DEPARTMENT OF TAXATION

Income tax

- 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.
- Eliminates the requirement that, if claiming the business income deduction, each business or professional activity generating income for a taxpayer be reported on their annual income tax return.
- 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.

Use tax

- 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.

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.
- Codifies an administrative rule that elaborates on which business entities are considered to be part of a consolidated elected or combined taxpayer group.

Estate tax

- Makes several administrative changes to the state's repealed estate tax.

Property tax

- Authorizes combined health districts to levy property tax, with voter approval, for operating expenses.

- Authorizes a property tax exemption for certain housing used by individuals diagnosed with mental illness or substance use disorder.
- Requires an application for a property and sales and use tax exemption for certain facilities used to abate pollution, noise, or energy waste to separately identify property exclusively and necessarily used for the operation of the facility.

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

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.[64]

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.[65]

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.

Business reporting requirement

(R.C. 5747.08(L); Section 803.80)

The bill removes a requirement that a taxpayer claiming the business income deduction indicate on their annual income tax return each business or professional activity from which that income is derived. Under current law, these indications must be reported according to each activity's corresponding North American Industry Classification System (NAICS) code. This reporting requirement is no longer required for taxable years beginning on or after January 1, 2021.

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[64] 45 U.S.C. 231m.

[65] 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.

Continuing law authorizes an income tax deduction for up to $250,000 of the taxpayer's business income (or $125,000 for a spouse filing a separate return).

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 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.[66]

[66] 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.

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 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.[67] 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.

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 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:

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

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

Common ownership test for taxpayer groups

(R.C. 5751.051)

The bill codifies an administrative rule that elaborates on which business entities are considered to be part of a CAT consolidated elected or combined taxpayer group.[68]

Under the CAT, each entity in a consolidated elected taxpayer group may elect, and each entity in a combined taxpayer group is required, to aggregate their taxable gross receipts and file as a single taxpayer. A taxpayer group consists of one or more common owners and all the entities in which that the common owner holds a certain level of ownership interest (either 50% or 80%, depending on the situation).

The bill codifies rules for determining the value of an ownership interest and who is considered a common owner, as follows:

Type of entity	Ownership rules
Corporation	Ownership interest is based on the value of stock with voting rights.
Limited partnership	Ownership interest is based on the general partnership interests in the entity.
Pass-through entity other than limited partnerships	Ownership interest is based on fair market value of the voting interests in the entity.

[68] O.A.C. 5703-29-02.

Type of entity	Ownership rules
Unincorporated business without a formal partnership agreement ("implied partnership")	If the business files an Internal Revenue Service Form 1065 partnership return, ownership interest is based on a person's capital account contributions. If the business does not file Form 1065 but owns rental property, the common owner is the person or persons who hold the deed to the property. If neither of the above apply, the common owner is based on the number of persons in the group.
Trust	The common owner depends on the type of trust, and may be the grantor, a beneficiary, or no one.

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.[69] 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

[69] 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.

with future censuses by fixing the compensation according to the county's 2010 census population.

Property tax

Combined health district property tax

(R.C. 3709.291)

The bill authorizes combined health districts to levy property tax, with voter approval, for operating expenses. Combined health districts include the union of two or more city health districts, two or more county health districts, or at least one city health district and at least one county health district.

The tax may be levied for any rate and for a term of up to ten years. Before it is levied, it must be approved by the voters in the combined health district's territory, in the same manner as most other voter-approved property taxes. Once a combined district levies a property tax, it must comply with the subdivision budgeting and accounting and tax administration provisions to which other taxing authorities are subject. Similar to other taxing authorities, a district that levies such a tax may issue debt secured by anticipated tax collections.

Under current law, health districts are not authorized to directly levy a property tax. A county, however, may levy property tax for the benefit of a county health district.[70] But a county may not levy such a tax for a combined health district, at least, any combined district whose territory extends to other counties or does not include a county health district.

Property tax exemption for supportive housing

(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 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.

[70] R.C. 3709.29, not in the bill.

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.[71]

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.

Pollution control, energy facility tax exemption

(R.C. 5709.21; Section 803.40)

Under continuing law, a pollution control facility or a facility that converts natural gas, oil, solid waste, or waste heat to other forms of energy in industrial or commercial settings may apply to the Department of Taxation to exempt property used for such purposes from property tax and purchases of such property from sales and use tax. Before approving a facility for such exemptions and issuing an "exempt facility certificate," the Department must obtain certification that a facility qualifies for those exemptions from the Environmental Protection Agency in the case of a pollution control facility or the Department of Development in the case of an energy conversion facility.

The bill requires applications for an exempt facility certificate to identify property exclusively and necessarily used for the operation of the facility ("exclusive property"), as distinct from auxiliary property that may also be used for other purposes. For already-filed applications in which exclusive property and auxiliary property are not separately distinguished, the bill requires the applicant to prove which property is exclusive property. Under continuing law, exclusive property qualifies for a full property tax exemption and auxiliary property is partially exempted, based on the extent to which it is used for an exempt purpose.

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;
- 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.

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

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.[72] 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.

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.

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

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.[73]

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