# DEPARTMENT OF TAXATION

## Income tax

- Phases down income tax rates and reduces the number of income tax brackets over two years, beginning with the 2023 taxable year.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts until taxpayers pay no tax on their first $26,050 of income.
- Requires that, beginning in September 2024, TAX reduce income tax withholding rates so that the estimated reduction in withholding collections during an annual period equals the amount of BSF interest credited to the GRF in the preceding fiscal year.
- Authorizes an income tax deduction for individuals who contribute to a homeownership savings account.
- Authorizes, for homeownership savings account holders, an income tax deduction for interest earned on savings in, and employer contributions to, an account.
- Allows donations to scholarship granting organizations made before the federal income tax return filing deadline to be the basis of an income tax credit claim for the preceding taxable year.
- Allows taxpayers with income of $100,000 or more to qualify for the nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school.
- Increases the value of that credit.
- Includes certain pass-through entity (PTE) taxes remitted on behalf of an investor in the calculation of the investor's Ohio income tax resident credit.
- Requires a PTE investor to add back certain PTE taxes imposed by another state that the investor deducts from federal adjusted gross income as a business expense.
- Applies the PTE provisions to taxable years ending on or after January 1, 2023, but allows taxpayers to apply, at their option, the provisions to taxable years ending on or after January 1, 2022, with an amended or original return.
- Removes the requirement for employers who withhold and remit employee income taxes on a partial weekly basis to file quarterly reconciliation returns, instead requiring such employers to file an annual return, starting in 2024.

## Municipal income taxes

- Exempts stock option and nonqualified deferred compensation income from municipal income tax levied by any municipality.
- Corrects an erroneous cross-reference governing the deduction of net operating losses and requires municipal corporations to incorporate the change in 2023.

- Allows a business with remote employees to use a modified municipal income tax apportionment formula with respect to those employees.
- Limits the circumstances under which municipal income tax inquiries or notices may be sent by a municipal tax administrator or the Tax Commissioner to a taxpayer subject to a filing extension.
- Limits the penalty that may be imposed on a taxpayer for failing to timely file municipal income tax returns from a $25 monthly penalty, up to $150, to a one-time $25 penalty. Exempts a taxpayer's first failure to timely file from the penalty.
- Provides an additional, automatic one-month extension for municipal income tax returns where a business entity has received a six-month federal extension.
- Requires the Department of Taxation (TAX) to provide information to municipal corporations on any businesses that had municipal taxable income apportioned to such a municipal corporation in the preceding five or seven months as opposed to in any prior year.
- Requires a municipal corporation to notify TAX any time there is a decrease in the municipal corporation's income tax rate.

## Sales and use tax

- Authorizes a sales tax holiday for most items priced under $500 to be held over at least 14 days in August of 2024.
- Requires the state to hold similar, possibly shorter, sales tax holidays in future years if the surplus revenue in the GRF reaches a certain threshold.
- Uses this mechanism to replace the income tax reduction fund, which is a mechanism that uses surplus revenues to temporarily reduce income tax rates.
- Suspends the existing sales tax holiday for clothes and school supplies in any year in which the bill's sales tax holiday applies.
- Exempts children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax, beginning October 1, 2023.

## Lodging taxes

- Authorizes Hamilton County to levy an additional 1% lodging tax to fund convention, entertainment, or Major League Soccer sports facilities, and to repurpose a portion of the revenue from its existing 3% general and special lodging tax to fund or promote such a facility.
- Authorizes Cincinnati to repurpose a portion of the revenue from its 3% general lodging tax or 1% special convention center lodging tax to fund such facilities.
- Authorizes a county to use a portion of the revenue from its general lodging tax to fund public safety services in a municipality or township designated as a resort area.

- Authorizes a county with a population exceeding 800,000 or a municipality within such a county to wholly or partially exempt from county and municipal lodging taxes a designated hotel associated with a convention center ("headquarters hotel").
- Authorizes the county or municipality to require payments in lieu of taxes (PILOTs) from the headquarters hotel, to be used to finance facilities associated with the hotel or convention center.
- Authorizes the county or municipality, or a port authority, to enter into an agreement with the headquarters hotel operator for the operator to make binding payments to ensure funds for the completion of such associated facilities.
- Authorizes Delaware County or port authorities in that county, to issue bonds backed by proceeds from the county's existing or renewed special 3% lodging tax to finance permanent improvements at fairground sites.

## Commercial activity tax (CAT)

- Excludes, for tax periods beginning in 2024, businesses with taxable gross receipts of $3 million or less and, for tax periods in 2025 and thereafter, businesses with taxable gross receipts of $6 million or less from the CAT.
- Indexes the $6 million exclusion threshold to increase with inflation in 2026 and thereafter.
- Eliminates the CAT minimum tax, only applying the CAT to a business's gross receipts in excess of the applicable exclusion threshold.
- Eliminates calendar year CAT filing, which was principally available to taxpayers with less than $1 million in gross receipts, who are excluded from the CAT under the bill.
- Excludes from gross receipts taxable under the CAT any federal, state, or local grants received or debt forgiven to provide or expand broadband service in Ohio.
- Modifies the method of allocating CAT revenue for the payment of tangible personal property tax replacement payments.

## Financial institutions tax

- Clarifies which entities are included in a taxpayer group subject to the financial institutions tax (FIT).
- Repeals an expired FIT deduction allowed for investments in a qualifying real estate investment trust.

## Sports gaming tax

- Increases the sports gaming receipts tax rate, from 10% to 20%, beginning July 1, 2023.
- Requires nearly all of the sports gaming tax revenue to be used for the general support of K-12 education.

## Cigarette and tobacco and vapor product taxes

- Allows a wholesaler or distributor to obtain a refund of excise taxes on cigarettes, other tobacco products, and nicotine vapor products remitted on bad debts arising from the sale of those products and charged off on or after January 1, 2024.
- Authorizes an exemption from the vapor products tax for certain distributors.
- Requires, beginning July 1, 2024, persons selling nicotine vapor products and tobacco products other than cigarettes (OTP) at retail to Ohio consumers to obtain an annual license from TAX.
- Extends the deadline for renewing annual cigarette tax licenses to June 1 instead of the 4th Monday in May.
- Modifies the authority of Cuyahoga County to levy cigarette taxes and rescinds its authority to levy a new tax on nicotine vapor products.

## Motor fuel taxes

- Imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax for a taxpayer.

## Public utility taxation

- Exempts heating companies from the state's public utilities excise tax, and instead subjects such companies to the CAT.

## Municipal ridesharing tax

- Authorizes the largest municipality in a county with a population of between 800,000 and 1 million, i.e., Cincinnati, to levy a tax on ridesharing services provided to passengers who begin or end their ride in the municipality.

## Tax incentives

### Low-income housing tax credit

- Authorizes a nonrefundable credit against the insurance premiums, financial institution, or income tax for the development of low-income rental housing that is awarded in conjunction with the federal low-income housing tax credit (LIHTC).
- Allows the Governor's Office of Housing Transformation (GOHT) to reserve a state tax credit for any project in Ohio that receives a federal LIHTC allocation, as long as the project is located in Ohio and begins renting units after July 1, 2023.
- Prohibits GOHT from reserving any credits after June 30, 2027.
- Generally limits the amount of state credits that may be reserved in a fiscal year to $100 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.

- Limits the amount of credit reserved for any single project to an amount necessary, when combined with the federal credit, to ensure financial feasibility.
- Requires GOHT to reserve credits in a manner that ensures projects create additional housing units they would not otherwise create.

## Single-family housing development credit

- Authorizes a nonrefundable tax credit against the insurance premiums, financial institutions, or income tax for investment in the development and construction of affordable single-family homes.
- Requires local governments and quasi-public development entities to submit applications for the credit, but allows them to allocate credits to project investors.
- Allows the Director of the Governor's Office of Housing Transformation to reserve a tax credit for any project in Ohio that may qualify for the credit, as long as the project meets affordability qualifications adopted by the Office.
- Prohibits the Director from reserving any credits after June 30, 2027.
- Generally limits the amount of credits that may be reserved in a fiscal year to $50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Limits the amount of credit reserved for any single project to the amount by which the fair market value of the project's homes exceed the project's development costs.

## Film and theater credits

- Increases the total amount of film and theater tax credits that may be awarded each fiscal year, from $40 million to $50 million and requires $5 million of the total be reserved for Broadway theatrical productions.
- Authorizes, beginning in FY 2025, a refundable tax credit against the financial institutions tax, income tax, and commercial activity tax for production companies that complete certain capital improvement projects in Ohio.
- Sets the credit amount at 25% of the amount a production company spends to construct, acquire, repair, or expand facilities that will be used in a motion picture or theatrical production, up to $5 million per project.
- Caps the total amount of new credits that may be awarded each fiscal year at $25 million and caps the credits that may be awarded to projects in a single county at $5 million per fiscal year.

## Historic building rehabilitation credit

- Expands an existing prohibition on LIHTC property receiving a historic rehabilitation tax credit to most other federally subsidized residential rental property.

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### Job creation and retention credits

- Authorizes the Tax Credit Authority to adjust the amount that a noncompliant taxpayer must repay from a job creation or job retention tax credit one time within 90 days after initially certifying a repayment.

### Research and development credits

- Modifies the manner in which a taxpayer that consists of multiple individuals or entities may compute and claim a research and development (R&D) tax credit against the FIT or CAT.
- Requires a taxpayer claiming a R&D credit to retain records substantiating the claim for four years.
- Allows TAX to audit a representative sample of a taxpayer's R&D expenses to verify that the taxpayer correctly computed the R&D credit.

### Exemption and exclusion for consumer-grade fireworks fee

- Exempts the 4% fee on the sale of consumer-grade fireworks from sales and use tax, so long as the fee is separately stated on the sales receipt.
- Authorizes a CAT exclusion for collections of the separately stated fireworks fees.

### Deduction and exclusion for East Palestine derailment payments

- Authorizes a personal income tax deduction for government or railroad company payments received by a taxpayer as the result of the February 3, 2023, train derailment in East Palestine.
- Authorizes a CAT exclusion for compensation for business losses resulting from that derailment.

## Property tax

- Revises the information considered in the sales ratio studies that TAX uses to review and update property values.
- Temporarily adjusts the current agricultural use value ("CAUV") of farmland for property tax purposes.
- Authorizes a park district to renew, increase, or decrease an existing voted property tax levy.
- Expands to include other types of federally subsidized rental housing an existing provision that explicitly authorizes a county auditor to value low-income housing tax credit property by employing the income approach, cost approach, or comparable sales approach.

- Authorizes the Auditor of State to audit the construction and rehabilitation costs of any project that has received certain federal subsidies or tax credits to construct or renovate rental housing.
- Requires the Governor's Office of Housing Transformation to prepare and annually update a list of all Ohio federally subsidized residential rental property and annually certify the list to the Auditor of State, the Board of Tax Appeals, and TAX, who in turn certifies it to all county auditors.
- Exempts 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.
- Authorizes the development exemption for up to eight years, or until residential construction begins or the land is sold.
- Does not allow the exemption for development land included in a tax increment financing (TIF) project.
- Authorizes owners of real property which qualified for a brownfield tax abatement in 2020 but which was not subject to the abatement until 2022 to apply for the abatement to apply retroactively for two years and terminate two years earlier than scheduled.
- Allows a subdivision to remove a parcel from a TIF and include the parcel in a new TIF under certain circumstances.
- Authorizes an impacted city, i.e., a city that meets certain urbanization or disaster criteria, to, before July 1, 2024, reallocate TIF service payments to certain projects that do not directly benefit the assessed parcels.
- Extends the circumstances under which a county, municipality, or township may extend the maximum term of a parcel TIF by up to 30 years.
- Allows a municipality to extend the life of an existing TIF for up to 15 years if certain conditions are met.
- Authorizes the second and third publication of a notice of an impending property tax foreclosure action to be made online, provided the notice's first publication continues to be made in a newspaper of general circulation.
- Specifies that existing abbreviated newspaper publication procedures for government notices apply to the publication of a property tax foreclosure notice if the second and third publication of the notice continues to be made in a newspaper.
- Extends the sunset date of a property tax exemption for qualified energy projects from 2025 to 2029.

