DEPARTMENT OF TAXATION

Income tax

- Reduces income tax rates in all brackets by 10% over three years.
- Creates a new income tax deduction for individuals receiving business income as a sole proprietor or through a pass-through entity whereby 50% of such income is deductible, with the deduction limited to $125,000 (or $62,500 for each spouse if spouses file separately), beginning with taxable years that begin in 2013.
- Authorizes a nonrefundable state earned income tax credit for low-income taxpayers equal to 5% of the taxpayer's federal earned income tax credit.
- Repeals the income tax deduction for wagering losses.
- Prohibits an individual income taxpayer from claiming a personal exemption or a personal exemption credit for a taxable year if another taxpayer may claim the individual as a dependent.
- Limits the $20 personal exemption tax credit to taxpayers with an Ohio taxable income of less than $30,000.
- Specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf.
- Extends an income tax deduction for retired military personnel pay to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Commissioned Corps of the Public Health Service.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2013, 2014, and 2015, and reconciles a timing issue related to such adjustments.
- Requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment of Ohio-sourced income to submit the request with a return or amended return filed on or before the due date.
- Clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable allocation and apportionment of business income in the state.

- Clarifies that nonresident taxpayers receive an income tax credit equal to the amount of tax otherwise due on the portion of adjusted gross income not allocable or apportionable to Ohio.

Sales and use taxes

- Increases the state sales and use tax rate from 5.5% to 5.75% beginning September 1, 2013.

- Subjects to sales and use taxation the sale or use of electronically transferred digital audio or audiovisual products or digital books beginning January 1, 2014.

- Specifically exempts from sales and use taxation cable, video, and audio service and programming, and digital audio and audiovisual works bought or sold by a cable or video service provider or a federally regulated radio or television broadcaster.

- Eliminates the sales and use tax exemption for sales of magazine subscriptions beginning January 1, 2014.

- Would have exempted from sales and use taxation investment metal bullion and investment coins (VETOED).

- Would have prescribed new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and therefore required to register with the Tax Commissioner and collect and remit use tax, including sellers that enter into an agreement with Ohio residents to refer potential customers to the seller (VETOED).

- Would have allowed a seller presumed to have substantial nexus with Ohio to rebut that presumption (VETOED).

- Would have required a person or that person's affiliates, before selling or leasing tangible personal property or services to a state agency, to register with the Commissioner and collect and remit use tax (VETOED).

- Expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" Internet sales and use tax legislation by Congress.

- Specifies that a "remote" seller is not legally required to collect use tax if the seller has $1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax.

- Creates the Remote Seller Administration Fund, made up of 0.5% of voluntary Ohio use tax collections by out-of-state sellers that currently are not legally required to collect the tax ("remote sellers"), to offset the state's cost of administering taxes collected by remote sellers.

- Earmarks new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund (in excess of collections from participants in the Streamlined Sales and Use Tax Agreement, refunds, and deposits to the Remote Seller Administration Fund).
- Specifies that Ohio sales tax does not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution.
- Would have authorized a sales and use tax exemption for goods and services used in aerospace vehicle research and development (VETOED).
- Allows the Tax Credit Authority to enter into a single agreement authorizing a sales and use tax exemption for computer data center equipment purchased by multiple businesses operating at a single data center.
- Authorizes a business to join an existing computer data center equipment exemption agreement between the Tax Credit Authority and another business.
- Allows a business to receive the computer data center equipment exemption if the business leases a facility to a person that would have qualified as a "computer data center business" prior to the act.
- Provides that, in order to qualify for the computer data center equipment exemption, a business or group of businesses need only maintain an annual payroll at the data center of $1.5 million, instead of the $5 million required under prior law.
- Authorizes a sales and use tax exemption for purchases made by a nonprofit organization that leases a professional or minor league sports facility from Lucas County and that remits its net revenue from operating the facility to the county.

Other excise taxes

- Extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.
- Increases the rate of the tobacco product excise tax imposed on "little cigars" from 17% to 37% of little cigars' wholesale price beginning on and after October 1, 2013.

- Allows the Tax Commissioner to deny the license application of a cigarette dealer, manufacturer, or importer if the applicant has not submitted tax returns, payments, or information due at the time of the license application.

- Requires that the motor fuel excise tax on liquid natural gas be measured in pounds, rather than gallons, and specifies a gallon-equivalent standard for pounds of liquid natural gas for the purpose of calculating the tax.

- Requires a motor fuel dealer that sells or discontinues the dealer's business to notify the Tax Commissioner that the business has been sold or discontinued and of the purchaser's contact information.

- Authorizes Cuyahoga County to renew county alcoholic beverage and cigarette taxes that are set to expire in 2015.

Commercial activity tax

- Increases the "minimum" commercial activity tax (CAT) due on a taxpayer's first $1 million in taxable gross receipts for taxpayers having more than $1 million in such receipts.

- Excludes from the taxable gross receipts base of the CAT receipts of licensed agricultural commodity handlers from the sale of agricultural commodities.

- Eliminates the $500,000 penalty on operators of distribution centers that improperly qualified its suppliers for the CAT exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the total supplier tax liability.

- Authorizes the Tax Commissioner to request from a distribution center that improperly qualified as QDC a list of all suppliers of the distribution center along with the corresponding costs of property that is used to determine the improper exclusion.

- Expressly prohibits municipal corporations from levying a tax that is the same as or similar to the CAT.

- Beginning July 1, 2014, replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax, the motor fuel receipts tax (MFRT), that is modeled on the CAT and that applies solely to such receipts.

- Provides that the MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio.

- Defines a supplier as a person that imports motor fuel for sale or distribution by the person within the state or that acquires motor fuel from a terminal or refinery rack and distributes that fuel within the state.

- Imposes a tax rate equal to 0.65% on a supplier's gross receipts and, similar to the CAT, requires suppliers to pay the tax on a quarterly basis.

- Requires suppliers to obtain a license from the Tax Commissioner and to renew the license annually.

- Prescribes several procedures and requirements for the MFRT that are similar to the CAT, including provisions related to assessments, refunds, penalties, joint liability, and the electronic filing of returns.

- Specifies that MFRT revenue, and CAT liability accruing before July 1, 2014, arising from the sale of motor fuel used on public highways may be credited first to the GRF to pay debt service on state-issued bonds whose proceeds the Ohio Public Works Commission (OPWC) awarded to fund local highway-related infrastructure projects, and the balance to the Highway Operating Fund.

- Excludes from the gross premiums of a mutual or stock insurance company for the purposes of the franchise tax workers' compensation insurance premium deposits exceeding the cost of the insurance if the excess is returned to policyholders.

Property taxes

- Restricts the availability of the homestead exemption for homeowners who do not receive the exemption for tax year 2013 (or tax year 2014 for manufactured home taxpayers) to owners with an Ohio adjusted gross income of $30,000 or less.

- Limits the application of the 2.5% and 10% real property tax rollbacks to levies approved before September 29, 2013, and to subsequent renewals of such levies.

- Allows a school district that levies an existing combined levy for current expenses and permanent improvements to replace or renew that levy solely for the purpose of funding general permanent improvements.

- Authorizes a school district to replace an existing combined levy for a term of years different from the term for which the original tax was levied.

- Specifies that all new combined levies must be levied for current expenses and general (not specific) permanent improvements.

- Authorizes school districts to levy a property tax exclusively for school safety and security purposes.

- Creates a tax exemption for real property used primarily for meetings and administration of long-standing fraternal organizations that provide financial support for charitable purposes.

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

- Allows a TIF resolution or ordinance authorizing a property tax exemption to specify that the exemption begins upon the occurrence of certain triggering conditions, rather than in a year stated in the resolution or ordinance.

- Provides that a TIF resolution or ordinance that grants an exemption for more than one individual parcel to specify that the exemption of different parcels begins in different tax years.

- Increases the maximum amount of income that may be generated by a veterans' organization's real property before the property becomes disqualified from property tax exemption, from $10,000 to $36,000, and specifies that only rental income counts towards the maximum income limit.

- Authorizes the transfer of a tax-delinquent cemetery to a county, municipal corporation, or a township if foreclosed through a continuing law expedited nonjudical foreclosure procedure for disposing of abandoned lands.

- Prohibits the sale by public auction of any tax-delinquent cemeteries foreclosed through the expedited nonjudical foreclosure procedure.

Local Government Fund and other revenue distributions

- Clarifies the method of calculating the tax revenue credited to the General Revenue Fund for the purposes of determining Local Government Fund and Public Library Fund allocations.

- Requires that, for fiscal year 2014 and thereafter, distributions to each county from the Local Government Fund must be at least $750,000 or the amount distributed to the county in FY 2013, whichever is less.

- Authorizes the Director of Budget and Management (OBM) to use revenue from the new motor fuel receipts-based tax or from the CAT revenue derived from receipts from the sale of motor fuel to compensate the GRF for GRF-sourced debt service on state-issued bonds whose proceeds the OPWC awarded to fund local infrastructure projects that are highway-related.

- Requires the OBM Director to transfer to the Highway Operating Fund CAT revenue derived from receipts from the sale of motor fuel remaining after the GRF is compensated for that debt service.

- Imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund.

- Permits the Commission to retain up to 5% of the share of casino tax revenue transferred to the fund for operating expenses necessary for the administration of the fund.

- Requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically.

- Changes the date by which the Tax Commissioner must certify to county auditors the estimated amount each county is to receive from the Public Library Fund.

- Postpones the due date for November tangible personal property tax "replacement payments" to school districts to the last day of the month.

Tax credits; administration and compliance

- Would have increased the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee from $5 million to $10 million (VETOED).

- Eliminates the requirement that the owner of a historic building who has entered into a pass-through agreement with a qualified lessee for purpose of the federal rehabilitation tax credit must attribute qualified rehabilitation expenditures to the qualified lessee.

- Extends the date by which a county and a business may enter into an agreement under which the business agrees to construct an "impact facility" and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility.

- Modifies two of the criteria a facility must meet to qualify as an "impact facility."

- Modifies the existing relocation prohibition to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location.

- Would have allowed, for the purposes of the state New Markets Tax Credit, investments to be made in low-income community businesses that derive 15% or more of their annual revenue from renting or selling real estate (VETOED).

- Would have eliminated the requirement that a taxpayer receive a federal New Markets Tax Credit in order to qualify for the state New Markets Tax Credit (VETOED).

- Provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount.

- Requires the Tax Commissioner to calculate interest charged after an assessment has been issued, but before the assessment has been certified to the Attorney General for collection, based on tax liability only and not on penalty or pre-assessment interest.

- Requires the Tax Commissioner to deliver a tax notice to a person by ordinary mail, instead of by certified mail or personal or delivery service, if the person does not timely access the notice electronically.

- Requires annual taxpayers of the CAT, like quarterly taxpayers, to pay the tax electronically and, if required by the Tax Commissioner, file electronic returns.

- Prescribes minimum penalties for the failure to submit an electronic CAT return or payment, equal to $25 for each of the first two violations and $50 for each subsequent violation, that apply if the continuing law penalties of 5% or 10% of the tax due, respectively, do not exceed those amounts.

- Expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and filing of returns for, the CAT, financial institutions tax, horse-racing tax, and the new motor fuel receipts tax.

- Requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically.

- Specifies that payment for severance tax refunds be derived from the proceeds of the same severance tax against which the refund is claimed.

- Authorizes the Department of Natural Resources to publicly disclose otherwise confidential tax information furnished by the Department of Taxation in order to enforce oil and gas regulatory laws.

- Relieves the Tax Commissioner from issuing any tax refund if the amount of the refund is $1 or less, and relieves taxpayers from paying a tax if the total amount due with the taxpayer's return is $1 or less.

- Provides a single rule for the accrual of interest on income tax refunds, and removes two provisions of prior law that provided separate rules for the accrual of interest on refunds arising from overpayments under certain circumstances.

- Eliminates the Discovery Project Fund, which financed the Department of Taxation's implementation and operation of the Tax Discovery Data System, which is devoted to identifying noncompliant taxpayers and analyzing revenue.

- Eliminates the requirement that tax refunds be paid from sales tax receipts if current receipts from another tax do not exceed refunds required to be paid against that tax.

- Includes estate taxes among other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax.

- Renames the fund receiving income tax refund "check-off" funds the "Income Tax Contribution Fund."

- Specifies that the "first" 2% of motor fuel tax revenue generated each month is credited to the Highway Operating Fund only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds.

- Changes the date for crediting the first 2% of motor fuel tax revenue to the Highway Operating Fund from the first to the last day of each month.

- Allows the Tax Commissioner to require horse-racing tax returns and payments be made electronically.

- Creates two new administrative funds for the collection and distribution of horse-racing tax revenue.

- Requires the Tax Commissioner to distribute horse-racing tax revenue on a monthly basis, rather than on a weekly basis for state funds or immediately upon receipt in the case of local governments.

