DEPARTMENT OF TAXATION

Income taxes

- Reduces income tax rates by 4%.
- Eliminates the lowest two income tax brackets, thereby reducing the number of brackets from seven to five.
- Disallows the business income tax deduction and 3% flat rate on business income greater than $250,000 if the income arises from the practice of law or from lobbying.
- Requires that income excluded under the business income deduction be "added back" when determining a taxpayer's eligibility for means-tested tax benefits.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2019; indexing resumes in 2020.
- Extends, from 60 to 90 days, the time in which an individual must file an amended state return after an adjustment is made to the individual's federal tax return.
- Establishes reporting and payment procedures for pass-through entity owners whose state tax liability is affected by an IRS partnership-level audit.
- Repeals the income tax credit for contributions to campaigns for state offices.
- Repeals the income tax credit for a pass-through entity investor's share of the financial institutions tax (FIT).
- Authorizes the Director of Health to award nonrefundable income tax credits for up to $10,000 in costs incurred to abate lead in an Ohio residence constructed before 1978 and limits the amount of credits to $5 million per fiscal year.
- Eliminates the Ohio political party fund income tax checkoff.
- Prohibits tax return preparers from engaging in certain conduct and prescribes penalties for preparers that engage in that conduct.
- Requires that, for purposes of school district income taxes that use "earned income" as the tax base, earned income includes business income that a taxpayer deducts under the business income deduction.

Municipal income taxes

- Would have allowed taxpayers up to 24 months to terminate the taxpayer's initial election to opt-in to the state-administered tax (VETOED).
- Requires a municipal corporation to pay money to the Treasurer of State if the net distribution amount for the municipal corporation's state-administered municipal income tax accounts is less than zero in any month.
- Allows the Tax Commissioner to recover unpaid amounts by reducing a delinquent municipal corporation's various state administered tax distributions.

- Creates a separate Municipal Net Profit Tax Fund to receive revenue solely from the state-administered municipal tax on business income.
- Requires that income from any retirement benefit plan, including one that does not qualify for favorable federal tax treatment, be exempt from municipal income tax.

Sales and use taxes

- Modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax.
- Requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated ("marketplace facilitators") to register as a seller and collect and remit the use tax due on all transactions facilitated through that marketplace.
- Repeals the sales tax exemption for sales of vehicles, parts, and repair services to a professional motor racing team.
- Repeals the sales tax exemption for sales of investment bullion and coins.
- Exempts from sales and use tax sales of equipment and supplies used to clean equipment that is used to produce or process food for people.
- Specifies that a peer-to-peer car sharing program operator is a vendor for sales and use tax purposes and therefore required to collect taxes for such services.
- Would have specified the manner by which any other technology platform operator's services are subject to sales and use tax (VETOED).
- Allows counties and transit authorities to levy their local sales and use taxes in increments of 0.05%.

County sales tax

- Authorizes noncharter counties to levy an additional ½% sales and use tax to be used exclusively to construct, acquire, equip, or repair detention facilities, provided the tax is approved by voters.
- Reduces the maximum sales and use tax rate available to an overlapping transit authority commensurately.
- Allows for the extension of an existing county lodging tax that is levied by a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees.
- Allows a convention facilities authority (CFA) created between July and December of 2019 to levy an additional lodging tax of up to 3%.

- Increases from 15% to 25% the maximum amount of lodging tax revenue received by the Muskingum County CFA that may be diverted by the CFA to various county fairground purposes.

Property taxes

- Authorizes the board of trustees of a state community college district to levy a property tax for permanent improvements, or a combination bond issuance and tax levy for that purpose.
- Authorizes the board of education of a school district to propose a tax levy for school safety and security and give some of the revenue to chartered nonpublic schools located in the district to be used for that purpose.
- Modifies the calculation of rental income when determining eligibility for existing tax exemptions for property held or occupied by a fraternal or veterans' organization.
- Authorizes a partial real property tax exemption for child care centers that serve children from households that receive public assistance.
- Excuses community schools from the requirement to file annual applications with the Tax Commissioner as a condition of obtaining a property tax exemption.
- Limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities.
- Imposes restrictions on a county budget commission's ability to reduce the amount of taxes that a county levies on behalf of a county board of developmental disabilities.
- Requires certain county websites to display the percentage of property taxes charged by each taxing unit.
- Would have modified information conveyed in and the form of property tax election notices and ballot language (VETOED).
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Clarifies the calculation of payments-in-lieu-of-taxes (PILOTs) that must be paid by solar energy facilities that receive the renewable energy property tax exemption.
- Exempts from real property taxation convention centers and arenas owned by the Hamilton County CFA and leased to a private enterprise.
- Establishes a temporary procedure by which a municipal corporation may apply for tax exemption and the abatement of unpaid taxes, penalties, and interest due on certain municipal property.
- Would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses (VETOED).

- Would have exempted from property tax the value of unimproved land subdivided for residential development in excess of the fair market value of the property from which that land was subdivided, apportioned according to the relative value of each subdivided parcel (VETOED).

Financial institutions tax

- Limits the tax base upon which the financial institutions tax (FIT) is computed for institutions that report total equity capital in excess of 14% of total assets.

Commercial activity tax

- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.75% to 0.65% beginning July 1, 2019.
- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax.

Nicotine vapor products tax

- Levies an excise tax on the distribution, sale, or use of liquid or other consumable vapor products containing nicotine at a rate of 1¢ per 0.1 milliliter or gram of product.
- Applies the new tax at the first point at which the vapor product is received in Ohio.
- Administers the new tax in a similar manner to an existing excise tax on tobacco products other than cigarettes.
- Excludes gross receipts used to pay the new tax from those gross receipts taxable under the commercial activity tax (CAT).
- Requires monthly vapor products tax returns and all existing monthly tobacco products tax returns to be filed by the 23rd of the following month.
- Changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state."

Other tax provisions

- Extends the authority for townships and municipal corporations to levy a new gross receipts tax (up to 2%) on businesses within a tourism development district (TDD) until December 31, 2020.
- Authorizes townships and municipal corporations to enter into agreements with owners of property located within a TDD to impose a development charge equal to a percentage (up to 2%) of gross receipts derived from sales made at the property.
- Temporarily increases the amount to be credited to the Local Government Fund (LGF) in FYs 2020 and 2021, from 1.66% to 1.68% of the state tax revenue credited to the GRF each month.

- Modifies the formula for making direct payments from the LGF to municipalities.
- Allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet income eligibility requirements.
- Modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Income taxes

The act includes several changes to Ohio's income tax, principally: a reduction in income tax rates on nonbusiness income, the elimination of the two lowest income tax brackets, and a new limitation on the business income deduction.

Tax bracket elimination

Continuing law prescribes tiered tax brackets for nonbusiness income, with increasingly greater rates assigned to higher income brackets. In 2017 and 2018, there were seven brackets (reduced from nine in 2016). For 2018, the lowest bracket began at $10,850 of adjusted gross income and the highest applied to income of $217,400 or more. Individuals with an adjusted gross (nonbusiness) income of less than $10,850 were exempt from the tax.[97]

The act eliminates those first two tax brackets ($10,850-$16,300 and $16,300-$21,750 for the 2018). Beginning in 2019, individuals with an adjusted gross (nonbusiness) income (minus personal exemptions) of less than $21,750 will be exempt from the tax. (Similar to current law, individuals with income of more than $21,750 will still pay the tax on their first $21,750 of income. That tax is reflected as a dollar amount added to the remaining tax brackets.)[98]

Reduction in tax rates

The act reduces the tax rates applicable to the remaining five tax brackets by 4% beginning with 2019. Previously, the rates in those five brackets ranged from 2.969% to 4.997%. Under the act, those rates will range from 2.850% to 4.797%.[99]

Taxation of business income

Under continuing law, a taxpayer may deduct the first $250,000 of the taxpayer's business income from the taxpayer's adjusted gross income. (For married taxpayers that file separate returns, the deduction equals $125,000 per spouse.) A 3% flat tax applies to all business income in excess of that amount.

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[97] These income amounts reflect inflation-indexing adjustments for 2018.

[98] R.C. 5747.02(A)(3) and 5747.06 and Section 757.150.

[99] R.C. 5747.02(A)(2) and (3) and Sections 757.150 and 757.160.

Exclusion for income from lobbying or legal services

Beginning in 2020, income earned from the practice of law or from lobbying will not be eligible for either the business income deduction or the 3% flat rate. This new exclusion applies specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics Committee. Instead, such income will be subject to the same graduated tax rates applicable to nonbusiness income.[100]

Eligibility for tax benefits

The act requires that income excluded under the business income deduction be "added back" when determining a taxpayer's eligibility for means-tested tax benefits. The affected benefits include the homestead exemption, personal and dependent exemptions, $20 personal and dependent credit, joint filer credit, retirement income credits, and senior citizen credit.