## Special improvement districts

- Prohibits park district property from being included in a special improvement district unless the park district consents to its inclusion.

## Tax administration

- Authorizes TAX to send any tax notice currently required to be sent by certified mail by ordinary mail or, with the taxpayer's consent, electronically.
- Removes required recordkeeping standards a delivery service must meet before it may be used by TAX to deliver tax notices.
- Requires county auditors to accept real property and manufactured home conveyance forms electronically.
- Eliminates a requirement that taxpayers file amended reports with respect to the defunct corporation franchise tax.
- Streamlines the authority of TAX to share confidential tax information with state agencies.
- Makes conforming changes to a recently enacted law that allows taxpayers to obtain a refund of tax-related penalties and fees.

## Local Government and Public Library Funds

- Permanently increases the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, from 1.66% to 1.7%.
- Increases the minimum amount that may be distributed from the LGF to each county to $850,000, beginning in FY 2024.
- Requires the county budget commission of a county that adopts an alternative distribution formula for the county undivided local government fund, using the standard procedure to adopt such a formula, to hold a hearing on the formula every five years.

## Income tax

### Rate reduction

(R.C. 5747.02)

The bill phases-down the income tax rates applicable to nonbusiness income over two years. For the 2023 taxable year, the bill reduces the number of brackets from four to three, by consolidating the two lowest tax brackets, and reduces the rates of the lowest and highest tax brackets. Beginning with the 2024 taxable year, the bill consolidates the remaining three brackets into two, and further reduces the highest tax rate. The tax table for the 2022 taxable year compared to the 2023 tax table, as modified by the bill, is as follows:

| TY 2022 | | TY 2023, as modified by the bill | |
|---|---|---|---|
| Ohio taxable income | Marginal tax rate | Ohio taxable income | Marginal tax rate |
| $26,050-$46,100 | 2.765% | $26,050-$92,150 | 2.75% |
| $46,100-$92,150 | 3.226% | $92,150-$115,300 | 3.688% |
| $92,150-$115,300 | 3.688% | More than $115,300 | 3.75% |
| More than $115,300 | 3.99% | | |

The tax table for the 2024 taxable year, as modified by the bill, is as follows:

| Ohio taxable income | TY 2024 marginal tax rate, as modified by the bill |
|---|---|
| $26,050-$92,150 | 2.75% |
| More than $92,150 | 3.5% |

## Inflation indexing adjustments and future tax reductions

(R.C. 5747.02 and 5747.025; Section 757.50)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis.[257] The bill suspends these adjustments. The tax brackets and personal exemption amounts will be frozen at 2022 levels until income taxes are reduced as described below.

For the 2023 and 2024 taxable years, the bill simply suspends the inflation adjustments, with no other modifications required. Thereafter, the amounts will remain suspended until taxpayers pay no tax on their first $26,050 of income.

Under continuing law, taxpayers with less than $26,050 of income pay no tax, but taxpayers with income of $26,050 or more do pay tax on that first $26,050. That first tax amount currently equals $360.69. Under the bill, the Tax Commissioner must determine the amount by which that dollar amount can be reduced each year, based on the annual savings from the indexing suspension. The amount will be reduced each year until it equals $0, at which time the inflation adjustments will resume.

[257] R.C. 5747.02(A)(5); R.C. 5747.025, not in the bill.

## Withholding rate adjustments

(R.C. 131.43 and 5747.06)

Every July, beginning in 2024, the bill requires the Director of OBM to certify to the Tax Commissioner the amount of BSF investment earnings that were credited to the GRF in the preceding fiscal year. (Recall that the bill redirects the next $650 million in BSF interest from the BSF to the GRF, see "**Budget Stabilization Fund**," above.) The bill then requires the Commissioner, beginning in the following September, to reduce income tax employee withholding rates so that the estimated reduction in employee withholding collections during the period of September 1 through August 31 equals the amount so certified.

In essence, this mechanism will, over a period of likely several years, gradually require TAX to reduce employee withholding rates such that collections are reduced by a total of $650 million. The mechanism only affects the amount of income taxes withheld from an employee's compensation, not the amount of taxes the employee will actually owe.

## Deduction for contributions to homeownership savings accounts

(R.C. 5747.01(A)(42) and (43) and 5747.85; Section 803.220)

The bill authorizes an income tax deduction for individuals who contribute to homeownership savings accounts, which are accounts authorized in the bill that can be used towards the down payment and closing costs associated with the purchase of a home (see "**Home Improvement Linked Deposit Program**," below).

The deduction has two components:

- A deduction for contributions to an account. This deduction is limited to $10,000 per year, per account for joint filers and $5,000 per year, per account for all other filers, with a lifetime maximum per contributor, per account of $25,000. Only the account holder, or the account holder's parent, spouse, sibling, stepparent, or grandparent are eligible to take this deduction.
- A deduction for the interest earned on deposits in, and employer contributions to, an account. This deduction is only available to the account holder.

Under the bill, if an account holder withdraws money from a homeownership savings account, but does not use the money to pay the closing costs on a home that will be the account holder's primary residence, that individual is required to pay income tax on the amount withdrawn. The amount is added back to the account holder's taxable income, even if the amount was originally contributed by someone else.

The tax deduction is available for taxable year 2024 and thereafter. The bill allows the Tax Commissioner to adopt rules to administer the deductions.

## Scholarship granting organization donation credit

(R.C. 5747.73; Section 803.360)

The bill allows donations to scholarship granting organizations (SGOs) made before the federal income tax return filing deadline (generally April 15) to be the basis of a tax credit claim

against the income tax for the preceding taxable year. Under current law, such donations may be the basis for an income tax credit claim, but only for the taxable year in which the donations are made. The bill does not change other aspects of the credit, such as a $1,500 cap for spouses filing jointly, and a $750 cap for single filers.

An SGO is a charitable organization certified by the Attorney General that primarily awards academic scholarships to primary and secondary school students.

## Income tax credit for nonchartered, nonpublic school tuition

(R.C. 5747.75; Section 803.320)

Continuing law authorizes taxpayers to claim a nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school. The credit equals the amount of tuition paid by the taxpayer, up to certain annual maximums. Under current law, the credit may only be claimed if the taxpayer's and the taxpayer's spouse's total federal adjusted gross income (FAGI) for the year is less than $100,000.

The bill authorizes the credit to be claimed by a taxpayer whose FAGI exceeds this threshold. It also increases the annual maximum credit from $500 to $1,000 for taxpayers with a total income below $50,000 and from $1,000 to $1,500 for taxpayers with a total income at or above $50,000.

## Pass-through entity taxes

(R.C. 5747.01(A)(36), (41), and (S), 5747.05, 5747.11, and 5747.13; Section 803.310)

Under federal law, an itemized income tax deduction is allowed for state and local taxes. That deduction was capped at $10,000 in 2017. As a result, many states, including Ohio, enacted laws allowing owners of pass-through entities (PTEs), i.e., entities that are disregarded for federal income tax purposes, such that their tax liability passes through to their owners, to pay a tax on the PTE's income at the entity level, with the cost of the tax passing through to its owners. According to IRS guidance issued after the $10,000 cap was enacted, these entity-level taxes are subject to deduction as business expenses and are not subject to the $10,000 cap. As a result, owners could claim their full share of the entity-level taxes as a federal income tax deduction.[258]

Ohio's PTE tax allows PTEs to elect to pay an entity-level tax, the cost of which is then passed through to each PTE owner as part of their distributive share of gains and losses. Each PTE owner is allowed an Ohio income tax credit equal to the cost of their distributive share of the tax liability, but the amount of that tax liability is deductible against the federal income tax, reducing the taxpayer's federal adjusted gross income (FAGI) and the tax liability calculated against it. In other words, the state PTE tax is cost-neutral to the taxpayer, but it reduces federal income tax liability.

FAGI is the basis for the Ohio income tax, and Ohio adjusted gross income (OAGI) is FAGI adjusted with various deductions and additions. When the Ohio PTE tax was enacted, a related provision requiring the addition of a taxpayer's proportionate share of the elective PTE entity tax

[258] R.C. 5747.38, not in the bill, and Internal Revenue Service Notice 2020-75.

discussed above that was deducted from federal taxes was also enacted. This avoids a scenario in which a taxpayer pays the state PTE tax designed to reduce federal-income tax liability, but receives the same amount of money back in a credit and then also reduces OAGI based on the Ohio tax that is completely credited to the taxpayer.

The bill makes several changes related to how Ohio's PTE tax and similar taxes levied in other states interact with other aspects of Ohio's income tax. First, the bill requires the addition to FAGI, when calculating OAGI (and Ohio taxable income in the context of estates and trusts), of any income taxes deducted from FAGI on the basis of a PTE entity tax designed to reduce FAGI pursuant to the IRS guidance discussed above and levied by another state or the District of Columbia. As mentioned above, Ohio was among a group of states that enacted these types of PTE taxes, so FAGI could be reduced by any one of them.

Second, the bill specifies that the addition, to the extent it is related to an individual's "business income," is to be treated as such. Business income is relevant in various contexts of the income tax law, one of which is for a deduction allowed for $125,000 of business income for each spouse filing a separate return or $250,000 for other filers and another of which is a special 3% rate that applies to business income above that threshold. Thus, this provision clarifies how amounts added back are to be classified.

Third, continuing law allows an income tax credit for taxes due for the taxes residents pay to other states and the District of Columbia. The credit is applied against the amount of a taxpayer's OAGI, before applying any tax credits. The bill provides that, for purposes of the credit, a resident taxpayer's OAGI that is subject to an income tax levied in another state includes income that is subject in the other state, or the District of Columbia, to either (1) an entity-level tax imposed on a PTE and paid by the PTE through a composite return covering all PTE owners, with the cost of the tax passed on to the resident taxpayer as part of the taxpayer's distributive share of PTE gain and loss, or (2) a PTE tax, similar to Ohio's, adopted in response to the $10,000 cap on the federal deduction for state and local taxes. It also requires OAGI, for purposes of the credit, to be calculated by first deducting the business income deduction described above.

In other words, for purposes of the resident income tax credit for taxes paid to other states, the bill includes taxes paid to those states on account of the resident taxpayer's ownership of a PTE that paid taxes to the other jurisdiction on behalf of the taxpayer, either as part of a composite return or as part of a tax designed to avoid the $10,000 state and local tax deduction cap. But, the tax liability against which that credit is applied is first reduced because it is calculated with an OAGI that has been reduced by the business income deduction.

The bill applies these changes to taxable years ending on or after January 1, 2023. Taxpayers may, however, apply them to taxable years ending on or after January 1, 2022, by filing an amended or original return for that year.

## Eliminate quarterly employer reconciliation return

(R.C. 5747.07 and 5747.072; Section 803.60)

The bill removes the requirement in current law that employers who withhold and remit employee income taxes on a partial weekly basis, i.e., two times in a single week, file quarterly

withholding reconciliation returns. Instead, these employers will only be required to file the annual reconciliation returns required for other employers under continuing law starting on January 1, 2024. Reconciliation returns allow an employer to calculate and pay any required employee withholding that was not remitted in the preceding period.

Under continuing law, employers are required to remit employee withholding on a partial weekly basis if they withhold and accumulate a significant amount of it. Employers with smaller accumulated withholding may remit it monthly or quarterly.

# Municipal income taxes

## Exemptions for stock options and deferred compensation

(R.C. 718.01(R), 718.02(G), and 718.82(F); Section 803.10)

The bill exempts stock option and nonqualified deferred compensation income from any municipality's income tax. Under current law, those types of income are exempt only if a municipality exempted such income in an ordinance adopted before 2016. The bill's changes apply to taxable years beginning on or after January 1, 2024.

## Net operating loss deduction cross-reference

(R.C. 718.01; Section 803.10)

The bill corrects an erroneous cross-reference in the municipal income tax law governing the deduction of net operating loss (NOL). From 2018-2022, a business was allowed to deduct 50% of its NOL from its taxable net profits. Beginning in 2023, the 50% limitation is discontinued and a business may deduct the full amount of its NOL. The bill's correction clarifies that the 50% limitation ceases to apply in 2023. The bill requires municipalities that levy an income tax to incorporate this cross-reference change into their municipal tax ordinances and apply it to taxable years beginning in 2023.