Wireless 9-1-1 charges

- Makes the following changes, as of January 1, 2014:
  - Requires wireless service providers, wireless resellers, and prepaid wireless sellers to keep records of collected wireless 9-1-1 charges for four years, and to allow the Tax Commissioner to inspect those records.
  - Establishes a four-year statute of limitations, with exceptions, on assessments for noncompliance with wireless 9-1-1 charge remittance requirements.
  - Applies the interest on an assessment for unremitted wireless 9-1-1 charges to only the portion of the assessment that consists of wireless 9-1-1 charges due.
  - Removes provisions specifying how the interest on an assessment and assessments are to be remitted.
  - Requires wireless 9-1-1 charges to be subject to the federal short-term interest rate from the day that they are due until they are remitted or until the collector is assessed, whichever occurs first.
  - Permits, in some cases, the Tax Commissioner to issue refunds for illegal or erroneous payments, charging, and billing of wireless 9-1-1 charges.
  - Requires monthly disbursements of wireless 9-1-1 charges (and interest) to be made to counties in the same amounts as the counties' disbursements in the corresponding calendar months in 2013, and provides for proportionate reductions if funds available are insufficient.
  - Repeals a provision that required the Treasurer to disburse money from the Wireless 9-1-1 Government Assistance Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Network Steering Committee.
- Permits the Tax Commissioner to impose the following penalties:
  - A late-filing penalty, for a failure to file a monthly return showing the amount of wireless 9-1-1 charges due, of the greater of $50 or 5% of the amount due.
  - A late-payment penalty, for a failure to remit the amount due on time, of the greater of $50 or 5% of the amount due.

- An assessment penalty of the greater of $100 or 35% of the amount of wireless 9-1-1 charges due "after the [T]ax [C]ommissioner notifies the person of an audit, an examination, a delinquency, assessment, or other notice that additional wireless 9-1-1 charges are due."

- An electronic penalty, for a failure to remit a return electronically or pay an amount due electronically, of the lesser of (a) the greater of $100 or 10% of the amount not remitted electronically or (b) $5,000.

- Repeals a provision that required the Treasurer to disburse money from the Next Generation 9-1-1 Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Steering Committee.

Income tax

The act reduces income tax rates, creates a new deduction for business income, authorizes a nonrefundable earned income tax credit, eliminates prior law's deduction for wagering losses, bars the same person from claiming more than one personal income tax exemption or credit, limits the $20 exemption credit to lower-income taxpayers, revises filing requirements for some pass-through entity investors, corrects the timing of inflation indexing adjustments, and suspends the making of such adjustments to tax brackets and exemption amounts for three years.

The income tax is levied on individuals, estates, and some trusts. The tax base for individuals is federal adjusted gross income after several deductions and a few additions; for estates and trusts, the base is federal taxable income after several additions and deductions. An $88 credit is granted for individuals filing a return (joint or individual) showing tax due, after personal and dependent exemptions, of $10,000 or less; the effect of the credit is to exempt such filers from the income tax. The tax applies to residents, and to nonresidents who have income that is attributable to Ohio under statutory attribution rules. For residents who have income taxable by another state with an income tax, a credit is available to offset the tax paid to other states; for nonresidents who have income attributable to Ohio and another state, a credit is allowed to the extent the income is not attributable to Ohio.

Rate reductions

(R.C. 5747.02(A); Section 803.80)

The act phases in a 10% reduction in income tax rates for all income tax brackets over three years. Under the phase-in, 2012 tax rates are reduced by 8.5% for taxable years that begin in 2013, 9% for taxable years that begin in 2014, and 10% for taxable years that begin in 2015 or thereafter.

For taxable years beginning in 2012, the income tax is levied at rates ranging from 0.587% for taxable income up to $5,200 to 5.925% for taxable income above $208,500. There are nine income brackets with increasingly greater rates assigned to higher income brackets.

Business income deduction

(R.C. 5747.01(A)(31), 5747.21, 5747.22, and 5748.01; Section 803.80)

The act creates a new state income tax deduction for individuals receiving business income as a sole proprietor or as an owner of a pass-through entity. The deduction equals 50% of business income included in a taxpayer's federal adjusted gross income and not otherwise deducted in computing Ohio taxable income, and to the extent apportioned to Ohio. The amount of the deduction is limited to $125,000 per taxpayer per year, except for spouses who file separately and who each report business income; in that case, each spouse's separate deduction is limited to $62,500. The deduction may first be applied to taxable years that begin in 2013. The deduction is not available to estates or trusts subject to the income tax, and is not available to pass-through entities as such.

The deduction does not affect the school district income tax base. Any taxpayer making the deduction for state income tax purposes must add the deducted amount back into the taxpayer's school district taxable income if the school district's income tax base is based on state taxable income.

Under ongoing law, "business income" is income from the regular conduct of a trade or business, including gains or losses, and includes gains or losses from liquidating a business or from selling goodwill.

Nonrefundable earned income tax credit

(R.C. 5747.08, 5747.71, and 5747.98; Section 803.80)

The act authorizes a state earned income tax credit for low-income taxpayers who receive a federal earned income tax credit. The amount of the credit equals 5% of the federal earned income tax credit allowed on a federal return filed for 2013 or thereafter. The credit is nonrefundable, which means that the amount of a taxpayer's credit may not exceed the taxpayer's tax liability for the year. In addition, if the Ohio adjusted gross income of the taxpayer or, if filing jointly, the taxpayer and the taxpayer's spouse, exceeds $20,000, the credit may not exceed 50% of the tax liability for that year after deducting all other credits except for the joint filing credit.

Federal earned income tax credit

The federal earned income tax credit is a refundable credit available to certain low-income taxpayers.[214] The credit equals a percentage of the taxpayer's earned income, which includes wages, tips, net earnings from self-employment, or other compensation. The credit is available to any taxpayer who is (or whose spouse is) between 25 and 64 years of age, lives primarily in the United States, and is not claimed as a dependent by any other taxpayer. An enhanced credit is available to the parents of one or more qualifying children. A qualifying child is a child who is under the age of 19 or, if the child is a student, under the age of 24. Permanently and totally disabled children of any age are also considered qualifying children.

To qualify for the federal credit, the taxpayer's earned income and adjusted gross income must also fall below a specified threshold. For 2012, those thresholds were $13,980 for taxpayers without qualifying children ($19,190 if married filing jointly), $36,920 for taxpayers with one qualifying child ($42,130 if married filing jointly), $41,952 for taxpayers with two qualifying children ($47,162 if married filing jointly), and $45,060 for taxpayers with three or more qualifying children ($50,270 if married filing jointly).

For 2012, the maximum federal earned income credit for a person or couple without qualifying children was $475, with one qualifying child was $3,169, with two qualifying children was $5,236, and with three or more qualifying children was $5,891.

Wagering loss deduction

(R.C. 5747.01(A)(29); Section 803.80)

The act eliminates the income tax deduction for wagering losses. Under prior law, the deduction was allowed for any loss from wagering transactions that is allowed as an itemized wagering losses deduction under Internal Revenue Code sec. 165. That section permits losses to be deducted to the extent of the gains from such transactions.

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[214] 26 U.S.C. 32.

The elimination of the deduction applies to taxable years ending on or after January 1, 2013. Prior law authorized taxpayers to claim the deduction beginning in "tax year 2013," presumably referring to taxable years beginning in or after 2013.[215] Therefore, because the act's elimination of the deduction takes effect in 2013, the deduction will not be available to taxpayers for any year.

Limits on personal exemptions and $20 credit

(R.C. 5747.022 and 5747.025; Section 803.80)

Continuing law allows an income tax taxpayer to claim a personal exemption for the taxpayer, the taxpayer's spouse (if filing a joint return), and the taxpayer's dependents. Under prior law, each taxpayer could also claim a $20 credit for every personal exemption claimed (e.g., a taxpayer who claims three personal exemptions could claim a credit equal to $60). The act limits the allowance of this $20 credit to taxpayers with an Ohio adjusted gross income, less the personal exemptions, of less than $30,000. Consequently, a taxpayer who claims three personal exemptions, but whose Ohio taxable income is $30,000 or more, may not claim the $20 credit with respect to any of the exemptions claimed.

The act also eliminates a situation, allowed under prior law, in which individuals who are claimed as a dependent on another taxpayer's return may also claim a personal exemption and exemption credit for themselves on their own tax return. The act eliminates this option, and instead specifies that, beginning with taxable years beginning in or after 2014, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

Composite returns of pass-through entities

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

The act specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf. This apparently includes nonresident investors with no other Ohio-source income who are not permitted to file an individual return if the entity includes them in a composite return. The provision applies to taxable years beginning in or after 2013.

Under continuing law, investors who are Ohio residents or who are nonresidents with other Ohio-source income, and on whose behalf the pass-through entity files a

[215] See Section 4 of H.B. 519 of the 128th General Assembly.

composite return (IT 4708), may file an individual return and claim the credit. Prior law restricted nonresident investors with no other Ohio-source income from doing so unless the Tax Commissioner allowed. When a composite return is filed, all the income of investors included in the return is taxed at the highest marginal tax rate and the investors are not allowed the personal and dependent exemptions or the $20 exemption credit; the only credits available to them are business-related credits (which do not include the nonresident credit). Also, net operating loss carryforwards are not reflected in the composite return, as they are on an individual investor's return. By filing an individual return, an investor is able to claim the personal and dependent exemptions (or $20 credit), claim any nonbusiness credits otherwise available to the investor, reflect NOL carryforwards in Ohio taxable income, and pay tax on the basis of a lower net effective tax rate because not all the investor's taxable income is taxed at the highest rate as it is in the composite return. When the individual return is filed, the investor also may claim a refundable credit for the investor's share of the tax the entity paid with the composite return which yields a refund to the extent the investor's share of the composite tax exceeds the investor's tax computed on an individualized basis.

NOAA and PHS commissioned corps retirement pay deduction

(R.C. 5747.01(A)(26) and (GG); Section 803.80)

Continuing law permits a taxpayer to deduct from adjusted gross income amounts received as retired military personnel pay for service in the U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps, their respective reserve components, or the National Guard. A surviving spouse or former spouse of such a taxpayer receiving benefits under the survivor benefit plan on account of the taxpayer's death also may deduct those benefits.

The act extends the deduction to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and to retirees of the Commissioned Corps of the Public Health Service (PHS) by permitting retirees of all the "uniformed services" to claim the deduction. Surviving spouses and former spouses covered by a survivor benefit plan of such retirees also qualify for the deduction.

In the act, "uniformed services" has the same meaning as in federal law: the Armed Forces, NOAA Commissioned Corps, and PHS Commissioned Corps. Under federal law, "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

The act appears to contain two conflicting application dates for this deduction. One provision allows taxpayers qualifying for the deduction to claim it for taxable years beginning on or after January 1, 2014, and another allows qualifying taxpayers to claim the deduction for taxable years beginning on or after January 1, 2013.[216]

Inflation indexing adjustment

(R.C. 5747.02 and 5747.025; Section 803.80)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The act suspends these adjustments for taxable years beginning in 2013, 2014, or 2015. Consequently, the 2012 income tax brackets and exemption amounts will apply through 2015 (although the tax rates corresponding with those brackets will be reduced as described above).

The act also reconciles a timing issue related to the annual inflation indexing adjustments. Under prior law, the Tax Commissioner was required to adjust the tax brackets in July, but was not required to compute the adjustment factor (the percentage by which the federal gross domestic product deflator increased during a calendar year), or to adjust personal exemption amounts, until September. The act instead requires the Tax Commissioner to adjust both items, and to calculate the adjustment factor, in August.

Requests for alternative apportionment of income

(R.C. 5747.21; Section 803.80)

Under continuing law, nonresidents who have Ohio-source income may claim a tax credit equal to the Ohio tax on any income that is not allocated or apportioned to Ohio under statutory guidelines. Generally, business income is apportioned to Ohio on the basis of three factors: (1) property used in business in Ohio, (2) payroll paid in Ohio, and (3) sales made in Ohio. Each of these factors is used as an indication, for tax purposes, of a taxpayer's business activity in Ohio as compared to business activity everywhere. The factors are weighted such that property used in Ohio and payroll paid in Ohio each account for 20% of the taxpayer's business activity in Ohio and sales made by the taxpayer in Ohio accounts for the remaining 60% of the taxpayer's activity. Nonbusiness income generally is allocated to Ohio on the basis of where the property or activity giving rise to the income is located.

The Tax Commissioner may adopt rules providing for alternative methods of computing business and nonbusiness income applicable to all taxpayers and pass-through entities, to classes of taxpayers and pass-through entities, or only to taxpayers and pass-through entities within a certain industry. Furthermore, nonresident taxpayers

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[216] Sections 803.80(A) and (B).

and pass-through entities are permitted to petition the Tax Commissioner for alternative apportionment if the method of apportionment prescribed by law or by rule does not fairly represent the extent of Ohio business activity of the taxpayer or pass-through entity.

The act requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment to submit the request with a return or amended return filed by the due date. Prior law did not expressly mandate that the return or amended return be filed by the due date. The act also clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable apportionment of business in the state. Prior law referenced only equitable allocation.

