DEPARTMENT OF TAXATION

Income taxes

- Eliminates the bottom two income tax brackets applicable to individual nonbusiness income and repeals the low-income taxpayer credit.
- Requires that the Office of Budget and Management separately state in its reports of actual and estimated revenues the total tax liability, before credits, arising from taxable business income versus nonbusiness income and to state the total amount of claimed income tax credits.
- Eliminates the reimbursement the Department of Taxation received for the cost of administering the six income tax check-offs.
- Reduces the Tax Commissioner's role in distributing revenue derived from the Ohio political party fund income tax check-off.
- Increases the maximum income tax deduction for contributions to a federally tax-advantaged college savings plan or disability expense savings (ABLE) account to $4,000 (from $2,000) annually for each beneficiary.
- Prescribes the manner in which school district income tax applies to a school district resulting from the consolidation of territory of two or more districts.

Municipal income taxes

- Allows businesses, other than sole proprietors, to elect for the Department of Taxation to administer the business' municipal income taxes, beginning in 2018.
- Requires 99.5% of the revenue collected from such businesses to be distributed monthly to municipal corporations, with the other 0.5% earmarked for administrative expenses.
- Repeals the "throw-back rule" used in determining what amount of a business' income is apportioned to a particular municipal corporation, beginning in 2018.
- Extends, by one month, the due date by which municipal income taxpayers that are individuals must make their fourth-quarter estimated tax payment, beginning in 2018.
- Permits the penalty imposed on employers that do not timely remit municipal income tax withholdings to be less than 50% of the unpaid amount.

- Decreases, from three to one, the number of municipal tax administrator representatives that the Governor may appoint to the Ohio Business Gateway Steering Committee.

- Requires the Department to study the feasibility of accepting municipal income tax returns through the existing joint federal/state Modernized e-File (MeF) program.

Sales and use taxes

- Provides two payments, one in 2017 and one in January 2018, to counties and transit authorities to mitigate their short-term revenue loss resulting from the termination of all sales taxes on health care services provided by Medicaid health insuring corporations under contracts with the state.

- Prescribes new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio by adding sellers with annual Ohio sales in excess of $500,000 that use in-state software to make Ohio sales or Ohio content distribution networks to accelerate or enhance delivery of web content to Ohio consumers.

- Allows counties and transit authorities to increase their local sales and use tax rates in increments of 0.1%, rather than 0.25%, beginning July 1, 2018.

- Would have exempted the first $650 in price of prescription optical aids (e.g., eyeglasses and contact lenses) and their components from sales and use tax (VETOED).

- Exempts from sales and use taxation digital music purchased from, and electronically delivered by a jukebox or other single-play commercial music machine.

- Provides a three-day sales tax "holiday" in August 2018 during which sales of clothing, school supplies, and instructional materials within certain price ranges are exempt from sales and use taxes.

- Would have modified the standard for determining when the sales and use tax applies to business-related electronic services that are provided together with other services (VETOED).

- Allows revenue raised by an existing county sales tax for community improvements and granted to a school district to be spent outside the county as long as the improvements are within the school district.

- Prescribes the manner by which county auditors issue sales tax vendor's licenses and expressly requires certain vendor license-related information to be published on the Department's website.

- Allows reinstatement of a vendor's sales tax license that was suspended for the vendor's repeated failure to report or pay sales tax only if the vendor reports and remits not only delinquent sales taxes, but delinquent income tax required to be withheld from its employees' wages.

- Authorizes the Tax Commissioner to suspend a vendor's sales tax license for the vendor's repeated failure to report or pay its employees' income tax withholdings.

- Modifies rules for situsing sales and use tax for direct mail – i.e., for determining the proper taxing jurisdiction for material that is mass mailed to predetermined recipients.

- Would have allowed high-volume motor vehicle dealers to remit the sales tax collected on vehicle sales directly to the state on the dealer's monthly return rather than to the Clerk of the Court of Common Pleas along with each application for a certificate of title (VETOED).

Lodging taxes

- Authorizes a charter county (Summit) to extend an expiring 1% lodging tax for an additional ten years.

- Authorizes a county with a population between 375,000 and 400,000 and that currently levies a 3% lodging tax (currently, Stark) to increase the rate of the tax by up to an additional 3%.

- Authorizes a county with a population between 190,000 and 200,000 and that currently levies a 3% lodging tax (Clermont) to increase the rate of the tax by up to an additional 1% to construct and maintain a professional sports facility, subject to certain conditions.

- Authorizes a city that currently levies a 3% municipal lodging tax and that is located in a county with a population between 300,000 and 350,000 that currently levies a 3% county lodging tax (Lorain County) to increase the municipal lodging tax rate by up to an additional 3%.

- Authorizes a county with a population between 175,000 and 225,000 that levied a lodging tax rate of 3% in 2014 and that has an amusement park with annual attendance of more than two million (Warren) to use the tax revenue to pay the construction and maintenance costs of a county-owned or port authority-owned sports facility.

Severance tax

- Replaces a severance tax exemption for resources used to improve the severer's homestead with an exemption for natural gas produced by an "exempt domestic well," but continues to subject the owners of most such wells to a $60 annual fee.

- Transfers severance tax permitting responsibilities from the Department of Taxation to the Department of Natural Resources (DNR).

- Adjusts the due dates of severance tax returns.