## Net profits apportionment for remote employees

(R.C. 718.02, 718.021, 718.82, and 718.821; R.C. 718.021 (718.17); Section 803.240)

Under continuing law, municipal corporations may impose an income tax on the net profit of businesses operating within their jurisdictions. When determining the portion of a business' total net profit that is taxable by a particular municipality, the business uses a three-factor formula based on the business' payroll, sales, and property.

The bill allows businesses with employees who work remotely to use a modified version of this apportionment formula. Instead of apportioning the payroll earned, sales made, or property used by a remote employee to that employee's remote work location, the employer may instead apportion those amounts to a designated "reporting location." This alternative is available both to businesses that file returns with municipal tax administrators and businesses that elect to file a single return covering all municipal corporations with the Tax Commissioner.

Under continuing law, an employee's payroll is generally only included in the existing apportionment formula if the employee performs services at a location "owned, controlled, or

used by, rented to, or under the possession of" the employer, or a vendor or customer of the employer.

### Designating a reporting location

To use the bill's modified apportionment formula, the business must assign a remote employee to a designated reporting location, which is any location owned or controlled by the employer or, in some circumstances, by a customer of the employer.[259] An employee's designated reporting location will be (a) the location at which the employee works on a regular or periodic basis, (b) if no such location exists, the location at which the employee's supervisor works on a regular or periodic basis, or (c) if neither such locations exist, any reporting location designated by the employer, provided that the designation is made in good faith and is reflected in the employer's business records.

A business can change a remote employee's designated reporting location at any time. If the business is a pass-through entity, e.g., a partnership or LLC, it can also designate a reporting location for any of its equity owners who work remotely.

### Election

A business that wishes to use the bill's modified apportionment formula must make an election to do so with each municipality in which it is required to file a net profits tax return or, if the business has elected to file a single return with the Tax Commissioner, with the Commissioner. The election can be made on the business' net profit return, timely filed amended return, or a timely filed appeal of an assessment. Once the election is made, it applies to each municipality in which the business operates and to all future taxable years, until it is revoked.

### Application of existing law and effective date

Aside from the apportionment of payroll, sales, and property attributable to remote employees, all other aspects of continuing law's apportionment formula will continue to apply to a business that makes the election allowed under the bill. The business can still request to use an alternative apportionment method, as under existing law, although the bill specifies that the business cannot be compelled to use an alternative method that would require it to file a return with a municipality solely because an employee is working remotely in that municipality.

The bill applies to taxable years ending on or after December 31, 2023.

## Prohibited inquiries and notices

(R.C. 718.05 and 718.85; Section 803.100)

The bill limits when a municipal tax administrator or the Tax Commissioner may make inquiries or send notices to taxpayers whose income tax filing deadline has been extended. Under continuing law, taxpayers generally report and remit municipal income tax to municipal tax administrators, but a business that owes taxes on its net profits may elect to report and remit

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[259] A customer location qualifies only if it is located in a municipality to which the employer is required to withhold income taxes on employee wages, due to one or more employees providing services at that location. R.C. 718.021(A)(3)(b).

municipal net profits taxes to TAX, which then disperses payments to each municipality to which such tax is owed.

Under current law, the due date of a taxpayer's municipal income tax return, whether filed with a municipality or the Tax Commissioner, may be extended under various circumstances, including any of the following:

- The taxpayer has requested an extension of the deadline to file the taxpayer's federal income tax return.
- The taxpayer has requested an extension of the deadline to file the taxpayer's municipal income tax return from the municipal tax administrator or Commissioner.
- The Commissioner extends the state income tax filing deadline for all taxpayers.

When a taxpayer receives an extension, the bill prohibits a municipal tax administrator or the Commissioner from sending any inquiry or notice regarding the municipal return until after either the taxpayer files the return or the extended due date passes. If a tax administrator sends a prohibited inquiry or notice, the municipality must reimburse the taxpayer for any reasonable costs incurred in responding to it, up to $150.

The bill's new limitations apply to taxable years ending on or after January 1, 2023. The limitations do not apply, and a municipal tax administrator or the Commissioner may send an otherwise prohibited inquiry or notice, if either has actual knowledge that the taxpayer did not actually file for a federal or municipal income tax extension.

### Penalty limitations

(R.C. 718.27 and 718.89; Section 803.100)

The bill limits the penalty a municipal corporation or the Tax Commissioner may impose for the failure to timely file a municipal income tax return. Currently, a municipal corporation may impose a penalty of $25 for each month a taxpayer fails to file a required income tax or withholding return, up to $150 for each return. The Commissioner may impose the same monthly penalty on those unfiled returns as well as on unfiled estimated tax declarations. The bill reduces these penalties to a one-time $25 penalty. The bill also exempts a taxpayer's first failure to timely file from the penalty, requiring the municipal corporation or Commissioner to either refund or abate the penalty after the taxpayer files the late return. These changes also apply to taxable years ending on or after January 1, 2023.

### Extension for businesses

(R.C. 718.05(G)(2) and 718.85(D)(1); Section 803.100)

The bill provides an additional, automatic one-month filing extension for municipal income tax returns where a business entity has received a six-month federal extension, bringing the full duration of the extension to seven months beginning in taxable years ending on or after January 1, 2023. The current extended deadline for individuals and business entities is the same as the extended federal deadline.

## Net profits tax reports and notifications

(R.C. 718.80 and 718.84; Section 803.80)

Under continuing law, a business that operates in multiple municipalities, and is therefore subject to multiple municipal income taxes, may elect to have TAX serve as the sole administrator for those taxes. For electing taxpayers, a single municipal net profit tax return is filed through the Ohio Business Gateway for processing by TAX, which handles all administrative functions for those returns, including distributing payments to the municipalities, billing, assessment, collections, audits, and appeals. The bill modifies, as described below, the reporting and notification requirements associated with this state-administered municipal net profits tax.

### TAX's municipal income tax report

The bill requires that twice a year, in May and December, TAX provide information to municipalities on any businesses that had net profits apportioned to the municipality, as reported to TAX, in the preceding five or seven months only, as applicable. (Net profits apportionable to the municipality, e.g., earned in the municipality, are generally subject to the municipality's income tax.) Under current law, this twice-per-year notification, done in May and November, is required to list information for businesses that had net profits apportioned to the municipality in any prior year. This change applies to reports required to be filed after the bill's 90-day effective date.

### Rate decrease notification

Under continuing law, by January 31 of each year, a municipal corporation levying an income tax must certify the rate of the tax to TAX. If the municipality increases the rate after that date, the municipality must notify TAX of the increase at least 60 days before it goes into effect. The bill requires a municipality to notify TAX, within the same 60-day notice period, when there is any change in its municipal income tax rate, including a decrease.

# Sales and use tax

## Sales tax holidays

(R.C. 131.44, 5739.01, 5739.02, and 5739.41; Section 510.10)

The bill authorizes a sales tax holiday for most items priced under $500 to be held over at least 14 days in August of 2024. The bill also requires the state to hold similar, possibly shorter, tax holidays in future years if the surplus revenue in the GRF reaches a certain threshold.

Continuing law authorizes a "back-to-school" sales tax holiday during the first Friday and following weekend in August of each year for school supplies that cost $20 or less and clothing that costs $75 or less. The bill's expanded sales tax holidays would occur during this same period, but would apply to a broader array of items and involve a higher price threshold.

### August 2024 sales tax holiday

The bill authorizes a sales tax holiday beginning August 1, 2024. The holiday will last at least 14 days, and may be longer if TAX, in consultation with OBM and the County Commissioners' Association of Ohio (CCAO), determines that the $1 billion earmarked for the holiday is sufficient

to reimburse the state and local governments for a longer holiday. In making this determination, the state must consider changes in consumer behavior as a result of the holiday.

During the sales tax holiday, most items priced under $500 will be exempt from state and local sales taxes. The holiday does not apply to motor vehicles, watercraft, alcohol, marijuana, and tobacco and nicotine vapor products.

Once the holiday is completed, TAX and OBM will estimate the amount of state and local revenue foregone as a result of the holiday and will reimburse the GRF, Local Government Fund, Public Library Fund, and counties and transit authorities that levy sales taxes for their proportionate revenue loss. For the August 2024 holiday, the reimbursements cannot exceed $1 billion.

### Future sales tax holidays

In each year thereafter, beginning in August of 2025, the state will hold a similar tax holiday if there is at least $60 million of surplus GRF revenue at the end of the preceding fiscal year. The holiday must be three days or more, depending on the surplus revenue available, as determined by TAX, in consultation with OBM and CCAO. Similar to the 2024 holiday, the parties must consider changes in consumer behavior around the time of the holiday when calculating the number of days the surplus revenue will support.

Under current law, any surplus revenue remaining at the end of a fiscal year, after any required transfer to the Budget Stabilization Fund, must be used to temporarily reduce income tax rates through a mechanism called the Income Tax Reduction Fund, or ITRF. The bill discontinues and liquidates the ITRF, and instead directs any surplus revenue to be used for future sales tax holidays. Any money remaining in the ITRF is transferred to fund these holidays, starting with the 2024 holiday described above.

Each future tax holiday will apply to the same items as the August 2024 holiday, and will include the same $500 per-item limit and the same reimbursement mechanism for the state and local governments. If there is insufficient surplus revenue to hold an expanded tax holiday in any year, existing law's "back-to-school" sales tax holiday will still be held in that year. If an expanded holiday is held, TAX must notify vendors of the holiday's dates by the first day of June preceding the holiday.

### Streamlined Sales and Use Tax Agreement

Ohio is currently a full member of the Streamlined Sales and Use Tax Agreement (SSUTA), which is a multistate agreement that imposes uniform sales tax collection and administration protocol on member states. Under the SSUTA, member states may only offer sales tax holidays for specific, defined items. For example, the SSUTA specifically allows sales tax holidays for school supplies, clothing, and Energy Star appliances.

The bill's sales tax holidays would exempt items that are not defined in the SSUTA, in possible conflict with the SSUTA. The bill requires TAX to coordinate with the SSUTA's governing board to pursue means by which the state can comply with the SSUTA.

### Baby product exemption

(R.C. 5739.01 and 5739.02; Section 803.50)

The bill exempts, beginning October 1, 2023, children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax. Under continuing law, sales of both children and adult diapers are exempt during the first weekend of August each year as part of Ohio's "sales tax holiday" for school supplies and clothing. In addition, adult diapers are exempt under continuing law if sold to a Medicaid recipient pursuant to a prescription.

## Lodging taxes

### Convention, entertainment, and sports facilities

(R.C. 5739.08 and 5739.09(X))

Under continuing law, counties, municipal corporations, and townships are authorized to levy an up to 3% excise tax on transactions by which hotels provide lodging to transient guests (referred to in this analysis as the "3% general lodging tax"). For counties, the use of such a tax's revenue is generally limited to making contributions to a convention and visitors' bureau under current law.

The bill authorizes a county with a population between 800,000 and 1 million, i.e., Hamilton County, to repurpose a portion of the revenue from its existing lodging taxes (its 3% general lodging tax and a special 3.5% convention center tax that county is authorized to levy) and to levy an additional 1% lodging to fund the acquisition, construction, renovation, expansion, maintenance, operation, or promotion by a convention facilities authority, convention and visitors' bureau, or port authority of a convention or entertainment facility or a sports facility intended to house a Major League Soccer team.

The bill also authorizes Cincinnati to repurpose a portion of the revenue from its existing 3% general lodging tax and its existing 1% special convention center lodging tax for those same purposes.

### Public safety services in a resort area

(R.C. 5739.09(A))

The bill authorizes a county to use a portion of the revenue from its 3% general lodging tax to fund public safety services in a municipality or township designated as a resort area, which is an area where at least 62% of the housing units are for seasonal, recreational, or occasional use, and where there are seasonal peaks of employment and demand for government services, among other similar requirements. Certain Lake Erie islands are the only currently designated resort areas in Ohio.

