DEPARTMENT OF TAXATION

Income tax

- Reduces nonbusiness income tax rates by 2%.
- Authorizes a full or partial income tax deduction for capital gains received by investors in certain Ohio-based venture capital operating companies (VCOCs) for taxable years beginning in and after 2026, provided the VCOC is certified by the Director of Development.
- Beginning with the 2026 taxable year, allows an income tax deduction for taxpayers with capital gains from the sale of an ownership interest in a business equal to the lesser of the capital gain or a percentage of the business's payroll over a specified period based on the taxpayer's proportionate interest in the business.
- Explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law.
- Clarifies that nonresident income not subject to personal income tax based on a reciprocity agreement between Ohio and another state may be deducted on a taxpayer's Ohio return.
- Clarifies that a taxpayer may claim a credit for any income tax withheld on behalf of the taxpayer, including from a taxpayer's wages, retirement income, or lottery and casino winnings.
- Extends the amount of time within which a taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's resident credit for income that is taxed in another state or the District of Columbia.
- Declares that the state does not intend to impose income tax on unemployment compensation reported to a person whose identity was fraudulently used by a third party to collect unemployment compensation.

Sales and use taxes

- Exempts the sale or use of investment bullion and coins from state and local sales and use taxes.
- Allows certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of the facilities.
- Repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax.

Lodging taxes

- Authorizes the convention facilities authority (CFA) of a county with a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County) to increase the rate of an existing lodging tax from 3% to 4%.

Commercial activity tax

- Requires that a taxpayer's preceding year's taxable gross receipts be used to calculate the commercial activity tax owed on its first $1 million in gross receipts, instead of its current year's receipts.
- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.65% to 0.5% beginning July 1, 2021.

Kilowatt-hour tax

- Clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity.

Estate tax

- Makes several administrative changes to the state's repealed estate tax.

Property tax

- Authorizes a municipal corporation or township to permanently impose, with voter approval, a combined levy for fire, emergency medical, and police services.
- Modifies an existing property tax exemption for property used as housing for individuals with developmental disabilities.
- Authorizes a property tax exemption for certain housing used by individuals diagnosed with mental illness or substance use disorder.
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Authorizes a county with a population of between 400,000 and 450,000 (Lucas County) to designate "urban agricultural areas" and allow qualifying urban farmers to apply for a full or partial exemption from county property taxes.
- Imposes a charge against any property that improperly received the homestead exemption if the property owner or occupant fails to notify the county auditor that the owner or occupant no longer qualifies for the exemption.

Tangible personal property tax reimbursements

- Between FY 2022 and 2026, requires that the tangible personal property (TPP) supplement payment to be paid to joint fire districts and school districts that have a nuclear power plant in their territory be no less than the amount that was paid to them in FY 2017.

Tax cross-references

- Updates and corrects several cross-references in state tax law.

Tax administration

- Extends the time allowed for the Tax Commissioner to approve or deny a political subdivision's request to transfer money between certain funds of the subdivision.
- Allows the Department of Taxation to disclose to the State Racing Commission confidential taxpayer information to assist the Commission with administering horse racing permits and taxes on horse racing.
- Explicitly authorizes the Tax Commissioner to review additional information provided by an applicant for a state tax refund and to adjust the amount of the refund multiple times before issuing a final refund determination.
- Adds resort area and tourism development gross receipts taxes to the list of tax obligations respecting which the Tax Commissioner must periodically verify the compliance of liquor permit holders.
- Requires the monthly disbursements made by the Tax Commissioner from the Wireless 9-1-1 Government Assistance Fund to county treasurers to be made in the same proportion distributed to that county in the corresponding calendar month of the previous year, instead of basing them on 2013 distributions made by the Public Utilities Commission (PUCO).
- Requires any shortfall in distributions resulting from the timing of funds received in a previous month to be distributed in the following month, instead of calculating the county's share of the fund by proportionally reducing the distributions to be equivalent to the amount available in the fund.

Income tax

Rate reduction

(R.C. 5747.02; Section 803.97)

The bill reduces the tax rates for all nonbusiness income brackets by 2% for taxable years beginning in or after 2021. (Business income remains subject to a 3% flat tax.) Previously, the rates in those brackets ranged from 2.850% to 4.797%. Under the bill, those rates will range from 2.793% to 4.701%. The bill also adjusts the income amounts of each bracket to reflect inflation-indexing adjustments for the 2021 taxable year, as required under continuing law.