As an example: Consider Business Owner, a taxpayer with total business income of $275,000, and Nurse, a taxpayer with nonbusiness income of $50,000. Under current law, after taking the $250,000 business income deduction, Business Owner's Ohio AGI is $25,000. Nurse's Ohio AGI is $50,000.

Under prior law, Business Owner would have been eligible for several means-tested benefits, while Nurse would not. Under the act, Business Owner will be required to add back any amount taken as a business income deduction when determining eligibility for means-tested benefits. Consequently, for the purposes of those benefits, Business Owner's AGI is considered to be $250,000 and Business Owner will not be eligible for any of the means-tested benefits.[101]

Inflation indexing adjustment

(R.C. 5747.02 and 5747.025; Section 757.160)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The act suspends these adjustments for taxable years beginning in 2019. Consequently, the 2018 income tax brackets will also apply in 2019 (although the number of those brackets, and the tax rates corresponding with those brackets, will be reduced as described above). Indexing resumes in 2020.

Individual amended returns

(R.C. 5747.10 and 5747.11; Section 757.70)

The act extends, from 60 to 90 days, the time in which an individual must file an amended state return after an adjustment is made to the individual's federal tax return.

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[100] R.C. 5747.01(A)(31), (B)(2), and (HH).

[101] R.C. 323.151, 5747.01(JJ), 5747.022, 5747.025, 5747.05, 5747.054, 5747.055, and 5748.01 and Section 757.150.

Under continuing law, if an individual's state tax liability will change due to adjustments made on the individual's federal tax return – whether by the individual or by the IRS – the individual is required to file an amended state return.

Timeline for refunds

When the changes on an amended return result in a refund, the application for refund must be filed by the same deadline prescribed for the amended return (previously, 60 days) or, if still applicable, before the general deadline to apply for refunds (four years from the date of the overpayment).

The act correspondingly extends this former deadline to 90 days.

Partnership level audits

The act also prescribes reporting and payment procedures for pass-through entity owners whose state tax liabilities are affected by an IRS audit. The procedures apply to partnerships and to LLCs that are taxed as partnerships under federal law (hereinafter, simply referred to as "partnerships").

Federal partnership level audit changes

The new procedures are in response to changes in federal law governing the payment and collection of taxes when a partnership is audited. The new rules, enacted in the "Bipartisan Budget Act of 2015" (BBA), apply to federal returns filed for 2018 and thereafter.

Partnerships file a federal tax return on their partners' behalf, but each partner separately reports and pays the partner's share of the entity's tax liability on the partner's own return. Before the BBA, audits functioned similarly – a partnership could be audited at the entity level, but, generally, any increase or decrease in tax liability was "passed through" to each partner's return and taxes were collected at the partner level.

Under the BBA, the IRS will audit partnerships at the partnership level and, if additional tax is due, the partnership will generally pay that tax, rather than pass the tax through to its partners.

Partnerships may elect to "push out" the tax liability to individual partners, in which case the liability shifts from the entity level to the individual partner level. In addition, certain partnerships may elect to "opt out" of the new BBA rules, and instead operate under the rules in place before the BBA.[102]

New state procedures

The act prescribes new procedures in response to this change in federal law. Under the act, the default method for reporting changes in state tax liability arising from a federal audit is similar to the federal "push out" procedure. First, the audited partnership must report the

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[102] Internal Revenue Code Subtitle F, Chapter 63, Subchapter C. Generally, to opt out, the partnership must have fewer than 100 partners and each partner must be a qualifying individual or entity.

changes in federal liability (“adjustments”) to the Tax Commissioner, notify its direct partners of each partner’s share of the adjustments, and submit an amended return that includes any additional tax that would have been due from the entity’s nonresident direct partners if the items requiring adjustment had been reported correctly. Each direct partner is then responsible for filing a separate report and paying any additional tax due (less any amount already paid by the partnership on the partner’s behalf). If the partner is itself a pass-through entity, that entity would follow the same reporting and payment procedures on behalf of its own partners (i.e., the “indirect” partners of the audited partnership).

However, a partnership may elect to pay the additional tax liability directly, at the partnership level. Under this election, the partnership pays an amount “in lieu of” the taxes due from its partners: the amount generally equals the portion of the partnership’s federal adjustments that can be apportioned to Ohio (but includes a resident partner’s entire share of the adjustments), multiplied by the state’s highest income tax rate.

Under this election, a partnership might pay more than the actual tax due from each partner as a result of the federal adjustments, but the partners avoid the administrative burden of each filing a separate report with the Department of Taxation. If the election is made, a partner may, later, file an amended return to receive a refund of the difference between the amount paid on the partner’s behalf and the amount actually due from that partner.

The act also allows a partnership to request an alternative reporting and payment method, which the Tax Commissioner may approve at the Commissioner’s discretion.

Partnership representative

Federal law requires a partnership to designate a “partnership representative” to act on the partnership’s behalf during a federal audit. Individual partners are bound by the representative’s actions.

The act requires that the partnership also designate a state partnership representative. By default, the state representative is the same individual designated during the federal audit. However, the act allows partnerships to designate a different individual as the state representative, in accordance with rules adopted by the Department of Taxation.

Automatic extension for large partnerships

Under the act, an audited partnership with more than 10,000 partners may automatically extend the reporting and payment deadlines prescribed in the new rules by an additional 60 days, provided that the partnership notifies the Tax Commissioner that it will take the extension.

Application date

The new procedures apply to final federal adjustments made on or after October 1, 2019.

Tax credit repeal

(R.C. 5747.01, 5747.02, 5747.29, 5747.65, and 5747.98; Section 757.150)

The act repeals two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor's share of the financial institutions tax (FIT).

The campaign contribution tax credit was a nonrefundable credit for contributions made to the campaign committees of candidates for a statewide office (e.g., Governor or member of the General Assembly). The credit could not exceed $50 per individual taxpayer.

The second credit repealed by the act allowed a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner's share of the institution's FIT tax payments. The refundable credit equaled the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.

The credits are repealed for taxable years beginning in 2019 or thereafter.

Lead abatement income tax credit

(R.C. 3742.50, 5747.02, 5747.08, 5747.26, and 5747.98; Section 757.10)

The act authorizes a nonrefundable income tax credit for expenses incurred by a taxpayer to abate lead in an Ohio residence constructed before 1978. Specifically, the credit is based on the sum of the following "lead abatement costs" incurred in a taxable year, up to $10,000 per taxpayer:

- Costs for a licensed specialist to conduct a lead risk assessment, lead abatement project, or clearance examination (a test conducted to verify that the lead hazard has been abated);
- Costs to relocate the dwelling's occupants to protect them during the lead abatement process.

The credit is not available on the basis of any lead abatement cost for which the taxpayer is reimbursed or that the taxpayer deducted or intends to deduct for federal or state income tax purposes.

To obtain a credit, the taxpayer must submit an application to the Director of Health listing the taxpayer's lead abatement costs incurred during the taxable year. After verifying those costs and that the dwelling was constructed before 1978 and has passed a clearance examination, the Director issues a certificate authorizing the applicant to claim a nonrefundable income tax credit equal to the lesser of the costs listed on the application, the actual costs verified by the Director, or $10,000.

The Director may not issue credit certificates lead abatement costs incurred in taxable years beginning before 2020, nor may the Director issue more than $5 million in certificates in a fiscal year. The Director may adopt rules for the administration of the lead abatement credit program, in consultation with the Tax Commissioner.

The taxpayer may claim, for the taxable year in which the certificate is issued, a nonrefundable income tax credit equal to the amount stated on the certificate. Any unclaimed balance may be carried forward for up to seven years. Upon request, the taxpayer must furnish the Commissioner with documentation verifying the taxpayer's credit eligibility.

Political party fund checkoff

(R.C. 5747.081, 131.44, 3501.05, 3517.01, 3517.10, 3517.102, 3517.1012, 3517.11, 3517.12, 3517.153, 3517.16, 3517.17, 3517.18, 3517.23, 3517.99, 3517.992, 5703.05, 5747.03, and 5747.04; Sections 757.240 and 815.10)

The act eliminates the Ohio political party fund income tax checkoff for taxable years beginning in or after 2019 – generally meaning returns filed in 2020 and thereafter. Prior law allowed an individual to choose an option on their return to credit $1 (or $2 for married couples filing joint returns) of their income tax liability to the fund. Money in the fund is divided among Ohio's major political parties. The money could not be used to further the election or defeat of any particular candidate or to influence the outcome of an issue election.

Under the act, the fund is dissolved on January 1, 2020, or earlier if the Commissioner determines that all or substantially all of the checkoff contributions for taxable years beginning before the termination date have been received by the fund. Amounts received by the fund before its dissolution must be distributed and utilized in the same manner prescribed by prior law.

The act relieves the Auditor of State of a prior duty to conduct annual audits of the use of money distributed from the fund. The audit requirement is eliminated after the fund is dissolved and all money is distributed by the treasurers of the state executive committees of the major political parties.

