money among non-school taxing units when there is money remaining in the LGRF after the levy losses are reimbursed according to the reimbursement schedule. Under prior law, if any money remained in the fund, one-half of the excess was allocated to counties on a per-capita basis and one-half was allocated to counties in proportion to the utility property tax losses of taxing units in each county. Each county's share of the surplus was then distributed among the non-school taxing units in the county in proportion to taxing units' respective property tax billings. The payment of the surplus is terminated with the January 2011 payment. Any future surpluses are to be transferred to the GRF.

Public utility tax study committee

Prior law established the Public Utility Tax Study Committee as of January 1, 2011. The committee was to study the extent to which school districts have been compensated by the tax loss reimbursements discussed above.

The act repeals the creation of this committee.

New refundable job retention tax credit

(R.C. 122.171)

Credit eligibility

Continuing law authorizes the Ohio Tax Credit Authority to award to eligible businesses involved in significant capital investment projects a refundable or nonrefundable job retention tax credit (JRTC) against the income tax, commercial activities tax, insurance company premiums tax, or corporation franchise tax. Either credit is measured as a percentage of the state income taxes withheld from employees working at a project site. However, qualifying businesses may only receive the refundable credit if the business' credit application is recommended for approval before July 1, 2011.

The act authorizes the Tax Credit Authority to grant a new, separate refundable credit to certain qualifying businesses between July 1, 2011, and December 31, 2013. To qualify for the new refundable credit, an eligible business must have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same political subdivision as that in which the business has its principal place of business, and meet other JRTC program requirements.

Employee retention or annual payroll requirement

Under prior law, in order to qualify as an "eligible business" for the purposes of either pre-existing JRTC, a business was required to employ and retain at least 500 "full-time equivalent employees." A business' number of "full-time equivalent employees" is calculated by dividing its total employee-hours at a project by 2,080, which the number of hours in a 40-hour-per-week, 52-week work year.

The act amends this requirement to provide that, to be considered an "eligible business" for the pre-existing JRTCs, a business may either meet the employee retention requirement or have an annual payroll of at least $35 million. The act further requires that, to qualify for the new refundable JRTC, an eligible business must either (1) have an annual payroll of at least $20 million and retain at least 500 employees, or (2) have an annual payroll of $35 million or more.

Summary of JRTC employment requirements		
	Prior law	**Act**
Nonrefundable (ongoing availability)	Retain 500 FTE	Retain 500 FTE or $35M annual payroll
Pre-existing refundable (expired July 1, 2011)	Retain 1,000 FTE	No change
New refundable (July 1, 2011 through 2013)	(not applicable)	Retain 1,000 FTE or retain 500 FTE and $20M annual payroll

Capital investment requirement

To be considered an "eligible business" for the purposes of the pre-existing credits, a business must invest at least $50 million in assets in manufacturing operations or $20 million in assets for "significant corporate administrative functions." Additionally, a business applying for the pre-existing refundable JRTC must make a capital investment of $25 million, regardless of investment type. The required capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment. (The act does not change the investment requirement for the pre-existing credits.)

To qualify for the act's new refundable credit, a business need only make a capital investment of $5 million.

Additional requirements for existing and proposed refundable credits

In addition to the requirements described above, an eligible business may qualify to receive the pre-existing refundable credit only if the business received a written offer of financial incentives from another state in 2010 and if the Director of Development determined that offer to be sufficient inducement for the business to relocate to the state. The business' tax credit application must also receive a recommendation for approval before July 1, 2011. These requirements do not apply to either the nonrefundable credit or to the refundable credit authorized by the act.

However, the act does impose additional requirements on applicants for the new refundable credit that do not apply to the other credits. To receive the new credit, an eligible business must demonstrate that its capital investment project will be located in the same political subdivision as that in which the business maintains its principal place of business. In addition, the business' tax credit application must be approved by the Tax Credit Authority between July 1, 2011, and December 31, 2013.

Refundability

Under continuing law, a business may not claim a nonrefundable JRTC in excess of the business' annual tax liability. The excess, however, may be carried forward for up to three years. Alternatively, a business that qualifies for the pre-existing refundable credit or the act's refundable credit may claim the full amount of the credit in one year; if the amount of the credit exceeds outstanding tax liability, the business would be entitled to a refund.

Credit amount and term

As under continuing law, the act requires that the amount and term of a new refundable JRTC be specified in an agreement between the eligible business and the Tax Credit Authority. The amount of the credit may equal up to 75% of the state income taxes withheld from eligible full-time employees. An eligible business may receive the credit for a period of up to 15 years; however, under Department of Development regulations, the Tax Credit Authority may not grant a nonrefundable JRTC for a term longer than ten years unless the Authority determines that there is "significant retention" of employees associated with the project.

Credit application and agreement

The act requires recipients of the new refundable JRTC to comply with the same application procedures, agreement provisions, and reporting measures required of recipients of the pre-existing refundable or nonrefundable JRTC. For any of the credits, an eligible business must apply to the Tax Credit Authority to enter into a tax credit agreement. The agreement must describe the capital investment project that is the subject of the agreement and require that the business maintain operations at the project site for at least the greater of (1) the term of the credit plus three years, or (2) seven years.

In order to continue receiving any credit, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports. If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit.

Aggregate credit limits

Continuing law limits the total amount of nonrefundable or refundable tax credits issued in any calendar year. In 2010, the limit for the nonrefundable credit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million. The limit applicable to the pre-existing refundable tax credit was $8 million.

The act imposes a new aggregate limit that includes both the pre-existing and new refundable credits. In the 2011, 2012, and 2013 calendar years combined, the Tax Credit Authority may authorize up to $25 million of refundable job retention credits. Beginning in 2014, the total amount authorized between 2011 and 2013 is the maximum amount that may be awarded in each year of the ensuing 15-year period.

Small business investment tax credit

(R.C. 122.86, 5747.81, and 5747.98)

The act authorizes a new personal income tax credit for individuals, estates, and taxable trusts that make qualifying investments in "small" businesses with specified minimum operating presence in Ohio. Investments may be made either directly, or indirectly through one or more tiers of partnerships or other form of pass-through entity owned wholly or partly by the taxpayer. The credit is not refundable, but it may be carried over for up to seven subsequent years. The credit amount is 10% of the taxpayer's cash investment. Limits are placed on the total amount of credits allowed each fiscal biennium ($100 million) and on each taxpayer's credit each biennium ($1 million, or $2 million for joint filers).