Deduction for venture capital gains

(R.C. 122.851, 5703.21(C)(16), and 5747.01(A)(35))

The bill allows an income tax deduction for all or a portion of capital gains received by investors in certain Ohio-based "venture capital operating companies," or VCOCs. The deduction is available only for taxable years beginning in or after 2026 for an investor's capital gains attributable to investments by a VCOC certified by the Director of Development. The amount of gains that may be deducted depends upon whether or not they are attributable to the VCOC's investments in certain Ohio businesses.

Eligible VCOC certification

Under the bill, the deduction is only available for the gains from investments by an eligible Ohio-based VCOC (referred to in the bill as an "Ohio VCOC"), which must be certified as such by the Director of Development. The bill employs the definition of a VCOC used in federal pension rules, pursuant to which a VCOC is an investment fund that invests at least 50% of its assets in operating companies or derivative investments in which the fund has direct contractual management rights. Additionally, the fund must actually exercise "management rights" with respect to at least one operating company, i.e., substantially participate in, or substantially influence the conduct of, its management.[94]

To qualify its investors for the capital gains deduction, a VCOC must apply to the Director of Development to be certified as meeting both of the following requirements: (1) the VCOC must manage, or maintain capital commitments of, at least $50 million in active assets and (2) at least two-thirds of its managing and general partners must be Ohio residents.

After receiving an application, the Director has 60 days to review it and notify the applicant VCOC of the Director's determination. Certification as an Ohio VCOC is valid for as long as the company continues to meet all necessary qualifications. A company that no longer qualifies as an Ohio VCOC must notify the Director of its ineligibility, and the Director is required to revoke the VCOC's certification, subject to contest and appeal by the VCOC.

Reporting and administrative requirements

A certified Ohio VCOC must annually provide information identifying and describing its investors and investments to both the Director and Tax Commissioner, as well as any other information that the Director requires to administer the deduction. This information must include all of the following:

- The name, Social Security or federal employer identification number, and ownership percentage of each investor with a qualifying interest in the VCOC, i.e., a direct or indirect ownership interest in the VCOC acquired through an investment of cash in, or provision of services to the VCOC while it was certified as an Ohio VCOC.

[94] 28 C.F.R. 2510.3-101.

- The amount of capital gains generated during the portion of the previous calendar year during which the VCOC was certified.
- A description of the VCOC's investments that generated the capital gains, including the date of sale and whether the investment was in an Ohio business. An Ohio business is a business with its headquarters in Ohio that employs over 50% of its full-time equivalent employees in this state, based on more than 50% of an employee's compensation being subject to Ohio income tax withholding.
- The amount of, and basis in, any business's equity interests or securities distributed to an investor while the VCOC was certified, including reporting whether the business is an Ohio business.

The Director must review the information submitted by the Ohio VCOC, and, if the VCOC either generates capital gains that qualify for the deduction or distributes equity interests or securities that, when sold, would qualify for the deduction once the income is recognized from their disposition, the Director must issue a certificate to the VCOC that includes all of the following information:

- The total amount of capital gains generated during the portion of the year that the VCOC was certified and the portion attributable to investments in Ohio businesses.
- The total amount of, and basis in, any equity interests or securities distributed during the time that the VCOC was certified and the portion of those interests and securities attributable to the VCOC's investments in Ohio businesses.
- The portion of the reported capital gains attributable to each individual with a qualifying interest in the VCOC.

The Ohio VCOC must provide each person with a qualifying interest in the company a copy of this certificate as well as any other documents necessary for computing the income tax deduction.

Deduction amounts; business income deduction

The amount of the deduction is based on the capital gains earned by a taxpayer from the sale of an investment in a certified Ohio VCOC. The deduction equals 100% of the capital gains attributable to the certified Ohio VCOC's investments in Ohio businesses and 50% of the gains attributable to its investments in other businesses.

The taxpayer must deduct any such capital gains that qualify as business income under the bill's deduction before applying any excess towards continuing law's business income deduction.

A taxpayer must add back any gains that were previously deducted but actually realized after the Ohio VCOC failed to qualify for the Director's certification described above or any gains that did not otherwise qualify for the deduction.

Deduction for capital gains from sale of business

(R.C. 5747.01(A)(34) and 5747.79)

The bill authorizes an income tax deduction for taxpayers with capital gains from the sale of an ownership interest in a business. Such capital gains could include, for example, a partner's income from the sale of a stake in a partnership or an owner's income from the sale of an interest in a limited liability company (LLC).

The deduction is allowed for taxable years beginning in and after 2026. To qualify, the business must, for at least five years before the sale, be both headquartered in Ohio and incorporated, registered, or organized in Ohio. In addition, the taxpayer must either:

1. Have "materially participated" in the business for the five years preceding the sale under IRS rules, which generally consider the number of hours the taxpayer spent participating in the business, either on their own or in relation to other business participants.