- Requires severance tax revenue to be credited to funds on a monthly, rather than quarterly, basis.

- Limits the authority of DNR to disclose severance tax information received by the Tax Commissioner.

Excise taxes

- Requires that cigarette tax returns be filed monthly instead of semiannually.

- Places a ceiling on the amount of excise tax on "premium cigars" of 50¢ per cigar (adjusted annually for inflation).

- Authorizes an exemption from the kilowatt-hour tax for electricity consumed in a chlor-alkali manufacturing process unless the electricity is distributed by a municipal electric company that does not consent to the exemption.

- Requires the continuing publication of certain motor fuel dealer information.

- Clarifies the deadline by which a person newly subject to the petroleum activity tax must apply for a supplier's license and stipulates an annual expiration date for all such licenses.

Property taxation

- Prescribes in statute certain additional factors that must be considered in computing the current agricultural use value (CAUV) of agricultural land for property tax purposes, and deletes reference to one existing factor.

- Prescribes in statute that the method used to compute CAUV values must employ a capitalization rate and prescribes certain factors that must be included or excluded in the calculation of the rate.

- Places a ceiling on the taxable value of CAUV land if the land is also used for conservation purposes by requiring the land to be valued as though it included soil of the least productive type.

- Phases in the effects of the CAUV changes in two stages over the six-year assessment cycle by allowing one-half of the valuation change to take effect in each county in the next tax year in which the county undergoes a reappraisal or triennial update, beginning with counties undergoing a reappraisal or update in tax year 2017, and the second half at the ensuing update or reappraisal.

- Requires the Tax Commissioner to publish an annual report of CAUV values that can be sorted by county and by school district.

- Removes the authority to bypass a Court of Appeals by appealing a decision of the Board of Tax Appeals directly to the Ohio Supreme Court unless the Supreme Court authorizes the direct appeal; all other appeals from BTA decisions would have to be made to a Court of Appeals (except for decisions on the BTA's small claims docket, which are conclusive and not appealable).

- Authorizes a property tax exemption for retail stores operated by a charitable nonprofit housing organization that sells primarily donated household items.

- Authorizes a property tax exemption for property that is owned by a municipal corporation, that must be transferred to a community improvement corporation (CIC) before it is developed, and that meets other criteria.

- Revises the procedure for appealing a county board of revision's determination on an application for remission of property tax or manufactured home tax penalties.

- Requires that exemption applications for state university property be approved or disapproved by the Tax Commissioner rather than the county auditor.

- Extends, by 18 months, the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from June of the year before the tax year for which the exemption is sought, to December 31 of the tax year.

- Removes a requirement that a taxing authority receive approval from a court of common pleas before transferring revenue between certain funds of the subdivision.

- Requires a township to obtain the approval of affected school districts before extending the term of a tax increment financing (TIF) property tax exemption originally granted before 1995.

- Authorizes, under certain circumstances, extension of a community reinvestment area (CRA) property tax exemption without requiring the CRA to conform to various requirements and limitations enacted in 1994.

- Extends the deadline by which a county or municipality must petition for the Director of Development Services to approve its designation of a community reinvestment area.

- Revises the schedule for the fees exacted from taxes collected by county treasurers.

- Requires a resolution proposing to levy a property tax to include additional details on the scope and nature of the levy.

- Eliminates several superfluous provisions of law pertaining to the property tax exemption for burial grounds.

Tax credits and exemptions

- Requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to certain "business incentive" tax credits in the current biennium and future biennia.

- Allows employers that apply for a job creation tax credit (JCTC) to count compensation paid to certain "work-from-home" employees for the purposes of qualifying and complying with the terms of the JCTC agreement.

- Changes Ohio's motion picture tax credit to carry over unused credits within the annual cap, prioritize television productions, and require minimum financing thresholds.

- Modifies the $10 million annual cap on the New Markets Tax Credit to be a limit on the amount of credits that may be approved per year, rather than a limit on the amount of credits that taxpayers may claim each year.

- Authorizes local governments to enter into an enterprise zone agreement with a business after October 15, 2017.

- Increases from five to six the number of years that some operators of computer data centers have to meet the capital investment requirement associated with an existing sales and use tax exemption.

- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax.

- Provides that, when a taxpayer holds a tax credit certificate demonstrating the taxpayer's eligibility for a tax credit, the taxpayer must automatically submit the certificate to the Tax Commissioner when claiming the credit, rather than providing the certificate only on the Commissioner's request.

- Modifies the crediting and use of fees charged by the Development Services Agency (DSA) to administer certain tax incentive programs.

- Would have authorized $60 million in nonrefundable tax credits for insurance companies and financial institutions that invested in special purpose "rural and high-growth industry funds" that were to be certified by DSA and that made loans to or investments in certain classes of Ohio businesses (VETOED).

Tax administration

- Authorizes a temporary "amnesty" for taxpayers owing certain delinquent taxes whereby penalties and one-half the interest charges otherwise due are waived, along with criminal or civil action, if the taxpayer pays the outstanding liability and one-half the interest due.

- Distributes amnesty collections in the same way as the underlying tax, except distributes collections in excess of $20 million that otherwise would be credited to the GRF to the Budget Stabilization Fund.

- Generally authorizes the Department of Taxation, the Treasurer of State, and certain county officials to deny or revoke a license if certain prohibited acts are performed in relation to an application to approve or renew the license.