Qualifying "small business enterprises"

For an investment to qualify for the tax credit, the investment must be made in a "small business enterprise," which must satisfy all of the following qualifications:

- It has assets of no more than $50 million or annual sales revenue of no more than $10 million;
- It employs 50 or more full-time equivalent employees in Ohio, or at least one-half its U.S.-based employees are employed in Ohio. Employees must be subject to Ohio income tax withholding to count toward the employment threshold.
- Within six months after a taxpayer invests in the business, the business spends an equal amount of money on any of the following:
  - Tangible personal property used in Ohio. If the property is a motor vehicle for use on public roads, the vehicle must be purchased and registered in Ohio, must be used primarily for business, and must be necessary for the business' operations.
  - Real property in Ohio used in business.
  - Intangible personal property (e.g., licenses, patents, trade or service marks, or copyrights) used in business primarily in Ohio.
  - Employee compensation, other than for increased compensation for the business' owners, officers, or "managers."[268]

For real property or either form of personal property, the property must satisfy the foregoing use and location requirements from the time it is acquired until the end of the taxpayer-investor's required investment holding period (either two or five years, depending on when the investment is made; see below under "**Holding period**").

For an investment in a business to qualify for the tax credit, the business must provide any records or other evidence that the Director of Development requests to show that the business satisfies the foregoing qualifications. The Director is to determine whether a business qualifies, and must compile a register of qualifying businesses. The register is to be certified to the Tax Commissioner.

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[268] Although the act refers to compensation for "new" employees, it states that a "new" employee includes "retained" employees.

"Qualifying investments"

To qualify for the credit, a taxpayer's investment must be an investment of money in a small business enterprise to acquire capital stock or other equity interest in the business. The investment must be made on or after July 1, 2011. An investment does not qualify to the extent the investor's money is derived from a government grant or loan, including, specifically, from the Third Frontier program (R.C. Chapter 184.).

Qualifying investments are valid for tax credits only if the investor applies for and obtains a certificate from the Director of Development. (Alternatively, a small business enterprise may apply on behalf of its investors.) Certificates are available on a first-come, first-served basis and only until the total value of investments applied for does not exceed the $100 million-per-biennium limit. Any one investor may not apply for certificates representing more than $10 million in investments per biennium. To obtain a certificate, investors must pledge to hold investments for the applicable holding period.

Holding period

A credit is allowed only if the investor holds the investment for a specified minimum period of time. The minimum holding period depends on when the investment is made. If the investment is made before July 1, 2013, the holding period is two years; if made on or after July 1, 2013, the holding period is five years. The required holding period applies to the person making the investment. If that person is a taxpayer, the taxpayer must hold the investment for the holding period, and must claim the credit for the taxpayer's taxable year that includes the last day of the holding period. If the investor is a pass-through entity, the pass-through entity must hold the investment for the holding period. Any taxpayer that owns an equity interest in the pass-through entity on the last day of the entity's taxable year in which the holding period ends may claim the taxpayer's proportionate share of the credit allocated to the entity; the taxpayer need not have owned a part of the entity when the entity made the investment.

Rulemaking

The act requires the Director of Development to adopt rules, in consultation with the Tax Commissioner, for administration of the tax credit. The rules must address at least the following matters:

(1) Information or documentation small business enterprises and investors must provide;

(2) How the number of a small business' required employment level is to be determined;

(3) Means of verifying a small business' required spending on tangible or intangible personal property, including when an expenditure is made and where the property is used;

(4) Circumstances under which small businesses or investors may be considered to be subverting the purposes of the law granting the credit.

Historic building rehabilitation tax credit

(R.C. 149.311)

Permanent extension

The historic building rehabilitation tax credit is a credit against the income tax (R.C. Chapter 5747.), corporation franchise tax (R.C. Chapter 5733.), and dealers in intangibles tax (R.C. 5707.03(D) and 5725.15). The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance, and that meets certain historic preservation criteria as determined by the State Historic Preservation Officer.

Under prior law, the credit effectively ended on June 30, 2011, the last day on which applications for credits could be filed. The act removes this deadline, extending the credit perpetually.

As under prior law, the act limits the amount of credits that may be issued in a fiscal year to $60 million.

Credit applications and cost-benefit analyses

The act requires a person applying for a rehabilitation tax credit certificate to apply to the Director of Development, who evaluates the application with the assistance of the State Historic Preservation Officer. Under prior law, the person applied to the State Historic Preservation Officer, who then forwarded applications to the Director for evaluation.

In reviewing applications, the Director and State Historic Preservation Officer currently must determine (1) that the applicant owns a historic building, (2) that the rehabilitation will satisfy historic preservation standards prescribed in federal law, and (3) that receiving the tax credit is a major factor in the applicant's decision to rehabilitate the building or increase the applicant's level of investment in the rehabilitation.

The act additionally requires that, before the Director of Development may approve an application, the Director must conduct a cost-benefit analysis to determine whether rehabilitation of the historic building will result in a net revenue gain in state or local taxes after the rehabilitation is completed. The Director must "consider" the results of the cost-benefit analysis when approving or denying an application, but is not required to approve or deny an application based on particular results. The act also requires the Director to enact rules establishing procedures for conducting such cost-benefit analyses.

Tax credit certificate issuance and projects completed in stages

For an applicant whose time period for rehabilitation is not projected to exceed 24 months, the Director of Development is required, under continuing law, to award credit certificates upon the project's completion of the rehabilitation. But for an applicant that plans to complete the rehabilitation in stages, the act requires the Director to issue credit certificates after a stage in the rehabilitation is complete, depending on the length of the rehabilitation period, but the total period may not exceed 60 months, in accordance with federal law governing the federal rehabilitation tax credit.

Applicants awarded a tax credit for a completed stage of rehabilitation are required to repay any amounts received if the project is not completed. Under prior law, the Director could not award a credit certificate until a project was completed. The Director may reallocate unused tax credits from a prior fiscal year for new applicants.

Administration fees

The act permits the Department of Development and Ohio Historic Preservation Office each to charge reasonable fees for the administration of the Historic Preservation Tax Credit Program. The fees are to be deposited in the Historic Rehabilitation Tax Credit Operating Fund created by the act, and used to pay costs incurred by the Department of Development and the Ohio Historic Preservation Office in administering the credit.

Miscellaneous changes

The act requires expenditures of a project with total costs exceeding $200,000 to be certified by a certified public accountant.

The act permits, rather than requires as under prior law, the Director to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.

The act requires the Tax Commissioner and Director to submit an annual report in April of each year. Prior law required an annual report through 2011. The act requires the Commissioner and the Director to submit recommendations regarding the effectiveness of the program by December 2015 and not in 2012, as required under prior law.