2. Have directly or indirectly made a venture capital investment of at least $1 million in the business.

Deduction amount

The amount of the deduction equals the lesser of the taxpayer's capital gain or a percentage of the business' Ohio payroll over a specified period equal to the percentage of the entity's interest that the taxpayer sold. If the taxpayer qualifies under the "material participation" requirement, that period is the five years preceding the sale. If the taxpayer qualifies under the venture capital investment requirement, it is the period of up to five years preceding the sale during which the investment was made. Amounts paid to the taxpayer or the taxpayer's close relatives are not included in the payroll calculation.

As an example: A taxpayer that materially participated in an LLC sells their ownership interest, which equals 10% of the total interests in the LLC, and realizes a capital gain of $10 million. During the five years preceding the sale, the Ohio payroll of the business' employees and owners (other than the taxpayer) was $1 million per year, for a total of $5 million. Consequently, the taxpayer may claim a $500,000 deduction (10% of $5 million).

If a taxpayer has capital gains from the sale of interests in multiple businesses during a taxable year, the capital gains and payroll from each business will be considered separately, then the deductible amounts attributable to each business will be aggregated to determine the total deduction.

Relationship to business income deduction

If a capital gain is also eligible to be deducted under continuing law's business income deduction, the taxpayer must claim the bill's deduction first, before deducting any remaining amount under the business income deduction. (Generally, capital gains from the sale of an ownership interest in a business are not considered "business income," so are not eligible for the business income deduction.)

Taxation of railroad retirement benefits

(R.C. 5747.01(A)(5))

The bill explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law. Current Ohio law allows a deduction for Tier I railroad retirement benefits, but does not specifically allow a deduction for other types of railroad retirement benefits that are exempted from state taxation under federal law, i.e., any railroad retirement annuities and supplemental annuities.[95]

Deduction for certain nonresident income

(R.C. 5747.01(A)(33) and 5747.10; Section 803.60)

Continuing law authorizes the Tax Commissioner to enter into an agreement with the Commissioner's counterparts in another state or the District of Columbia pursuant to which residents of that state are exempted from Ohio's income tax on income earned or received in Ohio, as long as the other state provides the same tax treatment for Ohio residents. In the absence of such a reciprocity agreement, Ohio's income tax generally applies to the income of nonresidents earned in Ohio. Currently, Ohio has entered into such agreements with its bordering states – Indiana, Kentucky, West Virginia, Michigan, and Pennsylvania.[96]

The bill clarifies that income not subject to state income tax because of one of these reciprocity agreements may be deducted on the nonresident taxpayer's annual Ohio income tax return.

Income tax credit for tax withholdings

(R.C. 5747.08(H); Section 803.70)

The bill clarifies that any income tax withheld, including from a taxpayer's wages, retirement income, or lottery and casino winnings, entitles the taxpayer who is required to report the income on the taxpayer's annual return to claim a credit for those withheld amounts. Under continuing law, employers, public retirement systems, the state lottery commission, casino operators, and video lottery sales agents are required to withhold state income tax and school district income tax on a taxpayer's wages, retirement income, or lottery and casino winnings, as applicable.

The bill states that the provision is intended to clarify existing law and applies to taxable years beginning on and after January 1, 2016.

[95] 45 U.S.C. 231m.

[96] See Ohio Department of Taxation, Employer Withholding – Reciprocity FAQs, https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/employer-withholding-reciprocity/employer-withholding-reciprocity.

Resident credit amended return period

(R.C. 5747.05(B))

The bill extends, from 60 days to 90 days, the time within which a resident taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's credit for income that is taxed in another state or the District of Columbia. Likewise, the bill extends, from 60 days to 90 days, the time for a resident taxpayer to request a refund due to a change in that credit.

Continuing law allows an income tax credit for a resident Ohio taxpayer for any income that is subject to both Ohio income tax and income tax in another state or the District of Columbia. The credit equals the lesser of the income tax liability owed on that income in the other jurisdiction or the Ohio income tax liability that would otherwise be owed on that income if not for the credit. In essence, the resident credit prevents the double taxation of the same income by Ohio and another jurisdiction. If there is a change in the taxpayer's taxable income or tax liability that impacts the amount of the taxpayer's resident credit, then the taxpayer is required to report the change by filing an amended return.

Tax on fraudulent unemployment compensation

(Sections 757.10 and 812.23)

The bill declares that the state does not intend to collect tax on unemployment compensation benefits reported to a person whose identity was fraudulently used by a third party to collect those benefits. Under continuing law, unemployment benefits are subject to federal, state, and school district income tax.