Requirements for tax return preparers

(R.C. 5703.263; Section 757.281)

The act prohibits tax return preparers from engaging in certain conduct and authorizes the Tax Commissioner to impose penalties or request that the Attorney General seek an injunction against a tax return preparer that engages in that conduct. For this purpose, a "tax return preparer" is defined to be a person operating a business that prepares tax returns or applications for refund for a taxpayer in exchange for compensation. The definition expressly excludes attorneys admitted to the Ohio bar, accountants registered in Ohio or elsewhere, and individuals working for a public accounting firm under the supervision of an accountant.

Also excluded are persons that only do any of the following:

- Perform typing, reproducing, or other mechanical assistance;
- Prepare a return or application for refund on behalf of their employer or an officer or employee of that employer;
- Prepare an application for refund as a fiduciary; or
- Prepare a return or application for refund in response to a notice of deficiency or a waiver of restriction after the commencement of an audit.

The act authorizes the Commissioner, beginning in 2020, to require a tax return preparer to include their federal tax identification number on any state tax form they prepare. If the Commissioner imposes such a requirement, the penalty for failing to provide the number or for providing false, inaccurate, or incomplete information is $50 for each incident. The maximum penalty is $25,000 per calendar year.

The act expressly prohibits tax return preparers from doing any of the following:

- Recklessly, willfully, or unreasonably understating the taxpayer's tax liability;
- Failing to properly file returns or keep records;
- Failing to cooperate with the Commissioner or comply with tax law;
- Failing to act diligently to determine a taxpayer's eligibility for tax reductions;
- Misrepresenting their experience or credentials;
- Cashing a refund check without the taxpayer's permission;
- Guaranteeing tax refunds or credits; or
- Engaging in other fraudulent and deceptive conduct.

Each time a tax return preparer engages in prohibited conduct, the Commissioner may request that the Attorney General apply to a court for an injunction against the tax return preparer. Generally, if the court determines an injunction is appropriate, the tax return preparer is enjoined only from continuing the prohibited conduct. However, if the court finds that the tax return preparer has continually or repeatedly engaged in prohibited conduct and that a standard injunction is not a sufficient deterrent, the court may enjoin the tax return preparer from preparing tax returns and applications for refund in Ohio. The act specifies that a prior injunction for engaging in prohibited conduct issued to the same tax return preparer by a federal or any state's court in the preceding five years is sufficient evidence for a court to conclude that another injunction is appropriate in response to subsequent violations.

If the Commissioner has previously warned a tax return preparer in writing of the consequences of continuing to engage in prohibited conduct, the Commissioner may impose a penalty of up to $100 for each incident. This penalty and the penalty for failure to include a federal tax identification number on a return or application for refund is collected in the same manner as delinquent taxes. The act allows the Commissioner to abate the penalties for good cause.

School district income tax base

(R.C. 5748.01(E)(1)(b); Section 757.150)

The act requires that, for purposes of school district income taxes that use "earned income" as the tax base, amounts that a taxpayer deducts under the state business income deduction must be added back when computing a taxpayer's earned income.

Under continuing law, school districts that levy an income tax may use Ohio adjusted gross income (OAGI) or "earned income" as a tax base. "Earned income" includes compensation and self-employment earnings, but only to the extent that such income is included in OAGI. (In computing their OAGI, most taxpayers may deduct up to $250,000 of their business income see "**Business income deduction**," above.) Under prior law, the deducted amount had to be added back when computing the taxable income of taxpayers in school districts that use OAGI as a base, but not in districts that had an earned income tax base.

This change applies to taxable years commencing in 2019 or thereafter.

Municipal income taxes

State administration of municipal income taxes

Continuing law allows businesses (other than sole proprietors) to choose between filing a separate tax return for each municipal corporation in which the business operates and filing a single return with the Department of Taxation that covers the business' total tax liability to all municipalities. Each municipality continues to administer its tax on businesses that choose to file separate returns. The Department assumes all aspects of administering the taxes of businesses that choose to file a single return. The Tax Commissioner is required to distribute municipal income tax revenue on a monthly basis, after deducting 0.5% of such revenue to cover the Department's administrative expense.

Taxpayer opt-in (VETOED)

(R.C. 718.80; Section 757.220)

The Governor vetoed a provision that would have allowed a business to reverse its initial election to opt-in to the state-administered municipal income tax within 24 months after making that initial election by notifying the Tax Commissioner. Under the vetoed provision, if a business reversed its decision to opt-in during that time, the business's initial election would have terminated 60 days after the notice was sent to the Commissioner.

Continuing law unchanged by the act requires a business to make the election to opt-in or opt-out of the state-administered tax on or before the first day of the third month after the beginning of their taxable year (March 1 for calendar year taxpayers).

Net distribution deficiency

(R.C. 718.83, 321.24, and 5745.05; Section 812.20)

The act addresses negative cash-flow issues with the state's Municipal Income Tax Fund that arise when a municipal corporation's net distribution of revenue from tax accounts administered by the Department is less than zero. This might happen if audit adjustments and refunds exceed collections in a given month. In such cases, the act requires the municipal corporation to remit payment to the Treasurer of State within 30 days of receiving a notice of deficiency from the Department. If a municipal corporation does not reimburse the state in a timely manner, the act authorizes the Commissioner to recover the deficiency by reducing the municipal corporation's future municipal income tax distributions, electric and telephone company income tax distributions, and property tax distributions.

Municipal Net Profit Tax Fund

(R.C. 718.83, 718.85, and 718.90; Sections 701.20 and 812.20)

In addition to administering the municipal income taxes of businesses that opt-in to central filing and collection, the Department of Taxation also administers a separate municipal income tax on electric and telephone companies.

Under prior law, revenue from both taxes was deposited into a single Municipal Income Tax Fund. The act creates a separate fund – the Municipal Net Profit Tax Fund – to receive revenue from the state-administered municipal tax on business income. Revenue from municipal taxes on electric and telephone companies continues to be credited to the Municipal Income Tax Fund.

Amounts credited to both funds are returned to the municipal corporations that levy the underlying taxes, after an allowance for the Department's administrative costs.

Municipal taxation of retirement plans

(R.C. 718.01; Section 757.220)

The act specifies that income from any retirement benefit plan, including a "nonqualified plan" that is not eligible for favorable federal tax treatment, is exempt from municipal income tax. Continuing law prescribes categories of income that a municipal corporation must exempt from its municipal income tax. One category of exempt income is pension income.

Prior law did not define the term "pension," so presumably municipal corporations had some authority to clarify what plans they consider to qualify as a pension and, thus, exempt from municipal income tax. For example, the City of Cleveland argued it had the authority to impose municipal income tax on income from a type of nonqualified employee benefit plan on the ground that the plan was not a pension. In *Macdonald v. Cleveland Income Tax Board of Review*, the Ohio Supreme Court considered Cleveland's argument that it could impose a tax on income from supplemental executive retirement plans (SERPs) or "top hat plans" (see "**SERPs and other nonqualified plans**," below). The Court held that the term "pension," as used in Cleveland's ordinances, encompassed SERPs and that Cleveland could not tax SERP income because it had exempted pension compensation from its municipal income tax.[103]

The act specifically defines pensions to include SERPs and other nonqualified plans, essentially requiring every municipal corporation to exempt income from such plans from its municipal income tax. Under the act, a pension is defined as any retirement benefit plan regardless of (1) whether the plan qualifies for favorable federal income tax treatment, (2) whether the plan is subject to federal Medicare and Social Security withholding taxes, and (3) whether and when the plan is included in the employee's taxable wages. A retirement benefit plan, in turn, is defined to be any arrangement by which benefits are provided to

[103] 151 Ohio St.3d 114 (2017).

individuals on or after their retirement or termination of service, excluding wage continuation, severance, or leave accrual payments.

The act specifically ensures that SERPs and other nonqualified retirement plans are exempt from municipal income taxes regardless of how they may be treated under a given municipality's ordinance. SERPs are unfunded employee benefit plans maintained by an employer primarily to provide deferred compensation for a select group of management or highly compensated employees. Income from SERPs, and several other types of nonqualified plans, may be subject to federal and state income tax as part of the beneficiary's taxable wages before the beneficiary actually withdraws money from the plan.[104] In addition, nonqualified plans are generally (1) exempt from certain federal pension regulations, i.e., ERISA[105] ("Employee Retirement Income Security Act") and (2) subject to Social Security and Medicare withholding taxes[106] (referred to collectively as "Federal Insurance Contributions Act" taxes, or FICA taxes). In contrast, qualified plans are generally tax-exempt until distributed to beneficiaries, exempt from FICA taxes, and subject to ERISA regulations. Among the requirements for such favorable federal tax treatment is that a plan does not discriminate among employees in terms of contributions or benefits; accordingly, SERPs and other nonqualified plans that discriminate do not receive favorable treatment.

The exemption changes apply to municipal taxable years beginning on or after January 1, 2020.