Historic rehabilitation tax credit against insurance tax

(R.C. 149.311, 5725.34, 5725.98, 5729.17, and 5729.98)

The act extends eligibility to foreign and domestic insurance company taxpayers for the refundable historic rehabilitation tax credit. A foreign or domestic insurance company is thus permitted to claim the credit against the insurance company gross premiums taxes, provided the company satisfies all other eligibility requirements.

Under continuing law, a refundable credit is provided against the dealer in intangibles tax, the corporation franchise tax (on financial firms), or the income tax equal to 25% of the "qualified rehabilitation expenditures" incurred by the property owner in rehabilitating an historic building. "Qualified rehabilitation expenditures" are those paid or incurred during the "rehabilitation period," and before and after that period as determined under federal rehabilitation tax credit law, by an owner of an historic building to rehabilitate the building. The maximum credit amount is $5 million, but not more than $3 million may be taken in a year; any excess above $3 million may be applied to up to five subsequent years' tax liability.

Racing facility capital improvement tax reduction extension

(R.C. 3769.20)

The act extends to December 31, 2017, from December 31, 2014, the final date on which horse racing permit holders are eligible to take tax reductions to recover the costs that permitholders incur in renovation, reconstruction, or remodeling projects costing at least $6 million at their race tracks. Under this tax reduction program, the taxes a permit holder pays to the state, in excess of the amounts required to be paid into the nursing home franchise permit (formerly PASSPORT) Fund, are reduced by 1% of the total amount wagered.

Computer data center equipment sales and use tax exemption

(R.C. 122.175)

The act allows businesses to receive a full or partial exemption from the sales and use tax for purchases of certain personal property that will be used at an "eligible computer data center."

Eligibility for the exemption

To qualify for the exemption, a business must agree to make a capital investment at an "eligible computer data center" in the state. A computer data center is eligible if the business agrees (1) to invest at least $100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least $5 million at the center. Regarding the capital investment, the act does not prescribe a beginning date after which investments count toward the $100 million minimum. Instead, the Tax Credit Authority is authorized to establish the beginning date. The act does not require that the date fall after June 30, 2011.

The act defines a "computer data center" as a facility used primarily to house computer data center equipment used in conducting a computer data center business. A computer data center business is a business that provides access to computer equipment by means of telecommunications equipment for the purpose of (1) examining or acquiring data that is stored in or accessible to the computer equipment or (2) placing data into the computer equipment that can be retrieved by recipients with access to the computer equipment.

Computer data center equipment includes tangible personal property used in conducting a computer data center business, including the equipment necessary to supply electricity for the center or cooling systems that manage the performance of the equipment. Building and construction materials incorporated into the computer data center also qualify.

Exemption application

A business must apply to the Tax Credit Authority to enter into an agreement for a complete or partial sales and use tax exemption for computer data center equipment that will used at an eligible computer data center. The Director of Budget and Management, Tax Commissioner, and Director of Development must review the application, determine the economic impact of the proposed computer data center, and make recommendations in regards to the application.

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

If the Tax Credit Authority approves an application, the authorized exemption will apply to the business' purchases of computer data center equipment and to any charges for the delivery, installation, or repair of that equipment.

Agreement with Tax Credit Authority

An agreement for a computer data center equipment sales and use tax exemption must include the following:

(1) A description of the eligible computer data center, the amount of the capital investment that will be made at the center, the timeline for the capital investment, the annual payroll at the proposed center, and the anticipated amount of Ohio income taxes to be withheld from the compensation of employees of the center.

(2) The percentage of the approved exemption, the length of time the exemption will apply, and the first date the exemption will apply.

(3) A requirement that the business maintain operations, and an annual payroll of at least $5 million, at the eligible computer data center for the term of the agreement.

The agreement must also include several provisions similar to those required in agreements for a job creation or retention tax credit under R.C. 122.17 and 122.171. Those provisions include an annual reporting requirement, a limitation on employment position relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement.

Agreement compliance

Under the act, the Tax Credit Authority may amend an agreement to reduce the percentage or term of an authorized exemption if a business fails to comply with any condition of the agreement.

The Tax Credit Authority may also terminate an agreement if a business does not maintain operations at an eligible computer data center for the term of the agreement. In such instances, the Authority may require the business to pay all or a portion of the taxes that would have been owed on equipment exempted under the agreement. The act allows the Authority discretion in determining the portion of the unpaid taxes to charge a business.

Direct payment permits

The act requires the Tax Commissioner to grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. Under continuing law, a direct payment permit allows an eligible business to forgo the payment of sales and use tax at the time of purchase and to instead accrue and pay the tax directly to the Department of Taxation.

Under the act, a business' direct payment permit must allow the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center. The business must file a return that details the amount of computer data center equipment purchased, the amount of other goods and services purchased for use at the eligible computer data center, the exemption percentage, the amount of tax that would be due absent the exemption agreement, and the amount of tax due as a result of the exemption.

Exemption from Public Records Law

Under the act, financial statements or other information submitted to the Department of Development or Tax Credit Authority in relation to an exemption authorized by the act are not available to the public under Ohio's Public Records Law. However, the Authority must provide such information to the Tax Commissioner upon request. The Authority may also use such information to issue public reports or in connection with court proceedings.

Annual report

On or before August 1 of each year, the Director of Development must prepare an annual report that includes the number of agreements the Department entered into in the previous year, a description of the eligible computer data centers that are the subjects of those agreements, and a status update on all eligible computer data centers that are the subject of an exemption agreement. The report must be filed with the Governor, the Senate President, and the House Speaker.

Estate tax repeal

(R.C. 5731.02, 5731.19, and 5731.21)

Estate tax

The act effectively repeals the Ohio estate tax by limiting its application to estates of decedents dying before January 1, 2013. Estates of persons dying on or after that date would not be subject to the tax.

Overview of estate tax

The tax on Ohio residents' estates is levied on the value of the taxable estate, which generally is the value of all property in which the decedent had an interest on the date of death, minus certain deductions for marital transfers, debts, charitable donations, and administration expenses, among other things. The tax is levied at graduated rates, through six tax brackets, ranging from 2% for taxable estates of $40,000 or less, to $23,600 plus 7% of the excess over $500,000 for estates of more than $500,000.

A credit is allowed in the amount of $13,900, which equates to a deduction of $338,333. Thus, taxable estates worth $338,333 or less (after allowable deductions) owe no tax. If the gross estate does not exceed that threshold, no tax return must be filed.