- Specifies that, before approving a retail tire dealer or wholesale tire distributor registration, motor fuel dealer license, or tobacco product distributor license, the Tax Commissioner must confirm that the applicant is not delinquent in paying any tax administered by the Commissioner.

- Requires that, in addition to delinquent sales and income withholding taxes, the Commissioner must notify the Division of Liquor Control when a liquor permit holder is delinquent in paying most other types of state taxes.

- Specifically authorizes the Department to disclose such information to the Division of Liquor Control.

- Transfers from the Treasurer of State to the Tax Commissioner the collection and refund responsibilities for the public utility excise tax.

- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.85% to 0.75% beginning July 1, 2017.

- Allocates all revenue from fees paid to have various pollution control or energy conversion facilities certified for property tax and sales and use tax exemptions to the appropriate state oversight agency – either EPA or DSA.

- Applies a $1 minimum payment and refund floor for fees administered by the Tax Commissioner.

- Reduces from two to one the number of times each year that county auditors and treasurers are required to distribute estate tax revenue.

Local Government Fund and other revenue distributions

- Makes permanent a monthly $1 million set-aside of Local Government Fund (LGF) funds for villages with a population of less than 1,000 and for townships, which is subtracted from LGF distributions that otherwise would be paid directly to municipalities that levied an income tax in 2006.

- Diverts all remaining LGF money that otherwise would be paid directly to those municipalities to various substance abuse-related expenditures during the biennium.

- Sets the Public Library Fund's share of GRF revenue at 1.68% for the FY 2018-2019 biennium after the temporarily higher percentage of 1.70% in the FY 2016-2017 biennium.

- Increases the share of commercial activity tax revenue credited to the General Revenue Fund and decreases the share allocated to reimburse school districts and other local taxing units for the loss of tangible personal property taxes.

- Would have withheld all LGF payments to the city of Columbus if it were to impose certain conditions or require certain payments before extending water and sewer service extraterritorially or if it were to withdraw or threaten to withdraw such service for the failure to meet such conditions or make such payments (VETOED).

- Would have reduced Local Government Fund (LGF) payments to the city of Columbus if it did not timely publish a plan to cease charging, or if it actually charged, different sewer and water rates to residents and nonresidents (VETOED).

- Would have modified the phase-out of payments that many school districts receive as reimbursement for their loss of tangible personal property (TPP) tax revenue, including by slowing the rate of reduction after FY 2019 from ⅝-mill to ¼-mill worth of property taxes per year (VETOED).

Special taxing districts

- Modifies the requirements to create a tourism development district (TDD).
- Requires subdivisions to use lodging tax revenues collected from a hotel located in a TDD to foster and develop tourism in the TDD.
- Changes a reporting date relative to businesses subject to a gross receipts tax levied in a TDD.
- Authorizes a county and other political subdivisions and private parties to enter into cooperative agreements to fund the construction and maintenance of certain permanent improvements located in a TDD designated by a municipal corporation.
- Specifically authorizes an LED sign to be located within a TDD next to an interstate highway, provided the sign meets all state and federal standards.
- Allows municipal corporations to pledge their income tax revenue and counties and transit authorities to pledge their sales tax revenue for Regional Transportation Improvement Projects (RTIPs).
- Limits the duration of an RTIP to 15 years or, if the governing board is authorized to issue securities, 20 years after the first such issuance.
- Creates a default requirement that unencumbered funds held by the governing board on the date an RTIP is dissolved are distributed proportionally to the state and to each political subdivision that contributed revenue to the RTIP.
- Authorizes counties participating in an RTIP to create a Transportation Financing District (TFD) that generates revenue by exempting improvements to nonresidential parcels from property taxation and collecting in-lieu service payments.

Income taxes

Elimination of income tax brackets and low-income taxpayer credit

(R.C. 5747.02, 5747.056, 5747.06, 5747.08, and 5747.98)

The act eliminates the bottom two tax brackets applicable to individuals' nonbusiness income, and, correspondingly, repeals the low-income taxpayer credit. Under continuing law, the state income tax on nonbusiness income is imposed via tiered tax rate brackets, with increasingly greater rates assigned to higher income brackets. Previously there were nine brackets; the act reduces this number to seven for individuals. Estates and trusts will continue to be subject to the same tax rates as under prior law, except that the prior two brackets for income up to $10,500 will be combined into a single bracket with a rate of 0.7425% (which is the average of the rates of those two brackets).

The change has no practical effect for most taxpayers. Previously, the bottom two brackets applied to nonbusiness income of $0 to $5,250 and $5,250 to $10,500, respectively.[150] However, prior law also provided a low-income taxpayer credit that erased the liability of individual taxpayers with Ohio adjusted gross income of $10,000 or less. Under the act, the bottom two brackets are repealed for individuals, so that the new lowest tax bracket begins at $10,500, rather than $0, and individuals may no longer claim the low-income taxpayer credit. Similar to prior law, most taxpayers with an OAGI of $10,500 or less would not owe any tax.

However, the act may increase the tax due from a presumably small class of taxpayers with business income. Under continuing law, in computing OAGI, taxpayers may deduct up to $250,000 of their business income. Because the low-income tax credit was allowed for taxpayers with an OAGI of less than $10,000, a taxpayer with business income of between $250,000 and $260,000 and no other taxable income previously could claim the $88 low-income credit against the 3% tax on their $10,000 of OAGI, reducing the $300 liability to $212. The act's repeal of the low-income credit would disallow the credit for this group of taxpayers.