Nonresident credit computation

(R.C. 5747.05(A); Section 803.80)

The act clarifies the law governing how nonresidents compute the nonresident income tax credit. Under prior law, the credit equaled the Ohio tax on the portion of the nonresident's income not *allocable* to Ohio under the statutes that allocate nonbusiness and wage income and apportion business income between Ohio and elsewhere. The act clarifies that the credit is computed on the basis of both allocable and apportionable income.

Under continuing law, the nonresident credit is allowed for nonresident individuals who have income assignable to Ohio under the allocation and apportionment statutes. Under these statutes, income from carrying on a business ("business income") is apportioned under a formula that assigns 60% of the income according to the proportion of sales are made in Ohio, 20% according to the proportion of property in Ohio, and 20% according to the proportion of payroll (with adjustments if any factor is absent). Any of a nonresident's other income ("nonbusiness income," such as a gain from selling an asset used in business operations when the business is not regularly selling such an asset as part of its business) is allocated under a different set of rules that generally assign all income either to Ohio or elsewhere according to where the asset is located or used. Nonresidents are required to report all of their federal adjusted gross income from wherever it may be sourced and compute Ohio tax as do residents, but they receive a credit equal to the Ohio tax that otherwise is due on the portion of their income that is not assigned to Ohio.

Sales and use taxes

Rate increase

(R.C. 5739.02, 5739.10, and 5741.02; Section 803.190)

Prior law imposed a sales and use tax rate of 5.5% on all retail sales or storage, use, or consumption of tangible personal property and taxable services in Ohio (continuing law authorizes counties and transit authorities to impose additional "piggyback" sales and use taxes). The act increases the state sales and use tax rate to 5.75% for retail sales and tangible personal property or taxable services stored, used, or consumed on or after September 1, 2013.

Sales of digital products

(R.C. 5739.01(B)(12) and (QQQ); Section 803.190)

Beginning on and after January 1, 2014, the act expands the sales and use tax base to include the sale or use of electronically transferred digital audio or audiovisual products and digital books, regardless of whether continuing payment is required. "Digital audio" products include ringtones and other sound files downloaded onto an electronic device.

Cable, video service, and broadcasting exemption

(R.C. 5739.02(B)(53))

The act specifically exempts from sales and use taxation all of the following when bought or sold by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government:

(1) Cable service or programming;

(2) Video service or programming;

(3) Audio service or programming;

(4) Electronically transferred digital audio or audiovisual products.

The act's specific exemption of such programming services and products overlaps with existing exemptions for such services and products by excluding them from the definition of otherwise taxable "telecommunications services." Continuing law subjects "telecommunications service" to sales and use taxation, but explicitly excludes video and audio programming, cable service, and electronically delivered digital products.

Sales of magazine subscriptions

(R.C. 5739.02(B)(4); Section 803.190)

The act eliminates a sales and use tax exemption for the sale or use of magazine subscriptions. Consequently, the sale or use of such subscriptions will be subject to sales and use taxation beginning January 1, 2014. Two related exemptions, for sales of newspapers and of magazines distributed as controlled circulation publications, are retained under the act. A magazine is distributed as a "controlled circulation publication" if the magazine if free to the recipient, has at least 24 pages, consists of at least 25% editorial content, is issued at regular intervals four or more times a year, and is not owned or controlled by an entity that distributes the magazine as a means to advance the entity's business interests.

Sales of investment metals and coins (VETOED)

(R.C. 5739.02(B)(54); Section 803.190)

The Governor vetoed a provision that would have exempted from sales and use taxation the sale or use of investment metal bullion and investment coins. Investment metal bullion was defined to be any elementary precious metal that has been put through a process of smelting or refining and which was in such a state or condition that its value depended upon its content and not upon its form. Examples of investment metal bullion included gold, silver, platinum, and palladium. Investment coins were defined to be money and legal tender manufactured under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value. The exemption would have applied beginning on and after October 1, 2013.

"Substantial nexus" standards (VETOED)

(R.C. 5741.01 and 5741.17; Section 803.190)

Under continuing law, state and local sales tax applies to every retail sale conducted in Ohio. State and local use tax applies to sales of tangible personal property or taxable services made outside Ohio in which the property or service is used or stored in Ohio and on which sales tax was not collected. Sales and use taxes are levied at the same rate. Under U.S. Supreme Court precedent, only sellers that have a "physical presence" with a state may be required to collect sales or use tax from a customer in that state.[217] Otherwise, a state cannot require a seller to collect and remit use tax. In

[217] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (finding that a catalog seller that delivered products to North Dakota customers by an out-of-state common carrier outside the state did not have a physical presence with North Dakota and was not required to collect and remit the state's sales tax).

instances where use tax is not collected by the seller, continuing Ohio law requires that the consumer pay use tax directly to the state.

Continuing law codifies the physical presence requirement by requiring sellers with a "substantial nexus" with Ohio to collect and remit use tax from Ohio customers and provides several explicit examples of circumstances under which an out-of-state seller has a substantial nexus with Ohio.

The Governor vetoed a provision that prescribed new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and would therefore be required to register with the Tax Commissioner to collect and remit use tax. A seller would have been presumed to have substantial nexus with Ohio in any of the following circumstances:

(1) The seller used a place of business in Ohio operated by the seller or another person, other than a common carrier. Continuing law includes such a seller if the place of business is operated by the seller, a franchisee, a member of an affiliated group, or an employee or agent of the seller.

(2) The seller regularly used employees or other agents and persons to conduct the seller's business or that used similar trademarks or trade names as the seller, or that sold a similar line of products under a business with the same industry classification as the seller. Continuing law includes only a seller that regularly employs or engages individuals in Ohio to conduct the seller's business.

(3) The seller used any person, other than a common carrier, to receive or process orders, promote, advertise, or facilitate customer sales, perform maintenance, delivery, and installation services for the seller's Ohio customers, or facilitate delivery by allowing Ohio customers to pick up property sold by the seller. Continuing law includes a seller who uses a person in Ohio to receive or process the seller's orders.

(4) The seller entered into an agreement to pay one or more Ohio residents to refer potential customers to the seller if gross sales to customers referred to the seller by all such residents exceed $10,000 during the preceding 12 months. The customer could have been referred by a link on a web site, an in-person oral presentation, or through telemarketing. This nexus relationship has been referred to as "click-through nexus."

Under the vetoed provision, a seller would have been presumed to have substantial nexus with Ohio if, as under continuing law, the seller made regular deliveries of tangible personal property to Ohio other than by a common carrier, the seller was a member of an affiliated group of entities at least one other member of which has substantial nexus with Ohio, or the seller rented, leased, or offered on approval tangible personal property to Ohio customers. In addition, the act would have eliminated the following bases in continuing law that would cause a seller to have substantial nexus with Ohio:

(1) The seller is registered to do business in Ohio. Continuing law includes such sellers, except sellers registering with the Streamlined Sales and Use Tax central registration system.

(2) The seller has any other contact with Ohio that forms the basis of substantial nexus as allowed under the U.S. Constitution's Commerce Clause. Continuing law includes such sellers.

Substantial nexus presumption

Continuing law provides several explicit examples of when a remote seller has substantial nexus with Ohio. The Governor vetoed a provision that would have transformed the examples to rebuttable presumptions. A seller that had substantial nexus with Ohio, except for a seller that had click-through nexus, could have rebutted that presumption by demonstrating that the activities conducted by a person on the seller's behalf were not significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales.

For a seller presumed to have click-through nexus with Ohio, the presumption could have been rebutted by submitting proof that each Ohio resident the seller engaged to refer potential customers on the seller's behalf did not engage in activity significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales during the preceding 12 months. The proof could have consisted of sworn written statements from each resident stating that the resident did not engage in solicitation in Ohio on behalf of the seller in the preceding 12 months, provided the statements were obtained and provided in good faith.

Out-of-state seller doing business with the state

The Governor vetoed a provision that would have required an out-of-state seller and the seller's affiliates, before the seller sold or leased tangible personal property or services to a state agency, to register with the Tax Commissioner to collect and remit use tax, even if that seller would not otherwise have substantial nexus with Ohio.

"Marketplace Fairness Act of 2013"

(Section 757.50)

The act expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" legislation (or other similar legislation) by Congress. H.R. 684 and S. 336, which were introduced in 2013 in the U.S. House of Representatives and Senate, respectively, would authorize qualifying states to compel online and catalog retailers to collect sales or use tax at the time of a transaction regardless of whether the retailer has a "substantial nexus" with the state.

The authority created under the federal bill would extend only to states that are members of the Streamlined Sales and Use Tax Agreement or that meet a statutorily prescribed alternative standard for sales and use tax simplicity. Ohio is an associate member of the Streamlined Sales and Use Tax Agreement, meaning that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively. As such, Ohio does not qualify as a "member state" under the federal legislation. It appears that legislative action by the General Assembly would be necessary for Ohio to qualify under the "alternative standard." (On July 9, 2013, the Governor issued an executive order directing the Tax Commissioner to apply for full membership in the agreement. Executive Order 2013-09K.) However, since the federal "Marketplace Fairness" legislation is currently pending in Congress and is not law, it is not yet clear what that action would eventually entail.

The act also specifies that the intent of the conforming legislation is not to create a nexus between Ohio and remote sellers for any tax other than those imposed under Chapters 5739. and 5741. of the Revised Code (sales and use tax). The federal "Marketplace Fairness" legislation explicitly states that it does not "create any nexus between a person and a State or locality."

The act does not exempt any person from collecting use tax that is required to do so under continuing law. The provisions pertaining to remote small sellers appear to anticipate the application of the "Marketplace Fairness" legislation if it is enacted in its current form. Specifically, the act codifies the small seller exception found in subsection (c) of that legislation into Ohio sales and use tax law.

Remote Seller Administration Fund

(R.C. 5741.032)

The act creates the Remote Seller Administration Fund to offset the Department of Taxation's cost of administering taxes collected and remitted by remote sellers. The fund is made up of 0.5% of Ohio use tax collections by out-of-state sellers that currently are not legally required to collect the tax (i.e., "remote sellers"). The Treasurer of State must transfer this amount to the Fund before July 31 each year.

Use tax collections by remote sellers for Income Tax Reduction Fund

(R.C. 5741.03)

The act earmarks new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund. The deposit is required semiannually by January 1 and by July 1 each year. The "new" remote seller use tax collections are the collections remitted by remote sellers in excess of (1) remittances by sellers that collect use taxes under the Streamlined Sales and Use Tax Agreement and (2) refunds issued to remote sellers. The new revenue would be added to the surplus revenue for which an income tax rate reduction may be determined. Under continuing law, the amount of the tax rate reduction is based on the amount of "surplus revenue" that is available after the balance in the Budget Stabilization Fund equals 5% of annual General Revenue Fund expenditures and certain inter-year fund carryovers and reserves are made.

Under law largely unchanged by the act, all other use tax collections must be deposited to the state General Revenue Fund, with a portion of such revenue earmarked for the Local Government Fund and Public Library Fund.

Remote small sellers

(R.C. 5741.01(Q) to (S) and 5741.17)

The act specifies that a seller is not legally required to collect Ohio use tax if the seller has $1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax (which the act defines as "remote small sellers"). For the purpose of calculating gross annual receipts of a remote small seller, all related persons must be aggregated, and persons with one or more owner relationships must be aggregated if those relationships were designed for the purpose of qualifying as a remote small seller. (Relationships would be determined under certain federal income tax provisions that describe relationships between family members, trust fiduciaries and beneficiaries, and persons holding majority ownership or control in other persons.) The purchaser's liability for any use tax that a seller has not collected and remitted to the state is not affected.

Under continuing law, use tax applies to sales made outside Ohio to a purchaser for use in Ohio. The location where a sale is made is generally deemed to be where the order is received by the seller. Out-of-state sellers lacking a "substantial nexus" with Ohio – i.e., lacking one of several specified forms of physical presence in Ohio (see "**Substantial nexus standards**," above) – are not required under state or federal law to collect use tax for the state, but some may voluntarily collect the tax and remit it to the state. (See R.C. 5741.17.)

Sales tax exemption for sales not taxable under federal law or the Ohio Constitution

(R.C. 5739.02(B)(10))

The act specifies that Ohio sales and use taxes do not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution. Prior law referred only to the U.S. Constitution. The effect, if any, is not clear, because federal and state constitutional provisions, and federal laws, prohibitions or limitations on the state's power to tax apply even in the absence of this provision.

Sales and use tax exemption for items used in aerospace vehicle research (VETOED)

(R.C. 5739.02(B)(49); Section 803.190)

The Governor vetoed a provision that would have authorized a sales and use tax exemption for goods and services used in aerospace vehicle research and development. The act would have defined an "aerospace vehicle" as any manned and unmanned airplane, helicopter, missile, rocket, space vehicle, or similar aviation device. To qualify for the exemption, the purchased services or items would have had to have been used in the research or development of such vehicles, human performance equipment and technology associated with operating such vehicles, or the parts and components of such vehicles. Exempt items would have included, among other items, materials, parts, equipment, software, tools, and fuel.