### Headquarters hotel exemption and financing

(R.C. 5739.093)

The bill authorizes a county with a population exceeding 800,000, i.e., Cuyahoga, Franklin, or Hamilton County, or a municipal corporation located in such a county ("eligible subdivision") to wholly or partially exempt a hotel associated with a convention center and located in that

subdivision from lodging taxes levied by the designating county or municipality. Only one such hotel, referred to in the bill as a "headquarters hotel," may be designated for any convention center.

Alongside the exemption, the eligible subdivision may impose payments in lieu of taxes (PILOTs) on the hotel operator, up to the amount of the exempted taxes, to be paid to the subdivision or directly to a convention facility authority, port authority, or an agent of either. The eligible subdivision or agency may then use these PILOTs, which are collected in the same manner as the exempted lodging taxes, to pay the costs of acquiring, constructing, renovating, or maintaining the headquarters hotel, the associated convention center, or any related infrastructure improvements. In essence, the bill creates a mechanism by which lodging tax revenue may be redirected to those specific facility projects, similar to a tax increment financing (TIF) arrangement in the context of property taxes.

To initiate this process, the eligible subdivision must notify any other eligible subdivision, the county's convention and visitors' bureau (CVB), and any township that levies a lodging tax on the proposed headquarters hotel. Then the eligible subdivision may adopt a resolution designating the headquarters hotel and listing the percentage of county and municipal lodging taxes that will be exempt and the duration of the exemption, which may not exceed 30 years. The resolution must list whether PILOTs will be imposed and to whom they are to be pledged.

The PILOTs must be pledged by the eligible subdivision to an "issuing authority," i.e., an eligible subdivision, convention facilities authority, or port authority, to pay the costs of the project for which the PILOTs are imposed, including the costs of any debt issued for that project. The issuing authority may also authorize the eligible subdivision to use PILOTs for the same purposes as any exempted lodging taxes could be used for, e.g., funding CVBs or general municipal purposes. Any PILOTs unspent at end of the project may be used by the eligible subdivision for the same purposes as its lodging taxes. The hotel operator may charge hotel guests for the cost of the PILOTs, in the same manner as lodging taxes are collected from guests.

An eligible subdivision may enter into an agreement with the headquarters hotel's operator by which the operator, and any succeeding operator, pledges to make binding payments to the subdivision or a port authority to ensure sufficient funds are available to finance the PILOT-funded facilities project.

The bill also prohibits the designation of a headquarters hotel that has not furnished lodging to guests before its designation from being considered to result in a diminution of the rate or revenue of the lodging tax. Under continuing law, in some instances, laws are prohibited from making such a diminution if lodging tax-backed bonds and notes are outstanding.

## Delaware county fairgrounds tax

(R.C. 5739.09(T) and 133.07)

The bill authorizes counties in which an agricultural society owns a facility used to conduct an annual harness horse race with at least 40,000 in attendance, i.e., Delaware County, or port authorities in such counties, to issue bonds backed by proceeds from an existing or renewed

special 3% lodging tax authorized for such a county to finance permanent improvements at fairground sites.

# Commercial activity tax (CAT)

## Increased exclusion

(R.C. 5751.01(E)(1), (N), (O), and (R), 5751.02(A), 5751.03, 5751.04, 5751.05, 5751.051, 5751.06, 5751.08, and 5751.091; Section 803.340)

Under current law, businesses with less than $150,000 in total taxable gross receipts for a calendar year are excluded from the CAT. Businesses also pay a minimum tax on the first $1 million in gross receipts, the amount of which scales up with the taxpayer's total taxable gross receipts for the year, up to $2,600 for those that make over $4 million (i.e., the standard rate of 0.26%).

The bill increases the exclusion threshold over the next two years. For tax periods beginning in 2024, businesses with taxable gross receipts of $3 million or less and, for tax periods in 2025 and thereafter, businesses with taxable gross receipts of $6 million or less, are excluded from the CAT. After 2025, the $6 million threshold is indexed for inflation so that it increases according to increases in the prices of all goods and services composing the national gross domestic product (GDP). The Tax Commissioner must compute the adjustments in August of each year to be applied the following calendar year.

The bill also repeals the minimum tax so that businesses are only taxed on their taxable gross receipts in excess of those applicable exclusion amount at the existing CAT rate of 0.26%. For example, under current law, a business with $4 million of gross receipts would pay 0.26% of $4 million. Under the bill, for 2024, the business would only pay 0.26% of $1 million.

The bill also eliminates calendar year filing, which was principally available to taxpayers with less than $1 million in taxable gross receipts, requiring all taxpayers to file quarterly.

## Broadband funding exclusion

(R.C. 5751.01(F)(2)(rr); Section 803.190)

The bill excludes from gross receipts taxable under the CAT any federal, state, or local funding received or debt forgiven to provide or expand Internet broadband service in Ohio, including video service, voice over internet protocol service, and internet protocol-enabled services. The exclusion applies to CAT tax periods ending on or after the bill's 90-day effective date.

## Revenue distribution

(R.C. 5751.02(C) and (D); Section 812.20)

The bill repeals a provision that earmarks a set percentage of CAT receipts for the payment of tangible property tax replacement payments. Under current law, the School District Tangible Property Tax Replacement Fund (Fund 7047) receives 13% of CAT receipts, while the Local Government Tangible Property Tax Replacement Fund receives 2%. The remaining 85% is credited to the GRF.

The bill removes these percentage allocations to the two replacement funds and, instead, requires the Tax Commissioner to transfer CAT receipts to those funds as necessary. Under continuing law, money in those funds is used to reimburse local governments for their revenue loss from the state's repeal of the tax on business tangible personal property.

# Financial institutions tax

## Financial institution taxpayer group

(R.C. 5726.01; Section 803.70)

Continuing law imposes the financial institutions tax (FIT) on financial institutions, including all entities that are reported on the institution's federal regulatory FR Y-9 or call report. The bill clarifies that a "financial institution" includes all of the entities consolidated, rather than "included," in the institution's report. The bill further clarifies that, in the case of a small bank holding company that is not required to file a FR Y-9 under federal law, the financial institution includes all of the entities that would be included in statement FR Y-9 if the company were required to file one.

## Repeal deduction for REIT investments

(R.C. 5726.04; repealed R.C. 5726.041)

The bill repeals an expired FIT deduction that was allowed for an institution's investment in a qualifying real estate investment trust. The deduction was available between 2014, the first year the FIT was levied, and 2017. It essentially allowed an institution that owned shares of a publicly traded REIT to phase in the value of that investment into the institution's tax base over those four years.

# Sports gaming tax

## Rate increase

(R.C. 5753.021; Sections 803.40 and 812.20)

The bill increases the rate of the state's sports gaming tax, from 10% to 20%. Under the continuing law, the tax is levied on the "sports gaming receipts" of online and in-person sports gaming businesses, other than those that offer gaming through lottery terminals. A business' sports gaming receipts include the total amount the business receives as wagers, less winnings paid, voided wagers, and, beginning in 2027, a portion of the promotional gaming credits wagered by patrons.

The rate increase applies to sports gaming receipts received on and after July 1, 2023.

## Allocation of sports gaming revenue

(R.C. 5753.021 and R.C. 5753.031; Sections 803.40 and 812.20)

Current law allocates nearly all (98%) of sports gaming tax revenue to K-12 education and athletics. Specifically, 50% of such revenue must be used to generally support K-12 education and 50% must be used for K-12 athletics and extracurricular activities. The bill requires that all of this

revenue be used for the general support of K-12 education, effectively eliminating the 50% reserved for K-12 athletics.

This reallocation begins to apply on and after July 1, 2023.

# Cigarette and tobacco and vapor product taxes

## Refund on bad debts

(R.C. 5743.06 and 5743.53; Section 803.150)

The state levies excise taxes on the sale of cigarettes, other tobacco products (OTP), and vapor products containing nicotine. Cigarette taxes are generally paid by wholesalers, whereas, OTP and vapor products taxes are paid by distributors. The bill allows a wholesaler or distributor to obtain a refund of excise taxes remitted on certain bad debts arising from the sale of those products, less any discounts allowed, under continuing law, for affixing the tax stamp or prompt payment (referred to in this analysis as "qualifying bad debts"). The deduction applies only to the specific tax levied on the product that is the basis of the qualifying bad debt, and applies to both the state and, if applicable, local excise taxes.

The bill allows a wholesaler or distributor to apply to the Tax Commissioner for a refund of the cigarette, OTP, or vapor products taxes paid on qualifying bad debts. The application must include a copy of the original invoice and evidence of delivery of the product to the purchaser, that the purchaser did not pay, and that the wholesaler or distributor used reasonable collection practices to try to collect the debt. An application must also include evidence of the wholesale price or vapor volume, as applicable, at the time the product was subject to taxation and any other information the Commissioner requires.

A qualifying bad debt is any debt arising from the sale of cigarettes, OTP, or vapor products that satisfy each of the following criteria:

- The cigarette, OTP, or vapor products tax has been paid.
- The debt has become worthless or uncollectible.
- The debt has been uncollected for at least six months, but not more than three years from either the time the debt became uncollectible (in the case of cigarette taxes) or the time the tax was remitted (OTP and vapor products taxes).
- The wholesaler or distributor charges off the debt as uncollectable on its books on or after January 1, 2024.
- The wholesaler or distributor deducts, or would be allowed to deduct, the bad debt in calculating federal income tax liability.

A qualifying bad debt does not include interest or financing charges, collections costs, accounts receivable that have been sold or assigned to a third party, or repossessed property. No person other than a wholesaler or distributor that remitted the applicable tax and generated the bad debt may receive a bad debt refund. If any portion of a bad debt for which a wholesaler or distributor receives a refund is later paid, the wholesaler or distributor must pay the applicable tax on the amount of the debt recovered.

The Commissioner may adopt any rules necessary to administer these refunds.

Continuing law authorizes a very similar deduction and refund for sales taxes paid on bad debt.[260] However, sales taxes are assessed against a consumer and remitted to the vendor, for payment to the state. In contrast, the wholesaler or distributor is generally liable for the cigarette, OTP, and vapor products tax even though each tax is generally passed down to retailers and consumers as a matter of practice.

## Taxation of vapor product dealers

(R.C. 5743.01, 5743.51, 5743.63, and 5743.64)

The bill authorizes an exemption from the state's vapor products tax for certain distributors.

In general, the vapor products tax applies at the first point in which a distributor receives untaxed products in the state. Under the bill, a distributor that receives untaxed vapor products is not required to pay the tax if the distributor (1) is a manufacturer or importer of vapor products registered with the state and the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives and (2) only sells vapor products to other state-licensed distributors or to purchasers outside of the state. However, the bill allows such a distributor to pay the tax voluntarily on products it sells to another distributor in the state, if that other distributor agrees to the arrangement in a signed statement filed with the Tax Commissioner.

The vapor products tax also applies to the "storage, use, or consumption" of vapor products, if the tax has not already been paid on the products by a distributor or an out-of-state seller. The bill exempts a manufacturer or importer described above from paying this tax on its storage, use, or consumption of vapor products that will be sold outside of Ohio.

Additionally, under continuing law, any person that intends to transport vapor products with a volume greater than 500 milliliters (for liquid products) or 500 grams (nonliquids) must first obtain consent from the Tax Commissioner. The consent is not required if the tax has already been paid on the transported product. The bill adds that consent is also not required if that volume of product is transported by a manufacturer or importer described above, even if the tax has not been paid.

## Tobacco and vapor product retail license

(R.C. 5743.61; Section 803.350)

Beginning July 1, 2024, the bill requires all persons that sell nicotine vapor products or tobacco products other than cigarettes (OTP) at retail to consumers to obtain an annual license to operate in Ohio. The licensing process for vapor and OTP retailers is very similar to the process for vapor and OTP distributors under continuing law. Generally speaking, licensed distributors sell vapor products and OTP to retail dealers and other licensed distributors. Sometimes, a retailer that sells products directly to consumers must obtain a distributor license, if the retailer sells vapor products or OTP upon which taxes have not yet been paid. State taxes on vapor

[260] R.C. 5739.121, not in the bill.

products and OTP are collected from licensed distributors so, unlike other vapor and OTP licenses administered by TAX, licensed vapor and OTP retailers are not required to collect or remit those taxes. However, like all other vendors with a nexus to Ohio, licensed retailers must collect and remit state and local sales taxes.