Sales and use taxes

Use tax collection

The act modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax. The act also requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers (i.e., "marketplace facilitators") to register as a seller with the Tax Commissioner and collect and remit the use tax due on all transactions facilitated through that marketplace. (For example, a company operates an Internet-accessible platform permitting third-party sellers to use the platform to offer products for sale; the company is therefore a marketplace facilitator.)

Continuing law imposes use tax on tangible personal property and certain taxable services purchased outside of, but used, consumed, or stored in Ohio. Use taxes are levied at the same rate as state and local sales taxes, and all revenue from the tax is credited to the General Revenue Fund.

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[104] 26 U.S.C. 401(a).

[105] See, e.g., 29 U.S.C. 1002 and 1051(2).

[106] 26 U.S.C. 3121(a)(5).

Substantial nexus

(R.C. 5741.01(I); Sections 757.80 and 812.20)

Background

The authority of states to require out-of-state sellers to collect and remit taxes is limited by the Commerce Clause of the U.S. Constitution. The U.S. Supreme Court held in *Complete Auto Transit v. Brady* that taxation of interstate commerce is permissible only if (1) the seller has a substantial nexus with the taxing state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is related to the services the state provides.[107]

"Substantial nexus" is a connection or link between a seller and the taxing state that is sufficient to justify requiring the seller to collect and remit use tax to that state. Until 2018, the controlling legal precedent on the subject required a physical presence by the seller in the taxing state to establish substantial nexus.[108] Most states, including Ohio, tailored their sales and use tax collection requirements for out-of-state sellers in conformance with that standard.

The U.S. Supreme Court overturned the *Quill* standard in a 2018 case, *South Dakota v. Wayfair, Inc.*, determining that substantial nexus is not established by physical presence, but instead when the seller avails itself of the privilege of carrying on business in the taxing state. In its decision, the Court declined to strike down South Dakota's substantial nexus standard which requires out-of-state sellers that engage in a high volume of sales into the state to collect and remit the state's sales tax irrespective of whether the sellers have a physical presence in the state.[109]

Ohio's standard

Ohio law requires out-of-state sellers to collect and remit use tax on sales into the state to the maximum extent permissible under the Commerce Clause of the U.S. Constitution. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.[110]

Continuing law prescribes several examples of activities that, if conducted by an out-of-state seller, create a presumption that the seller has substantial nexus with Ohio. For example, an out-of-state seller is presumed to have substantial nexus with Ohio if the seller uses an Ohio warehouse or regularly uses agents in Ohio to conduct business. In general, these presumptions may be overcome if the seller demonstrates that those activities are not significantly associated with the seller's ability to establish or maintain the seller's Ohio market.

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[107] 430 U.S. 274, 279 (1977).

[108] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

[109] 585 U.S. ____, 138 S.Ct. 2080.

[110] R.C. 5741.12(B), not in the act.

The act modifies the activities sufficient to establish a presumption of substantial nexus with Ohio so that they are more closely aligned with the South Dakota nexus standard that withstood the scrutiny of the U.S. Supreme Court in the *Wayfair* case. The act adds a presumption that a seller has substantial nexus with Ohio if the seller (1) has gross receipts in excess of $100,000 from sales into Ohio, or (2) engages in 200 or more separate sales transactions into Ohio, during the current or preceding calendar year. As a conforming change, the act eliminates a narrower presumption of substantial nexus under prior law for a seller that has gross receipts in excess of $500,000 from sales into Ohio and that (1) uses computer software stored or distributed in Ohio to make Ohio sales, or (2) provides, or enters into an agreement with a third party to provide, content distribution networks in Ohio to accelerate or enhance the delivery of the seller's website to Ohio consumers. This prior presumption is subsumed by the act's new presumption of substantial nexus for sellers with more than $100,000 in gross receipts from sales into Ohio.

The act also eliminates a presumption of substantial nexus under prior law for a seller that has a "click-through" agreement with an Ohio resident that referred more than $10,000 in sales to the seller in the preceding 12 months. A click-through agreement is an agreement where the Ohio resident receives a commission or other form of compensation for referring potential customers to the seller (e.g., by including a link on a website, in-person communication, or telemarketing).

Marketplace facilitators

(R.C. 5741.01, 5741.04, 5741.05, 5741.07, 5741.071, 5741.11, 5741.13, and 5741.17; Sections 757.80 and 812.20)

The act requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers ("marketplace facilitators") to collect and remit use tax on all transactions facilitated through that marketplace. A marketplace facilitator's use tax collection and remission duties begin the first day of the first month that begins at least 30 days after the marketplace facilitator first has substantial nexus with Ohio. For the most part, marketplace facilitators have the same rights and obligations as other sellers under the administrative provisions of the use tax, such as the requirements to register with the Tax Commissioner and file returns.

After a marketplace facilitator's use tax collection and remission duties begin, the marketplace facilitator is treated as the seller for all sales it facilitates regardless of whether the "marketplace seller" for whom the sale is facilitated has substantial nexus with Ohio and irrespective of the amount of the price paid by the consumer that is retained by the marketplace facilitator. Marketplace sellers that are otherwise required to collect and remit use tax in Ohio retain that duty for all sales other than those for which a marketplace facilitator is treated as the seller.

Substantial nexus

The general standard for determining whether a marketplace facilitator has substantial nexus with Ohio is the same as for other sellers (i.e., to the fullest extent allowable under the Commerce Clause of the U.S. Constitution). However, the act prescribes only two examples of activities that, if done in the current or preceding calendar year, are sufficient to establish a presumption of substantial nexus for a marketplace facilitator: (1) obtaining gross receipts in excess of $100,000 from sales made or facilitated into Ohio, or (2) making or facilitating 200 or more separate sales into Ohio. These presumptions are identical to the presumptions added by the act for other sellers except that, for marketplace facilitators, direct sales and sales facilitated on behalf of marketplace sellers are treated cumulatively. As with other sellers, the presumption of substantial nexus may be overcome if the marketplace facilitator demonstrates that the activities are not significantly associated with the marketplace facilitator's ability to establish or maintain the Ohio market.

Meaning of "facilitated"

The act establishes criteria for determining whether a sale is "facilitated" by a marketplace facilitator, thereby activating the marketplace facilitator's use tax collection and remission duties. In general terms, the duties apply when a marketplace facilitator (1) supports or enables a marketplace seller in establishing a connection with a consumer through the provision of advertising, communication, infrastructure, software research and development, fulfillment or storage services, price-setting, customer service, or brand identification, and (2) collects payment from the consumer, provides payment processing services, or provides virtual currency used by the consumer in the sale.

Sales of hotel lodging are expressly excluded from the types of transactions that activate a marketplace facilitator's use tax collection and remission duties. Therefore, any use tax due on sales of hotel lodging must either be remitted by the seller or by the consumer.

Advertising exception

The act expressly exempts from the definition of "marketplace facilitator" any advertisers that do not collect payment from the consumer, provide payment processing services, or provide virtual currency used by the consumer in the sale and, consequently, exempts such advertisers from having to collect and remit use tax on behalf of marketplace sellers.

Waiver

The act establishes a process by which certain marketplace sellers may request a waiver from the requirement that a marketplace facilitator collect and remit use tax on the seller's sales. The Commissioner is required to grant the waiver if the marketplace facilitator consents and if the seller: (1) has annual gross receipts within the U.S. of at least $1 billion (including the gross receipts of affiliates), (2) is publicly traded or has an affiliate that is publicly traded on a major stock exchange, (3) is current on all taxes, fees, and charges administered by the Department of Taxation (excluding charges that are the subject of a bona fide dispute), (4) has not canceled a waiver or had a waiver revoked by the Commissioner related to the same marketplace facilitator in the preceding 12 months, and (5) has not repeatedly failed to file Ohio sales tax returns.

The act requires the Commissioner to notify both the seller and the marketplace facilitator of whether the request is granted or denied and also requires the seller to keep the marketplace facilitator apprised of the status of the request. If the request is not granted or denied within 30 days of the date it was filed, it is deemed to have been granted.

A seller may cancel the waiver at any time by sending notice to the marketplace facilitator and the Commissioner. The Commissioner may revoke a waiver only if the seller no longer meets the criteria described above.

Destination-based sourcing

The act requires marketplace facilitators to use destination-based sourcing to determine the amount of use tax to collect and remit for each facilitated sale. Continuing law prescribes rules for assigning where a sale is deemed to have occurred. Determining the appropriate taxing jurisdiction (i.e., state and county or transit authority) under these rules is instrumental in ensuring that the tax is collected at the appropriate rate and that the proper taxing authority receives the revenue.

Applying the destination-based method means that a sale will generally be deemed to have occurred where the goods or services are received by the consumer. Under destination-based sourcing, the following rules are applied, in order, to determine the location of the sale:

- The location where the consumer receives the tangible personal property or service;
- The address of the consumer according to the marketplace facilitator's business records;
- An address obtained from the consumer during the consummation of the sale (e.g., a billing address associated with the consumer's credit card);
- The address from which the tangible personal property was shipped or the service was provided.