The nonresident estate tax is levied on the portion of a nonresident's estate that is located in Ohio. The tax is determined by dividing the gross value of the property located in Ohio by the entire gross estate, wherever located. That fraction is then multiplied by the tax the estate would owe if the decedent had been an Ohio resident.

Intangible personal property located in Ohio owned by a nonresident is not taxed unless it is used to carry on a business within Ohio. If it is used to carry on a business within Ohio, it will not be taxed if the state where the nonresident was domiciled would not tax the intangible personal property of decedents domiciled in Ohio.

Estate tax revenues are divided between the state and the local government where the tax is deemed to have originated: 80% is distributed to the local government, and 20% is distributed to the state General Revenue Fund. Origination of a tax depends upon the type of property, its location when the decedent died, and whether it is owned by a resident or by a nonresident.

Temporary tax amnesty program

(Sections 757.40 and 757.41)

Program description

The act requires that the Tax Commissioner administer a temporary tax amnesty program from May 1, 2012, to June 15, 2012, with respect to delinquent personal income tax, commercial activity tax, sales tax, corporation franchise tax, estate tax, school district income tax, motor fuel tax, natural gas company excise tax, dealers in intangibles tax, and use tax owed by an out-of-state seller. The program applies only to taxes that were due and payable as of May 1, 2011, which were unreported or underreported, and which remain unpaid when the program commences. The program 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. Nor does the program apply to any unpaid tax that pertains to a tax period that ends after September 29, 2011. A separate amnesty program is proposed specifically for the use tax owed by consumers, as described in the following section.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The act authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. The Commissioner may contract with a third party to administer the amnesty or provide advertising or computer support for the amnesty.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program. The act specifies, further, that no assessment may be issued against any person with respect to tax paid through the program.

The act requires that the Commissioner issue forms and instructions for the program, and take any other actions necessary to implement the program. The act directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it. The sections authorizing the amnesty are repealed effective June 16, 2012.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a local taxing authority would have received had the tax been timely paid is distributed to that taxing authority.

Use tax amnesty

(R.C. 5703.58; Section 757.42)

The act requires the Tax Commissioner to establish and administer a temporary use tax amnesty program specifically for consumers owing outstanding use tax. The general amnesty program is available to out-of-state sellers who register with the Commissioner and are required to collect and remit use tax. These sellers are not authorized to participate in the use tax amnesty program. A consumer that has been assessed for delinquent use tax on or before the program begins is not eligible to participate in the program. The Commissioner may not waive interest or penalties due on use tax paid pursuant to the amnesty by a consumer who registered for payment of the use tax with the Commissioner on or after June 1, 2011.

The use tax program begins October 1, 2011 and runs until May 1, 2013. Under the program, a consumer with outstanding use tax liability is required to self-report and remit the amount of use tax owed by the consumer from January 1, 2009 forward. If the consumer pays the required amount of delinquent use tax, the Commissioner is required to waive or abate all delinquent use tax owed by the consumer before January 1, 2009, and all applicable interest and penalties accruing on any delinquent use tax owed by the consumer. A consumer that makes the required payments pursuant to the program may not be the subject of a criminal or civil action with regard to the remitted tax, and the Commissioner may not issue an assessment against the consumer for that tax. A consumer that does not participate in the use tax amnesty program may be audited and assessed for delinquent use tax owed on or after January 1, 2008, and any interest or penalties that have accrued on that tax. Under prior law, an assessment against a consumer had to be issued within ten years after the tax was due, except in cases of fraud, for which there was no time limit.

The Commissioner is required to issue forms and instructions and to adopt rules to administer the program and contract with parties for the promotions, computer support, or administration of the program. As soon as practicable after the program begins, the Commissioner is required to implement installment payment plans for participants in the amnesty program. No payment plan may last more than seven years. If a consumer that has entered into a payment plan with the Commissioner fails to make the required payments, the Commissioner is required to certify to the Attorney General any unpaid amount for the Attorney General to begin collection proceedings, and interest will accrue on this unpaid amount at the state-set rate that applies to overdue taxes (currently 4% per year), compounded annually.

Any taxes and interest from payment plans collected under the program are credited to the General Revenue Fund or to the appropriate counties or transit authorities.

Seven-year sales and use tax assessment and refund period

(R.C. 5703.58 and 5739.07)

The act places a seven-year time limit within which the Tax Commissioner must issue an assessment for any alleged unpaid use tax when no shorter time limit applies under continuing law. Prior law imposed a ten-year time limit. The change from ten to seven years applies only to use taxes; other taxes remain subject to the ten-year limit.

Generally, the new seven-year limit will apply in cases where no return was filed, the return was fraudulent, or the tax was collected but not remitted to the state. Under continuing law, there remain shorter time limits within which assessments for most taxes must be issued, except in cases where a return has not been filed, a return is fraudulent, or the tax has been collected but not remitted to the state. The time limit is currently four years for sales and use taxes. The time limits begin to run when the tax return is due or when it is filed, whichever is later. This four-year time limit is not affected by the amendment.

Taxpayers who are assessed for unpaid use tax between four and seven years after the tax was due are authorized to file a refund claim for overpaid sales or use tax for up to seven prior years, provided the application is filed within six months after the date the assessment was issued. Any refund allowed to such a taxpayer may not exceed the amount the taxpayer was assessed for unpaid use taxes during the same period. Prior law required taxpayers to apply for a refund of overpaid sales and use taxes within four years after the tax overpayment in all cases.

Electronic tax filing rules

(R.C. 5703.059)

The act authorizes the Tax Commissioner to adopt rules requiring that tax returns or payments for employer income tax withholding, use tax, motor fuel tax, cigarette and tobacco product excise taxes, and severance tax be filed electronically. The electronic filing of returns may be required by use of the Ohio Business Gateway, the Ohio "telefile" system (telephone filing), or another electronic method. (Under continuing law, the Ohio Business Gateway is a computer network system that enables businesses to electronically file forms with state agencies.) The electronic payment of those taxes may be required in a manner approved by the Commissioner.

The requirements could not be imposed on filings or payments required to be made within the first six months after the rules take effect.

Any taxpayer that is required under the rules to file or pay electronically may apply to the Commissioner to be excused from the requirement. The Commissioner must excuse the taxpayer if the taxpayer shows good cause for being excused.

Any rule adopted that requires electronic filing must be publicized on the Department's web site, as well as through seminars, workshops, conferences, or other similar outreach activities.