A person seeking a retail license to sell vapor products, OTP, or both, must apply to TAX, on a form prescribed by TAX. The application must include the name of the applicant, each of the applicant's places of business, and any other information TAX considers necessary. The license is valid for one year beginning on the first day of February. The annual application fee is $125 per business location. If a license is issued after February 1, the application fee is reduced proportionally for the remainder of the year. However, the minimum license fee is $25. If the original license is lost, destroyed, or defaced, the retailer may request a duplicate license for $25. Revenue from the license fee is deposited to the Cigarette Tax Enforcement Fund, which is used to offset the Department of Taxation's expenses in enforcing the cigarette, OTP, and vapor products tax law.

The bill provides guidelines as to what constitutes a "place of business" for the purpose of determining the applicant's license fee. Multiple points of sale may be considered the same place of business for licensure purposes if they are located in contiguous, adjacent, or adjoining buildings, or in a single building under one roof, and connected by doors, halls, stairways, or elevators. The spaces composing a place of business must be leased, licensed, controlled by, or supervised by the same applicant.

The bill allows but does not require TAX to adopt rules requiring that applicants for a vapor or OTP retailer license demonstrate compliance with state taxes, charges, and fees. TAX may impose a penalty of up to $1,000 on any person found to be selling vapor products or OTP at retail without a license.

## Cigarette tax license renewal deadline

(R.C. 5743.15; Section 757.10)

The bill extends the deadline for renewing annual cigarette tax licenses. Under continuing law, a retailer, wholesaler, importer, or manufacturer of cigarettes is required to hold a license issued by TAX before selling or otherwise trafficking in cigarettes in Ohio. Such cigarettes are subject to state and county cigarette excise taxes. Under current law, each license expires on, and must be renewed by, the fourth Monday in May. The bill extends the renewal deadline to June 1.

The bill applies the renewal extension to existing licenses, so those licenses will remain valid until June 1, 2024, rather than May 27, 2024.

## Cuyahoga County cigarette and vapor products taxes

(R.C. 5743.01, 5743.021, 5743.025, 5743.03, 5743.05, 5743.33, 5743.511, 5743.52, 5743.521, 5743.54, 5743.55, 5743.56, 5743.57, 5743.59, 5743.60, 5743.62, 5743.621, 5743.63, 5743.631, and 5743.64; Section 803.230)

The bill modifies the authority of Cuyahoga County to levy cigarette and vapor products taxes. First, the bill rescinds a recent act, S.B. 164 of the 134th General Assembly, which allows

the county to modify its cigarette tax base and to levy a new tax on nicotine vapor products. Second, the bill removes a 30¢ limit on the amount of cigarette taxes that can be levied.

#### Cigarette tax base

Under continuing law, Cuyahoga County can levy a tax on the sale, distribution, or use of cigarettes. Before S.B. 164, the tax could consist of two different levies: a tax of 30¢ per pack to support arts and cultural facilities and a tax of 4.5¢ per pack to fund the operation of a sports facility. Cuyahoga County is currently the only county authorized to levy a cigarette tax.

S.B. 164 allowed the county to convert its existing 30¢ per pack tax for arts and cultural facilities to a tax based on wholesale price. The new tax could equal up to 9% of the wholesale price of a pack of cigarettes.

The bill rescinds this change. Instead, the county may continue to levy a cents-per-pack tax to support arts and cultural facilities. However, the bill also removes the previous 30¢ limit on the tax, allowing the county to levy a rate greater than that amount, provided that county voters approve the increase.

#### Vapor products tax

The bill also repeals a provision of S.B. 164 that allowed Cuyahoga County to levy a new wholesale tax on nicotine vapor products to funds its arts and cultural district. That tax would be collected in the same manner as the state's existing tax on vapor products, which is paid primarily by distributors. However, unlike the state tax, which is volume-based, the county tax would be based on the products' wholesale price, at a rate of up to 9%.

#### Application to pending proposals

If Cuyahoga County has already submitted a ballot question to modify its cigarette tax base or levy a vapor products tax before the bill's 90-day effective date, the bill requires that the board of elections decline to place the question on the ballot.

## Motor fuel use tax

### Personal liability

(R.C. 5728.16)

The bill imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax on behalf of a business taxpayer. An individual's personal liability under the bill is not discharged by the dissolution, termination, or bankruptcy of the business. If more than one individual has personal liability under the bill for the unpaid taxes, all of those individuals will be joint and severally liable. Several other state taxes have similar personal liability imposed.[261]

[261] E.g., R.C. 5735.40 (motor fuel tax), 5743.57 (tobacco and vapor products taxes), and 5747.07 (employer income tax withholding), not in the bill.

### Fuel use tax background

In addition to a motor fuel tax imposed on motor fuel dealers, the state imposes a motor vehicle fuel use tax on heavy trucks on the amount of motor fuel consumed in Ohio, but purchased outside Ohio. The rate of this tax is the same as for the dealer-imposed motor fuel tax. A refund or credit is allowed for the fuel use tax on fuel purchased in Ohio for use in another state, provided that the other state imposes a tax on such fuel and allows a similar credit or refund.

# Public utility taxation

## Taxation of heating companies

(R.C. 5727.30 and 5751.01(E); Sections 757.80 and 803.330)

The bill exempts heating companies from the state's public utilities excise tax, and instead subjects such companies to the commercial activity tax (CAT). A heating company is a public utility that supplies water, steam, or air to consumers for heating purposes.

Under continuing law, the state levies a tax on the gross receipts of certain public utilities, including heating companies. Since public utilities pay this separate gross receipts tax, they are exempt from the CAT, which is a general tax on businesses' gross receipts. Under the bill, heating companies would become exempt from the public utility excise tax beginning on May 1, 2023. Since this is in the middle of a CAT quarterly tax period, heating companies would not become subject to the CAT until the beginning of the next quarter, on July 1, 2023.

The bill additionally requires that, if a heating company is currently recovering public utility excise tax amounts from customers in the company's rates, the company must pass on to customers its net reduction in taxes. The bill requires a company, no later than six months after May 1, 2023, to use one of three options in ongoing public utility law to pass on the reduction. At the company's option, it must (1) file an application not for an increase in rates under the ratemaking law, (2) file a modified schedule, or enter into a modified reasonable arrangement, regarding rate adjustments allowed under the law, or (3) enter into a modified agreement with a customer who has entered into an agreement with a company under the law that allows agreements for free or reduced rates.[262]

# Municipal ridesharing tax

(R.C. 4925.09 and 4925.11)

The bill authorizes the largest municipality in a county with a population between 800,000 and 1 million, i.e., Cincinnati, to levy a tax on ridesharing services provided by a transportation network company (TNC) to passengers who begin or end their ride in the municipality.

The bill requires Cincinnati to use revenue from the tax to fund the costs of administering the tax and for economic development purposes, including, affordable housing, public

[262] R.C. 4905.31, 4905.34, and Chapter 4909, not in the bill.

infrastructure and facilities, residential development, mixed-use development, commercial development, land development, community facilities, and convention facilities, including hotels.

# Tax incentives

## Low-income housing tax credit

(R.C. 175.16, 5725.36, 5726.58, 5729.19, and 5747.83, with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The bill authorizes a nonrefundable tax credit for the development of low-income rental housing that is awarded in conjunction with an existing federal low-income housing tax credit (LIHTC). The credit may be claimed against the insurance premiums, financial institution, or income tax. The Director of the Governor's Office of Housing Transformation (GOHT) reserves credit amounts for federal LIHTC projects up to the amount necessary to ensure the project's financial feasibility. The total amount of state credits reserved by GOHT is limited to $100 million per fiscal year, though unreserved or recaptured amounts in one fiscal year may be carried forward and reserved in the next. Eligibility begins for projects placed in service on or after July 1, 2023, and GOHT is prohibited from reserving credits after June 30, 2027.

### Federal LIHTC

The federal LIHTC is a federal income tax credit that offsets a portion of a developer's construction costs in exchange for reserving a certain number of rent-restricted units for lower-income households in a new or rehabilitated facility. In Ohio, the federal LIHTC is administered by GOHT.

To receive a federal LIHTC, developers must apply to GOHT before undertaking a project. If the project preliminarily qualifies for credit, based on federal criteria and the state's allocation plan, GOHT may set aside (or "allocate") a credit. Receipt of the credit is contingent upon completion of the project and the project entering service, i.e., beginning to rent units, generally within two years of allocation.[263] In practice, developers typically sell the rights to claim federal LIHTCs upon receiving an allocation to secure up-front financing necessary to undertake the project.

### Ohio LIHTC

Any project that is allocated a federal LIHTC may also qualify for the bill's Ohio LIHTC, as long as the project is located in Ohio and placed into service at any time on or after July 1, 2023.

#### *Reserved credit*

A developer does not need to separately apply for the Ohio LIHTC. Instead, GOHT may reserve a state credit for any qualified project when allocating a federal LIHTC. When reserving a state credit, GOHT must send written notice of reservation to each of the qualified project's owners, which must include the aggregate amount of the credit reserved for all years of the qualified project's ten-year credit period and state that the receipt of the credit is contingent

[263] 26 U.S.C. 42.

upon issuance of an eligibility certificate after the project is placed into service. After receipt of that notice, the projects owners must identify to GOHT the party that will issue annual credit allocation reports to GOHT (see "***Claiming the credit and reporting requirements***," below). This "designated reporter" may be the owner or its member, shareholder, or partner.

The amount of credit reserved for any particular qualified project is determined by GOHT, but in no case may the reserved credit, combined with the allocated federal credit, exceed the amount necessary to ensure the financial feasibility of the project. The bill additionally requires GOHT to reserve credits in a manner that ensures the qualified project is creating housing units that would not otherwise be created.

### *Awarded credit*

After the project for which a credit is reserved is placed into service and GOHT approves the federal LIHTC, GOHT must issue an eligibility certificate to each project owner and send a copy to TAX and INS. The certificate must state the amount of the credit that may be claimed for each year of the ten year credit period, which is the lesser of:

- The amount of the federal LIHTC that would be awarded for the first year of the federal credit period absent a first-year reduction required by federal law;
- $^{1}/_{10}$ of the reserved credit amount stated in the notice reserving the state LIHTC.

This provision effectively caps the amount of a state LIHTC at the amount of the corresponding federal credit.

### *Claiming the credit and reporting requirements*

The bill allows the qualified project's owners, or the equity owners of a pass-through entity that is the project owner, to claim the state LIHTC. An owner is a person holding a fee simple or ground lease interest in the project. The credit may be applied against more than one tax over more than one year, and the credit may be allocated amongst various owners and their equity owners by agreement. The total credits claimed in connection with the applicable year of the project's credit period must not, however, exceed the amount stated on the eligibility certificate. Even though the credit is nonrefundable, any unclaimed amounts may be carried forward for up to five years.

Each year, a project's designated reporter must report to GOHT a list of each project or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to GOHT within a time frame that GOHT must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

### *Recapture*

Federal law allows for the recapture of federal LIHTCs. Under the bill, if any portion of the federal LIHTC allocated to a qualified project is recaptured, GOHT must recapture a proportionate

amount of the state credit allocated to the same project. To effectuate this recapture, GOHT must request that TAX or INS, as applicable, issue an assessment to recover any previously claimed credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

#### *Fees and rules*

The bill allows GOHT to assess application, processing, and reporting fees to cover the cost of administering the tax credit. It also allows DEV, in consultation with GOHT, TAX, and INS, to adopt rules necessary to administer the credit.