Liability relief

Generally, a seller is personally liable for any use tax the seller is required, but fails, to collect and remit. The act relieves a marketplace facilitator from personal liability if the marketplace facilitator was unable to obtain accurate or sufficient information regarding the terms of the sale from an unaffiliated marketplace seller despite reasonable efforts. This liability relief applies only to a marketplace facilitator's failure to collect the tax. Once the tax is collected, the marketplace facilitator is fully liable for any amount that is not remitted as required by law.

If the marketplace facilitator is relieved of personal liability, the marketplace seller and the purchaser remain liable for the unpaid use tax.

Audits

The act prohibits the Tax Commissioner from auditing any person other than the marketplace facilitator respecting sales for which the marketplace facilitator is required to collect and remit use tax. Generally, the Commissioner may audit either the seller or the consumer if the Commissioner has information that indicates that the amount of use tax paid is less than what is due.

Class action lawsuits

The act prohibits any person from filing a class action lawsuit related to an overpayment of use tax against a marketplace facilitator on behalf of consumers. Under continuing law, consumers may seek a refund of overpaid use tax from the Tax Commissioner.[111]

Repeal of sales tax exemptions

(R.C. 122.175, 5739.01(TT), 5739.02(B)(38) and (54), 5739.03, and 5739.05; Section 757.140)

The act repeals two sales tax exemptions:

1. The exemption for sales of vehicles, parts, and repair services to qualified motor racing teams. To qualify for the exemption, the racing team had to employ at least 25 full-time employees and conduct its business with the purpose of competing in at least ten professional racing events per year.

2. The exemption for sales of investment bullion and coins.

The repeal of both exemptions takes effect October 1, 2019.

Sales tax exemption for food manufacturing equipment

(R.C. 5739.011; Section 757.140)

The act expands a sales tax exemption for equipment and supplies used to clean other equipment that is used to produce or process food for people. The exemption previously applied only if the food being produced or processed was a dairy product. The expanded exemption applies beginning October 1, 2019.

Taxation of technology platform operators

(R.C. 5739.01(C) and (SSS); Section 757.301)

Peer-to-peer car sharing program operators

Continuing law requires a vendor – i.e., a person that makes retail sales of goods or services – to collect sales tax. The act specifies that the operator of a peer-to-peer car sharing program is a vendor, requiring an operator of a peer-to-peer car sharing program to collect sales tax from the consumer for car sharing services (see "**Peer-to-peer car sharing**" under **ATTORNEY GENERAL**). The act states that the provision "clarifies the status of vendors . . . and does not change the existing application of" the sales tax law.

Other technology platform operators (VETOED)

The Governor vetoed a provision that would have specified that an operator of any technology platform (other than a peer-to-peer car sharing platform) that "connects" a consumer with another person who is providing a taxable service is a vendor. The act would have required an operator of any technology platform that facilitates a taxable service, rather

[111] R.C. 5741.10, not in the act.

than the person providing the taxable service, to collect sales tax from the consumer, even if the person providing the service (e.g., the driver) is not an agent of the operator. Except for peer-to-peer car sharing program operators (see above), it is unresolved under continuing law whether other technology platform operators, including transportation network companies, e.g. Uber or Lyft, are vendors required to collect sales tax.[112]

Local sales and use tax rate increments

(R.C. 5739.021, 5739.023, and 5739.026; Section 757.331)

The act allows counties and transit authorities to levy their local sales and use taxes in rate increments of 0.05% beginning October 1, 2019. Under former law, a county or transit authority could only levy or increase a rate in increments of 0.1% or 0.25%.[113]

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that "piggyback" on the state sales and use tax. All of Ohio's counties, plus eight transit authorities, levy sales and use taxes. Counties and transit authorities each may levy a tax of up to 1.5%.

County sales tax: detention facility

(R.C. 5739.021 and 5739.023; Section 757.331)

The act authorizes a county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) to levy up to a 0.5% sales and use tax exclusively to construct, acquire, equip, or repair detention facilities (referred to in this analysis as "detention facility purposes"). Continuing law authorizes any county to levy a sales and use tax of up to 1% for general operations, or for supporting criminal and administrative justice services (including, among others, detention facility purposes) or funding a regional transportation improvement project. A county may levy an additional tax of up to 0.5% for any of one dozen special purposes. The act increases the maximum rate a county may levy overall from 1.5% to 2%, but it requires the extra 0.5% to be dedicated exclusively for detention center purposes and approved by county voters before taking effect.

However, this 0.5% additional detention facility tax rate is reduced commensurately in a county with a transit authority that levies a sales or use tax, to the extent the transit authority's tax exceeds 1%. Under continuing law, a transit authority may levy up to a 1.5% sales and use tax rate. So, for instance, if the transit authority levies a 1.25% tax, the county would only be able to levy a detention facility tax of 0.25%. Similarly, if the transit authority's rate equals 1.5%, the county would not be allowed to levy an additional detention facility tax.

[112] The question of whether Uber is a vendor required to collect sales tax currently is pending in the Board of Tax Appeals. *Uber Technologies, Inc. v. Testa.*

[113] The 0.1% increment was authorized recently, in H.B. 69 of the 132nd General Assembly. Before July 1, 2018, rates could only be levied in increments of 0.25%.

Conversely, if a county does levy an additional tax for detention facility purposes, the maximum rate of tax that the overlapping transit authority may levy is reduced commensurately. Thus, for instance, if the transit authority levies a 1.25% tax and the county levies a detention facility tax of 0.25%, the transit authority would not be able to increase its tax an additional 0.25% to reach the otherwise-allowable 1.5% maximum transit authority rate.

These commensurate rate-reduction mechanisms ensure that the detention facility tax rate will not exceed the maximum tax rate that could have been levied in the county had the transit authority levied the full rate of tax to which it was otherwise entitled.

The provision begins to apply October 1, 2019.

Lodging tax

For county agricultural societies

(R.C. 5739.09(L))

Continuing law authorizes a lodging tax of up to 3% for a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees. This tax is in addition to the 3% lodging tax authority that all counties have. The additional lodging tax revenue must be used by the county to pay for the construction, maintenance, and operation of permanent improvements at sites where the agricultural society conducts fairs or exhibits. The additional tax is proposed by resolution of the board of county commissioners and is subject to voter approval.

Under former law, the term of the additional lodging tax could not exceed five years. The act allows the board of county commissioners to extend the term of the tax for an additional period not exceeding 15 years. The extension could be approved by resolution of the board and would not be subject to voter approval, but it would be subject to referendum.

For new convention facilities authorities (CFAs)

(R.C. 351.021(C)(3); Section 757.311)

Continuing law authorizes a board of county commissioners to create CFAs with the authority to administer convention, entertainment, or sports facilities located within their respective territories and, in a few counties, to levy a lodging tax. The act authorizes an additional lodging tax of up to 3% for any convention facilities authority created between July and December of 2019 and subjects the creation of a CFA during that period to a referendum if a petition signed by electors equal in number to 10% of the votes cast in the county for Governor in the most recent gubernatorial election, is filed within 90 days after the creating resolution is adopted.

The act requires the additional lodging tax to be adopted, if at all, by December 30, 2020. The tax is proposed by resolution of the CFA and must be approved by the board of county commissioners before it is levied. Like most other CFA lodging taxes, the revenue must be used to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility, including associated debt, the CFA's operating costs, and costs to administer the tax.

The additional lodging tax itself is not subject to voter approval or referendum. However, if a referendum is held on the board of county commissioners' resolution creating the CFA, the tax does not take effect unless the board's resolution is upheld by the referendum. The CFA may adopt a resolution proposing the lodging tax at any time after its creation (and before December 30, 2020) but the tax cannot take effect until the 90-day referendum period on the board of county commissioners' resolution has expired.

For county fairground purposes

(R.C. 351.021(F))

The act increases from 15% to 25% the amount of lodging tax revenue received by a CFA located in a county with a 2010 population between 80,000 and 90,000 (i.e., Muskingum County) that the CFA may allocate to tourism-related sites or facilities and programs, the improvement and maintenance of county fairgrounds, and any other purpose connected with the use of a county fairground. The act also specifies that unspent lodging tax revenue that was previously allocated to such purposes may be used in subsequent years without counting towards the 25% cap.

Generally, CFAs that levy a lodging tax are required to use the revenue to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility including associated debt, the convention facilities authority's operating costs, and costs to administer the tax. However, in 2013, H.B. 59 allowed the Muskingum County CFA to allocate a portion of its lodging tax revenue to tourism-related sites or facilities and programs and county fairgrounds.

Property taxes

State community college permanent improvements levy

(R.C. 3358.11, 3333.59, 3358.02, and 3358.06)

The act authorizes the board of trustees of a state community college district to propose a property tax levy for permanent improvements, or a combination bond issuance and tax levy for permanent improvements. In either case, the issue is subject to voter approval. In the case of a tax levy without bond issuance, the tax may be levied for any specified number of years, or for a continuing period of time, and may be renewed or replaced before its expiration.