Computer data center equipment sales and use tax exemption

(R.C. 122.175)

Continuing law authorizes a sales and use tax exemption for purchases of certain personal property that will be used at an eligible computer data center. Under law retained in part by the act, a business qualifies for the exemption if the business agrees (1) to invest at least $100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least $5 million at the center for the entire term of the agreement. To receive the exemption, the business must submit an application and enter into an agreement with the Tax Credit Authority authorizing the exemption.

Eligibility for the exemption

The act makes several changes to the requirements for receiving the computer data center equipment exemption. First, the act allows multiple businesses that operate at the same computer data center to submit a single exemption application. For the purposes of meeting the capital investment and annual payroll requirements, the total investment and payroll of all of the participating businesses are combined, instead of a single business having to meet those requirements.

Second, the act lowers the annual payroll requirement, from $5 million to $1.5 million, and provides that the recipient or recipients of the exemption are not required to meet this lower threshold until the third year of the exemption agreement.

Third, the act allows a person to receive the exemption if the person leases a computer data center to other businesses that operate at the center. Under prior law, a business qualified for the exemption only if the business itself provided "electronic information services," which involves providing access to computer equipment for the purpose of acquiring, examining, or placing data.

Exemption application

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

The act specifies that, if multiple businesses apply to enter into a single exemption agreement, only the business that submits the application is required to meet the requirements described in (2), (3), and (4) above. The requirement described in (1) applies to the combined capital investment made by all of the businesses.

Agreement with Tax Credit Authority

Continuing law requires that an agreement for a computer data center equipment sales and use tax exemption describe the proposed data center project, state the percentage of the approved exemption and length of time the exemption will apply, and include other provisions related to annual reporting, a limit on employment relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement. The act specifies that, if multiple businesses enter into a single exemption agreement, these requirements must apply to all businesses subject to the agreement.

Under prior law, a business that entered into an exemption agreement was required to maintain operations at the eligible computer data center for the term of the agreement. The act clarifies that, if an agreement covers multiple businesses, this requirement applies only to the business that submitted the exemption application. In addition, the act modifies the requirement to allow such a business to cease operations at the computer data center for up to 18 months. In such a case, the exemption agreement is not void, but no business may claim the sales and use tax exemption allowed under the agreement during the period the applicant business ceased operations.

Addition of businesses to existing agreement

The act allows a business to be made a party to an existing exemption agreement between the Tax Credit Authority and another business. In such a case, the business is entitled to the exemption authorized in the existing agreement and bound by all requirements specified in law and the agreement.

Agreement compliance

Under continuing law, the Tax Credit Authority may terminate an agreement if a business does not meet the capital investment and annual payroll requirements specified in the agreement. In such instances, the Authority may require the business to pay all or a portion of the sales and use taxes that would have been owed on equipment exempted under the agreement.

The act provides that, if a terminated agreement covered multiple businesses, the Tax Credit Authority may require each of the businesses to pay a portion of the taxes that would have been owed. When determining the amount of unpaid taxes to charge each business, the Authority may consider the level of each business' responsibility for the noncompliance.

Direct payment permit

The act specifies that, if multiple businesses enter into a single exemption agreement, the Tax Commissioner must provide direct payment permits to each of the businesses. Under continuing law, the Tax Commissioner must grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. This permit allows the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center.

Sales and use tax exemption for sales to a nonprofit sports facility operator

(R.C. 5739.02(B)(52); Section 803.230)

The act authorizes a sales and use tax exemption for purchases made by a nonprofit corporation that satisfies all of the following criteria:

(1) The nonprofit corporation leases a sports facility used by a professional athletic team or minor league affiliate from an "eligible county." An "eligible county" is a county that had a population of between 400,000 and 800,000 according to the 2000 federal census and that borders another state. (Lucas County is the only county that satisfies these criteria.)

(2) The lease requires that substantially all of the net revenue from the nonprofit corporation's operations at the facility be paid to the county at least once per year.

(3) Upon dissolution of the corporation, all of the corporation's net assets are distributable to the county's board of commissioners.

The exemption applies both to sales that occurred before September 29, 2013 (the act's 90-day effective date) and to sales that occur on or after that date. The act does not expressly state whether a refund must be issued for prior sales or how that refund would be administered.

Other excise taxes

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The act extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape and wine industry, and the remainder is credited to the General Revenue Fund (GRF). Under prior law, the amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2013.

Tobacco product tax rate on little cigars

(R.C. 5743.01, 5743.51, 5743.62, and 5743.63; Section 803.193)

Under continuing law, an excise tax is levied on the sale, distribution, or use of tobacco products other than cigarettes at a rate of 17% of the product's wholesale price. All revenue from the tax is credited to the General Revenue Fund.

The act increases the rate levied on a specific type of tobacco product – "little cigars" – to 37% of wholesale price beginning on and after October 1, 2013. A "little cigar" is a smoking roll made of tobacco that does not satisfy the excise tax law's definition of a cigarette, that contains an integrated cellulose acetate filter or other filter, and that is not wrapped in natural leaf tobacco.

Cigarette license approval

(R.C. 5743.15)

Under continuing law, cigarette manufacturers, dealers, and importers must obtain a license to operate in the state. Before issuing such a license, the Tax Commissioner must verify that the applicant is in compliance with Ohio's tax laws. The act specifically requires the Tax Commissioner to confirm that the applicant has filed any tax returns, paid any outstanding taxes or fees, and submitted any required information that, to the Tax Commissioner's knowledge, are due at the time of application.

Motor fuel excise tax on liquid natural gas

(R.C. 5735.012 and 5735.013; Section 803.180)

Ohio levies an excise tax on all motor vehicle fuel used, distributed, or sold within Ohio and used to generate power for the operation of motor vehicles. The rate of the tax is 28¢ per gallon.

Under prior law, the tax on liquid natural gas, like all other forms of motor fuel, was measured in gallons. The act instead requires that the tax on liquid natural gas be measured in pounds. In order to apply the per-gallon tax rate to liquid natural gas, the act establishes a gallon-equivalent standard equal to either (1) the diesel gallon-equivalent standard for liquid natural gas adopted by the National Conference on Weights and Measures or (2) if no such standard has been adopted, 6.06 pounds of liquid natural gas. The new measurement standard applies on and after January 1, 2014.

Notice of fuel dealer sale or closing

(R.C. 5735.34)

Continuing law requires a motor fuel dealer that sells or discontinues the dealer's entire business to file a final motor fuel excise tax return within 15 days after the sale or discontinuance. The act additionally requires the dealer, within that time period, to notify the Tax Commissioner in writing that the dealer's business has been sold or discontinued and, if the business was sold, of the contact information of the purchaser.

Cuyahoga County alcoholic beverage and cigarette tax levy authority

(R.C. 307.673, 307.696, 307.697, 4301.421, 5743.024, and 5743.323; Section 803.280)

The act authorizes Cuyahoga County to renew county alcoholic beverage and cigarette taxes that are set to expire in 2015. The county levies a spirituous liquor tax of $3 per gallon and an alcoholic beverage tax of 32¢ per gallon of wine and mixed beverages, 24¢ per gallon of cider, and 16¢ per gallon of beer. The county also levies a cigarette tax of 34.5¢ per pack, but only 4.5¢ of that tax is set to expire in 2015.

Under the act, the county may propose to renew the expiring taxes for up to 20 years by adopting a resolution to do so on or before September 1, 2015. Before taking effect, the taxes must be approved by county voters. Continuing law requires that revenue from the taxes be used to operate and service the debt of sports facilities owned by the county or a development corporation. The act specifies that tax revenue may also be used to repair or make improvements to such sports facilities.

Application of spirituous liquor tax

Under continuing law, Cuyahoga County's spirituous liquor tax applies to sales made at retail by the Division of Liquor Control and to sales made to liquor permit holders who purchase the liquor for resale. The act clarifies that the tax will also apply to any sales made pursuant to the existing agreement that transferred liquor distribution and merchandising rights to JobsOhio.

Effective date

The act applies to proceedings that were initiated by the county to renew the alcoholic beverage or cigarette taxes before September 29, 2013 (the act's 90-day effective date), so long as those proceedings are consistent with the terms of the act.

Commercial activity tax (CAT)

The CAT is an annual excise tax imposed on businesses for the privilege of doing business in Ohio that is based on a business' taxable gross receipts. Taxable gross receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. There are over 35 other categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.

Minimum tax amount

(R.C. 5751.03, 5751.031, and 5751.051; Section 803.90)

The act increases the commercial activity tax (CAT) due on a taxpayer's first $1 million in taxable gross receipts for taxpayers that have more than $1 million in taxable gross receipts. Under continuing law, persons with less than $150,000 in taxable gross receipts are excluded from paying the CAT. All other CAT taxpayers pay a minimum tax on the first $1 million in taxable gross receipts plus 0.26% of receipts in excess of $1 million.

Prior law set the minimum tax at $150 for all taxpayers with more than $150,000 in taxable gross receipts. The act imposes varying minimum tax amounts based on the total annual taxable gross receipts of the taxpayer. The following table summarizes the minimum tax imposed by the act:

Taxable gross receipts of taxpayer	Minimum tax on first $1 million
$150,000 to $1 million	$150
$1 million to $2 million	$800
$2 million to $4 million	$2,100
More than $4 million	$2,600

The act also specifies that the minimum tax due from first-time CAT taxpayers that timely register is one-half of the minimum tax otherwise due. Under prior law, the minimum tax due for such taxpayers was $75.

CAT exclusion for grain sold by grain handlers

(R.C. 5751.01(F)(2)(ii); Section 803.90)

The act excludes from the taxable gross receipts base of the CAT the receipts of agricultural commodity handlers licensed by the Department of Agriculture from the sale of agricultural commodities. The exclusion may be applied to original returns filed on or after January 1, 2014.

Under continuing law, agricultural commodities include grains such as barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, or speltz, or any other crop designated by the Director of Agriculture, excluding grains or other crops used for seed. Generally, an agricultural commodity handler is a person that purchases agricultural commodities from producers in excess of 30,000 bushels annually or operates a facility for the receiving, storing, shipping, or conditioning of agricultural commodities. Agricultural cooperatives, which may operate as agricultural commodity handlers, are already exempted from the CAT as nonprofit corporations. (See R.C. 5751.01(E)(8) and Ohio Adm. Code 5703-29-10.)

Penalties for improperly excluded qualified distribution center receipts

(R.C. 5751.01(F)(2)(z); Section 803.90)

The act replaces the $500,000 penalty enacted earlier in 2013 by S.B. 28 of the 130th General Assembly on operators of distribution centers that improperly qualify as a qualified distribution center (QDC). Instead of the $500,000 penalty, the operator of such a QDC would be liable for the "ineligible operator's supplier tax liability," which equals the CAT that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate. The penalty is substantially similar to the penalty imposed under the law prior to S.B. 28 of the 130th General Assembly. The difference is that, prior to S.B. 28, the law required ineligible QDC operators to pay all tax, interest, and penalties on the improperly excluded receipts of the QDC's suppliers. Under the act, the ineligible operator's supplier tax liability explicitly excludes any interest or penalties on the amount that would have been owed by the suppliers.

The act authorizes the Commissioner to request from a distribution center that is improperly issued a qualifying certificate a list of all suppliers of the distribution center along with the corresponding costs of qualified property for the qualifying year at issue. The purpose of the list is to assist the Commissioner in calculating the ineligible operator's supplier tax liability. The operator of such a distribution center is required to provide such information within 60 days of the Commissioner's request.

Existing QDC exclusion

Continuing law excludes from the CAT base a percentage of receipts suppliers of a QDC derive from property they ship to the QDC. A QDC includes a warehouse or other similar facility in Ohio that has obtained a certificate from the Tax Commissioner indicating that the facility's suppliers qualify for the exemption. To qualify as a QDC, all persons operating the center must have had more than 50% of the cost of the property shipped from the center to locations outside Ohio, using CAT situsing rules under continuing law, for a 12-month period and must have had cumulative costs from its suppliers of at least $500 million for that period. To qualify for the associated CAT exclusion, a supplier must deliver property to the QDC certificate holder solely for further shipping by the center to another location inside or outside Ohio. The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or process at the distribution center. For 2013, there are seven QDC certificate holders.

The QDC operator must submit an annual fee of $100,000 for each year the QDC is issued a qualifying certificate. Under prior law, the Commissioner could assess this annual fee in the same manner as taxes, penalties, and interest due under the CAT could be assessed. The act eliminates the Commissioner's authority to assess the fee in this manner.

The act's changes to the QDC exclusion apply to original returns filed on or after January 1, 2014.

Prohibition against municipal commercial activity tax

(R.C. 715.13)

The act specifies that municipal corporations may not levy a tax that is "the same as or similar to" the CAT. Continuing law prohibits municipal corporations from levying most of the kinds of taxes the state levies. If there were no such prohibition, municipal corporations would be authorized to levy taxes under their home rule authority, without authorization from the General Assembly.

Motor fuel receipts tax

(R.C. 113.061, 715.013, 5703.052, 5703.053, 5703.059, 5703.19, 5703.50, 5703.70, 5736.01 to 5736.14, 5736.99, 5751.01, 5751.02, 5751.051, and 5751.20; Sections 395.10 and 803.90)

Beginning July 1, 2014, the act replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax – the "motor fuel receipts tax" (MFRT). The MFRT is modeled on the CAT, but is based solely on receipts from one sale or exchange of motor fuel.