The act may also lower the tax due from certain taxpayers with both business and nonbusiness income. For example, a taxpayer with $7,000 of nonbusiness income and $30,000 of taxable business income (i.e., $280,000 total business income) would owe taxes on the $7,000 of nonbusiness income under prior law, but not under the act because the act eliminates the brackets that previously applied to nonbusiness income under $10,500.

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[150] The dollar amounts reflect the inflation-indexed amounts.

Separate reporting of business and nonbusiness income tax revenues

(R.C. 5747.031)

The act requires that the Department of Taxation compute and report to the Office of Budget and Management (OBM), and that OBM separately state in its reports of actual and estimated revenues, the tax liability, before credits, arising from the taxation of business income (which is taxed at a flat rate of 3%); the tax liability, before credits, arising from the taxation of nonbusiness income (taxed under the graduated rate schedule); and the total amount of income tax credits claimed.

Under continuing law, OBM is required to compile estimates of revenues and expenditures on or before the first day of January preceding the convening of each General Assembly. Under prior law, income tax figures were not required to be subdivided based on type of income.

Administrative fees for refund check-offs

(R.C. 5747.113)

The act eliminates a provision of law that reimbursed the Department for the cost of administering the six income tax refund contribution "check-offs." The administration fee, which could not exceed 2.5% of the total fund contributions, was deducted in equal one-sixth shares from each fund twice a year.

Under continuing law, check-offs allow taxpayers to contribute all or part of their income tax refund to the Natural Areas and Preserves Fund, the Nongame and Endangered Wildlife Fund, the Military Injury Relief Fund, the Ohio History Connection, the Breast and Cervical Cancer Project, or the Wishes for Sick Children Income Tax Contribution Fund.

Ohio Political Party Fund distributions

(R.C. 3517.17; Section 803.50)

The act reduces the Tax Commissioner's role in distributing revenue derived from the Ohio Political Party Fund income tax check-off. Previously, the Commissioner directly distributed 50% of the revenue to the statewide political party and 50% to the various county party committees based on the relative number of check-offs in each county. The act eliminates direct distributions by the Commissioner to the county party committees. Instead, the statewide political party would receive all of the check-off revenue, and then allocate 50% to the county party committees. The changes begin to apply to distributions of check-offs made for taxable years beginning in 2017.

The Ohio Political Party Fund income tax check-off is an option on the state income tax return that allows each taxpayer to designate $1 to help fund the state's "major" political parties. The fund is divided equally among the two major parties. Fund distributions may be used to maintain a party headquarters, organize voter registration programs, administer fundraising drives, and communicate with registered voters regarding issues unrelated to any particular candidate or election. The parties may not use fund distributions to further the election or defeat of a particular candidate or issue or to pay debts incurred as the result of any election.

College savings and disability account deduction

(R.C. 5747.70; Section 803.360)

The act increases the maximum annual personal income tax deduction allowed for contributions to a federally tax-advantaged college savings plan or disability savings account from $2,000 to $4,000. The increase applies to taxable years beginning in 2018 or thereafter.

Under continuing law, two tax-preferred college savings programs are authorized allowing individuals to purchase tuition units or make contributions to an investment account to pay for future college expenses.[151] Ohio's plans are administered by the Ohio Tuition Trust Authority. Both plans are designed to receive favorable tax treatment under section 529 of Internal Revenue Code and so are referred to as "529 plans." Earnings in 529 plans are not subject to federal and state income tax, and distributions from 529 plans are exempt to the extent used to pay qualified higher education expenses of the plan beneficiary.

Similarly, continuing law authorizes a program under which a disabled individual or the individual's guardian or trustee may open an account with the Treasurer of State that is endowed with certain federal income tax and means-tested public assistance advantages. These accounts are referred to as "Achieve a Better Living Experience" (ABLE) savings accounts.[152] Similar to 529 plans, earnings in ABLE accounts are not subject to federal and state income tax, and distributions from the accounts to the beneficiary are exempt to the extent the money is used to pay the beneficiary's qualified disability expenses.[153]

[151] Ohio's program authorizing the purchase of tuition credits or units has been closed to new enrollments since 2003. Ohio Administrative Code (O.A.C.) 3334-1-01.

[152] R.C. 113.50 to 113.56, not in the act.

[153] 26 United States Code (U.S.C.) 529A.

Continuing law allows a $2,000 per-year, per-beneficiary state income tax deduction for contributions to a 529 plan or ABLE account opened under Ohio's program to the extent such contributions are included in the contributor's federal adjusted gross income.

A taxpayer may carry forward any excess deduction amount to future years until the amount of the contributions has been fully deducted.

School district income tax in consolidated districts

(R.C. 3311.27 and 5748.10)

Continuing law prescribes various procedures by which some or all of the territory of a school district may be merged or joined with or transferred to another school district ("school district consolidation"). The act specifies that, following a school district consolidation, school district income tax is levied throughout the combined district's territory at the rate and according to the other terms in effect for the "surviving" school district gaining the territory. Prior law did not explicitly prescribe the manner in which existing school district income taxes applied after a school district consolidation.

The act also requires the school board of the surviving school district to report certain tax-related information to the Tax Commissioner within 90 days before a school district consolidation takes effect. Specifically, the school board is required to identify that effective date and each school district that is a party to the consolidation, including the rate of income tax levied by each district after that effective date, if any.