The Internal Revenue Service (IRS) requires the Department of Job and Family Services (JFS) to issue IRS Form 1099-G to every person who was issued unemployment benefits. The bill strongly encourages any taxpayer who receives a Form 1099-G that includes fraudulent unemployment benefits to report the fraud to JFS for the purpose of receiving a corrected Form 1099-G. Although the IRS, in Information Release 2021-24, instructs taxpayers who are victims of identity theft to only report actual unemployment benefits received, the IRS warns that a corrected Form 1099-G is required to avoid receiving an unexpected federal tax bill for unreported income.[97]

The bill also requires the Director of JFS and the Tax Commissioner to publish information on the websites of their respective agencies to educate residents about unemployment compensation fraud, including information on measures to help prevent such fraud, recommended actions when a resident suspects or detects such fraud, and the penalties under continuing law for engaging in such fraud. This information must remain on the websites of both agencies until June 30, 2023.

[97] See Internal Revenue Service, "IRS Offers Guidance to Taxpayers on Identity Theft Involving Unemployment Benefits," January 28, 2021, available at https://www.irs.gov/newsroom/irs-offers-guidance-to-taxpayers-on-identity-theft-involving-unemployment-benefits.

Sales and use taxes

Investment bullion and coin exemption

(R.C. 5739.02)

The bill reinstates the sales and use tax exemption for the sale of investment metal bullion and coins. The exemption was repealed the preceding biennial budget act (H.B. 166 of the 133rd General Assembly). Investment metal bullion is gold, silver, platinum, or palladium bullion in excess of the minimum fineness required by a contract market for delivery in satisfaction of a commodity futures contract. (The definition is derived from federal law governing whether the purchase of something by an individual retirement account is a "collectible," and therefore considered a distribution from the IRA; bullion satisfying the federal law definition is not considered a collectible.) An investment coin is any coin composed primarily of gold, silver, platinum, or palladium.[98]

The reinstated exemption applies to the sale or use of investment bullion and coins beginning on or after the first day of the first month that begins after the provision's effective date.[99]

County sales and use taxes for jail operations

(R.C. 5739.021)

The bill allows for certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of such facilities. Under continuing law, any county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) may levy up to a 0.5% sales and use tax to be used exclusively for detention purposes, i.e., the construction, acquisition, equipping, or repairing of detention facilities. The bill expands this list of purposes to which proceeds from the 0.5% sales and use tax can be applied to include the operation of jail facilities.[100]

Under continuing law, a county is only able to levy this detention services tax to the extent the rate of the tax, when added to the rate of a transit authority sales and use tax levied in the county, does not exceed 1.5%. Thus, for example, if the county's transit authority levies a 1.25% sales and use tax, then the county could only levy a 0.25% jail facility sales and use tax.

Remote sellers

(R.C. 5741.01 and 5741.03; R.C. 5741.032, repealed; Section 757.50 of H.B. 59 of the 130th General Assembly, repealed)

The bill repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax on internet and catalog

[98] R.C. 5739.02(B)(57) and 26 U.S.C. 408(m)(3).

[99] Section 803.93.

[100] R.C. 5739.021.

transactions. The repealed provisions expressed the General Assembly's intent, upon the enactment of such a federal act, to enact conforming legislation, earmarked a small portion of new collections for administrative costs and the remainder for the Income Tax Reduction Fund, and exempted remote sellers with annual sales of $1 million or less.

In 2018, the U.S. Supreme Court struck down a long-standing interpretation of the Commerce Clause (Article 1, Section 8 of the U.S. Constitution) that prevented states from compelling remote sellers to collect and remit state sales or use taxes.[101] Following that decision, many states (including Ohio) began requiring remote sellers with sufficient local "contacts" to collect and remit the taxes. (Continuing Ohio law requires the consumer to pay use tax directly to the state in instances where it is not remitted by the seller.) Since this extension of state tax collection authority was sanctioned by a holding of the U.S. Supreme Court rather than an act of Congress, the provisions repealed by the bill remain inoperable.

Lodging taxes

For convention facilities

(R.C. 351.021)

Current law authorizes a lodging tax of up to 3% for the convention facilities authority (CFA) of a county that had a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County). This tax is in addition to the 3% lodging tax authority granted to all counties. To levy the tax, the board of directors of the CFA must have adopted a resolution imposing the tax on or before November 1, 2009. The Clark County CFA adopted the full 3% lodging tax within that period.

The bill authorizes the board of directors of the CFA to increase the rate of its lodging tax by up to an additional 1%, provided it does so before November 1, 2021, and the increase is approved by the board of county commissioners. As with the original tax, revenue derived from the rate increase must be used by the CFA to pay the costs of one or more convention facilities (including maintenance costs), the operating costs of the CFA, and the costs of administering the tax.