## Single-family housing development credit

(R.C. 175.17, 5725.37, 5726.59, 5729.20, and 5747.84, with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The bill authorizes a nonrefundable tax credit against the insurance premiums, financial institutions, or income tax for investment in the development and construction of affordable single-family homes. To obtain a credit, a local government or quasi-public development entity, in partnership with a private "development team," must submit an application to the Governor's Office of Housing Transformation. Upon approving an application, the Office reserves a credit for the applicant to be awarded when the project is completed. The credit equals the amount by which the fair market value of the project's completed homes exceed the project's development costs. The applicant may allocate credits to taxpayers of the credit-eligible taxes who invest capital in the project. The total credit amount is claimed in equal increments over the ten years after the project's completion, and each project home is subject to an Office-prescribed affordability requirement for the ten years following its initial sale to a qualified buyer ("affordability period").

### Application process

A county, township, municipal corporation, regional planning commission, community improvement corporation, economic development corporation, port authority, or county land reutilization corporation, i.e., a land bank, may apply for a credit. Each application must identify a project's development team, a person that will make annual credit allocation reports on behalf of the applicant ("designated reporter"), and an estimate of the project's total development costs. The Office may charge application, processing, and reporting fees to cover the cost of administering the credit.

### Credit reservation and limits

The bill requires the Office to develop a plan for competitively awarding tax credits by establishing criteria and metrics by which projects will be evaluated. The Office is allowed to reserve a credit for any single-family housing development project that is located in Ohio and that meets the plan's qualifications. The Office's plan may allocate credits in a pooled manner. The bill sets forth several criteria, described below, that the Office may consider when evaluating applications, but allows DEV to adopt rules, in consultation with the Office, TAX, and INS, specifying the exact criteria to be considered.

| Suggested criteria to consider |
| --- |
| Underwriting criteria to assess the risk associated with a project and criteria by which the sponsoring applicant shall be responsible for risk associated with the project, such as homeowner abandonment, default, or foreclosure. |
| Requirements that the applicant provide capital assets or other investments to the project. |
| Criteria regarding the purchase, ownership, and sale of completed project homes. |
| Measures to maintain affordability of project homes during the affordability period, which may include a deed restriction for some or all of the tax credit value or appreciated value of the home. |

The Office must notify each applicant, in writing, whether or not the applicant's project is approved for a credit reservation. If a project is approved, the notice will include the tax credit reservation amount with the stipulation that final receipt of the credit is contingent upon the project's completion and meeting certain reporting requirements. The amount of credit reserved for any single project is limited to the amount by which the fair market value of the project's homes, as appraised by the Office, exceed the project's estimated development costs. However, this amount can be increased or decreased depending on the actual development costs as they are certified at the time the credit is issued after completion of the project.

The bill generally limits the amount of total credits that may be reserved in a fiscal year to $50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year. The Office is prohibited from reserving any credits after June 30, 2027.

### Project completion and claiming the credit

When a project is completed, the bill requires the original applicant to notify the Office and provide a final development cost certification. At that time, the Office is required to appraise the project's finished homes and, after approving the applicant's final cost certification, compute the amount of the tax credit. The Office then issues an eligibility certificate to the applicant that states the amount of the credit, i.e., $^1/_{10}$ of the amount issued in the initial certification, subject to any increase or decrease as a result of the final appraisal and cost certifications. That credit amount may then be claimed in each year of the ten year credit period listed on the certificate. The Office is required to certify a copy of each eligibility certificate to TAX and INS.

The applicant may allocate all or a portion of the annual credit amount for any year of the credit period to one or more project investors or equity owners of a pass-through entity project investor. An investor or owner allocated a credit may claim it against the insurance premiums, financial institution, or income taxes after the eligibility certificate has been issued and the annual reporting requirements discussed below have been complied with. To do so, the investor or owner must submit a copy of the certificate with the tax return for the year in which they claim the credit. The bill authorizes TAX and INS to request other documentation which an investor or owner must provide to claim the credit. If the credit exceeds the taxpayer's tax liability for that year, the credit may be carried forward for up to five years.

If a project ceases to qualify for a credit, the Office may disallow and recapture any credit issued by requesting that TAX or INS, as applicable, issue an assessment to recover any previously claimed credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

### Continuing obligations and reporting requirements

Throughout the development of the project, the applicant must maintain ownership of the homes until they are sold to qualified buyers. The bill authorizes DEV to establish, by rule, criteria to evaluate the qualifications for buyers. A qualified buyer must occupy a home constructed as part of a covered project as the buyer's primary residence for all ten years of the affordability period. During this period, the affordability of the home, as determined by DEV by rule, is to be maintained and services are to be provided by the applicant's development team.

Each year, a project's designated reporter must report to the Office a list of each investor or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to the Office within a time frame that the Office must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

## Film and theater tax credits

### Film and theater production credit cap

(R.C. 122.85)

The bill increases the total amount of film and theater tax credits that may be awarded each fiscal year, from $40 million to $50 million. It also requires that $5 million of the $50 million cap be reserved for Broadway theatrical productions each fiscal year. Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least $300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the CAT, FIT, or income tax.

Under continuing law, DEV awards credits in two rounds, with the first ending July 31 and the second ending January 31. Currently, DEV may only award up to $20 million in the first round, plus any unused credits from the previous year. The bill increases that limit to $25 million, and requires unawarded credits from the $5 million reserved for Broadway productions to remain reserved for those productions when carried forward to the next year. For FY 2024, the first round limit remains $20 million because this provision will not have taken effect before the July 31 application deadline.

### Film and theater capital improvement tax credit

(R.C. 122.852, 122.85(A)(4), 5726.59, 5726.98, 5747.67, 5747.98, 5751.55, and 5751.98)

The bill authorizes a new tax credit for a motion picture or Broadway theatrical production company that completes a capital improvement project in Ohio. Eligible projects include the construction, acquisition, repair, or expansion of facilities or equipment that will be used in a motion picture or Broadway production or for postproduction.

Generally, the credit equals 25% of either the company's actual qualified expenditures, or the amount of such expenditures estimated on the company's application, whichever is less. Qualified expenditures are Ohio-sourced capital improvement expenditures and include the purchase of goods or services directly for use in a capital improvement project, as well as any accounting and auditing expenses incurred to comply with the bill's reporting requirements. They do not include expenses on the basis of which an existing motion picture and theater credit has been awarded.

The credit is capped at $5 million per project, $5 million per county, and $100 million per fiscal year overall. If DEV does not issue the full $100 million allotment in a particular fiscal year, the excess allotment can be carried forward to the next fiscal year.

Key features of the credit include the following:

- The credit is refundable and may be claimed against the CAT, FIT, and income tax;
- A credit recipient can sell or transfer all or part of the credit to another person or persons with notice to DEV;
- A production company must show that it is making reviewable progress on its capital improvement project within 90 days after the Director approves the project. DEV can rescind approval of a project that does not begin between that 90-day deadline, unless there is good cause for the delay.
- The production company must engage an independent certified public accountant to certify the company's qualified capital improvement expenditures.
- DEV must adopt rules governing the credit program, including rules for evaluating applications.
- DEV will review and award applications for the credit in one round each fiscal year, beginning in FY 2025. A production company may apply for the credit either before or after the capital improvement project is complete. DEV may charge an application fee equal to the lesser of $10,000 or 1% of the estimated value of the credit.

The application must include a description of the project, the project's schedule, the estimated project expenditures and credit amount, and the estimated economic impact of the project in the state as a whole and in the community in which the project is located. DEV will rank applications based on their likely economic impact, the potential number of new jobs created, and the potential new payroll for employees in this state. After ranking the applications, DEV will

award credits to projects in the order of their ranking, starting with the projects that have the greatest economic and workforce development impact.

Once a project is approved and an accountant has certified the qualified expenditures, DEV will issue the production company a tax credit certificate.

## Historic rehabilitation tax credit eligibility

(R.C. 149.311; Section 803.270)

The bill expands an existing prohibition on LIHTC property receiving a historic rehabilitation tax credit to any other federally subsidized residential rental property that is subsidized by one of the federal programs discussed in "**Valuation of subsidized residential rental housing**," above. The expanded prohibition applies to credit applications filed on or after the bill's 90-day effective date, but does not apply to applications for which credit approval is pending on that date.

## Job creation and retention credit recapture adjustments

(R.C. 122.17 and 122.171)

Under continuing law, when DEV discovers that a taxpayer that has received a job creation or job retention tax credit (JCTC or JRTC) is not in compliance with the agreement for the credit, DEV may report that noncompliance to the Tax Credit Authority (TCA). After giving the taxpayer an opportunity to explain the noncompliance, TCA may require the taxpayer repay a portion of the credit by certifying the repayment to TAX or INS. The bill authorizes TCA to adjust that repayment amount if circumstances change after this, but only once within 90 days after the certification. However, no adjustment is allowed if the taxpayer has already repaid the amount or if TAX's or INS's assessment has been certified to the Attorney General for collection.

### Background

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the tax credit agreement). The credits may be claimed against the CAT, FIT, petroleum activity tax, domestic or foreign insurance premiums taxes, or personal income tax. The JCTC is a refundable credit, while the JRTC is nonrefundable. To ensure compliance with the terms of the agreement, each employer must file an annual report with TCA in which it reports its number of employees and payroll, among other metrics.

## Research and development tax credits

(R.C. 5726.56 and 5751.51)

Continuing law allows a nonrefundable tax credit against the FIT and CAT equal to 7% of the taxpayer's excess qualified research and development (R&D) expenses above the average of the taxpayer's R&D expenses in the three preceding years. Unclaimed credits may be carried

forward for up to seven years. The bill changes the way certain taxpayers calculate and claim that credit, imposes recordkeeping requirements, and allows TAX more flexible audit authority.

#### Taxpayer groups

The bill modifies how a taxpayer comprised of more than one person – e.g., a pass-through entity with several owners – may calculate and claim R&D credits. Both the FIT and CAT require or allow such a "taxpayer group" to file and pay the tax as a single taxpayer.

The bill requires a taxpayer group to compute the R&D credit on a member-by-member basis, rather than across the entire taxpayer group. In other words, the group's total R&D credit equals the aggregate credit computed against each member's qualified R&D expenses. This computation and the R&D credit that may be claimed must be made on a form prescribed by TAX.

The bill also limits the members whose R&D expenses may be included in a group's aggregate credit amount by only allowing such members to include their portion of the credit if they are members of the group on December 31 of the year during which the R&D expenses are incurred. A similar membership requirement applies to the computation of any R&D credit carryforwards.

#### Recordkeeping requirements

The bill requires a taxpayer claiming an R&D credit to retain records substantiating the claim. The records must be kept for four years after the due date for the return on which the credit is claimed, or four years after it is actually filed, whichever is later. Records required to be retained include those relating to any R&D expenses used in calculating the credit and incurred in the year for which the credit was claimed and for the three preceding years.

#### Audits

In addition to TAX's general audit authority, the bill authorizes TAX to audit a representative sample of a taxpayer's R&D expenses to verify that the taxpayer has correctly computed its R&D credit. In undertaking this audit, the bill requires that TAX make a good faith effort to agree on a representative sample, but it does not preclude a representative sample audit absent such an agreement.

### Exemption and exclusion for consumer-grade fireworks fees

(R.C. 5739.02(B)(65) and 5751.01(F)(2)(tt); Sections 803.50 and 803.190)

Continuing law imposes a 4% fee, collected by the State Fire Marshal, on the gross receipts from consumer-grade fireworks sales by licensed fireworks manufacturers, wholesalers, and retailers. The manufacturer, wholesaler, or retailer may separately or proportionately bill the fee to another person, including the consumer.[264]

The bill exempts the consumer-grade fireworks fees from sales and use tax, beginning October 1, 2023, so long as they are separately stated on the invoice, bill of sale, or similar

[264] R.C. 3743.22, not in the bill.

document the vendor gives the consumer in the retail sale. The bill also authorizes a business to exclude from its taxable gross CAT receipts collections of any separately stated and billed fireworks fees, beginning for CAT tax periods ending after the bill's 90-day effective date.

## Deduction and exclusion for East Palestine derailment payments

(R.C. 5747.01(A)(39) and 5751.01(F)(2)(ss); Section 803.160)

The bill also authorizes an income tax deduction and a more limited CAT exclusion for certain payments received by a taxpayer and related to the train derailment near East Palestine that occurred on February 3, 2023. The deduction and exclusion applies to taxable years or tax periods beginning on or after January 1, 2023.