Municipal income taxes

State administration of municipal income taxes on business income

(R.C. 718.80 to 718.95, 113.061, 718.01, 718.06, 718.60, 5703.052, 5703.053, 5703.054, 5703.056, 5703.19, 5703.21, 5703.371, 5703.50, and 5703.70; Section 803.100)

The act allows businesses to elect to have the Department of Taxation administer the business' municipal income taxes. Under prior law, a business that operated in multiple municipal corporations was required to file separate tax returns for each municipality; the filings could be made through the state's Ohio Business Gateway system, but separate filings had to be made for each municipality. Under the act, a business may choose to continue filing separate returns or to file a single return with the Department that covers the business' total tax liability to all municipalities. The Department would assume all aspects of administering the taxes of those filing with the

Department; almost all of the revenue would be distributed to the appropriate municipalities.

Under the act, a municipality will continue to administer its tax on the income of individuals, as well as businesses that do not make the election. Each municipality will still control the rate of its tax on business income, and whether any business credits are allowed against that municipality. Under continuing law, municipalities retain their authority to tax residents' distributive shares of pass-through entity (PTE) income.

Election

The election is available to businesses other than sole proprietors, beginning in 2018. The election applies to the taxable year for which it is made, but automatically renews for each ensuing taxable year until terminated. Businesses must make the election, or request to terminate an election, on or before the first day of the third month of their taxable year.

Comparison with prior law

The act preserves most of pre-existing law's provisions governing the calculation of a business' taxable income, filing and payment requirements, and the issuance of refunds, with the following key differences:

--For businesses that make the election, the Tax Commissioner, rather than a municipality's tax administrator, will perform all of the duties related to the administration of the tax.

--The act requires that businesses that make the election must file returns electronically, and allows the Commissioner to excuse taxpayers from the requirement for good cause shown. Under continuing law, a municipality may require electronic filing, but may permit nonelectronic filing as well.

--With respect to tax assessments, the procedures that the Commissioner will administer more closely mimic those for the state income tax, with appeals taken to the Board of Tax Appeals, rather than a municipality's local board of tax review, and with unpaid amounts certified to the state Attorney General for collection in the same manner as for unpaid state taxes.

Distribution of revenue

The act requires the Commissioner to distribute municipal income tax revenue to municipalities on a monthly basis, after deducting 0.5% of such revenue to cover the Department's administrative expenses.

Each year, every municipality that levies an income tax must certify its tax rate for that year to the Commissioner. In addition, each time a taxpayer makes the election allowed by the act, the municipality must provide certain information about that taxpayer to the Commissioner, including whether the taxpayer is entitled to any tax credits or net operating loss carryforward in the future. If a municipality fails to provide any of this information, the Commissioner may withhold 50% of all subsequent tax revenue distributions to the municipality until the information is provided.

Information required from the Commissioner

In May and November of each year, the Tax Commissioner must provide municipalities with information about businesses that have made the election, including the ratio of the business' income that is apportioned to that municipality and other data impacting the business' taxable income. Each month, the Commissioner must also report to each municipality the amount of estimated payments received that are attributable to that municipality.

If, after receiving the above information, a municipality finds that it has additional information that could result in a change to a business' tax liability, the municipality may refer the taxpayer to the Commissioner for audit. The Commissioner must review the referral, but is not required to conduct an audit. However, the act explicitly authorizes a municipality to file a writ of mandamus if it believes the Commissioner "has violated the Commissioner's fiduciary duty as administrator of" the municipality's income tax.

Throw-back rule

(R.C. 718.02)

The act removes prior law's "throw-back rule," beginning with the 2018 taxable year. Under continuing law, when determining the portion of a business' net profits attributable to a municipality, the business uses a three-factor formula based on the business' payroll, sales, and property. The act modifies the formula's "sales factor."

Under prior law, sales of goods were considered to be made in a municipality when the goods were any of the following:

(1) Both shipped from and delivered within the municipal corporation;

(2) Delivered within the municipal corporation, but shipped from elsewhere, if employees of the business regularly solicited sales within the municipal corporation and the sale of the goods resulted from that solicitation;

(3) Shipped from the municipal corporation, but delivered elsewhere, if the business, through its own employees, did not regularly solicit sales at the location where the goods were delivered.

The third criterion is known as the "throw-back rule." The act removes this third criterion, so that sales of goods will be apportioned to a municipality only if either the first or second criterion is met. As a consequence, if goods are shipped from one municipality to another, and the seller does not regularly solicit sales in that other municipality, the sale will not be included in the seller's "sales factor" for the first municipality.

Estimated payment due date

(R.C. 718.08; Section 803.100)

The act provides municipal income taxpayers who are individuals with one additional month to pay their fourth-quarter estimated municipal income taxes. Under prior law, taxpayers who make estimated payments were required to submit their fourth, and final, estimated payment on or before the fifteenth day of last month of the taxable year (December 15 for calendar year taxpayers). Under the act, this deadline remains unchanged for taxpayers who are not individuals (such as businesses), but is extended by one month for individuals, to the fifteenth day of the first month of the next taxable year (January 15 for calendar year taxpayers). The change applies to estimated payments for taxable years beginning on or after January 1, 2018.