Commercial activity tax

Minimum commercial activity tax computation

(R.C. 5751.03; Section 812.20)

The bill requires the minimum commercial activity tax (CAT) to be computed based on the taxpayer's taxable gross receipts reported in the preceding year, rather than the current year. Otherwise, the minimum tax tiers remain the same.

The CAT is levied on the basis of a business's gross receipts from Ohio sales. A business with $150,000 or less in annual taxable gross receipts pays no CAT. Otherwise, the CAT rate equals 0.26% of a business's taxable gross receipts in excess of $1 million annually. A differently

[101] See, *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S. Ct. 2080 (2018).

calculated "minimum tax" applies to the taxpayer's first $1 million of taxable gross receipts. The amount of minimum tax owed varies according to the business's total taxable gross receipts received, under current law, in the year for which the tax is being calculated, as follows:

CAT minimum tax	
If taxpayer's total taxable gross receipts are. . .	**The CAT minimum tax is. . .**
Greater than $150,000, but not over $1 million	$150
Greater than $1 million, but not over $2 million	$800
Greater than $2 million, but not over $4 million	$2,100
Greater than $4 million	$2,600

Administrative expense earmark

(R.C. 5751.02)

The bill reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from current law's 0.65% to 0.5%, beginning July 1, 2021. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures." The percentage credited to the fund was previously reduced in July of 2019, from 0.75% to the current 0.65%.

Kilowatt-hour tax

Exemptions

(R.C. 5727.80 and 5727.81; Section 803.100)

The bill clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity. The kilowatt-hour tax is imposed on the distribution of electricity to end users in Ohio, at varying rates depending on the kilowatt-hour consumption of the end user. Most revenue from the kilowatt-hour tax is credited to the GRF.

Current law exempts end users that generate their own electricity and use it on the same site where the electricity was generated. The bill instead specifies that the exemption applies to both of the following:

- Electricity distributed or obtained by an end user if the electricity is generated by a facility that is (1) primarily dedicated to providing electricity to the end user, (2) interconnected and integrated with the end user's electric-consuming facilities, (3) located on the same property as the end user's electric-consuming facilities or on property contiguous to those facilities, and (4) sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user's electricity needs.

- Electricity generated by an end user primarily for its own consumption on the same premises, including electricity provided by the end user to other entities, so long as the electric generating facility is sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user's electricity needs.

The bill states that these changes to the exemption criteria are intended to clarify the meaning of existing law.

Estate tax

(R.C. 319.54, 321.27, 5731.21, 5731.24, 5731.28, and 5731.41)

The bill makes several administrative changes to the state's repealed estate tax. The estate tax was repealed on January 1, 2013, but currently continues to apply to newly discovered property of individuals who died before that date.

Newly discovered property and refunds

First, the bill provides that no estate tax will be due for property that is first discovered after December 31, 2021, or property discovered before that date, but not yet disclosed or reported by that date. Similarly, an executor or similar official may no longer file an application for an estate tax refund after that date.

Administrative fees

The bill modifies fees paid to county auditors and treasurers for the administration of the estate tax. Under current law, such fees are tiered based on countywide collections. The bill instead provides for a flat fee equal to 2% of the net tax collected.

The bill also fixes additional compensation paid to county auditors to enforce real property, manufactured home, and estate tax law.[102] Under current law, auditors are compensated based on a sliding per capita scale that varies according to the county's population based on the most recent census, up to $3,000 annually. The bill prohibits the fee from varying with future censuses by fixing the compensation according to the county's 2010 census population.

Property tax

Emergency and police services combined levy

(R.C. 5705.19; Section 803.90)

The bill authorizes a municipal corporation or a township to permanently impose, with voter approval, a combined levy for fire and emergency medical services (EMS) and police

[102] This compensation appears to apply to any agent of the Tax Commissioner appointed in that enforcement capacity, but county auditors do fulfill that role and appear to be the actual recipients of the compensation. See, e.g., David Yost, "Compensation Increase Legislation pertaining to Nonjudical County Elected Officials, Judges and Boards of Elections Members (House Bill Number 64)," Auditor of State Bulletin 2016-001 (April 20, 2016), available here.

services. Under current law, such a combined levy is limited to a five-year term, but a levy for either fire and EMS or police services, but not both, may be permanent, i.e., levied for a "continuing period of time."

Under continuing law, a municipal corporation or a township may also adopt a resolution to terminate or decrease a fire and EMS or a police services levy if the tax is no longer necessary or if the amount levied is more than needed. Such a levy imposed for a continuing period of time may also be reduced by voters, under certain circumstances, through ballot initiative. The bill extends this authority to terminate or decrease a levy to include an emergency and police services combined levy.