### Income tax deduction

Under federal income tax law, a taxpayer may deduct payments received to reimburse or compensate the taxpayer for costs incurred for certain declared disasters.[265] The bill authorizes a state income tax deduction for any such payments resulting from that derailment that would be deductible under federal law if the derailment was a declared disaster that triggered the federal deduction. The payments must be made by a federal, state, or local government agency, a railroad company or any subsidiary, insurer, related person, or agent of a railroad company ("eligible payers"). The bill additionally authorizes the taxpayer to deduct any payments received from an eligible payer to compensate for business losses.

### CAT exclusion

The bill authorizes a CAT exclusion for gross receipts received by a taxpayer from an eligible payer as compensation for business losses resulting from that derailment.

# Property tax

## Property sales ratio studies

(R.C. 5715.012; Section 803.370)

The bill makes several changes to the information that TAX uses to review and update property values for tax purposes. Under continuing law, as part of the three-year cycle of property reassessment, TAX performs studies that analyze a county's property values and recent sales data. These "sales ratio" studies compare sales prices and the assessed value of property. The goal is to ensure that property is being assessed at 35% of its fair market value. If TAX's studies show that property in a particular county is not being taxed at that threshold, TAX will require an adjustment in that county's property values. These studies, in particular, play a significant role in updating property values as part of a county's triennial update.

The bill revises these sales ratio studies. First, the bill requires that the studies include all sales made during the preceding three years, and that TAX give each of those sales equal weight. Under current law, TAX is only required to consider a "representative sampling" of the previous three years' sales, and may give more or less weight to sales from different years. Second, if the

[265] 26 U.S.C. 139.

total number of sales of similarly situated property during the three previous years is less than 5% of all such properties in the county, the bill allows TAX to require the county auditor to conduct actual appraisals of property in that class. Currently, TAX may conduct appraisals if there are insufficient sales to constitute a representative sample. Third, the bill requires TAX to consider "current economic conditions" when recommending an adjustment in county property values.

The bill's changes apply beginning in tax year 2023. Since TAX will likely have already completed its sales ratio studies and certified adjustments to a county's property tax values for tax year 2023 before the bill takes effect, the bill requires TAX to recalculate those adjustments, using the bill's new requirements. TAX must certify its updated values within 15 days after the bill's 90-day effective date. Due to this delay, the bill also extends the time for affected counties to finalize their tax duplicate and for taxpayers to make both of their installments of 2023 property taxes.

## Temporary CAUV adjustment

(R.C. 5715.01; Section 757.90)

The bill temporarily adjusts the current agricultural use value ("CAUV") of farmland for property tax purposes. The changes will apply to farmland when it next undergoes a reappraisal or triennial update in 2023, 2024, or 2025.

Pursuant to authority granted in the Ohio Constitution, farmland may be valued at its CAUV – its value considering only its use for agriculture – rather than its fair market value. This usually results in a lower tax bill for farm owners because the land is often valued below its actual market value, particularly in areas where farmland is in demand for development purposes. A farm's CAUV is calculated using a complex formula that takes into account the farm's soil type, crop patterns and prices, management costs, and estimated income potential.

Under the bill, instead of directly applying this formula, a farm's CAUV at its next reappraisal or update will equal the average of the formula value calculated for that year and the values that would have been assigned if the land were in a county that underwent a reappraisal or update in each of the preceding two years.

As an example, consider a farm located in a county that undergoes a reappraisal in 2023. If the formula were applied for that year, the farm's CAUV would be $200 per acre. However, if the farm had been reappraised in 2022, its value would have been $190 per acre, and if it had been reappraised in 2021, its value would have been $180 per acre. Under the bill, the farm's reappraisal value will be $190 per acre (the average of $180, $190, and $200).

The adjusted value will apply until the land undergoes another reappraisal or update. In the above example, the farm's adjusted value will apply in 2023, 2024, and 2025. When the farm undergoes a triennial update in 2026, its value will be determined using the existing statutory formula.

Under continuing law, TAX publishes CAUV tables that prescribe the per-acre value of each soil type in the state. The bill requires that, if these tables have already been published for

the 2023 tax year when the provision takes effect, TAX must update the tables within fifteen days after the provision's effective date to take the bill's changes into account.

## Park district renewal levies

(R.C. 1545.21)

The bill authorizes park districts to propose renewal levies, which extend the term of any existing levy at its current effective millage rate unless coupled with an increase or decrease. Under continuing law, a park district's voted property tax may be extended through a replacement procedure unique to park districts. Unlike these replacement levies, a renewal levy authorized by the bill may only be proposed in the last year of the levy it is renewing or the following year. Most other types of voted property taxes may be renewed, increased, or decreased under continuing law in a similar manner.

## Valuation of subsidized residential rental housing

(R.C. 5713.03; Section 803.280)

Generally, under continuing law and practice, real property is appraised for tax purposes by a county auditor by using one of three methods – the income method (i.e., capitalizing the income generated by the property), cost method (i.e., the cost of constructing or improving the property), or comparable sales method (i.e., a comparison of the neighborhood sales prices of comparable properties).[266] All three methods are employed to value real property at its true, or fair market value, which is the uniform standard that all real property, except certain agricultural property, must be valued at, as required by the Ohio Constitution.[267] In the context of federally subsidized rental housing, courts have generally held that using the income approach is superior to the other two approaches when determining the property's fair market value. These cases generally result in subject property's fair market value being determined on the basis of its market rent, rather than any subsidized contract rent.[268] Courts and continuing law additionally require any valuation to take into account the effect of limitations on the property's value due to involuntary, governmental actions, such as the rent restrictions federal subsidies may impose.[269]

Under current, recently enacted law, county auditors are explicitly authorized to use any of the three methods in valuing low-income housing tax credit (LIHTC) property. The bill expands this authorization, beginning in tax year 2023, to apply to any property subsidized by the following programs, listed according to their most commonly used name and the section of federal law they are authorized under:

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[266] O.A.C. 5703-25-05 and 5703-25-07.

[267] Ohio Const., Art. XII, Sec. 2.

[268] See, e.g., *Alliance Towers v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, 23 (1988).

[269] R.C. 5713.03; *Woda Ivy Glen L.P. v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, ¶¶ 17, 23-24.

- Section 202, Supportive Housing for the Elderly;
- Section 811, Supportive Housing for Persons with Disabilities;
- Section 8, Housing Choice Voucher Program;
- Section 515, Rural Rental Housing Loans;
- Section 538, Guaranteed Rural Rental Housing Program; and
- Section 521, USDA Rural Rental Assistance Program.

## Subsidized rental property

### Cost audit

(R.C. 117.01 and 703.21)

The bill authorizes the Auditor of State to audit the construction and rehabilitation costs of any project that has received certain federal subsidies or tax credits to construct or renovate rental housing. The covered programs are those that county auditors are explicitly authorized, under the bill, to use one of three valuation methods in appraising (see "**Valuation of subsidized residential rental housing**," above).

### Annual list

(R.C. 175.20)

The bill requires the Governor's Office of Housing Transformation (GOHT) to prepare and annually update a list of all such federally subsidized residential rental property in Ohio. The list must be organized by county and include information about each property including the owner, address, parcel numbers, program it is subsidized by, and, for LIHTC property, the name and business address of any person allocated the credit. Metropolitan housing authorities are required to supply information for the list at GOHT's request. The bill also makes the list a public record.

The first list must include all covered properties as of January 1, 2024, and must be prepared and certified to the Auditor of State, Board of Tax Appeals, and TAX by January 31, 2024. GOHT is required to update and recertify the list to those agencies in January of each following year. TAX, in turn, certifies the list to all county auditors.

## Residential development land exemption

(R.C. 5709.56)

The bill authorizes a partial property tax exemption for unimproved land that has been subdivided for residential development. The value exempted is the value 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 (see "**Exempted portion**," below). Specifically, the exemption applies to any unimproved parcel subdivided pursuant to a plat and on which construction of residential buildings, e.g., single- or multi-family dwellings, is planned but has not started. The exemption does not apply to land included in a tax increment financing (TIF) arrangement.

The exemption applies beginning with the tax year in which the subdivided parcel first appears on the tax list, but no sooner than the tax year that includes the bill's 90-day effective ate. The exemption may be claimed for up to eight years, or until either the land is sold to another person or construction begins on a residential building. The exemption ceases to apply to the tax year following the year in which either event occurs. Construction of streets, sidewalks, curbs, or driveways or the installation of water, sewer, or other utility lines does not trigger the end of the exemption. Transferring the parcel to another person without consideration does not terminate the exemption.

The exemption is only available to the owner or owners of the land at the time it was subdivided, unless the land is transferred to another without consideration as mentioned above. As with other property tax exemptions, a parcel's owner is required to apply annually to the Tax Commissioner for the exemption. As part of an exemption application, the owner must expressly certify that the parcel qualifies as preresidential development property.

### Exempted portion

Under continuing law, real property is valued according to its "fair market value," which, generally, is the unconditioned price the property would sell for in an arm's length sale, or the price for which it has in fact been sold recently in such a sale. However, certain agricultural land may alternatively be valued according to the land's current agricultural use value (CAUV), which is the estimated value of the land based on its income-producing potential as farmland. County auditors must appraise the fair market value of CAUV land even though the land is taxed according to its CAUV.

Regardless of whether the original property was valued according to its fair market value or CAUV, the bill attributes a base, taxable value to each parcel resulting from the subdivision since a subdivided parcel would not have had its own individual assessed value before it was subdivided. This base value equals the original property's fair market value, and not its CAUV, apportioned to each subdivided parcel according to the parcel's appraised value once the subdivision occurs in proportion to the total of the appraised values of all parcels resulting from the subdivision.

The bill accounts also for how the exemption applies if a residential development parcel that resulted from a prior subdivision is itself further subdivided. In such a case, the exemption continues to apply to the new parcels resulting from the later subdivision, with each of the new parcels having an unexempted value that is a proportion of the unexempted value of the larger parcel from which it was most recently subdivided; the proportion is based on each new parcel's appraised value relative to the total appraised value of all the new parcels.

The bill specifies that the partial exemption does not create a new method for valuing property for tax purposes and reaffirms that fair market value and CAUV are the only two authorized valuation methods. The bill also specifies that subdivided farmland may continue to be valued at its CAUV only if it is still used for farming, and requires the county auditor to routinely inspect such land to ensure that such land continues to qualify for CAUV valuation.

## Brownfield property tax abatement

(Section 757.40)

The bill authorizes the owner of property currently subject to a ten-year property tax exemption for remediated brownfield development land to apply for an abatement or refund of taxes assessed on the property in tax years 2020 and 2021 that would not have been assessed had the property been subject to that exemption for those years. The property only qualifies if the owner was issued a covenant not to sue by the Ohio EPA in 2020 based on the owner's remediation activities and if the owner applies for the abatement within one year after the bill's 90-day effective date.

Under continuing law, the brownfield remediation exemption starts to apply not in the tax year that the covenant not to sue is issued, but the year in which the Ohio EPA certifies the covenant to TAX.[270] Thus, the bill applies to a situation where the covenant not to sue was issued two years before it was certified to TAX.

If the abatement is obtained, the bill shortens the exemption's duration by two years to account for the two years of abatement.

## Tax increment financing

### TIF background

Continuing law allows municipalities, townships, and counties to create a tax increment financing (TIF) arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a property tax exemption for the increase in the assessed value of designated parcels that are part of a development project. The exemption may apply to specific parcels or to entire areas, known as "incentive districts." The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the subdivision, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project.

### Removal of nonperforming parcels

(R.C. 5709.40 and 5709.73)

The bill authorizes a township or municipality to remove a parcel from an existing municipal or township TIF, either individually or as part of an incentive district, and add the parcel to a new incentive district TIF, if the parcel's owner is required to make service payments under the existing TIF, but has not yet done so. Once added to the new TIF, the parcel is excluded from its former TIF and the owner is no longer required to make service payments under that former TIF. When the township or municipality subsequently applies to TAX for the TIF-authorized property tax exemptions, necessary to allow for service payments under the new TIF, it must

[270] R.C. 5709.87(B) and (C), not in the bill.

identify the affected parcels, the original TIF ordinance or resolution, and the value history of each affected parcel since the original TIF ordinance or resolution was passed.