Tax notices and change of address service by alternative means

(R.C. 5703.056 and 5703.37)

The act permits the Tax Commissioner, when issuing a notice or order to a taxpayer or other person or when otherwise required by the Revised Code to use personal service or certified mail, to send it by certain means other than personally or by certified mail. The Commissioner may send the notice or order by a delivery service that postmarks the envelope and records the date when the notice or order was given to the delivery service and when it was received and by whom. The dates of delivery and receipt must be recorded electronically in a database that the delivery service keeps in the regular course of business. The delivery service must be available to the general public and must be at least as timely and reliable as the U.S. Postal Service. The Commissioner is further authorized to use a change of address service offered by such an alternative delivery service if a notice issued by the Commissioner via certified mail is returned due to an undeliverable address.

Previous law required such notices and orders to be delivered either personally or by certified mail unless the intended recipient agreed in writing to accept them by some other means and for the Commissioner to use change of address service from the U.S. Postal Service.

Vendor license revocation or suspension notices

(R.C. 5703.056 (not in the act), 5703.37, 5739.19, and 5739.30)

The act authorizes the Tax Commissioner to notify a sales tax vendor that the vendor's retail license has been revoked or suspended by using a delivery service other than certified mail if the Commissioner finds that the delivery service is timely, reliable, and available to the general public and it records the name of the person who accepted delivery and the date delivery was accepted. Prior law required the Commissioner to deliver such notices via personal service or by certified mail.

Voter registration forms with income tax forms

(R.C. 5703.05)

The act eliminates the requirement in prior law that the Department of Taxation include mail-in voter registration materials with income tax returns in odd-numbered years. The Secretary of State was required to bear the costs of printing and mailing the materials.

Ohio inheritance tax claims

(Section 757.50)

The Ohio Inheritance Tax was repealed in 1968 and replaced by the Estate Tax (Chapter 5731.). The act requires all claims and inquiries regarding files for which "ultimate succession" has not been finalized to be submitted to the Department of Taxation before 2013.

Joint vocational school districts: TIF compensation and notice

(R.C. 5709.40, 5709.41, 5709.73, 5709.78, 5709.82, and 5709.83)

The act requires a township, county, or municipal corporation authorizing a tax increment financing property tax exemption (TIF) to compensate the affected joint vocational school district (JVSD). The compensation terms must be equivalent to any compensation provided to the city, local, or exempt village school district.

The act also changes the schedule for subdivisions to notify JVSDs of pending TIF exemptions. The time in which a township, county, or municipal corporation is required to notify a JVSD before adopting a TIF resolution is increased from 14 days, as required under prior law, to 45 days if the city, local, or exempted village school district also receives a 45-day notice. Under prior law, notice was required to be given to all school districts at least 14 days before a TIF was formally authorized unless the tax exemption exceeded 75% or lasted for more than ten years. In those cases, a 45-day notice is required, but only for city, local, and exempted village school districts. The 45-day period allows time for negotiating compensation for the school district.

Qualified energy project tax exemption

(R.C. 5727.75)

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

With respect to an energy facility using renewable energy resources, prior law required the owner or lessee to submit an exemption application to the Director of Development, 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 2012. Prior law also required the owner or lessee to place the energy facility into service before 2013. The act extends each of these deadlines by two years.

With respect to an energy facility using advanced energy technology, prior law required the owner or lessee to submit an exemption application to the Director of Development before 2014 and to place the energy facility into service before 2017. The act extends each of these deadlines by two years.

Enterprise zone extension

(R.C. 5709.62, 5709.63, and 5709.632)

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for property tax exemptions and other incentives.

Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2011. The act extends the time during which local governments may enter these agreements to October 15, 2012.

Convention center property tax exemption

(R.C. 5709.084; Section 757.95)

The act authorizes a property tax exemption for a convention center owned by the largest city in a county with a population between 700,000 and 900,000. Under the act, the convention center may be leased to or operated or managed by another person and still qualify for exemption, as long as it is owned by a qualifying city. For purposes of the exemption, the population of a county is determined by reference to the most recent federal decennial census.

The act also provides for the abatement of unpaid taxes due in regards to an application for exemption of a qualifying convention center if the application, or an appeal from the denial of an application, is pending on September 29, 2011.

Applicability of related sales tax exemption

(R.C. 5739.02(B)(13))

Ongoing law allows a sales and use tax exemption for construction materials and services sold to a contractor for incorporation into a convention center that qualifies for exemption under the statutory provision that authorizes the exemption described above. (That same provision also authorizes an exemption for a qualifying convention center located in a county with a population exceeding 1.2 million.) The sales and use tax exemption expires one year after the completion of the convention center's construction. This exemption would also apply to any convention center for which the act authorizes the property tax exemption, subject to the one-year-from-completion time limit.

Ohio Historical Society income tax check-off

(R.C. 149.308 and 5747.113)

The act authorizes taxpayers who are due a refund of overpaid Ohio income tax to specify that all or a part of the refund be paid to the Ohio Historical Society. Contributions are to be credited to the Ohio Historical Society Income Tax Contribution Fund, a fund created by the act. The Society must use money in the fund in furtherance of its public functions as provided by law (summarized below). In addition to income tax refund contributions, the fund may accept direct contributions. Under prior law, there were only three income tax refund contributions or "check-offs": one for the benefit of the Natural Areas and Preserves Fund; one for the benefit of the Nongame and Endangered Wildlife Fund; and one for the benefit of the Military Injury Relief Fund. The Natural Areas and Preserves Fund and the Nongame and Endangered Wildlife Fund are administered by the Department of Natural Resources. The Military Injury Relief Fund is administered by the Department of Job and Family Services for the benefit of military personnel injured while serving under Operation Iraqi Freedom or Operation Enduring Freedom (Afghanistan).

As with the check-offs that were created prior to this act, the Ohio Historical Society check-off would authorize taxpayers to direct that all or part of their refund be credited to the designated 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 act requires the Ohio Historical Society to submit a biennial report on the effectiveness of the check-off to the General Assembly in January of every odd-numbered year. The report must include information about how the Society spent money from the Ohio Historical Society Income Tax Contribution Fund and the amount of money contributed (including both the amount contributed through the refund check-off and the amount contributed directly). The 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. Previously, reimbursement was paid from the then-existing check-off funds in equal one-third shares. Under continuing law, the reimbursement may not exceed 2½% of the total amount contributed. Under the act, the reimbursement would be divided in equal one-fourth shares among the two DNR funds, the Military Injury Relief Fund, and the Ohio Historical Society Income Tax Contribution Fund.

Income tax refunds may be contributed to the Ohio Historical Society beginning with taxable years that begin in or after 2011.