The bill's modifications to combined emergency and police services levies apply to property tax questions considered at any election held on or after the 100th day after the provision's effective date.

Developmental disability housing exemption

(R.C. 5709.121(E); Section 803.30)

The bill modifies an existing property tax exemption for property used as housing for individuals with developmental disabilities. To qualify for exemption under continuing law, the property must be owned by a charitable organization whose primary purpose is to provide such housing. Under current law, the organization must also receive at least part of its funding from a county board of developmental disabilities (county BDD).

The amendment waives the county BDD funding requirement if at least 75% of the individuals who lease the property for housing are eligible for Medicaid-funded "home and community-based care" services administered by the Department of Developmental Disabilities. Such services are provided to encourage individuals to receive care at home and in their communities, rather than at care facilities, and include services like employment training, assistive technology, and transportation.[103]

These changes apply to tax year 2021 and thereafter.

Supportive housing exemption

(R.C. 5709.121; Section 803.30)

The bill authorizes a property tax exemption for housing used by individuals diagnosed with mental illness or substance use disorder and their families. To qualify:

1. The owner of the property must be a tax-exempt 501(c)(3) organization, or a pass-through entity whose controlling member either is a 501(c)(3) organization or is owned by one or more 501(c)(3) organizations, for which providing such housing is a primary purpose.

2. At least one of those 501(c)(3) organizations must receive some of its funding from the Department of Mental Health and Addiction Services; a county board of alcohol, drug addiction, and mental health services; or a local continuum of care – a regional or local planning body that

[103] R.C. 5123.01.

coordinates housing and services funding for homeless families and qualifies for federal funding from the U.S. Department of Housing and Urban Development.

In addition, the property owner must either (a) use the property to provide such housing, (b) lease the property to individuals with mental illness or substance use disorder and make supportive service available to such individuals, or (c) lease the property to a charitable institution that uses the property for charitable purposes.

Under continuing law, property owned by a charitable organization and used exclusively for charitable purposes is exempt from taxation. Courts have generally not favored extending the charitable use exemption to residential properties. In fact, in May 2020, the Board of Tax Appeals (BTA) reversed an exemption for a property that would meet the bill's requirements. The BTA found that, based on Supreme Court precedent, the use of the property primarily for private residential purposes could not be considered a charitable use.[104]

The new exemption applies to tax year 2021 and thereafter, as well as to exemption applications or appeals pending on the provision's effective date.

Renewable energy facility exemption extension

(R.C. 5727.75)

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

Under continuing law, a renewable energy facility may qualify for a real and tangible personal property (TPP) tax exemption. When an exemption is approved, the owner or lessee of the facility is required to make "payments-in-lieu-of-taxes" (PILOTs) to the local governments in whose territory the facility is located. Currently, the owner or lessee of the facility must apply for the exemption and begin construction on the facility by January 1, 2023. The bill extends this deadline to January 1, 2025.

Urban agricultural area exemption

(R.C. 319.302, 323.155, and 323.161)

The bill authorizes a county with a population of between 400,000 and 450,000 (Lucas County) to designate one or more areas within the county's municipal territory as "urban agricultural areas" and to allow qualifying urban farmers located within an area to apply for a full or partial exemption from county property taxes.

An urban agricultural area must be contiguous and within both the territory of the county and a municipality. In the resolution designating the area, the county must specify the area's boundaries, include procedures by which urban farmers can apply for a tax exemption, and designate a county officer to review applications.

To qualify for exemption, an urban farm must not be enrolled in the current agricultural use valuation (CAUV) program or the forest land tax exemption program, and the urban farmer

[104] *Columbus City Schools Dis. Bd. of Edn. v. McClain, et al.* (May 28, 2020), BTA No. 2018-649.

must provide substantial day-to-day labor and management of the farm and meet one of the following eligibility criteria:

1. Be a member of a socially disadvantaged group (American Indian or Alaskan Native, Asian or Asian American, Black or African American, Native Hawaiian or other Pacific Islander, or Hispanic);

2. In the two preceding calendar years, have gross farm sales of $100,000 or less and have a total household income that is either (a) at or below the national poverty level for a family of four or (b) less than 50% of the county median household income;

3. Have not operated a farm or ranch in the previous ten years; or

4. Have received a direct farm ownership microloan or direct farm operating microloan from the U.S. Department of Agriculture.

The county may, in its resolution designating the urban agricultural area, impose additional eligibility requirements.