Under continuing law, a state community college district is a political subdivision created by the Ohio Board of Regents upon receiving a proposal from a technical college district or a state university or upon a proposal by boards of county commissioners or initiative petition. The purpose of the district is to establish, own, and operate a state community college. It is governed by a board of trustees consisting of nine members appointed by the Governor. The territory of the district is composed of the territory of a county, or of two or more contiguous counties. The district must have a population of at least 150,000.[114]

[114] R.C. 3358.01, not in the act.

The tax levy and bond issuance authorized by the act are nearly identical to the tax levy and bond issuance authorized under continuing law for community college districts, except that the existing community college district levy may also be used for operating expenses. Community college districts and state community college districts perform similar functions but there are some administrative differences between the two, such as how they are formed and how trustees are appointed.

Tax levy for safety and security of private schools

(R.C. 5705.21(F))

Continuing law allows the board of education of a school district to propose a property tax levy in excess of the ten-mill limitation exclusively for school safety and security purposes. Such purposes include funding permanent improvements to provide or enhance security, employing or contracting with safety personnel, providing mental health services and counseling, or providing training in safety and security practices and responses. The tax may be levied for a term of up to five years.

The act allows a school board proposing to levy such a tax to share the proceeds with private schools that hold a valid charter issued by the State Board of Education ("chartered nonpublic schools"). The resolution and ballot language proposing the levy must specify the portion of the proceeds that will be allocated to chartered nonpublic schools. If approved by the voters of the school district, the chartered nonpublic school portion of the proceeds would be divided proportionally among all such schools located within the territory of the school district based on the number of district resident students enrolled in each chartered nonpublic school.

The act specifies that a "resident student" is a student who is entitled to attend school in the district levying the tax. Every chartered nonpublic school that is located within the territory of the school district and that enrolls one or more resident students would receive its statutorily prescribed portion of the levy proceeds. The act requires the school district to pay each chartered nonpublic school its portion of the proceeds at least twice each year, after the February and August tax settlements. All such revenue received by chartered nonpublic schools must be used for school safety and security purposes.

Fraternal and veterans' organization exemptions

(R.C. 5709.17; Section 757.90)

The act modifies existing tax exemptions for property held or occupied by a fraternal or veterans' organization. Under continuing law, property that generates more than $36,000 in rental income in a year does not qualify for either exemption. For the purpose of determining this rental-income threshold for fraternal organizations, the act excludes rent received from other fraternal organizations. Similarly, for purposes of qualifying for the veterans' organization exemption, the act excludes rent received from other veterans' organizations in determining whether or not the rental income produced by the property exceeds that limit.

These modifications apply beginning in tax year 2019.

Partial property tax exemption for child care centers

(R.C. 319.302, 323.155, and 323.16; Section 757.350)

The act authorizes a partial property tax exemption for child care centers that serve children from households that receive public assistance.

To qualify for the partial exemption, a child care center must meet the following requirements:

- The center must be licensed by the Department of Job and Family Services (JFS).
- The center may only serve children who are 5 years old or younger.
- At least 25% of the children that attend the center must reside in a household that receives public assistance. Such assistance may include Medicaid, Ohio Works First (Ohio's TANF program), SNAP (food stamps), WIC (the supplemental nutrition program for women, infants, and children), or state child care benefits.
- The center cannot be operated from the administrator's primary residence or from a location that is used for a separate commercial purpose.

If a child care center meets these requirements, the partial exemption will equal a percentage reduction in the taxes levied on the property. If at least 25%, but less than 50%, of the children who attend the center reside in a household that receives public assistance, the reduction equals 25% of the taxes imposed. If 50% or more of the children who attend the center reside in such households, the reduction equals 75% of the taxes imposed.

To obtain the exemption, the owner of the child care center must file an annual application with the county auditor. The application is due on or before the last day of the tax year for which the exemption is sought (December 31), and the auditor must approve or deny an application within 30 days. Applicants who are initially denied may appeal the denial to the Board of Tax Appeals.

The exemption applies beginning in tax year 2019. Local governments are not reimbursed by the state for revenue lost as a result of the partial exemption.

Community school property tax applications

(R.C. 5713.08 and 5715.27)

The act excuses community schools from filing annual tax exemption applications with and obtaining the approval of the Tax Commissioner as a condition of obtaining a property tax exemption.

Under continuing law, property used for an educational purpose, including such community school property, qualifies for a property tax exemption.[115] Prior law, with only a few exceptions, required property owners to apply annually to the Tax Commissioner to obtain an

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[115] R.C. 5709.07(A).

exemption for the tax year. Under continuing law, the Commissioner evaluates and decides whether to approve the exemption.

The act changes the exemption process for community schools. Instead of obtaining the Tax Commissioner's approval every year, community schools applying for an educational purpose exemption will only need to obtain the Commissioner's approval in the first tax year for which the exemption is sought. Then, the property will continue to be exempt for all future tax years, provided the community school submits an annual statement to the Commissioner attesting that its property continues to qualify for the educational purpose exemption. But the Commissioner may order the exemption removed if the Commissioner discovers that the community school's property does not actually qualify for that exemption.

Public school districts and other noncommunity schools seeking the educational purpose exemption are still required to file for and obtain annual approval from the Commissioner.

County DD board funding

The act limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities (county DD board) and imposes new restrictions on a county budget commission's authority to reduce the amount of taxes that a county levies on a county DD board's behalf.

Under continuing law, each year the county budget commission reviews the budget and projected tax revenue of each subdivision in the county. The commission may reduce a subdivision's tax levy if it determines that the revenue from that tax, as currently levied, would exceed the actual needs of the subdivision as set forth in the subdivision's own budget. [116]

Continuing law also requires each county to establish a board of developmental disabilities and to levy taxes on its behalf. Under current law, if the amount that would be raised from such a tax, in combination with the county DD board's existing funds, would exceed the board's actual needs for a tax year, the county budget commission may reduce the rate of that tax accordingly.

Rainy day funds

(R.C. 5705.222)

Under the act, the balance of a county DD board's rainy day fund would not be permitted to exceed 40% of the board's expenditures for all services during the preceding year. Prior law specified no limit.

The act also provides that, when determining whether or not to reduce the amount of taxes a county levies on behalf of the county DD board, the county budget commission may not take into account any rainy day fund balance that is under that limit. Similarly, the act specifies that any balance in a board's capital improvements account that is within existing law's

[116] R.C. 5705.32, not in the act.

statutory limit likewise may not be considered. (Under continuing law, the balance of a county DD board's capital improvements account is limited to 25% of the replacement value of the board's capital facilities and equipment.)

General funds

(R.C. 5705.322)

In addition, the act requires that, before reducing a county's taxing authority as a result of the balance of a county DD board's general fund, the county budget commission must (1) take into account the county DD board's five-year projection of revenues and expenditures and (2) hold a separate, public hearing on the proposed reduction. If the commission holds such a hearing, the proposed reduction must be the sole topic of the hearing, the commission must publish notice of the hearing, and the commission must allow county representatives an opportunity to appear and explain the county DD board's financial needs.

Tax allocation information online

(R.C. 323.131; Section 757.210)

The act requires each county auditor and treasurer to post on their respective websites, or on the county's website, the percentage of property taxes charged by each taxing unit and, where counties are concerned, the percentage of taxes charged by the county for each of the county purposes for which taxes are charged (e.g., developmental disabilities, detention facilities, senior services, public safety communications). The requirement begins to apply in 2021.

Property tax notices and ballot language (VETOED)

(Sections 130.80, 130.81, and 130.82)

The Governor vetoed a provision that would have modified information conveyed in, and the form of, property tax election notices and ballot language as follows:

1. Required notices and ballot language to convey a property tax levy's rate in dollars for each $100,000 of fair market value instead of in dollars for each $100 of taxable value.

2. Required notices and ballot language to display the estimated amount the levy would collect annually.

3. Prohibited any portion of a property tax question from being printed on the ballot in boldface type or with differing font size, with some exceptions.

The vetoed provision wholly comprises H.B. 76 of the 133rd General Assembly. A detailed description of the vetoed provision is available as LSC's analysis of H.B. 76, as Reported by House Ways & Means. The analysis is available online at https://www.legislature.ohio.gov/download?key=11653&format=pdf.

Property tax exemption for renewable energy facilities

(R.C. 5727.75; Section 757.200)

The act extends, by two years, the deadline to apply for existing law's property tax exemption for qualified renewable energy facilities.

Under continuing law, a renewable energy facility may qualify for a real and tangible personal property (TPP) tax exemption. Prior to the act, the owner or lessee of the facility must have applied for the exemption and begun construction on the facility by January 1, 2021. The act extends this deadline to January 1, 2023.