Continuing law requires every taxpayer whose estimated annual municipal income tax liability, after subtracting withheld amounts, will be at least $200 to report and pay estimated taxes on a quarterly basis – 22.5% of annual liability is due by the end of each quarter.

Withholding tax penalty

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

The act modifies the computation of the penalty imposed on employers that do not timely remit municipal income tax withholdings. Prior state law mandated that the penalty equal 50% of the unpaid amount. The act authorizes municipal corporations to impose a penalty not exceeding 50% of the unpaid amount.

Under continuing law, employers must withhold municipal income taxes from employees according to a fixed schedule whereby the frequency of the withholding depends on the withholding amount for the municipal corporation in the preceding year. If the employer's withholdings do not exceed $2,399 in the preceding calendar year or do not exceed $200 in any month of the preceding calendar quarter, the employer is required to remit the withholdings on a quarterly basis. For larger withholding amounts, monthly remission of withholdings is required.

Technical change to calculation of businesses' municipal income

(R.C. 718.01; Section 803.100)

The act makes a technical change to the formula for calculating a business' municipal income. Under prior law, the formula included circular definitions for calculating a business' net operating losses and net profit. The act corrects this circularity.

Ohio Business Gateway Steering Committee membership

(R.C. 5703.57)

The act reduces, from three to one, the number of municipal tax administrator representatives that the Governor may appoint to the Ohio Business Gateway Steering Committee. The Committee is responsible for overseeing the operations of the Ohio Business Gateway, which is the state-administered online system that allows businesses to electronically file business and tax forms with state agencies. Under continuing law, the Committee also consists of up to four representatives of the business community and two tax practitioners, plus ex officio members representing various state agencies.

Before 2016, as under the act, the Governor was permitted to appoint only one municipal tax administrator representative to the Committee. The maximum number of such representatives was increased to three by H.B. 5 of the 130th General Assembly, which also required that the representatives be selected from a list provided by the Ohio Municipal League. The act returns the maximum number of such representatives back to one, but retains the requirement that the municipal tax administrator representative be selected from a list compiled by the Ohio Municipal League.

Study on electronic filing through MeF program

(Section 757.60)

The act also requires the Department of Taxation to study the feasibility of allowing taxpayers to file municipal income tax returns through the joint federal and state Modernized e-File (MeF) program. The MeF is a web-based electronic tax filing system developed and maintained by the Internal Revenue Service and made available to taxpayers through approved private sector tax filing software providers.

Under the act, the Department must estimate the costs of accepting municipal income tax returns through the MeF program and establish a timeline for the incorporation of municipal returns. The Department must submit a report on its findings to the General Assembly by December 31, 2017.

Sales and use taxes

Medicaid provider sales tax cessation and transition payments

(Section 387.20)

The act provides a series of two payments to counties and transit authorities, one by November 2017 and one in January 2018, to mitigate their sales tax revenue loss from the cessation of all sales tax on Medicaid managed care services provided by health insuring corporations (MHICs or Medicaid MCOs) under contracts with the state. The payments cover the entire local tax loss for the fourth quarter of calendar year 2017 and some of the loss thereafter. The amount each county and transit authority receives for the post-2017 loss is computed on the basis of its historical MHIC sales tax revenue, per-capita non-MHIC sales tax revenue, and a factor devised by OBM to adjust for local fiscal capacity to absorb the loss.

The state and local sales taxes had applied to Medicaid managed care services. By applying the taxes to such services, the state had been able to draw additional federal Medicaid funds because federal funding is calculated in part on the basis of MCOs' costs of providing care: the tax paid by MCOs increased their costs, thereby increasing their state/federal reimbursement to the extent of the tax, enabling the state to receive additional federal funding simply by extending the sales tax to MCOs. But federal law regulates how taxes on MCOs are designed and operate, and Ohio's sales tax on MCOs was in jeopardy of being found to violate that law.

Separately, the act enacts a new franchise fee on all health insuring corporations to replace the sales tax on MCOs. None of the revenue from the new franchise fee will be distributed to counties and transit authorities unless the state obtains federal approval for an increase in the fee to cover their MCO sales tax losses. In a provision vetoed by the Governor, the act requires ODM to seek federal approval for such an increase.[154] (For discussion of the franchise fee, see the "**Health insuring corporation franchise fee**" heading under the **DEPARTMENT OF MEDICAID** chapter.)

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[154] R.C. 5168.761. On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.

Software and network use tax nexus

(R.C. 5741.01; Section 803.410)

Continuing law imposes use tax on tangible personal property and certain taxable services purchased outside of, but used, consumed, or stored in Ohio. Use taxes are levied at the same rate as state and local sales taxes, and all revenue from the tax is credited to the General Revenue Fund. Under a 1992 U.S. Supreme Court case, *Quill Corp. v. North Dakota*, 504 U.S. 298, a state may not compel a seller to collect and remit a state's use tax unless that seller has a physical presence in, or substantial nexus with, the state. Thus, continuing law requires an out-of-state seller to register with the Tax Commissioner and collect and remit use tax on sales into Ohio only if that seller has some specified connection with Ohio sufficient to give the seller substantial nexus with the state. Continuing law prescribes several examples of activities that, if conducted by an out-of-state seller, creates a presumption that the seller has substantial nexus with Ohio. For example, an out-of-state seller is presumed to have substantial nexus with Ohio if the seller uses an Ohio warehouse or regularly uses agents in Ohio to conduct business. In general, these presumptions may be overcome if the seller demonstrates that those activities are not significantly associated with the seller's ability to establish or maintain the seller's Ohio market. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.