The exemption may equal any percentage, up to 100%, of the taxes levied by the county on the urban farm. (The exemption does not apply to taxes levied by any other subdivision, such as the municipality or school district.) The exemption percentage may vary with each exemption application and is set at the discretion of the county officer eligible to accept the application. Once an exemption application is accepted, the exemption initially runs for five years, but the exemption can be continually renewed for terms of three years with the filing of a new exemption application.

Improper homestead exemption recovery

(R.C. 323.153 and 4503.066)

The bill imposes a charge against property improperly receiving the homestead exemption. Continuing law authorizes two property tax incentives for owner-occupied residences, or "homesteads." The first – often referred to as the 2.5% rollback – is a property tax credit equal to 2.5% of the tax levied on a homestead by certain levies. The second is a credit equal to the taxes on $25,000 or $50,000 of a homestead's true value. This second incentive – often referred to as the homestead exemption – only applies if the homeowner or, in the case of a housing cooperative, occupant meets certain criteria, e.g., age, income, disability, or veteran status.

To receive the homestead exemption, an eligible owner or occupant must apply to the county auditor. After a homestead exemption application is approved, the applicant will generally continue to receive the exemption, without filing a new application each tax year, until the property is sold or transferred or the applicant no longer qualifies for the exemption. In the latter case, the applicant is required to inform the county auditor that the owner or occupant no longer qualifies for the exemption. An owner or occupant that fails to do so is guilty of a misdemeanor of the fourth degree, which carries a penalty of up to 30 days in jail and up to a $250 fine.

The bill imposes a charge against any property improperly receiving the homestead exemption if the applicant fails to notify the county auditor that the applicant no longer qualifies for the exemption. The charge equals the tax savings, plus interest, for each tax year that the county auditor determines the applicant did not qualify for the exemption. A similar charge is imposed under continuing law against property improperly receiving the 2.5% rollback.

The county auditor must notify the applicant, by ordinary mail, of the charge for improperly receiving the homestead exemption and the right to appeal the charge. An applicant that wishes to do so may file an appeal with the county board of revision.

The charge for improperly receiving the homestead exemption and any related interest is treated and enforced as delinquent tax. As with the existing 2.5% rollback charge, homestead exemption charge proceeds are distributed as property taxes and paid to local taxing authorities.

Tangible personal property tax reimbursements

Payments for subdivisions with a nuclear power plant

(R.C. 5709.92 and 5709.93)

The bill requires that, for FYs 2022 through 2026, the tangible personal property (TPP) supplement payment to be paid to joint fire districts and city, local, exempted village, or joint vocational school districts that have a nuclear power plant in their territory be no less than the amount that was paid to them in FY 2017. If the amount a district is scheduled to receive is less than its FY 2017 payment, the district will receive an additional payment to make up the difference.

Under continuing law, local governments receive TPP supplement payments as reimbursement for their loss of tax revenue following the repeal of the TPP tax on most businesses and reductions in the tax on public utility property. The reimbursement schedule generally provides for a gradual phase-out of payments over time.

For joint fire districts, any payment required by the bill is in addition to another payment authorized for certain districts under continuing law. That payment is available to joint fire districts with a nuclear power plant that experienced an at least 30% decrease in taxable value between 2016 and 2017. The payment is made through the Local Government Fund and compensates the district for public safety-related tax revenue losses due to that reduction in value. Those payments began in FY 2018 and run through FY 2028.[105]

Cross-reference corrections

(R.C. 5726.20, 5747.01(A)(6), (S)(5), and (GG), 5747.10, and 5751.40; Sections 803.50 and 803.60)

The bill makes several updates and corrections to cross-references in state tax law, as follows:

- Corrects an erroneous cross-reference in the financial institutions tax law;

[105] R.C. 5747.50(E).

- Corrects an erroneous cross-reference in the definition of taxable business income under the business income deduction law;
- Corrects an erroneous cross-reference in the law governing the qualified distribution center exclusion used in computing taxable gross receipts for the commercial activity tax;
- Updates references to the federal "targeted jobs" tax credit in the state's income tax law to reflect the federal credit's new name, the "work opportunity" tax credit.

Tax Administration

Local funds transfer approval period

(R.C. 5705.16)

The bill extends from ten days to 30 days the Tax Commissioner's deadline to either approve or deny the request of a political subdivision authorized to levy property tax (a "taxing authority") to transfer money between certain of its funds, starting from the time that the request was first received.

Continuing law regulates the ability of a taxing authority to transfer revenue between its funds. Some funds may be transferred unilaterally, without obtaining approval from any official, e.g., transfers from the taxing authority's general fund to another fund. On the other hand, some transfers are outright prohibited, such as the transfer of funds derived from a tax or license fee imposed for a specific purpose.[106] Any other transfer that is neither unilaterally permitted nor prohibited must first be approved by the Tax Commissioner, pursuant to an application of the taxing authority. The Commissioner may authorize the transfer of funds if the Commissioner finds that the transfer is justified or necessary and that no injury would result from the transfer.