Under prior law, the CAT applied to receipts from most transactions involving the sale or exchange of motor fuel. Certain receipts from exchanges between licensed motor fuel dealers were excluded from the CAT base; in addition, a taxpayer could deduct state and federal excise taxes paid on motor fuel.

Unlike the CAT, which may apply to multiple transactions involving the same motor fuel, the MFRT is designed to apply to only one transaction in the motor fuel distribution chain – the first transaction in which motor fuel is sold for delivery to a location in the state. The rate of the MFRT is 0.65% of a taxpayer's receipts.

Taxpayers

The MFRT is imposed on "suppliers." A supplier is any person that:

(1) Sells, transfers, or otherwise distributes motor fuel from a terminal or refinery "rack" to a point outside of a "distribution system," if the person distributes that motor fuel within Ohio;

(2) Imports motor fuel for sale, transfer, or other distribution by the person to a point outside of a distribution system in Ohio.

A "rack" is a mechanism that transfers motor fuel from a refinery, terminal, or marine vessel into a truck, supply tank, railroad car, or other point outside of a distribution system. A "distribution system" is a bulk transfer or terminal system that consists of refineries, terminals, marine vessels that transport motor fuel to a refinery or terminal, and pipelines; motor fuel that is not in any of those locations is outside of a distribution system.

Tax base

The MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio. As with the CAT, "gross receipts" generally includes all amounts received from the transaction, without deduction for the cost of the goods sold or the supplier's expenses.

The act excludes four specific items from the MFRT base, which were also excluded from the CAT base with respect to motor fuel under previous law:

(1) Receipts from the sale of motor fuel exported to another state;

(2) An amount equal to the state and federal excise taxes paid by a supplier on any motor fuel that contributed to the supplier's gross receipts;

(3) Bad debts on the basis of which the supplier paid the MFRT in a previous tax period;

(4) Receipts from the sale of an account receivable, to the extent that the gross receipts from the transaction that gave rise to the account receivable are already included in the supplier's gross receipts.

Tax rate

The MFRT rate equals 0.65% of a supplier's gross receipts. The rate is higher than the CAT rate of 0.26%; however, the structure of the MFRT is designed to require the taxation of motor fuel only once as it is distributed throughout the state, whereas the CAT may apply to multiple transactions occurring in the state. The higher rate is expected to apply to a lower amount of gross receipts.

Allocation of tax revenue

The act segregates MFRT revenue attributable to sales of motor fuel used for propelling vehicles on public highways and waterways from other gross receipts and requires the Director of Budget and Management to credit the revenue attributable to those receipts to a separate fund. In general, receipts in that fund – the Motor Fuel Receipts Tax Public Highways Fund – must be used solely to maintain the state highway system, fund traffic law enforcement, and cover the costs of hospitalization of indigent persons injured in motor vehicle accidents on public highways.

Under the act, all revenue from the MFRT is initially deposited in the Motor Fuel Receipts Tax Fund. On or before the last day of March, June, September, and December of each year, the OBM Director, after deducting an amount from the Motor Fuel Receipts Tax Fund to cover the Department's administrative costs and refunds of tax overpayments, must transfer an amount to the Motor Fuel Receipts Tax Public Highways Fund that is equal in proportion to the proportion of total MFRT revenue that is attributable to motor fuel used for propelling vehicles on public highways and waterways. Any revenue remaining after that transfer is credited to the General Revenue Fund.

Allocation of motor-fuel related CAT revenue

On December 7, 2012, the Ohio Supreme Court held that spending motor fuel-related CAT revenue on nonhighway purposes violates the constitutional provision prohibiting money derived from excises relating to motor vehicle fuel from being spent on nonhighway purposes (Ohio Constitution, Article XII, Section 5a).[218] Under prior law, all revenue from the CAT was credited to the GRF and to two other funds to provide tangible personal property tax replacement payments to some local governments and school districts. The Court enjoined CAT motor fuel revenue from being spent for those purposes after December 7, 2012.

To address the disposition of motor fuel-related CAT taxes imposed since the Supreme Court's decision, the General Assembly enacted H.B. 51 of the 130th General Assembly. That act requires the Department of Taxation to determine the amount of such taxes that were remitted between December 7, 2012, and June 30, 2013. The OBM Director must transfer the certified amount from the GRF to the Commercial Activity

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[218] *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565 (2012).

Tax Motor Fuel Receipts Fund, which H.B. 51 created. After June 30, 2013, H.B. 51 provides for quarterly transfers of motor fuel-related CAT revenue to the Commercial Activity Tax Motor Fuel Receipts Fund.

The act requires the continued transfer of motor fuel-related CAT revenue from tax periods ending before July 1, 2014, to be transferred to the Commercial Activity Tax Motor Fuel Receipts Fund. Thereafter, receipts from the MFRT are distributed in accordance with the Supreme Court's decision as provided above.

Use of tax revenue for Ohio Public Works Commission bond payments

Under the act, tax revenue allocated to either the Commercial Activity Tax Motor Fuel Receipts Fund or the Motor Fuel Receipts Tax Public Highways Fund may first be used to compensate the GRF for debt service paid from the GRF for state-issued bonds whose proceeds are used by the Ohio Public Works Commission (OPWC) to fund local highway-related infrastructure projects.

For each fiscal year beginning with fiscal year 2013, the act requires the OPWC Director to certify the amount of debt service paid from the GRF for bonds issued to finance or assist in the financing of local subdivision public infrastructure capital improvement projects that were used for highway purposes – i.e. the construction or repair of public highways and bridges. The infrastructure bonds are or have been issued under Sections 2k, 2m, and 2p of Article VIII, Ohio Constitution.[219] The OPWC is required to categorize the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

The act authorizes the OBM Director, on or before the last day of each fiscal year, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund to the GRF, presumably to reimburse the GRF for GRF money that had been used to service such bonds.[220] (The transfer for fiscal year 2014 will be made solely from the Commercial Activity Tax Motor Fuel Receipts Fund; transfers for subsequent fiscal years may be

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[219] Section 5a requires revenue from taxes relating to motor vehicle fuels to be used solely for highway purposes. Since the OPWC uses proceeds from Section 2k, 2m, and 2p bonds to fund some infrastructure projects that are not highway-related, such as water and sewer system improvements, presumably only the portion of bonds that fund infrastructure projects related to highways may be serviced by CAT motor fuel revenue.

[220] The act authorizes the OBM Director to use CAT motor fuel revenue to service Section 2p bonds. However, Section 2p expressly prohibits Section 5a revenue from being used to service bonds issued under the authority of that section: "Moneys referred to in Section 5a of Article XII of the Ohio Constitution may not be . . . used for the payment of debt service on those obligations." Section 2p(C), Article VIII, Ohio Constitution.

made from either Fund, to the extent that any revenue remains in the Commercial Activity Tax Motor Fuel Receipts Fund.)

The OBM Director must, by the end of each fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund after making the GRF transfers described above to the Highway Operating Fund. Under continuing law, money in the Highway Operating Fund supports the operations of the Department of Transportation and may be used solely for highway purposes.

Tax returns and payment

Each supplier subject to the MFRT must file quarterly returns. Similar to the CAT, returns are due on the tenth day of May, August, November, and February. Each return must state the supplier's gross receipts and indicate the portion of those gross receipts, if any, that are attributable to motor fuel used to propel vehicles on public highways.

As with the CAT, suppliers must pay the MFRT electronically and, if required by the Tax Commissioner, file electronic returns. The Commissioner may excuse a supplier from the electronic payment or filing requirement for good cause.

Licensing

Under the act, a person may not engage in business activities that subject the person to the MFRT without a supplier's license. To obtain the license, a supplier must apply to the Tax Commissioner on or before March 1, 2014, or thirty days after the supplier becomes subject to the tax, whichever is earlier. After obtaining a license, the supplier must renew the license annually. Renewal applications are due March 1 of each year.

If a supplier is engaged only in the importation of motor fuel that the supplier itself will sell or distribute, the fee for each initial or renewal application is $300. The application fee for all other suppliers is $1,000. However, if a supplier files an initial license application after September 1 of any year, the fee is reduced by one-half.

The Tax Commissioner may deny a license application if (1) the applicant has previously had a license cancelled for cause by the Commissioner, (2) the Commissioner believes that the application was not filed in good faith or was filed as a subterfuge in an attempt to procure a license for another person, or (3) the applicant has violated any provision of the MFRT law. If the Commissioner denies an applicant's license, the applicant is entitled to a refund of the application fee.

The Commissioner may revoke a supplier's license if the supplier files a false return, fails to file a return, or fails to pay the tax. The Commissioner must notify the supplier of the revocation by certified mail. In addition, if a person engages in activities that subject the person to the MFRT without holding a supplier's license, the person is subject is a penalty of up to $1,000 or up to 180 days of imprisonment.

If a supplier is no longer subject to the tax, the supplier may request the cancellation of the supplier's license. In such a case, the supplier must first pay any tax, penalty, and interest due at the time of the cancellation.

Administration and enforcement

The act includes provisions for the administration and enforcement of the MFRT that are substantially the same as similar provisions under the CAT. Those provisions cover the following topics:

- Penalties for failure to report or pay the tax as required by law.
- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Interest on unpaid taxes and refund payments.
- Assessments to collect unpaid tax, penalty, or interest.
- Procedures for tax payment by taxpayers that discontinue operations in the state.
- The cancellation of the authority of a noncompliant taxpayer to continue doing business in Ohio, including through a quo warranto action.
- Records retention and inspection.

Officer and employee liability

Under the act, the employees or officers of a supplier can be held personally liable for the supplier's failure to file returns or pay the MFRT if the officer is responsible for the supplier's fiscal responsibilities or if the employee is responsible for, or has control or supervision of, the filing of returns or the payment of taxes. The dissolution or bankruptcy of the supplier does not discharge such liability.

Tax avoidance provision

The act prohibits any person from avoiding the MFRT by receiving motor fuel outside of the state and transferring the motor fuel into the state within one year. In such a case, the person is considered to have received the fuel in this state and must include as gross receipts the value of the motor fuel transferred into the state within the one year. This analogous to an anti-avoidance provision of the CAT (see R.C. 5751.013).

Tax on mutual and stock insurance company premium deposits

(R.C. 5729.04; Section 803.260)

Under continuing law, foreign and domestic insurance companies, including mutual or stock insurance companies, are subject to a franchise tax based on the company's gross premiums, subject to certain exclusions. A mutual insurance company is an insurance company owned by its policyholders. A stock insurance company is an insurance company owned by investors who have purchased company stock; profits of the company are generally distributed to the investors without necessarily benefiting the policyholders.

Beginning with calendar year 2013, the act authorizes a mutual or stock insurance company to exclude from its taxable gross premiums any workers' compensation insurance premium deposits, if (1) the company distributes a portion of the premiums it collects during a policy year back to its policyholders, (2) the deposits exceed the net cost of the insurance to the insured, and (3) the excess is returned ratably to the company's policyholders at the end of the policy year. A similar exclusion applies under continuing law to premium deposits received for fire and allied lines insurance and inland marine insurance provided by mutual and stock insurance companies.

Property taxes

Homestead exemption income limit

(R.C. 323.151, 323.152(A), 323.153, 4503.064, 4503.065, and 4503.066)

The homestead exemption is a property tax credit equal to the taxes that would be charged on up to $25,000 of the true value of the property of qualified homeowners. ("True value" is the appraised fair market value.) The credit essentially exempts $25,000 of the value of a homestead from taxation. It also applies to manufactured and mobile homes regardless of whether they are taxed as real property or taxed under the manufactured homes tax (except that manufactured and mobile homes are assessed at 40% of cost or market value and are depreciated). The amount of the tax reduction for a homestead depends on the local tax rate: the higher the tax rate, the greater the tax reduction.[221]

Under continuing law, the homestead exemption is available only to homeowners who are 65 years of age or older, or permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption.[222] The act further restricts the availability of the exemption to owners who have an Ohio adjusted gross income of $30,000 or less, as computed for state income tax purposes. The income limit will be increased each year that the gross domestic product deflator increases by the percentage increase in the deflator, rounded to the nearest multiple of $100. The act authorizes the Tax Commissioner and county auditors to examine an applicant's tax or financial records to determine eligibility.

The homestead exemption, as it existed under prior law, is preserved for all elderly or disabled homeowners who received the exemption for tax year 2013 (or tax year 2014 for homeowners who live in a manufactured home taxed under the manufactured home tax). Persons who qualify for the exemption for tax year 2013 (or 2014 for manufactured home taxpayers) but who do not file on time, but who file a late application on time as allowed under continuing law, also may receive the homestead exemption regardless of income.