Ohio Historical Society

The Ohio Historical Society is a state-chartered, nonprofit corporation having the purpose of promoting knowledge of history and archeology, and performing any other public functions prescribed by law. (R.C. 149.30.) Among its prescribed functions are the following:

- Holding and maintaining state memorials and certain state-owned properties and making them available for the public, and holding and maintaining other sites;
- Administering state archives and preserving various historical documents;
- Administering the state historical museum;
- Publishing materials and conducting research about history, archeology, and natural sciences;
- Assisting local historical societies;
- Establishing criteria for the designation of historic and archeological sites.

Combined school district income tax and property tax levy

(R.C. 145.56, 319.301, 3305.08, 3307.41, 3309.66, 3316.041, 3316.06, 3316.08, 3317.08, 5505.22, 5705.214, 5705.29, 5748.01, 5748.05, 5748.081, and 5748.09; Section 757.90)

The act authorizes school districts to levy both a property tax for a fixed amount of revenue and an income tax through voter approval of a single ballot question. Prior law allowed school districts to propose both types of levy questions at a single election but not as a single issue on the ballot.

Levy proposal

To propose a combined levy, a school district board of education, by a vote of two-thirds of its members, must adopt a resolution declaring the necessity of raising a specified amount from each tax levy in order to support school operations. The resolution must be certified to the Tax Commissioner, who must estimate the income and property tax rates that would be necessary to raise the amount required to be raised from the income tax levy, and to the county auditor, who must calculate the property tax millage necessary to raise the amount required to be raised from the property tax levy.

After receiving the Tax Commissioner and county auditor estimates, the board of education, by a vote of two-thirds of its members, may adopt a resolution proposing to submit the combined levy question to voters at a special election (i.e., any of the four election dates each year). The resolution must state the income tax rate and property tax millage, the purpose of the income tax, the amount of money to be raised from the property tax, the date on which the income tax will take effect (which must be January 1 of any year following the year in which the question is submitted), and the tax list upon which the property tax will first be levied (which may be the current year's tax list).

The resolution must also specify the duration of each levy. Either tax may be levied for a specified number of years or for a continuing period of time; however, if the property tax is levied for a specified number of years, the number of years cannot exceed ten. Additionally, the resolution must state whether the income tax will be levied on all the taxable income of both resident individuals and estates, or only on the earnings of individuals. (Similar to other school district income tax levies, if the school district levies the income tax on both individuals and estates, the district may later replace the tax with a tax only on individuals' earnings.)

Submission of levy to voters

After the board adopts a resolution, the matter must be presented to school district voters in a single ballot question on the date of the special election specified in the resolution. Notice of the election must be published in one or more newspapers of general circulation in the school district once a week for two consecutive weeks before the election. (Under an unrelated law enacted by the act, the second notice may be published in abbreviated form. R.C. 7.16.) Additionally, if the board of elections maintains a web site, notice of the election must also be posted on that web site for 30 days before the election.

If the taxes are approved by voters, the school district may issue notes in anticipation of a portion of the proceeds from each tax.

Exemption from H.B. 920 tax reduction law

Similar to other property taxes levied for a fixed amount, a property tax levy that may be combined with an income tax levy under the act is exempt from the H.B. 920 tax reduction law. (The H.B. 920 tax reduction law operates to prevent the appreciation of real estate values from resulting in corresponding increases in property taxes. Generally, if the proceeds from a tax levied on real property in one year will exceed the proceeds from that tax, levied on that same property, in the preceding year, then the amount of the tax charged in the current year must be reduced by the difference. However, this reduction does not apply to a tax levy that is designed specifically to raise a fixed amount of revenue each year.)

Annual limitation on levy proposals

A school district may propose a combined income tax and property tax levy question up to twice per year. If the board submits the question more than once, at least one of the elections at which the question is submitted must be the November general election.

Levy reduction or repeal

As with other school district levies, voters may initiate a petition to repeal a school district income tax if it is levied for more than five years or to reduce a property tax levied for a continuing period of time.

Levy renewal

When one or both of the taxes levied through a combined levy are set to expire, the board of education may propose to renew either or both of the taxes through the submission of separate ballot questions. Alternatively, if both taxes are set to expire in the same calendar year, the board may propose a single ballot question to renew both existing taxes.

Applicability to pending proceedings

The act provides that the provisions authorizing a combined income tax and property tax levy may apply to proceedings that are pending or completed, elections that are authorized, conducted, or certified, or securities that are authorized or issued on the date those provisions take effect.

Sales and use tax exemption for customer loyalty coupons

(R.C. 5739.01(H)(1)(c), (I), and (PPP))

The act excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for a vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

Under the act, sales and use taxes will not apply to any portion of the price of an item or service paid for with a gift card or certificate if (1) the gift card or certificate was distributed through a customer awards, loyalty, or promotional program and (2) the vendor does not receive any reimbursement or compensation from a third party to cover any part of the value of the gift card or certificate. A past or present purchase by the consumer is not considered compensation to the vendor for the gift card or certificate. The exclusion does not apply to gift cards purchased by consumers or sold by vendors. The act defines a gift card to be a document, card, or certificate or a tangible or intangible record that can be redeemed for a dollar value when a purchase is made.

Agricultural sales tax exemptions

Agricultural "direct use," "use on use," and land tile exemptions

(R.C. 5739.01(OO) and (OOO) and 5739.02(B)(17) and (42); Section 757.60)

The act modifies the statutory language governing the agricultural "use on use" and "direct use" sales and use tax exemptions by applying them to sales of tangible personal property used "primarily" for producing tangible personal property used for farming, agriculture, horticulture, or floriculture or used "primarily" for those purposes, respectively. The act also modifies the exemption for agriculture tile by requiring the tile to be used "primarily," instead of directly, for production in farming, agriculture, horticulture, or floriculture.

Under prior law, sales of tangible personal property to farmers, agriculturists, horticulturists, and floriculturists who purchase such items for the purpose of incorporating them into other tangible personal property that is to be produced for sale or to use them "directly" to produce other things for sale ("use on use"), and sales of articles to be used in farming, agriculture, horticulture, or floriculture "directly" in producing tangible personal property for sale ("direct use"), were not subject to sales and use tax. Also, under prior law, agricultural land tile, for tax exemption purposes, was defined as fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated into a subsurface drainage system appurtenant to land used or to be used "directly" in production by farming, agriculture, horticulture, or floriculture.

Livestock structure exemption

The act removes horses and fish from the definition of excluded livestock for the purpose of the ongoing sales and use tax exemption for livestock-related property, thereby extending the exemption to purchases of building materials and related services that are incorporated into a building or structure used for keeping fish or horses for food. The exemption covers purchases of materials or services incorporated into buildings and structures used to house, feed, raise, or shelter livestock kept for food or other agricultural purposes, store or handle feed, or handle manure and waste.