When a property tax exemption is approved, the owner or lessee of the facility is required to make "payments-in-lieu-of-taxes" (PILOTs) to the local governments in which the facility is located. The act makes a technical correction to out-of-date language regarding the calculation of PILOTs that must be paid with respect to solar energy facilities. The correction causes each year's PILOTS to be calculated on the basis of generating capacity rating as of the last day of the preceding year instead as of December 31, 2016.

Exemption for convention centers and arenas

(R.C. 5709.084; Section 757.90)

The act authorizes a real property tax exemption for a convention center or arena that is owned by a convention facilities authority (CFA) of a county with a population between 750,000 and 1 million and is leased to a private enterprise. According to the 2010 U.S. census, Hamilton County is the only county in Ohio that has a population within that range. The exemption applies to tax year 2019 and every tax year thereafter.

Continuing law exempts property owned by a CFA from taxation unless the property is leased to, or used exclusively by, a private enterprise.[117] There are several exceptions to this rule for certain arenas and convention centers such as Nationwide Arena in Franklin County.

Property tax abatement for certain municipal property

(Section 757.340)

The act establishes a temporary procedure by which a municipal corporation may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest due on certain municipal property.

To qualify, the property must be owned by a municipal corporation that, within the past 25 years (1) was part of a federal disaster area declared because of severe storms or flooding and (2) following that declaration, obtained the title to property pursuant to the terms of a hazard mitigation grant from the Federal Emergency Management Agency (FEMA). The property must also currently be used for a tax-exempt purpose.

[117] R.C. 351.12, not in the act.

The application for exemption and abatement must be filed with the Tax Commissioner within 12 months of the provision's effective date (October 17, 2019).

Under continuing law, municipally owned property is tax-exempt if it is used "exclusively for a public purpose," but such property may not be exempted if more than three years' worth of taxes remain unpaid.

School district property tax reduction for certain property owners (VETOED)

(R.C. 319.302 and 323.18)

The act would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses. The reduction would have essentially functioned as a cap on the property taxes paid by such property owners to the school district. If the school district taxes charged against such owners' property exceeded the cap, the owners' taxes would have been reduced accordingly.

To qualify, property would have had to be in a "qualifying area," which is an area that is located in both a village and in a school district with an enrollment of at least 1,300 students and per-pupil operating spending of at least $6,500 greater than the statewide average. The act would have capped the amount of school district property taxes paid by property owners in the qualifying area at four times the operating expenses the district paid in the previous year on account of students who reside in the qualifying area.

The reduction would have decreased the school district property taxes collected from all real property in the qualifying area so that collections did not exceed the cap. So, the amount of the total reduction would have equaled the difference between the cap amount and the total school district property taxes that would have been collected absent the cap.

Once the total tax reduction for the qualifying area was determined, it would have been applied to each parcel of real property within the area. The reduction available to a particular parcel's owner would have been based on the proportion of the total school district property taxes paid by the parcel's owner as compared to all parcel owners in the qualifying area.

In tax years when a reduction was applied, a school district would have collected less revenue from the property located in the qualifying area than it otherwise would have. In such cases, the district would have had to proportionately reduce the amounts credited to each of the district's funds, other than funds created to pay off bonds or other debt charges.

Exemption of residential development property (VETOED)

(R.C. 5709.54)

The Governor vetoed a provision that would have exempted from property tax a portion of the value of land subdivided for residential development for up to five years (see "**Exempted portion**," below). Specifically, the exemption would have applied to any unimproved parcel subdivided pursuant to a plat and on which construction of residential buildings, e.g., single- or multi-family dwellings, was planned but not started. A detailed description of the vetoed provision is available on pages 394-396 of LSC's analysis of H.B. 166, As Passed by the House. The analysis is available on line at http://www.legislature.ohio.gov/download?key=12043&format=pdf.

Financial institutions tax

The act limits the tax base of the financial institutions tax (FIT) for certain highly capitalized institutions.

The FIT is a tax on banks and other kinds of financial institutions. The tax is based on the portion of an institution's equity capital attributable to its Ohio operations, as measured by the relative amount of its gross receipts that arise from activities in Ohio. The rate of the tax is tiered according to an institution's Ohio equity capital, as follows: 0.8% on the first $200 million, 0.4% on the next $1.1 billion, and 0.25% for equity capital in excess of $1.3 billion. The minimum tax is $1,000. All revenue from the tax is credited to the General Revenue Fund.

Limitation on tax base

For tax years beginning in 2020 or thereafter, the act limits the tax base upon which the FIT is computed for any financial institution having total equity capital in excess of 14% of its total assets. Total equity capital in excess of 14% of an institution's total assets is excluded from the FIT base. In other words, if total equity capital exceeds 14% of total assets, only the amount of equity capital equal to 14% of assets will be apportioned to Ohio on the basis of the institution's gross receipts and multiplied by the applicable tax rates.

An institution's total assets are derived from information that must be filed with federal regulatory authorities (i.e., FR Y-9 or call reports), as is an institution's total equity capital. For institutions that are not covered by such a filing, assets is determined according to generally accepted accounting principles (GAAP).

Technical amendment

The act strikes language in the FIT law that is no longer operative. This language is part of the original enactment of the FIT, and provided for offsetting adjustments in the initial top-tier tax rate if revenue proved to be substantially more or less than specified targets at two junctures within the first few years the tax was in effect. (No rate adjustments were necessary.)

Commercial activity tax

CAT administrative expense earmark

(R.C. 5751.02; Section 812.20)

The act reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.75% to 0.65%, beginning July 1, 2019. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures."

Temporary historic rehabilitation CAT credit

(Section 757.40)

The act extends, to July 1, 2021, the temporary authorization for owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2021 ("qualifying certificate owner"). Additionally, the act authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than $150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or that is a nonprofit organization, to claim a tax "credit" as if the business or organization were a CAT taxpayer.

Uncodified law enacted in 2014 by H.B. 483 of the 130th General Assembly authorized certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015. Two subsequent acts extended the authorization for tax periods ending between July 1, 2015, and June 30, 2019. Except for these prior temporary provisions, a certificate holder may claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

Other tax provisions

Vapor products tax

(R.C. 1346.04, 5743.01, 5743.025, 5743.03, 5743.14, 5743.20, 5743.41, 5743.44, 5743.51, 5743.52, 5743.53, 5743.54, 5743.55, 5743.59, 5743.60, 5743.61, 5743.62, 5743.63, 5743.64, 5743.66, and 5751.01; Sections 757.260 and 757.270)

The act levies an excise tax on the distribution, sale, or use of nicotine vapor products, effective October 1, 2019. Similar to the existing tax on tobacco products other than cigarettes (OTP), the vapor products tax would be levied primarily on distributors and all revenue from the tax is credited to the GRF. However, unlike the OTP tax, which is based on the wholesale price of the OTP product, the vapor products tax will be based on the volume of nicotine-containing liquid or other nicotine substance consumed in an electronic smoking product.

A corresponding "use" tax is imposed on persons using, storing, or consuming vapor products for which a vapor distributor has not paid the tax. (That is, the use tax applies, for example, to vapor products purchased outside Ohio and brought into Ohio, or otherwise acquired from someone other than a vapor distributor or retail dealer, in a manner analogous to the cigarette and OTP use taxes levied under continuing law.)

Tax base and rate

The act defines a vapor product as any liquid solution or other substance that (1) contains nicotine, (2) is consumed by use of an electronic smoking product, and (3) is not regulated as a drug or device by the U.S. Food and Drug Administration (FDA). An electronic smoking product is a noncombustible product, except for a cigarette or an OTP, that (1) is designed to use vapor products, (2) employs some mechanical, electronic, or chemical means to produce vapor from such products, and (3) is not regulated as a drug or device by the FDA. An example includes an electronic cigarette or "vape pen."

The tax is imposed on the volume of vapor products at the first point the products are received in Ohio by a vapor distributor or seller. The rate equals 1¢ per 0.1 milliliters (mL) of liquid vapor product or 1¢ per 0.1 grams of nonliquid vapor product. A vapor product is taxed only once, and, even if a tax-paid product is later reprocessed, diluted, or otherwise altered, the altered product is not subject to the tax.

Taxpayer

The tax is payable by vapor distributors and sellers of vapor products. A "seller" is any person located outside the state who is engaged in the business of selling vapor products to Ohio consumers. A distributor includes any person that:

1. Sells vapor products to retail dealers;

2. Is a retail dealer that receives vapor products upon which the tax has not been paid by another person;

3. Is a wholesaler that receives vapor products from a manufacturer or upon which the tax has not been paid by another person;

4. Is a wholesaler outside Ohio that sells vapor products to an Ohio wholesaler;

5. Is a "secondary manufacturer," i.e., a person that repackages, reconstitutes, dilutes, or reprocesses vapor products for resale to consumers.

Similar to OTP taxes, a manufacturer of vapor products may avoid payment of the tax if it notifies the Commissioner that the retailer will pay the tax.