Beginning January 1, 2018, the act expands the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax. Specifically, the act extends the nexus presumption to an out-of-state seller with annual Ohio sales in excess of $500,000 that either (1) uses computer software stored or distributed in Ohio to make Ohio sales or (2) provides, or enters into an agreement with a third party to provide, "content distribution networks" in Ohio to accelerate or enhance the delivery of the seller's website to Ohio consumers. A content distribution network is defined to be a system of distributed servers that deliver web content to users based on the geographic location of the user, the origin of the web content, and a content delivery server. (The operational language of the provision uses the term "content distribution network," whereas the definition uses the term "content delivery network.")

As under continuing law, a seller may rebut the presumption created by these activities by demonstrating that they are not significantly associated with the seller's ability to establish or maintain an Ohio market for the seller.

Local sales and use tax rate increments

(R.C. 5739.021, 5739.023, and 5739.026; Section 757.100)

The act allows counties and transit authorities to increase their local sales and use tax rates in increments of 0.1%, rather than the 0.25% minimum increment of prior law, beginning July 1, 2018.

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that "piggyback" on the state sales and use tax. All of Ohio's counties, plus eight transit authorities, levy a sales and use tax, at rates ranging from 0.25% to 1.5%. Under prior law, a county or transit authority could increase its tax rate in increments of 0.25%. The act allows for smaller increases, at increments of 0.01%.

Taxation of prescription optical aids (VETOED)

(R.C. 5739.01; Section 803.140)

The Governor vetoed a provision that would have exempted from sales and use tax the first $650 of the price of optical aids prescribed by a licensed physician or optometrist and components of such optical aids. "Optical aid" would have been defined to include eyeglass frames and lenses, contact lenses, and other devices that assist or correct human vision. The partial exemption would have applied only to optical aids and components purchased from an optometrist or physician who is authorized to dispense optical aids under Ohio law or the law of another state, country, or province.

The vetoed provision may have conflicted with Section 323 of the Streamlined Sales and Use Tax Agreement (SSUTA), which generally prohibits caps and thresholds on the application of state sales or use tax rates. The SSUTA is a multi-state agreement designed to simplify sales and use tax administration and make collection and remission easier for businesses that make sales in multiple states. Ohio has been a full member of SSUTA since 2014.

Digital jukebox exemption

(R.C. 5739.02(B)(55); Section 803.140)

Under continuing law, state and local sales tax extends to "specified digital products," i.e., music, multimedia, and digital books, that are transferred to the purchaser electronically. Beginning October 1, 2017, the act exempts from sales tax digital music purchased and delivered electronically via a machine that exclusively plays digital music in a commercial setting and accepts direct payments to play a single song – i.e., a digital jukebox.

The act does not exempt purchases from a jukebox that operates by playing "tangible storage media" – e.g., vinyl records or compact discs. Such purchases would not be delivered electronically and are not subject to sales tax under continuing law.

Sales tax holiday, August 2018

(Section 757.120)

The act establishes a three-day period in August 2018 during which clothing and school supplies and instructional materials are exempt from state and county sales and use taxes. The tax-exempt period is Friday, August 3, through Sunday, August 5, 2018. Similar sales tax holidays were held in August of 2015, 2016, and 2017.[155] As with these tax holidays, the act's tax exemption applies to each of the following:

(1) Items of clothing up to $75 each. "Clothing" means all human wearing apparel suitable for general use, but does not include items such as those used in a trade or business, accessories, or sports or protective equipment.

(2) Items of school supplies and instructional materials up to $20 each. "School supplies" means items commonly used by a student in a course of study and are explicitly listed in the act, including items such as book bags, crayons, erasers, notebooks, pencils, and pens. "School instructional materials" means reference books, reference maps and globes, textbooks, and workbooks only.

The exemption applies regardless of whether the sale occurs in Ohio or outside Ohio: if the sale occurs in Ohio, the sale is exempt from the sales taxes; if the sale occurs outside Ohio (for example, by mail-order or over the Internet) but the item is used in Ohio, the sale is exempt from the use taxes that would otherwise apply.

Sales tax on electronic services (VETOED)

(R.C. 5739.01(B)(3); Section 803.260)

The Governor vetoed a provision that would have modified the sales and use taxation of business-related automatic data processing, computer services, electronic information services, and electronic publishing services (hereinafter referred to collectively as "electronic services"). Specifically, the provision addressed "mixed" transactions, in which an electronic service is provided together with some other kind of service.

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[155] Am. Sub. S.B. 243 of the 130th General Assembly, Sub. S.B. 264 of the 131st General Assembly, and S.B. 9 of the 132nd General Assembly.

Under continuing law, an electronic service is not taxable if it is part of a mixed transaction and the receipt of the electronic service is only "incidental or supplemental" to the receipt of the other service. The act proposed to remove this standard, and instead provide that receipt of an electronic service would not be taxable if the service were provided "primarily for the delivery, receipt, or use" of the other service.

The vetoed provision would have applied this change retrospectively, to sales of electronic services made on or after December 21, 2007 (the effective date of H.B. 157 of the 127th General Assembly, which modified the taxation of electronic publishing services).