The act also exempts from sales and use tax purchases of any building materials and related services that are incorporated into a building or structure used for keeping "captive deer" by specifying that such deer are "livestock" for the purpose of the existing exemption for livestock structures. "Captive deer" are deer and other cervidae that have been legally acquired, or the offspring of such cervidae privately owned for agricultural or farming purposes.

The act states that its changes to the livestock structures exemption are intended to clarify the General Assembly's intent of the exemption when enacted.

Transfers from school district bond fund or bond retirement fund

(R.C. 5705.14)

Continuing law requires political subdivisions and school districts to establish different funds into which particular types of revenue are deposited, including a general fund, a sinking fund for the retirement of non-serial bonds, a bond retirement fund for the retirement of serial bonds, a special fund for each special tax levy, and a special bond fund for each bond issue. The subdivision or school district may transfer money between its funds only if the type of transfer is specifically authorized in law.

Under prior law, surplus money in a bond fund could be transferred only to the sinking fund or bond retirement fund. Similarly, money in a bond retirement fund could be transferred to the sinking fund or, if the subdivision does not have a sinking fund and if the Court of Common Pleas approves the transfer, to any other fund. Surplus money in a bond retirement fund could have been transferred only after the retirement of all debt obligations of the fund.

The act authorizes transfers from a bond fund or bond retirement fund to a permanent improvement fund, even if all of the obligations payable from the fund have not been retired. However, the act limits the availability of this new option to school districts that receive approval for such a transfer from the county budget commission. When approving such transfers, a county budget commission must determine that the money to be transferred will not be necessary to meet any outstanding obligations of the fund after considering the amount of outstanding obligations, the balance of the fund, and the fund's revenue sources.

School district levy for cultural center

(R.C. 5705.21)

The act clarifies that, if a school district seeks to levy a property tax for the purpose of operating a cultural center, the ballot must state that the levy is for the purpose of operating the cultural center. Continuing law requires the ballot to state the purpose of a levy.

Property tax levy for the payment of police and fire services personnel

(R.C. 5705.19)

The act expands the expressly permissible uses of property tax receipts for fire and police services. Continuing law allows political subdivisions to levy property taxes to pay for fire and police services and related property within the subdivision. The authorizing statute enumerates various specific categories of expenses that the levy's revenue may be spent for.

In addition to such expenses as the acquisition and maintenance of firefighting, ambulance, or emergency medical services equipment and buildings, the proceeds of a fire services levy may used for the payment of "permanent, part-time, or volunteer firefighters or firefighting companies." The act specifically authorizes subdivisions to also use the proceeds of a fire services tax levy to pay "emergency medical service, administrative, and communications" personnel involved in the subdivision's firefighting or emergency medical service operations.

Similarly, in addition to non-personnel related expenses, the proceeds of a police services levy may be used for the payment of "permanent police personnel." The act specifically adds the payment of part-time police personnel as a permitted expense, as well as permanent or part-time communications or administrative personnel involved in the operation of the police department.

In regard to both types of levies, the proceeds from a levy for the payment of personnel may be used to make employer contributions to retirement or pension funds for those personnel.

Tax certificate sales

(R.C. 5721.30, 5721.31, 5721.32, 5721.37, 5721.38, and 5721.42)

Continuing law authorizes county treasurers to sell delinquent real estate tax "certificates," which represent a legal claim on delinquent taxes owed on real estate. This authority enables taxing authorities to recover unpaid taxes before the ordinary tax foreclosure proceedings are concluded. The lien for the taxes is essentially transferred to private persons, who then may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the certificate owner's behalf. The certificates bear interest at a rate of up to 18% per year. The interest rate is set by either bid (for auctioned certificates, with the lowest rate bid the winner) or by negotiation (private sale). The interest accrues until the certificate is redeemed, either by the holder initiating foreclosure or the delinquent taxes being paid.

Foreclosure initiation deadline

Under prior law, the certificate holder must have initiated a foreclosure action between one year and six years after the date the tax certificate was *sold* if the certificate was sold in a public auction, or not later than six years after the date the certificate was *delivered* if the certificate was sold in a private sale. In effect, there was a five-year period during which a foreclosure must have been initiated. The six-year deadline was extended if the certificate holder entered into a payment plan with the property owner or other person entitled to redeem the property (e.g., lienholder). The deadline also was extended if under federal bankruptcy law the property became protected by the automatic stay, in which case, the deadline to foreclose was the later of six years or 180 days after the property was no longer property of the bankruptcy estate.

The act authorizes county treasurers to shorten the five-year period during which foreclosures must be initiated to as little as two years. With respect to certificates sold at public auction, the treasurer may establish a deadline of between three and six years after the certificate is sold. With respect to private sales, the treasurer may negotiate a deadline with the purchaser of between three and six years after the date the certificate is delivered to the purchaser. As under prior law, the deadline is extended if the certificate holder enters into a payment plan or if, before the deadline, the property owner files a petition in bankruptcy. If a bankruptcy is filed, the deadline is extended to the later of the original deadline or 180 days after the property is no longer property of the bankruptcy estate.

Continuing law grants to the holder of a tax certificate a first right of refusal to purchase the next tax certificate issued with respect to the same parcel. Under the act, if the certificate holder purchases the subsequent certificate, the foreclosure initiation deadline with respect to the subsequent certificate is the same deadline (date) the treasurer established for the certificate giving rise to the first right of refusal.

Payment plans

Prior law authorized the owner of a tax-delinquent parcel subject to a tax certificate and certain other persons (e.g., lienholders) to redeem the parcel by entering into a payment plan with the tax certificate holder. With respect to parcels subject to a tax certificate sold in a private sale, the payment plan could be entered at any time after the certificate was sold, but the last installment required under the plan could not be due after six years after the date the certificate was sold.

The act provides that the last installment may not be due after the expiration of the deadline by which the certificate holder may initiate a foreclosure action.

Advertisement of public auction

Under continuing law, a tax certificate may be sold in a public auction or in a private sale. When the sale is by public auction, the treasurer must publish notice of the auction by placing an advertisement in a newspaper once a week for two consecutive weeks. The advertisement must include the date, time, and place of the auction; descriptions of the properties; and the names of the property owners of record.

The act authorizes the public auction to be published alternatively "in an electronic format."