Property tax rollback limitations

(R.C. 319.302 and 323.152(B))

The act limits the application of the 2.5% and 10% real property tax rollbacks by specifying that the rollbacks may not be applied to reduce the taxes due on new or

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[221] In computing the tax reduction for real property, the 10% and 2.5% rollbacks are accounted for by adjusting the reduction so that it reflects the amount of taxes actually charged against $25,000 in true value considering that the taxes charged are only 87.5% of the amount that would be charged if the rollbacks did not apply. Since the act also limits application of the rollbacks to levies approved at an election held before September 29, 2013, and renewals of such levies, the amount of the homestead reduction in future years will be somewhat greater than the taxes actually charged against any homestead where new or replacement levies not covered by the rollbacks are imposed.

[222] The homestead exemption is authorized under the Ohio Constitution as an express exception to the Constitution's "uniform rule," which requires all real property to be taxed uniformly according to its value. The constitutional authorization empowers the General Assembly to pass laws "to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction." Article XII, Section 2, Ohio Constitution.

replacement levies approved at elections held on or after September 29, 2013 (the act's 90-day effective date). The limitation applies regardless of the tax year to which the levy would first apply, meaning that the reductions will not apply to levies approved at the November 2013 election for tax year 2013, 2014, or any later tax year, or to levies approved at any later election. The rollbacks continue to apply to all levies approved at an election held before September 29, 2013, and to subsequent renewals of those levies.

Under continuing law, the 2.5% rollback applies to all owner-occupied homesteads and the 10% rollback applies to all real property not intended primarily for use in business activity. The state is required to reimburse local governments and schools for the revenue lost due to the rollbacks.

School district combined levies for current expenses and improvements

(R.C. 5705.192, 5705.217, 5705.218, and 5705.25)

Continuing law allows a school district to levy a property tax for both current expenses and permanent improvements through a single ballot question. The tax may be levied for a term of up to five years or, if the levy is for current expenses and "general" permanent improvements, for a continuing period of time. The resolution proposing the combined levy must apportion the tax rate between the two purposes, although the apportionment need not be the same for each year the tax is levied.

Under prior law, the permanent improvement component of a combined levy could be used for specific permanent improvements, general permanent improvements, or both. The act instead specifies that all new combined levies must be levied only for current expenses and general permanent improvements. A specific permanent improvement is an improvement or group of improvements that the school district may include in a single bond issue, while a general permanent improvement is an improvement to which that limitation does not apply.

Renewal or replacement of combined levies

Continuing law allows a school district to renew or replace a combined levy for the same purposes and the same term for which the original tax was levied. The act gives districts the additional option of renewing or replacing an existing combined levy solely for the purpose of funding general permanent improvements. The act also authorizes school districts to replace the levy for a term of years different than the term for which it was originally levied.

Property tax levy for school safety

(R.C. 5705.21(A); Section 803.300)

The act authorizes school districts to levy a property tax exclusively for school safety and security purposes. The levy must comply with the same requirements that apply to general school district levies in excess of the 10-mill limitation. Proceedings undertaken by a board of education to propose a levy for school safety and security purposes are valid, even if they were initiated before September 29, 2013 (the effective date of the provision), so long as the proceedings are consistent with the terms of the act.

Under continuing law, school district boards of education may propose a levy in excess of the 10-mill limitation for any of the following purposes: (1) current expenses, (2) general permanent improvements, (3) specific improvements or a class of improvements that may be included in a single bond issue, (4) the support of a public library, (5) parks and recreational purposes, (6) the construction and operation of a community center, (7) the operation of a cultural center, (8) education technology, or (9) if the district is a municipal school district, for the current operating expenses of both the district and "partnering" community schools. The resolution to levy the tax must be limited to only one of these purposes. If voters approve the levy, revenue from the tax must be used solely for that purpose.

There is a five-year limit on the term of such levies unless the levy is for current expenses or general improvements. The five-year limit applies to the newly authorized school safety levy. The levy may be renewed or replaced as may any other school district levy.

Qualified energy project tax exemption

(R.C. 5727.75)

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

With respect to an energy facility using renewable energy resources, prior law required the owner or lessee to submit an exemption application to the Director of Development Services (DSA), to submit a construction commencement application to the Power Siting Board (or, for smaller projects, to any other state or local agency having jurisdiction), and to commence construction before 2014. The law also required the owner or lessee to place the energy facility into service before 2015. The act extends each of these deadlines by two years.

With respect to an energy facility using advanced energy technology, prior law required the owner or lessee to submit an exemption application to the DSA Director before 2016 and to place the energy facility into service before 2019. The act extends each of these deadlines by two years.

Tax increment financing exemption timing

(R.C. 5709.40, 5709.73, and 5709.78; Section 803.310)

Under continuing law, a tax increment financing (TIF) resolution or ordinance granting a property tax exemption may specify any year as the first year of the tax exemption, so long as that year begins after the effective date of the resolution or ordinance. To illustrate, if a TIF resolution takes effect at any time in 2013, the first year that any assessed value may be exempted is 2014.

The act adds that, in lieu of stating a specific starting year, a TIF resolution or ordinance may specify that a tax exemption begins in the year in which one of the following triggering conditions occurs: (1) the value of the exempt improvement exceeds a certain amount or (2) one or more of the exempt improvements are completed. The act also allows a TIF resolution or ordinance that grants an exemption for more than one individual parcel to specify that the exemption of different parcels begins in different tax years. In either case, as under prior law, the exemption may not take effect before the effective date of the resolution or ordinance.

The act specifies that this new authority applies to exemption applications that are pending on September 29, 2013, or that are filed thereafter. The new authority does not apply to the exemption of improvements in an incentive district TIF.

Income limit on veterans' organization property tax exemption

(R.C. 5709.17(B); Section 803.170)

Prior law exempted property held or occupied by a veterans' organization from property taxation if the organization was exempt from federal income taxation under section 501(c)(19) or (23) of the Internal Revenue Code and if the property was not held for the production of net rental or "other income" in excess of $10,000.[223] The act

[223] 26 U.S.C. 501(c)(19) and (23) provide tax-exempt status to an organization if at least 75% of its members are past or present members of the Armed Forces, among other qualifying criteria.

increases this income limit to $36,000 and removes the reference to "other income." Consequently, only net income arising directly from renting the property to others counts towards the income limit. The income limit increase applies to tax year 2013 and thereafter.

Property tax exemption for fraternal organizations

(R.C. 5709.17; Section 803.170)

The act creates a tax exemption for real property held or occupied by fraternal organizations that provide financial support for charitable purposes and have been operating in Ohio for at least 100 years. To qualify for the exemption, the fraternal organization must also qualify for exemption from federal income tax under section 501(c)(5), 501(c)(8), or 501(c)(10) of the Internal Revenue Code. Such federal exemptions apply to labor, agricultural, or horticultural organizations; fraternal beneficiary societies, orders, or associations operating under the lodge system for the exclusive benefit of the members of a fraternity itself or operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents; and domestic fraternal societies, orders, or associations operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.

The exempted property must be used primarily for the meetings and administration of the fraternal organization. Property is disqualified for the exemption for a tax year if it is held to produce net rental income in excess of $36,000 in the tax year.

The exemption begins to apply for tax year 2013.

Transfer of tax-delinquent cemeteries

(R.C. 1721.10)

Continuing law authorizes a county Board of Revision, on its own initiative or on the complaint of a tax lien holder, to foreclose the lien of the state or the lien holder against tax-delinquent, unoccupied real property ("abandoned land"). The board is required to order disposition of foreclosed abandoned land by public auction. If the land does not sell at a public auction, a community development organization, school district, municipal corporation, county, or township may request that the property be transferred to the requesting corporation or political subdivision. Under prior law, a cemetery, except for certain private cemeteries, could not be transferred or sold to satisfy a judgment or tax lien, and could thus not be foreclosed and transferred by a Board of Revision using the foreclosure process described above.

The act authorizes a county Board of Revision to transfer a tax-delinquent cemetery to a county, municipal corporation, or township using continuing law's expedited nonjudical foreclosure process. However, the act prohibits such a foreclosed cemetery from being offered for sale at a public auction, as is required for other abandoned lands.

Local Government Fund and other revenue distributions

Local Government Fund and Public Library Fund allocations

(R.C. 131.51 and 5747.501; Sections 757.10 and 812.20)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) and the Public Library Fund (PLF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF and the PLF is whatever percentage of those revenues are required to freeze the allocation at each fund's respective FY 2013 level (including the amount of the minimum distributions to county undivided LGF's receiving guaranteed minimum distributions). For example, if the total FY 2013 LGF allocation is 1.7% of the total FY 2013 GRF revenue, 1.7% of monthly FY 2014 GRF revenue is to be credited each month of FY 2014 to the LGF (see R.C. 131.51).

The act clarifies that the preceding month's GRF revenue allocations to the LGF and the PLF are not deducted in calculating the amount of tax revenue credited to the GRF during the preceding month for the purposes of determining the monthly allocation to the LGF and the PLF. The act does not change the percentage of GRF revenue allocated to either the LGF or the PLF.

Minimum distributions to county LGFs

Continuing law provides that LGF funds are distributed to the county undivided LGFs of every county. Local governments in each county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In the several counties where an allocation formula has not been agreed on, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

During FY 2013, LGF and PLF distributions were reduced by 50% compared to FY 2011 amounts for almost all counties and for all municipal corporations receiving direct distributions. But the proportionate share of the reduced LGF received by these counties and municipal corporations was held at the FY 2011 level. A few counties that received relatively little in LGF distributions in FY 2011 were guaranteed a minimum distribution: if the county LGF was less than $750,000, that county's distribution was not reduced; if the 50% reduction would reduce a county's LGF below $750,000, the county received $750,000.

The act permanently extends the FY 2013 minimum distribution for county LGFs that received the minimum in FY 2013. If necessary, the proportionate shares of other counties may be adjusted to produce the funds needed to meet the minimum distribution requirement. The minimum distribution levels do not apply to direct municipal corporation distributions. Counties not receiving a minimum guaranteed distribution would receive their respective proportionate shares of the LGF (based on FY 2011 shares and accounting for any adjustments because of minimum distributions), as would municipal corporations receiving direct distributions. For the July 2013 distribution, each county undivided LGF and each municipal corporation receiving direct LGF distributions will receive the same amount as it received in July 2012.

Quarterly distributions of Ohio State Racing Commission Fund revenue

(R.C. 5753.03; Section 812.20)

The act imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund. Continuing law imposes a 33% tax on gross casino revenue. Article XV, Section 6 of the Ohio Constitution includes specific directives as to how the proceeds of the casino tax must be distributed. One such directive is that the Ohio State Racing Commission Fund must receive 3% of casino tax revenue "to support purses, breeding programs, and operations at all existing commercial horse racetracks permitted as of January 1, 2009."

Prior law did not expressly require the Ohio State Racing Commission to distribute the money in the Ohio State Racing Commission Fund directly to the qualifying commercial horse race tracks nor did it impose a deadline for when such a distribution must occur. However, the continuing practice of the Commission is to distribute the revenue directly to the qualifying commercial horse race tracks according to a formula developed by the Commission. The act codifies a requirement that all revenue in the fund be distributed at the end of each quarterly period. The Commission retains discretion as to the formula utilized for distribution of the revenue.

The act also specifies that the Ohio State Racing Commission may retain up to 5% of the share of casino tax revenue transferred to the Ohio State Racing Commission Fund for operating expenses necessary for the administration of the fund. Prior law did not expressly authorize or limit the use of casino tax revenue for this purpose.

Electronic payments to local governments and political parties

(R.C. 5703.76)

The act requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically. Under continuing law, the Commissioner makes various payments to local governments, including distributions of county sales tax revenue, payments from the LGF, and reimbursements for the 10% rollback, 2.5% rollback, and homestead exemption. The Commissioner makes payments to political parties from the Ohio Political Party Fund, which is comprised of $1 donations that some individuals make to the Fund on their income tax returns.

Public Library Fund certification date

(R.C. 5747.47)

Under continuing law, the Tax Commissioner is required to annually certify to county auditors the estimated amount each county is to receive from the Public Library Fund in the following year. The act changes the date by which the Commissioner must make this certification from July 20 to July 25.

Due date for tangible personal property tax replacement payments to school districts

(R.C. 5751.21(C)(12) and (E)(1))

The act postpones the due date for November tangible personal property tax "replacement payments" to school districts from November 20 to November 30. From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. The replacement payments are reduced each year on a schedule scaled according to the taxing unit's reliance on the reimbursements as a percentage of the taxing unit's total budget. Under continuing law, replacement payments for both fixed-rate and fixed-sum levies are due twice annually in May and November. The May replacement payments are due on May 31.

Tax credits; administration and compliance

Historic Building Rehabilitation Tax Credit (PARTIALLY VETOED)

The act eliminates a requirement with respect to the attribution of qualified rehabilitation expenditures paid or incurred by an owner of a historic building who leases the building to a qualified lessee. The Governor vetoed a provision that would have increased the maximum historic rehabilitation tax credit that may be claimed in a year against the income tax, the financial institutions tax, and the insurance premiums taxes.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit equal to 25% of the qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as determined by the State Historic Preservation Officer. A person seeking the credit is required to apply to the DSA Director, who evaluates the application and may approve a credit by issuing a tax credit certificate.