### Impacted city TIF service payment reallocation

(Section 757.70)

The bill authorizes the legislative authority of an impacted city, i.e., a city that meets certain urbanization or disaster criteria, to, under certain circumstances, reallocate parcel TIF service payments. Under current law, these payments must generally be used to fund public improvements that benefit the parcel being assessed. The bill allows these payments to be reallocated for other projects that relate to urban development generally, but do not benefit the assessed parcel, if the reallocation is made before July 1, 2024, and the parcel benefitting public improvements have been sufficiently funded.

### 30-year parcel TIF extension

(R.C. 5709.51)

In general, TIFs may be designated for a term of up to ten years or, with the approval of the appropriate school district, 30 years. Current law authorizes a county, municipality, or township to extend the term of a parcel TIF by an additional 30 years. The bill modifies the circumstances under which such an extension may be authorized.

First, as an alternative to the existing requirement that the aggregate TIF service payments exceed $1.5 million in the year before an extension can be adopted, the bill allows a subdivision to determine that payments will meet the $1.5 million threshold in any future year of the TIF and adopt the extension on the basis of that determination. Second, the bill also applies a bar that prohibits such an extension if the service payments exceeded $1.5 million in any year preceding the year before the extension is adopted to extensions adopted after 2023. Current law only applies this bar to extensions adopted after 2020.

Third, rather than waiting for or satisfying one of the above requirements in order to amend an existing TIF resolution to authorize an up to 30-year extension, as required under current law, the bill allows a subdivision to extend the term of a TIF in the original resolution authorizing the TIF, presumably based on the subdivision's determination that the service payments will meet the $1.5 million threshold in the future.

The bill applies these changes to any pending and completed TIF proceedings.

### Extension of certain municipal TIFs

(R.C. 5709.40(L))

The bill also allows a municipality that created an incentive district TIF before 2006 to extend that TIF for up to 15 years, provided that certain conditions are met. In general, under continuing law, a subdivision can authorize a TIF for up to 30 years with school board approval or up to ten years without school board approval.

To be eligible for the extension, the municipality must (a) obtain the approval of the school board of each district in which the TIF is located and (b) notify each county in which the TIF is located. Unlike continuing law generally, if a school board fails to either approve or deny

the TIF within the time allocated, the municipality cannot create the TIF. However, similar to continuing law, if the resolution creating the TIF provides for compensation to be paid to a school district, or if a school district has adopted a resolution waiving its right to approve TIFs, the school board's approval is not required.

If the TIF is extended, the percentage of improvements exempted cannot exceed the percentage originally authorized. For example, if 80% of the value of improvements were exempted under the original TIF, the extended TIF cannot allow an exemption of more than 80%.

## Property tax foreclosure notice publication

(R.C. 323.25, 323.69, 5721.14, and 5721.18)

The bill modifies publication procedures for notices of impending tax foreclosure actions. Specifically, the bill allows a tax foreclosure notice to be published online if the notice is first published in a newspaper of general circulation in the county where the property is located. If online notice is used, the notice must begin to appear one week after the initial newspaper publication and continue to appear until one year after the foreclosure proceeding results in a judgment and finding against the property. The county clerk of courts decides which website of the county or court the online notice will appear. Online publication is considered "served" and a foreclosure proceeding action may thus continue two weeks after the clerk first posts the notice.

Under current law, publication of the notice must be made three times in a newspaper. Publishing the notice of a foreclosure action, along with other steps taken during the tax foreclosure process, such as title searching and notification by mail or in person, is meant to fulfill the state's obligation under the Due Process Clause to provide notice to property owners and lienholders of an impending action that may result in the property being taken and sold.

The bill also specifies that if a property tax foreclosure notice is not published online, then all publications of the notice beyond the first may be made in an abbreviated form in a newspaper pursuant to continuing law's abbreviated newspaper publication procedures for government notices.

## Qualified energy project tax exemptions

(R.C. 5727.75)

The bill extends the sunset date for real and tangible personal property exemptions for certain renewable energy projects. In general, a project seeking exemption must (1) apply to DEV to be certified as a qualifying project, (2) in some cases obtain the approval of a county in which the project will be located, (3) comply with certain deadlines and construction, safety, education, and labor requirements, and (4) make payments in lieu of taxes (PILOTs) to be distributed in the same manner as property taxes.

Under current law, exemptions for qualifying projects that are in their construction or installation phases are generally scheduled to sunset after tax year 2025, provided they enter construction or installation by December 31, 2024. The bill extends these sunset dates by four years. In line with those extensions, the bill extends other deadlines projects must satisfy.

Under current law, if a renewable energy project is placed in service by December 31, 2025, the property tax exemption may continue in perpetuity, as long as the project continues to comply with certain certification requirements. The bill extends the placed-in-service deadline to December 31, 2029.

# Special improvement districts

## Park district property

(R.C. 1710.01, 1710.02, 1710.03, and 1710.13)

The bill prohibits park district property from being included in a special improvement district (SID) unless the park district consents to its inclusion. Under continuing law, SIDs may be created within the boundaries of one or more municipalities or townships to finance public improvements or services via special assessments on most property within a district. The bill's exclusion for park district property puts such property in line with the similar continuing exclusion for county, township, municipal, state, and federal property.

# Tax administration

## Delivery of tax notices

(R.C. 5703.056 and 5703.37; conforming changes in numerous other R.C. sections)

The bill expands the means by which TAX may send tax notices. For any tax notice currently required to be sent by certified mail, the bill allows TAX to alternatively send the notice by ordinary mail or electronically, including by email or text message. Under continuing law, electronic delivery is only allowed if the taxpayer gives consent.

In addition, the bill specifies that electronic notices can be sent to a taxpayer's authorized representative, and requires TAX to establish a system to issue notifications of tax assessments to taxpayers through secure electronic means. Under continuing law, if an electronic notice is not accessed after two attempts, TAX must send it by ordinary mail.

The bill also eliminates certain recordkeeping requirements that a delivery service must meet before it can be used by TAX to deliver tax notices. Specifically, it eliminates the requirement that the delivery service record the date on which the document was sent and delivered.

## Electronic conveyance forms

(R.C. 319.20)

Under continuing law, whenever real property or a manufactured or mobile home is transferred, the grantee is required to file a statement with the county auditor attesting to the property's value and acknowledging that certain information related to the property's eligibility for the homestead exemption or current agricultural use valuation (CAUV) status has been considered as part of the transfer. The statement must be accompanied by any required property transfer tax.

Continuing law requires the grantee to file three copies of this statement, but the bill alternatively allows a grantee to submit a single copy of the statement electronically.

### Corporation franchise tax amended filings

(R.C. 5733.031; Section 757.30)

The bill eliminates a requirement that taxpayers file amended corporation franchise tax (CFT) reports. The CFT was fully repealed in 2013, but if an adjustment to a corporation's federal tax return alters the corporation's previous CFT tax liability, the corporation must still file an amended CFT report. Under the bill, corporations are no longer required to file amended reports after December 31, 2023. Similarly, no corporation may request a refund after that date.

### Disclosure of confidential tax information

(R.C. 5703.21 with conforming changes in R.C. 1346.03, 1509.11, 4301.441, and 5749.17)

The bill streamlines the authority of TAX to share confidential tax information with state agencies. Under continuing law, unless an exception applies, tax return information is confidential and cannot be disclosed by an employee of TAX or any other individual. Currently, the law lists several exceptions authorizing the disclosure of information to specific state agencies. The bill replaces much of this list, which involves specific state agencies, with a general authorization for TAX to share information with any state or federal agency when disclosure is necessary to ensure compliance with state or federal law. The receiving agency is prohibited from disclosing any of this shared information, except as otherwise authorized by state or federal law.

### Refunds of tax penalties

(R.C. 5703.052 and 5703.77)

The bill makes conforming changes to a law, recently enacted in H.B. 66 of the 134th General Assembly, that allows taxpayers to obtain a refund of tax-related penalties and fees.

Under continuing law, TAX may impose penalties if a taxpayer fails to comply with tax filing and reporting requirements – for example, if a taxpayer fails to file a tax return, pay the full amount due, pay a tax electronically when required to do so, or obtain a required license or registration. H.B. 66 allowed taxpayers who overpaid any such penalty to obtain a refund of that amount, with interest.

The bill updates two provisions to reflect this change. Both provisions, which were inadvertently excluded from H.B. 66, currently only refer to refunds of overpaid taxes, rather than both overpaid taxes and penalties.

## Local Government and Public Library Funds

### Permanent increase

(R.C. 131.51; Section 387.20)

The bill permanently increases, beginning in FY 2024, the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, to 1.7%.

Under current law, the LGF and PLF are each allocated 1.66% of the total tax revenue credited to the GRF each month. This percentage has been set in permanent law since FY 2014, following a series of decreases in allocations to both funds. Over the past decade, however, the actual percentage of tax revenue allocated to the LGF and PLF has fluctuated slightly. The General Assembly has repeatedly authorized "temporary" increases to the PLF allocation, ranging from 1.68% to 1.70%. The PLF allocation for FYs 2022 and 2023 currently stands at 1.70%. The LGF allocation was temporarily increased once, to 1.68% for FYs 2020 and 2021, but the current allocation stands at 1.66%.[271]

Under continuing law, most of the money in the LGF and PLF is distributed monthly to each county's undivided local government or public library fund, largely based upon that county's historical share. Each county distributes its share among local governments or libraries, respectively, according to a locally approved formula or, in a few counties, a statutory need-based formula. A smaller portion of the LGF is paid directly to townships, smaller villages, and municipalities.

## Minimum county distributions

(R.C. 5747.501; Sections 803.170 and 812.20)

The bill also increases the minimum amount distributed from the LGF to counties, beginning in FY 2024.

Under continuing law, LGF funds are distributed to each county in the state. In FY 2013, LGF distributions were reduced by 50% compared to previous levels. At the time, the proportionate share of the reduced LGF received by each county was held at FY 2013 levels, which included a minimum distribution for certain counties: if a county's LGF was less than $750,000, that county's distribution was not reduced; if the 50% reduction reduced a county's LGF below $750,000, the county received $750,000.

The bill increases the minimum LGF threshold for all counties to $850,000. Based on calendar year 2022 LGF data, the change appears to affect six counties who in that year received less than $850,000: Harrison, Monroe, Morgan, Noble, Paulding, and Vinton counties. Under continuing law, as necessary, the proportionate shares of other counties may be adjusted to produce the funds needed to meet the minimum distribution requirement.

## Alternative method to apportion county undivided funds

(R.C. 5747.53)

Under continuing law, a portion of the funds in the state's LGF are deposited in each county's undivided local government fund (CULGF) each year. Those funds are then distributed to the county and townships, municipalities, and park districts in the county according to a

[271] Section 387.20 of H.B. 110 of the 134th General Assembly, Section 387.20 of H.B. 166 of the 133rd General Assembly, Section 387.20 of H.B. 49 of the 132nd General Assembly, and Section 375.10 of H.B. 64 of the 131st General Assembly.

statutory formula or by an alternative method of apportionment provided for by the county budget commission.[272]

A budget commission may adopt alternative methods of apportioning CULGF funds through one of two methods. The first, sometimes referred to as the "standard procedure," requires approval of the county commissioners, the city with the largest population residing in the county, and a majority of the county's other municipal corporations and townships. Under continuing law, an alternative method of apportionment adopted under this method continues until it is revised, amended, or repealed. The bill requires the county budget commission to review such an alternative method at a public hearing held at least once in the year following the bill's 90-day effective date and once in every fifth year thereafter. The budget commission is required to give notice of this hearing to political subdivisions eligible to receive CULGF funding and allow their representatives to testify on the alternative apportionment method. The bill does not, however, require any changes based on the review.

A second method for the approval of an alternative method of apportionment, unchanged by the bill, allows approval of an alternative apportionment method without consent from a county's largest city if that city and the other political subdivisions meet certain requirements. Such a method is only effective for one year.

[272] R.C. 5747.51 and 5747.52, not in the bill.