Disclosing taxpayer information to State Racing Commission

(R.C. 5703.21(C)(20))

The bill authorizes the Department of Taxation to disclose to the State Racing Commission otherwise confidential taxpayer information for the purpose of assisting the Commission with administering taxes on horse racing and its responsibilities for issuing, denying, suspending, or revoking horse racing permits. The Commission, in turn, must keep the information confidential, unless its disclosure is authorized by law.

Continuing law permits disclosure of certain taxpayer information in the Department of Taxation's possession to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the Department may not disclose such information, and any Department agent or employee that does so is subject to employment termination and a fine.

[106] R.C. 5705.14 and 5705.15, not in the bill.

State tax refund review process

(R.C. 5703.70)

Under continuing law, a taxpayer may apply to the Tax Commissioner for a refund of overpaid state taxes. If the Commissioner determines that the taxpayer is not entitled to the amount requested, the Commissioner must provide the taxpayer with a written notice of that preliminary determination. The taxpayer then has 60 days to provide the Commissioner with additional documentation supporting the taxpayer's request for the refund, request a hearing on the matter, or both. Then, the Commissioner may issue a final refund determination, which the taxpayer may appeal to the Board of Tax Appeals.

If the taxpayer provides additional information in response to the Commissioner's preliminary refund determination, the bill explicitly authorizes the Commissioner to review and make adjustments to the taxpayer's refund as many times as necessary before the Commissioner issues a final determination.

Tax obligations of liquor permit holders

(R.C. 4303.26 and 4303.271; Section 803.20)

Continuing law requires the Division of Liquor Control, before approving the transfer or renewal of a liquor permit, to confirm with the Tax Commissioner that the applicant is not delinquent in paying, filing returns for, or providing information regarding sales taxes, withheld income taxes, horse-racing taxes, alcoholic beverage taxes, motor fuel taxes, petroleum activity taxes, cigarette and other tobacco product taxes, or casino gross receipts taxes. The Division is generally prohibited from renewing or transferring the liquor permit until the delinquency is addressed. Beginning February 1, 2022, the bill additionally requires the Division to confirm that the applicant is current on payments of resort area and tourism development district gross receipts taxes levied by certain townships and municipalities.

The Commissioner is required, under continuing law, to annually review the Department's tax records and notify the Division if any liquor permit holder is delinquent in paying, filing returns for, or providing information regarding any of the aforementioned taxes. Beginning February 1, 2022, the bill adds resort area and tourism development district gross receipts taxes to the list of taxes that are subject to this annual review.

Under continuing law, a municipality or township meeting the requirements of a "resort area" may levy a gross receipts tax on businesses for sales made in its territory to raise operating revenue. Municipalities and townships that are in a tourism development district may levy a similar gross receipts tax to foster or develop tourism. Though levied by local subdivisions, these taxes are collected and administered by the Tax Commissioner.

Wireless 9-1-1 Government Assistance Fund

(R.C. 128.55)

Ongoing law requires the Tax Commissioner to make monthly disbursements, plus accrued interest, from the Wireless 9-1-1 Government Assistance Fund to county treasurers. Under the bill, the disbursements are to be made in the same proportion that the Tax

Commissioner distributed to that county in the corresponding calendar month of the previous year. If a shortfall in distributions results because of the timing of funds received in a previous month, the bill requires that the shortfall amount be distributed in the following month.

Currently, counties receive monthly disbursements from the fund based on how much the Public Utilities Commission distributed to each county in 2013. But, if the amount available in the Wireless 9-1-1 Government Assistance Fund is insufficient to make the required monthly disbursements, each county's share is proportionately reduced for the month. Shortfalls in monthly county disbursements due to insufficient funds from the previous month are remedied in the following month.

Under continuing law, Ohio wireless subscribers and purchasers of prepaid wireless service pay a charge that provides funds to support 9-1-1 systems. Wireless subscribers pay a 25¢ monthly charge, and purchasers of prepaid wireless service pay 0.5% of the sale price for the wireless service. The charges are deposited in the Wireless 9-1-1 Government Assistance Fund, the Wireless 9-1-1 Administrative Fund, the Wireless 9-1-1 Program Fund, and the Next Generation 9-1-1 Fund. The Wireless 9-1-1 Government Assistance Fund receives 97% of the charges collected, plus interest.[107]

[107] R.C. 128.021, 128.03, 128.42, and 128.54, not in the bill.