Annual credit limit (VETOED)

(R.C. 5725.34, 5726.52, 5729.17, and 5747.76)

The act would have increased the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee of a historic building against the income tax, the financial institutions tax, and the insurance premiums taxes, from $5 million to $10 million. Continuing law allows a refund of up to $3 million if the credit exceeds the tax otherwise due for any year and permits any balance in excess of the credit claimed to be carried forward for up to five years.

Attribution of qualified rehabilitation expenditures

(R.C. 149.311(B))

Under continuing law, either the owner (holding a fee simple interest in the historic building) or a "qualified lessee" (subject to a lease agreement for the historic building and eligible for the federal rehabilitation tax credit as a lessee) may apply for a rehabilitation tax credit. Under prior law, if the owner of a historic building enters into a pass-through agreement with a qualified lessee for purposes of the federal rehabilitation tax credit, the qualified rehabilitation expenditures paid or incurred by the owner after April 4, 2007, were attributed to the qualified lessee.

The act eliminates this attribution requirement but permits expenses incurred by the owner after April 4, 2007, to be attributed to the qualified lessee for the purpose of the state historic rehabilitation tax credit.

Sales and use tax subsidy for retail "impact facilities"

(R.C. 333.01, 333.02, 333.03, 333.04, and 333.05)

The act modifies several provisions of ongoing law authorizing counties and businesses to enter into an agreement under which the business agrees to construct an "impact facility" in the county and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility. Under continuing law, an "impact facility" is a facility that meets five criteria, including that at least 150 new jobs will be maintained at the facility.

The act extends, from June 1, 2007, to June 1, 2015, the date by which such impact facility agreements may be entered into. The act also modifies two of the criteria a facility must meet to qualify as an impact facility. Under prior law, at least $50 million had to be invested in the land, building, infrastructure, and equipment at the facility over a two-year period, and at least 50% of the expected customers of the facility had to live within 100 miles of the facility. The act lowers the investment requirement to $30 million and decreases the area in which at least 50% of the facility's expected customers must live to 50 miles.

The act modifies the prohibition against relocating property or employment positions to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location. Under the act, if the prohibition is violated, remittances to the business are terminated regardless of whether the board of county commissioners consents to the relocation. Prior law prohibited relocation of more than ten full-time equivalent positions or more than $2 million in "taxable assets" without the consent of the board of county commissioners. (A full-time equivalent position equals the number of employee-hours in a week divided by 40; "taxable assets" is not defined, but presumably the term refers to tangible personal property.)

New Markets Tax Credit (VETOED)

(R.C. 5725.33, 5726.54, 5729.16, and 5733.58)

The Governor vetoed provisions that would have made several changes to the New Markets Tax Credit. Continuing law authorizes a nonrefundable New Markets Tax Credit against the insurance premiums taxes and the financial institutions tax for entities that purchase and hold securities to finance investments in "qualified active low-income community businesses" located in Ohio. The credit is based largely on the federal New Markets Tax Credit (26 U.S.C. 45D).

The act would have eliminated the requirement that a qualified active low-income community business derive less than 15% of its annual revenue from the rental or sale of real property, which would have made the state law definition of "qualified active low-income community business" identical to the federal definition. The act would also have eliminated the requirement that the investor qualify for the federal credit in order to receive the Ohio credit.

A detailed description of the vetoed provisions is available on pages 638 through 640 of LSC's analysis of the Senate version of H.B. 59. The analysis is available online at www.lsc.state.oh.us/analyses130/h0059-ps-130.pdf.

General authority to issue tax assessments

(R.C. 5703.90, 5726.20, and 5751.014)

The act provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount. This authority expressly extends to assessments against persons that are jointly and severally liable for a commercial activity tax or financial institutions tax liability; the partners in a partnership; and the directors, shareholders, and officers of a corporation that has dissolved or had its articles of incorporation cancelled. The Tax Commissioner must issue the assessment in accordance with the same requirements and procedures applicable to assessments for the tax for which the person is liable.

Calculation of post-assessment interest

(R.C. 3734.907(E), 3769.088(C), 4305.131(C), 5726.20(D)(3), 5727.26(C), 5727.89(C), 5728.10(C), 5733.11(C), 5735.12(C), 5739.13(C), 5743.081(C), 5743.56(E), 5745.12(C), 5747.13(C), 5749.07(C), 5751.09(C)(3), and 5753.07(A)(5))

Continuing law authorizes the Tax Commissioner to make assessments against taxpayers for failure to pay various fees and taxes and the penalties and interest thereon. Unless the taxpayer files a petition for reassessment within 60 days after notice of the assessment is served, the amount due on the assessment becomes final and is due and payable from the taxpayer to the Treasurer of State. Under prior law, any portion of the assessment not paid within 60 days after the assessment was issued, including interest and penalty, bore interest at the statutory rate for unpaid taxes (3%) until the assessment was paid in its entirety.

The act requires the Tax Commissioner to calculate interest charged after an assessment has been issued based on tax liability only; penalties and pre-assessment interest are not included. If an assessment is certified to the Attorney General for collection, the interest calculation reverts to ongoing law and the entire unpaid portion of the assessment is included.

Service of tax notices and orders

(R.C. 5703.37)

Continuing law authorizes the Tax Commissioner, with the recipient's consent, to serve a tax notice or order upon a person through secure electronic means. When the Commissioner serves the notice or order, the Commissioner must inform the person, electronically or by mail, that the person may access the notice or order. Under prior law, if a person did not access the electronic notice or order within ten business days after the Commissioner served the notice or order, the Commissioner was required to serve the notice or order by certified mail, personal service, or delivery service.

The act instead requires the Tax Commissioner to make a second attempt to inform the recipient that the notice or order is available. If the person does not access the notice or order within ten days after the second attempt, the Commissioner then must deliver the notice or order by ordinary mail.

Electronic payment and filing requirements

(R.C. 113.061, 5703.059, and 5751.07)

Under continuing law, quarterly taxpayers of the CAT must pay the tax electronically and, if the Tax Commissioner requires, file electronic returns. The act extends this requirement to annual taxpayers. Annual taxpayers are those whose taxable gross receipts are $1 million or less; all other taxpayers must file and pay the tax quarterly.

In addition, the act expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and the filing of returns for, the CAT, the financial institutions tax (FIT), the state horse-racing taxes, and the new MFRT created by the act. The electronic payments must also comply with any applicable Treasurer of State regulations that govern such payments.

CAT electronic filing penalties

Under prior law, when a taxpayer failed to submit an electronic CAT payment or return, the Tax Commissioner was authorized to assess a penalty equal to 5% of the tax due for each of the first two violations and 10% of the tax due for each subsequent violation. The act modifies these penalties to require that the taxpayer pay the greater of $25 or 5% of the tax due for each of the first two violations and $50 or 10% of the tax due for each subsequent violation.

Electronic filing and payment of severance tax, related penalties, and refunds

(R.C. 113.061 and 5749.06; Section 803.120)

The act makes several changes related to the reporting and payment of severance taxes. Under continuing law, a severer is required to file returns four times per year on a quarterly basis. The four calendar quarters run from January-March, April-June, July-September, and October-December. The Tax Commissioner may prescribe a different schedule for a taxpayer. Severers are required to file returns for each quarter by the 45th day after the last day in each quarter.

The act imposes a specific penalty for the failure to file or to timely file a complete return or to pay the full amount of tax due, up to the greater of $50 or 10% of the tax due for the quarter. Continuing law allows the Commissioner to extend the due date of filing a return for good cause. The act limits the duration of any extension to 30 days.

Additionally, beginning January 1, 2014, the act requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically, either through the Ohio Business Gateway or another means prescribed by the Tax Commissioner. The Tax Commissioner may excuse a severer from the obligation to remit payments electronically for good cause. If a severer fails to remit payments electronically or, if required, to file returns electronically, the Tax Commissioner may impose a penalty on the severer equal to the greater of $25 or 5% of the amount due for the first two failures, or the greater of $50 or 10% of the amount due for every subsequent failure. Any penalty the Tax Commissioner imposes under the act may be collected in the manner of an assessment, together with applicable penalties and interest, or may be waived by the Tax Commissioner.

Severance tax refunds

Continuing law requires that any severance tax refunds must be certified and paid from the Tax Refund Fund. Prior law did not specify how severance tax revenue is credited to that fund. Beginning October 1, 2013, the act specifies that all severance tax revenue is initially credited to the Severance Tax Receipts Fund, which is created by the act. The OBM Director must transfer from that fund to the Tax Refund Fund an amount equal to any refund certified by the Tax Commissioner to provide for the payment of that refund. Any amount so transferred must be derived from receipts of the same natural resource severance tax from which the refund arose.

After making this transfer, but not later than the 15th day of the month after the end of each calendar quarter, the Tax Commissioner must certify to the Director the amount remaining in the Severance Tax Receipts Fund, grouped according to the amount attributable to each natural resource subject to a severance tax, so the Director can credit remaining severance tax revenue to the respective funds as otherwise required by law.

Disclosure of severance tax information

(R.C. 5749.17; Section 803.120(A))

Prior law prohibited any otherwise confidential tax information provided to the Department of Natural Resources (DNR) from the Department of Taxation from being publicly disclosed, except that DNR could share the information with the Attorney General for unspecified law enforcement purposes. The act allows DNR, beginning October 1, 2013, to disclose otherwise confidential information submitted by the Department of Taxation specifically for the purpose of enforcing oil and gas regulatory laws.

Tax payments and refunds: $1 minimum

(R.C. 5703.75, 5747.08, 5747.10, and 5747.11)

The act introduces a $1 minimum payment floor for all taxes administered by the Department of Taxation. Under the act, taxpayers are not required to a pay any such tax if the total amount due with the taxpayer's return is $1 or less. Similarly, the Tax Commissioner is not required to issue a tax refund to any taxpayer if the amount of the refund is $1 or less. Under prior law, these $1 minimums applied only to the income tax and the pass-through entity withholding taxes.

Accrual of interest on income tax refunds

(R.C. 5747.11)

Under continuing law, interest accrues on a refund resulting from an income tax overpayment only if the Tax Commissioner does not refund the overpayment within 90 days after the final due date of the taxpayer's return or the date the return was actually filed, whichever is later. If interest is allowed, the interest accrues from the date of the overpayment or the final due date for the taxpayer's return, whichever is later, until the date the refund is paid. The act removes a separate, apparently inconsistent provision of the same law that provides that such interest must accrue from 90 days after the final due date of the return until the date the refund is paid.

The act also removes a provision of prior law that provided that interest resulting from an illegal or erroneous assessment accrued from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. Instead, the act provides that interest accrues on such amounts according to the same rule that applies to other overpayments as described above.

Elimination of the Tax Discovery Project Fund

(R.C. 5703.82)

The act eliminates the Discovery Project Fund, which was created to finance the Department of Taxation's implementation and operation of the Tax Discovery Data System. The Tax Discovery Data System assists the Department in revenue analysis, discovering noncompliant taxpayers, and collecting taxes from those taxpayers.

Prior law required the Tax Commissioner to request funds quarterly from the GRF to pay the costs of operating and administering the system.

Under the act, the Department remains responsible for administering the system.

Tax refund payments and estate tax refunds

(R.C. 5703.052)

Under continuing law, refunds for many taxes and fees administered by the Tax Commissioner or Superintendent of Insurance, including sales and use taxes, income tax, CAT, insurance taxes, FIT, alcoholic beverage and cigarette taxes, casino revenue tax, and public utility excise taxes are paid from the Tax Refund Fund. After the Tax Commissioner or Superintendent certifies a refund to the Treasurer of State, the Treasurer is required to credit the amount certified to the fund. The amount credited to the Tax Refund Fund must be derived from current receipts of the same tax or fee.

Under prior law, if current receipts of a particular tax or fee were not sufficient to enable the Treasurer to fully credit the fund, then the Treasurer was required to transfer the amount from the current receipts of the sales tax. The act eliminates the requirement that refunds be paid from sales tax receipts in the event receipts from the refunded tax do not exceed the amount of the required refund.

Additionally, the act includes estate taxes among the other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax. Although the estate tax is no longer in effect for individuals dying on or after January 1, 2013, refunds may continue to be due for payments for prior years.

Rename fund receiving income tax contributions

(R.C. 5747.113)

The act renames the "Litter Control and Natural Resource Tax Administration Fund" the "Income Tax Contribution Fund." Under continuing law, this fund is credited with a portion of the money received by four existing income tax contribution (commonly referred to as refund "check-off") funds to pay the Department of Taxation's costs of administering the income tax contribution system. Under the system, a taxpayer may voluntarily contribute a portion of the taxpayer's refund to benefit up to four separate purposes – natural areas and preserves, nongame and endangered wildlife, military injury relief, or the Ohio Historical Society.

Motor fuel tax refunds and revenue distribution

(Section 605.10)

Under prior law, the Treasurer of State would have been required to credit the "first" 2% of revenue generated from motor fuel tax each month to the Highway Operating Fund on the first day of every month beginning in July 2013.[224]

The act specifies that the crediting is to occur only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds. The act also changes the date the crediting is to occur from the first to the last day of each month.