The use tax is payable by any person who uses, stores, or consumes vapor products for which the tax has not already been paid.

Tax returns and payments

Vapor distributors must file returns and pay the tax due on a monthly basis, by the 23rd day of each month, unless the Commissioner allows a longer reporting interval. Returns must be filed electronically. Vapor distributors must also maintain the invoice from each vapor product transaction. For each vapor product transaction, the invoice must indicate the vapor distributor's account number, whether or not the tax has been paid, and the weight or volume of each vapor product, rounded to the nearest 0.1 mL or 0.1 gram, as applicable.

Licensing requirements

The act requires vapor distributors to obtain an annual license to operate in the state. A licensed vapor distributor may sell vapor products only to retail dealers, other licensed vapor distributors, or, if the vapor distributor is also a retail dealer, to consumers. However, a licensed distributor may sell vapor products to another licensed distributor only if the seller first obtains the Commissioner's permission to do so and receives the products directly from a manufacturer or importer. (A similar requirement exists under continuing law for transfers of OTP.)

The licensing process for vapor distributors is identical to the process for wholesale dealers of OTP. The act requires only a single license for distributing OTP and vapor products, so an OTP distributor that already holds the OTP license before the vapor tax takes effect on October 1, 2019, may distribute vapor products after that date without obtaining an additional license.

Vapor distributors that do not already hold an OTP distributor license must apply to the Tax Commissioner for the license, which is valid for one year beginning on the first day of February. The annual application fee is $125 per business location for a license solely to distribute vapor products or $1,000 per business location for a combined OTP and vapor products license. (Under continuing law, a licensing fee to distribute OTP is $1,000.) If a license is issued after February 1, the application fee is reduced proportionately for the remainder of the year. As the vapor tax begins to apply October 1, 2019, the act requires a vapor distributor that does not hold an OTP license before that date to apply for a license by September 30, 2019. This initial license will remain in effect until February 1, 2021. Revenue from the license fee is deposited in the Cigarette Tax Enforcement Fund, which funds the Department of Taxation's expenses in enforcing cigarette, OTP, and vapor product tax law.

As with existing OTP licenses, the Commissioner may refuse to issue or reissue a vapor distributor license if the applicant has any outstanding tax liability or has failed to file any prior vapor products tax return. The Commissioner may also suspend a license if a taxpayer fails to file a return or pay the tax. In addition, the Commissioner may cancel a license at the request of the licensee.

Administration and enforcement

The act incorporates vapor products into many of the existing provisions for the administration and enforcement of the state cigarette and OTP taxes. These provisions include:

- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Records retention, fraud prevention, and inspections.
- Seizure and forfeiture of products when the Commissioner has reason to believe that a person is avoiding paying the tax.
- Requirements for transporting or distributing untaxed vapor products.
- Registration and reporting of vapor product importers and manufacturers, which the act requires beginning in July 2020.
- Civil and criminal penalties.
- Prohibition against municipal corporations imposing a similar tax.[118]

[118] R.C. 715.013, not in the act.

The act also explicitly requires secondary manufacturers to comply with federal packaging laws when reconstituting, diluting, or reprocessing vapor products.

CAT exclusion

The act authorizes a vapor distributor to exclude from its gross receipts subject to the CAT an amount equal to the vapor products excise tax remitted to the state. A similar CAT exclusion already exists for distributors of cigarettes and tobacco products subject to state excise taxes. Under continuing law, the CAT is a business privilege tax levied on the basis of a business's taxable gross receipts.

Tobacco products tax return due dates and nexus

(R.C. 5743.62, 5743.63, and 5743.66)

The act adjusts the due date for several types of monthly OTP returns to the 23rd day of the following month, instead of the last day of the month. Under prior law, returns of OTP distributors were due on the 23rd day of the next month, but OTP seller and use tax returns and importer and manufacturer reports were not due until the last day of the next month. The act also sets the monthly return due date for the new vapor products tax as the 23rd day of the following month.

The act changes the phrasing of three nexus-related references involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state," which is consistent with phrasing involving sellers of items or services subject to the general use tax.

Tourism development districts

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (currently only Stark County) may designate a special district within which the municipal corporation or township may levy certain taxes or fees or receive certain revenue to fund tourism promotion and development in that district. Such a district is referred to as a "tourism development district" or a TDD. The act makes two modifications to the TDD law that enhance the authority of a TDD to raise revenue.

Gross receipts tax

(R.C. 5739.101)

The act extends until December 31, 2020, the authority of townships and municipal corporations to levy a new gross receipts tax within the territory of a TDD. Under prior law, such a tax was allowed only if it was adopted before January 1, 2019. Canton is the only subdivision that adopted a TDD gross receipts tax before that date.[119]

Under continuing law, a TDD gross receipts tax is levied on businesses' gross receipts derived from making sales in the TDD (excluding food sales) at a rate not exceeding 2%. The tax

[119] Ohio Department of Taxation, Resort Tax, available at: https://www.tax.ohio.gov/resorttax.aspx.

is administered and collected by the Tax Commissioner in the same manner as the gross receipts tax that is permitted in certain "resort areas" such as Kelleys Island and Put-in-Bay.

Development charge

(R.C. 505.56, 505.58, 715.014, and 715.015)

The act authorizes a township or municipal corporation to enter into agreements with owners of property located within the TDD to impose a development charge on the property equal to a percentage (up to 2%) of gross receipts derived from sales made at the property (excluding food sales). The development charge is subject to approval of the board of county commissioners. It is collected and enforced in the same manner, and has the same lien status, as real property taxes regardless of changes in ownership of the property.

A township or municipal corporation that levies a gross receipts tax within the TDD is prohibited from entering into or enforcing a development charge agreement within the same district.

Local Government Fund

(R.C. 5747.50; Sections 387.10, 387.20, 757.230, and 812.20)

LGF temporary increase

The act temporarily increases the amount to be credited to the Local Government Fund (LGF) each month. Generally, the LGF receives 1.66% of the total state tax revenue credited to the General Revenue Fund. The act increases that percentage to 1.68% for each month in FYs 2020 and 2021.

Most of the funds credited to the LGF are distributed to county undivided local government funds (county LGFs), from which the funds are allocated amongst subdivisions within the county using either a statutory or an alternative, county-specific formula. One million dollars of the LGF is set aside each month to make payments to villages with a population of less than 1,000 and to townships, and the remainder (around 5% of total LGF funds) has been used to make direct payments to municipal corporations.

Direct distributions to municipalities

The act modifies the formula for distributing these direct payments among municipalities. Previously, only municipalities that levied an income tax in 2006 received a distribution; each municipality's distribution was based on that municipality's share of the payments in 2006 (with that share being based on the municipality's relative income tax collections).

Under the act, every municipality in the state with a population of 1,000 or more will receive a distribution. (Villages with a population of less than 1,000 will continue to receive a portion of the $1 million set-aside.) Each such municipality's share is based on population, with the caveat that cities with a population of more than 50,000 will be capped at that amount. So, when each municipality's share is calculated, cities with a population of more than 50,000 will be considered to have a population of 50,000. The share paid to a municipality with a population of less than 50,000 will be based upon that municipality's actual population.

Verifying and disclosing scholarship eligibility

(R.C. 5703.21(C)(19))

The act allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet the program's income eligibility requirements. Eligibility for the Educational Choice Scholarship Pilot Program is based in part on a student's family income.[120] The Department of Education must request the verification and provide sufficient information about the student and their family to allow the Department of Taxation to make the verification.

Continuing law permits disclosure of certain information in the possession of the Department of Taxation to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the disclosure of taxpayer information is prohibited and subjects the violator to employment termination and a fine.

Job Retention Tax Credit

(R.C. 121.171)

The act modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Continuing law authorizes the JRTC for businesses that agree to make a minimum capital investment in Ohio and to retain a specified number of employees in connection with that capital project. The business must be engaged in either manufacturing or corporate administrative functions. To receive the tax credit, the business applies to the Tax Credit Authority, which reviews the application and offers a tax credit agreement. The credit will equal an agreed-upon percentage of the business' payroll, and can be allowed for up to 15 years.

Previously, to receive the credit, a business was required to employ at least 500 employees or have an annual payroll in Ohio of at least $35 million. In addition, for manufacturing projects, the business had to make a capital investment in Ohio of at least $50 million over three years. For corporate administrative projects, the investment must equal at least $20 million.

The act makes several changes to these requirements. First, the act provides that, if a corporate administrative project is located in a foreign trade zone, the business does not have to meet the 500 employee or $35 million payroll requirement. The project must still involve an investment of at least $20 million over three years.

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[120] See R.C. 3310.02 and 3310.032.

For manufacturing projects, the act entirely removes the requirement that a business have at least 500 employees or $35 million payroll. In addition, the act modifies the $50 million capital investment requirement, such that a manufacturer's investment may equal either (a) $50 million or (b) 5% of the net book value of the tangible personal property located at the project site on the last day of the three-year investment period.