Delinquent Tax and Assessment Collection Fund

(Sections 640.10 and 640.11)

The act extends the temporary authority of a prosecutor or treasurer of a county with a population of between 800,000 and 900,000 – currently only Hamilton County – to determine that the funds appropriated to the respective office from the Delinquent Tax and Assessment Collection Fund exceeds the amount required to be used by that office in collecting additional delinquent taxes and assessments. The prosecutor or treasurer may spend up to 50% of the excess to pay the expenses of operating the respective office that otherwise would be payable from appropriations from the county general fund. This authority, originally authorized by Section 6 of Am. Sub. S.B. 124 of the 128th General Assembly, had been scheduled to expire on December 31, 2011. The act extends this authority through December 31, 2012.

Franchise tax credit for research expenses

(R.C. 5733.351; Section 757.93)

Under ongoing law, a credit is allowed against the corporation franchise tax (CFT) for tax years 2004 through 2008 equal to 7% of the amount of qualified research expenses "incurred . . . by the taxpayer" during the taxable year that exceeded the taxpayer's average amount of research expenses over the three previous taxable years. The credit is nonrefundable but may be carried forward for up to seven years.[269]

In the case of a taxpayer that is a member of a "qualifying controlled group" (e.g., the taxpayer owns another taxpayer or the two are both owned by a third taxpayer, in which case the Tax Commissioner may treat them collectively as a single taxpayer for purposes of computing CFT liability), the credit is computed as if all taxpayers are one single taxpayer. The credit may then be allocated to such taxpayers in any manner selected by the taxpayers.

The act states that an insurance company may be included in the qualifying controlled group, even though insurance companies are not subject to the corporation franchise tax, and therefore not "taxpayers." (Insurance companies are subject to a different tax measured by premiums received to cover risks in Ohio.) The act declares that the amendment is a clarification of existing law.

County Delinquent Tax and Assessment Collection Fund

(R.C. 321.261, with conforming changes in R.C. 149.38, 323.73, 323.75, 5721.19, and 5723.18)

The act divides each county's Delinquent Tax and Assessment Collection Fund (DTAC Fund) into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney. Under prior law, the county DTAC Fund received 5% of all delinquent real property, personal property, and manufactured mobile home taxes and assessments collected in the county, including 5% of the delinquent taxes and assessments collected on property sold at a tax foreclosure sale. The Fund also received 20% of the proceeds from the public auction of abandoned

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[269] "Taxpayer" is a defined term meaning a corporation subject to the CFT, which before tax year 2010 included corporations generally, but not insurance companies, and for tax years 2010 and thereafter includes only financial institutions and certain other financial-related corporations. (R.C. 5733.04.) "Qualified research expenses" is a term defined under section 41 of the Internal Revenue Code. It means, generally, research to discover technological information useful in the development of a new or improved business component, substantially all of the activities of which constitute experimentation to determine whether the component performs well. It excludes software developed for internal use.

lands (i.e., unoccupied tax-delinquent real property foreclosed through nonjudicial proceedings) and 10% of the taxes and assessments collected from the sale of forfeited land (i.e., tax-delinquent real property forfeited to the state pursuant to tax-foreclosure proceedings).

The county treasurer and prosecuting attorney were each apportioned one-half of the money allocated to the county DTAC Fund. The officers used these allocations to pay for the costs each office incurred in collecting delinquent taxes and assessments. The county treasurer may also use part of an appropriation to support a county land reutilization corporation.

The act instead requires counties to establish a separate treasurer's DTAC Fund and prosecuting attorney's DTAC Fund, each of which would receive 2.5% of the delinquent taxes and assessments collected in the county. The separate funds would also receive one-half of the delinquent taxes and assessments received from tax foreclosure or forfeiture sales. However, all 20% of the proceeds from public auctions of abandoned lands must be credited to the treasurer's DTAC Fund.

Use of surplus money in a DTAC Fund

Under prior law, if either the county treasurer or prosecuting attorney determined that the officer's appropriation from the county DTAC Fund would exceed the amount the officer needed for the purposes of collecting delinquent taxes and assessments for the current year, the officer could spend that surplus "to prevent residential mortgage foreclosures," "to address problems associated with other foreclosed property," and, in some counties, to help local governments abate nuisances incident to foreclosures. The act extends this option to the separate treasurer and prosecutor funds.

The act additionally allows the county treasurer or prosecuting attorney to suspend the crediting of delinquent taxes and assessments to the officer's respective fund if the balance of the fund exceeds three times the total amount deposited in the fund in the previous year. The officer must direct the county auditor to suspend allocations to the officer's fund for the upcoming year before October 20 of the current year. Any allocations diverted from a treasurer's or prosecuting attorney's DTAC Fund must be distributed instead to all taxing units in the county.

Allocations to county land reutilization corporations

Under prior law, a board of county commissioners could have deposited up to an additional 5% of delinquent tax collections into the county DTAC Fund for the benefit of a county land reutilization corporation. The act requires that any such additional amounts be deposited in the county treasurer's DTAC Fund.

Applicability of laws affecting county DTAC Funds

The act provides that prior law applicable to county DTAC Funds related to annual accounting requirements, records retention, and employee travel expenses continue to apply to the respective treasurer's and prosecuting attorney's DTAC Funds.

Commercial activity tax exclusion for qualified uranium receipts

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

The act provides an exemption from the commercial activity tax for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner. A "uranium enrichment zone" includes all of the real property comprising a uranium enrichment facility that is licensed by the U.S. Nuclear Regulatory Commission and that is or was owned or controlled by the U.S. Department of Energy or its successor.

Uranium enrichment zone certification

The Tax Commissioner must certify a uranium enrichment zone before the exemption authorized by the act applies to receipts from transactions occurring within the zone. Any person that owns, leases, or operates real or personal property constituting or located within a uranium enrichment zone may apply for the certification.

Within 60 days of receiving an application for certification, the Tax Commissioner must approve the application if the property meets the definition of a uranium enrichment zone. If an application is denied, the Tax Commissioner must state the reasons for the denial. The Tax Commissioner may request additional information before approving or denying an application.

An applicant may appeal the denial of an application to the Board of Tax Appeals. In such a case, the Tax Commissioner must conditionally certify the applicant's property until final resolution of the appeal. The act requires the applicant to retain records related to the applicant's tax liability throughout the appeals process. Upon final resolution of the appeal, the property's conditional certification automatically expires.

Ohio Business Gateway steering committee

(R.C. 5703.57)

The act increases the number of committee members on the Ohio Business Gateway steering committee who may be representatives from the business community from two to four and reduces the number of committee members who may be representatives of municipal tax administrators from three to one. The act further makes the hiring of committee staff permissive rather than required.

The steering committee oversees the Ohio Business Gateway, the state government's electronic filing and payment system. It is also used for electronic filing and payment of municipal income taxes.