Payment and collection of state horse-racing taxes

(R.C. 113.061, 3769.08, 3769.087, 3769.088, 3769.089, 3769.10, 3769.101, 3769.102, 3769.103, 3769.26, 3769.28, and 5703.059; Section 803.290)

The act makes several administrative changes to the state horse-racing taxes, which are taxes levied on the total amount wagered on horse and harness racing (pari-mutuel wagering taxes) and on "exotic wagering," i.e., all bets other than win, place, and show, in the state.

Tax payment forms and dates

The act allows the Tax Commissioner to prescribe the method for filing returns and paying the horse-racing taxes. Among other options, the Commissioner may require taxpayers to submit returns or tax payments through the Ohio Business Gateway or by another electronic means. Under prior law, taxpayers could pay the taxes only by check, draft, or money order.

[224] Section 755.30 of Am. Sub. H.B. 51 of the 130th General Assembly.

Under the act, if a taxpayer is required to file returns or pay taxes electronically but fails to do so, the Tax Commissioner may impose a penalty equal to the greater of $50 or 10% of the taxes that were not paid electronically. This penalty is in addition to an existing penalty for the failure to file a return or pay taxes equal to 15% of the unpaid taxes.

Continuing law requires taxpayers to remit state pari-mutuel wagering taxes and exotic wagering taxes at the close of each racing day. The act clarifies that, if a race occurs on a day on which banks are not open, the taxpayer may remit the taxes by noon of the next day that banks are open.

Tax revenue collection and distribution

Under continuing law, revenue from the state pari-mutuel and exotic wagering taxes is distributed to the Ohio PASSPORT Fund (which pays for home health care and other senior citizen services), the Ohio State Racing Commission's Operating Fund, the Ohio Fairs Fund, the Ohio Standardbred Development Fund, the Quarter Horse Development Fund, and county agricultural societies. Revenue from an "additional" pari-mutuel wagering tax is distributed to the municipal corporation or township in which the racing event takes place.

The act creates two new funds, into which all horse-racing tax revenue is funneled before it is distributed to the various funds or subdivisions described above. Under the act, all revenue from the state pari-mutuel and exotic wagering taxes is credited to the Horse-Racing Tax Revenue Fund, and all revenue from the additional pari-mutuel wagering tax is credited to the Horse-Racing Tax Municipality Fund. From these respective funds, the revenue is then distributed in the same proportions required under continuing law.

The act also requires that the Tax Commissioner distribute money from the new funds on a monthly basis. Prior law required the Tax Commissioner to distribute state pari-mutuel and exotic wagering tax revenue on a weekly basis, while revenue from the additional pari-mutuel wagering tax was required to be distributed "immediately" upon collection.

Effective date

The act's changes to the horse-racing taxes take effect on October 1, 2013. The Tax Commissioner may adopt rules as necessary to implement the changes.

Wireless 9-1-1 charges

Records of wireless 9-1-1 charges, bills, and sales

(R.C. 128.45)

Beginning January 1, 2014, the act requires each wireless service provider and reseller to keep complete and accurate records of bills for wireless service, together with a record of the wireless 9-1-1 charges collected, and to keep all related invoices and other pertinent documents. Likewise, the act requires each seller of a prepaid wireless calling service to keep complete and accurate records of retail sales of prepaid wireless calling services, together with a record of the wireless 9-1-1 charges collected, and to keep all related invoices and other pertinent documents.

These records, invoices, and documents must be open during business hours to the inspection of the Tax Commissioner. They must be preserved for four years unless the Tax Commissioner, in writing, consents to their destruction within that period, or orders that they be kept longer.

Assessments for noncompliance with wireless 9-1-1-charge remittance

Statute of limitations on assessments

(R.C. 128.46(B) and (E)(2) and 128.462(A))

The act establishes a four-year statute of limitations, with exceptions, on assessments for noncompliance with remittance requirements, beginning January 1, 2014. Specifically, it prohibits an assessment from being made or issued against a wireless service provider, wireless reseller, or seller of a prepaid wireless calling service for any wireless 9-1-1 charge more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for the period is filed, whichever is later. Under continuing law, returns must be filed by the 23rd of each month, showing the full amount of wireless 9-1-1 charges due for the previous month.

The act states that the four-year limitation does *not* bar an assessment when (1) the provider, reseller, or seller fails to file a return, (2) the provider, reseller, or seller and the Tax Commissioner waive the limitation in writing; or (3) the Tax Commissioner has substantial evidence that wireless 9-1-1 charges were collected but not returned to the state.

Prohibition on issuing assessments when collection or payment is not required

(R.C. 128.462(B))

The act prohibits assessments for any period during which there was in full force and effect a rule of the Tax Commissioner under or by virtue of which the collection or payment of wireless 9-1-1 charges was not required. The act states that this provision does *not* bar an assessment when the Tax Commissioner has substantial evidence that wireless 9-1-1 charges were collected but not returned to the state.

Interest on assessments

(R.C. 128.46)

The act applies the interest on an assessment, charged by the Tax Commissioner beginning in 2014, to only the portion of the assessment that consists of wireless 9-1-1 charges due. Under continuing law, interest may be charged on an assessment when it is 60 days past due. The Tax Commissioner may also make assessments to collect unpaid interest on assessments.

The act also removes provisions specifying how assessments and interest on assessments are to be remitted to the Tax Commissioner. Prior law appeared to require that assessments for unpaid interest and any interest due must be remitted in the same manner as the wireless 9-1-1 charges.

Finally, the act removes redundant language regarding the issuance of assessments for collecting interest and the rate and remittance of interest.

Interest on wireless 9-1-1 charges

(R.C. 128.461)

The act requires that, beginning January 1, 2014, any wireless 9-1-1 charge required to be remitted be subject to the same interest rate that applies to most unpaid state tax liabilities,[225] calculated from the date the wireless 9-1-1 charge was due to the date the wireless 9-1-1 charge is remitted or the date of assessment, whichever occurs first.

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[225] R.C. 5703.47, not in the act.

Penalties related to wireless 9-1-1 charge remittance

(R.C. 128.46(B) and 128.99(C) to (G))

The act establishes four new penalties related to remittance of wireless 9-1-1 charges:

Penalty	Subject to penalty	Requirement violated
"Late-filing penalty" of not more than the greater of $50 or 5% of the amount required to be remitted	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	Make and file, by the due date or extended due date granted by the Tax Commissioner, a monthly return, in the form prescribed by the Tax Commissioner, showing the amount of wireless 9-1-1 charges due for the preceding month
"Late-payment penalty" of not more than the greater of $50 or 5% of the wireless 9-1-1 charge required to be remitted for the reporting period minus any partial remittance made on or before the due date, including any extensions granted	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	Remit the full amount due, as shown on the return (except for the authorized collection fee)
"Assessment penalty" of not more than the greater of $100 or 35% of the wireless 9-1-1 charges due	Person	Not clear; imposed "after the [T]ax [C]ommissioner notifies the person of an audit, an examination, a delinquency, assessment, or other notice that additional wireless 9-1-1 charges are due"
"Electronic penalty" of not more than the lesser of: • the greater of $100 or 10% of the amount required to be, but not, remitted electronically; or • $5,000	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	File the monthly return electronically using the Ohio Business Gateway, the Ohio Telefile System, or any other electronic means prescribed by the Tax Commissioner; or remit the amount due electronically in a manner approved by the Tax Commissioner

The act specifies that each of these penalties is in addition to any of the others. It also states that the Tax Commissioner may abate all or any portion of any of these penalties.

Refunds of wireless 9-1-1 charges

(R.C. 128.47, 128.54, 128.55, and 5703.052)

The act establishes refund procedures for illegal or erroneous payments, charging, and billing of wireless 9-1-1 charges, beginning January 1, 2014, to be administered by the Tax Commissioner. Refunds are required to be issued in the following scenarios:

	Scenario	Who may receive a refund
(1)	• Subscriber or consumer made an illegal or erroneous payment; • Amount is remitted; and • Provider, reseller, or seller refunded the full amount to the subscriber or consumer	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service
(2)	• Provider, reseller, or seller illegally or erroneously billed a subscriber or charged a consumer for a wireless 9-1-1 charge; • Amount is *not* collected; and • Amount *is* remitted	Wireless service provider, reseller, or seller of a prepaid wireless calling service
(3)	• Subscriber or consumer made an illegal or erroneous payment; • The provider, reseller, or seller has *not* received a refund from the Tax Commissioner; and • The consumer or subscriber has *not* received a refund from the provider, reseller, or seller	Wireless subscriber or consumer of a prepaid wireless calling service

Regarding the third scenario, the Tax Commissioner may require the subscriber or consumer to obtain from the provider, reseller, or seller a written statement confirming that no refund was received and that the provider, reseller, or seller has not applied for a refund. The Tax Commissioner may also require the provider, reseller, or seller to provide this statement.

Anyone eligible to receive a refund may apply to the Tax Commissioner for a refund on an application form prescribed by the Tax Commissioner. The application must be made not later than four years after the date of the illegal or erroneous payment of the wireless 9-1-1 charge by the subscriber or consumer. This provision does not appear to apply to the second scenario, in which a wireless 9-1-1 charge is billed or charged, but no payment is made.

If the provider, reseller, or seller waives the four-year statute of limitations on assessments established by the act (see "**Statute of limitations on assessments**"), the refund-application period is to be extended for the same period as the waiver.

On the filing of a refund application, the Tax Commissioner is required to determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the Tax Commissioner must certify the determined amount to the Director of OBM and the Treasurer of State for payment from the Tax Refund Fund. If the amount is less than that claimed, the Tax Commissioner is directed to proceed in accordance with continuing law governing refunds for other payments. The act requires the Director of OBM to transfer to the Tax Refund Fund, from the Wireless 9-1-1 Government Assistance Fund, amounts equal to the refunds certified by the Tax Commissioner.

Under continuing law, the Wireless 9-1-1 Government Assistance Fund is used primarily for monthly county disbursements for wireless enhanced 9-1-1 services. It is funded by remitted wireless 9-1-1 charges. The transfers from the Wireless 9-1-1 Government Assistance Fund to the Tax Refund Fund are to be made as funds are available. In a provision of the act governing the monthly county disbursements, the Tax Commissioner is required to transfer *any excess* remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**"). This seems to be required on a monthly basis.

The act requires that the wireless 9-1-1 refunds include interest, calculated with the same interest rate that applies to refunds of state taxes.[226]

The act modifies continuing law governing the Tax Refund Fund to provide for the inclusion of wireless 9-1-1 charge refunds.

Disbursements to counties

Disbursements from the Wireless 9-1-1 Government Assistance Fund

(R.C. 128.021, 128.54(A)(2)(a) and (B), and 128.55(B)(1))

The act modifies the manner in which monthly disbursements must be made to counties from the Wireless 9-1-1 Government Assistance Fund by the Tax Commissioner. These disbursement duties, under continuing law, are not granted to the Tax Commissioner until January 1, 2014. Prior law had required that these disbursements be made according to a proportionate share as determined according to

[226] R.C. 5703.47 and 5739.132, not in the act.

former 9-1-1 law as it existed prior to December 20, 2012. The act requires instead that as long as there are sufficient funds in the Wireless 9-1-1 Government Assistance Fund, each county treasurer is to receive, on a monthly basis, the same amount distributed to that county in the corresponding month in 2013. If funds are insufficient for these amounts, each county's share is to be reduced in proportion to the amounts received in the corresponding month in 2013, up to the point where the funds are exhausted.

Provided funds are sufficient to make the disbursements without proportionate reductions, the act requires the Tax Commissioner to transfer any excess remaining in the Wireless 9-1-1 Government Assistance Fund, after the disbursements are made, to the Next Generation 9-1-1 Fund. It seems that these transfers are required on a monthly basis. In a separate section of the Revised Code, the act repeals a provision that delayed, until January 1, 2014, the Tax Commissioner's duty to make these transfers.

The act also specifies that disbursements are to be made from the Wireless 9-1-1 Government Assistance Fund plus any accrued interest on the fund.

Finally, the act repeals a provision that required the Treasurer of State to disburse money from the Wireless 9-1-1 Government Assistance Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Network Steering Committee under continuing law. This continuing law requires the Steering Committee to adopt rules establishing technical and operational standards for public safety answering points eligible to receive disbursements. Compliance is not required until two years after the rules are adopted.

Disbursements from the Next Generation 9-1-1 Fund

(R.C. 128.022, 128.54(B), and 128.55(B)(2))

The act repeals a provision that required the Treasurer of State to disburse money from the Next Generation 9-1-1 Fund solely upon order of the Tax Commissioner according to policies established by the Steering Committee under the continuing law discussed above (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**"). But there remains a very similar provision of continuing law that requires the *Tax Commissioner* to disburse moneys from the Next Generation 9-1-1 Fund in accordance with *guidelines* established by the Steering Committee under continuing law. These guidelines are to be established specifically for the Tax Commissioner to use when disbursing money from the Next Generation 9-1-1 Fund. The guidelines are required to be consistent with the technical and operational standards discussed above (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**").