County sales and use tax for community improvements

(R.C. 307.283 and 5739.026; Section 803.280)

The act creates an exception to the general rule requiring revenue derived from a county sales and use tax that funds grants for permanent improvements to be spent only on projects located within the county. Under the act, grants for school districts may be spent for projects outside the county so long as the improvements are within the school district and a part of the school district is within the county. The exception applies only to grant revenue derived from existing sales and use taxes levied on September 29, 2017.

Under continuing law, a county may levy a local sales tax (and a corresponding use tax) at a rate of up to 0.5% for certain purposes specified by state law. (This 0.5% levy authority is in addition to distinct authority to levy up to 1% for general purposes or justice-related spending.) One of those purposes is to fund grants for local governments or the state for their permanent improvement projects, which, generally, include buildings and other real property improvements and tangible personal property having at least a five-year lifetime. Such a tax may be levied for a specified number of years or for a continuing period of time. The tax is subject to voter approval.

The grants are administered by a community improvements board which must be created by the board of county commissioners that imposes the tax. It has nine members – six appointed by the board and three appointed by the mayor of the most populous municipal corporation in the county – and must include at least one mayor and one township trustee.

Prior law, retained in part by the act, required all permanent improvements funded by community improvements board grants to be located in the county.

Vendor licenses

(R.C. 5739.18)

The act prescribes the manner by which county auditors issue sales tax vendor licenses and requires certain sales and use tax license information be published on the Department's website. Continuing law requires a person who will make retail sales ("vendor") to obtain a vendor's license from the county auditor of each county where the person desires to engage in business, thereby enabling the person to collect and remit sales tax. Prior law did not regulate the manner by which auditors issued those licenses. The act requires auditors to use a system provided and maintained by the Tax Commissioner to issue those licenses.

Under prior law, each county auditor was required to certify weekly to the Tax Commissioner and county treasurer the names of all vendors licensed with the auditor during the preceding week, and the Commissioner was required to keep a list of all certified vendors except those whose license had been cancelled. The act removes the auditors' weekly reporting duties and requires the Commissioner to publish on the Department of Taxation's website more extensive identifying information. In particular, the Commissioner must list the name, business address, and sales and use tax account number of each licensed vendor, each holder of a "direct payment" permit issued by the Commissioner that enables the holder to remit sales tax directly to the state, and each out-of-state seller that registers with the Commissioner to collect and remit use tax on sales to Ohio customers. The act additionally requires the Commissioner to identify whether such a license, permit, or registration is active or inactive.

Vendor's license suspension

(R.C. 5739.30; Section 803.150)

Under continuing law, the Tax Commissioner may suspend the sales tax vendor's license of a vendor that fails to report or remit sales tax within a consecutive two-month period or for three months within a 12-month period or, for semiannual reporters, for two or more occasions within a 24-month period. A vendor's license is required for any business that makes sales that are taxable under the sales tax. To have a suspended license reinstated under prior law, the only requirement was that the vendor had to correctly report and pay delinquent sales taxes, including penalties and interest.

The act adds the requirement that a vendor who has also failed to properly report or remit its employees' income tax withholdings during or before that suspension period must correctly report and pay all such unreported or unpaid withholdings as a condition of reinstating the vendor's license.

The act also authorizes the Tax Commissioner to suspend the license of a vendor that fails to report or remit its employees' income tax withholdings for two consecutive occasions or on three or more occasions within a twelve-month period. Similar to the suspension for unreported or unpaid sales taxes, this suspension may be lifted only if the vendor properly reports and pays all delinquent employee income tax withholdings and sales taxes.

The act's changes to vendor's license suspension procedures apply beginning January 1, 2018.

Direct mail sourcing

(R.C. 5739.033)

The act modifies the statutory rules for situsing sales and use tax for direct mail to conform with the Streamlined Sales and Use Tax Agreement (SSUTA) and prior practice by distinguishing between direct mail used for advertising purposes and all other forms of direct mail, and expressly applying a new situsing rule to the nonadvertising kind. In general, direct mail is printed material mass mailed by one party – the "vendor" – to predetermined recipients on behalf of another party – the "consumer."

The purpose of "situsing" a sale is to determine which taxing jurisdiction (state, county, and transit authority) properly taxes the sale and receives the revenue. Under prior law, all direct mail was sitused to the location from where the direct mail was shipped, unless the direct mail's consumer provided the vendor with an exemption certificate or direct payment permit or information showing where the mail was to be delivered ("delivery information"). If an exemption certificate or direct payment permit was furnished, the consumer was required to pay sales and use tax directly, and the vendor was relieved of all obligations to collect and remit tax on that transaction. If a consumer instead furnished delivery information, the vendor or seller was required to situs the tax to those locations.

The act distinguishes two classes of direct mail for the purpose of situsing sales. One class is advertising direct mail, which is defined to be direct mail designed to attract attention to or to attempt to sell, popularize, or secure financial support for a product, business, or other person. Advertising direct mail continues to be sitused as all direct mail had been previously. The second class includes all other direct mail, which is sitused, by default, to the location of the direct mail's consumer rather than the location from which the mail is shipped. The consumer may still submit a direct payment permit or exemption certificate excusing the vendor from collecting tax but is no longer permitted to furnish delivery information that would require situsing to delivery locations.

The act's direct mail situsing modifications conform with SSUTA requirements and prior Department of Taxation practices.[156] Ohio is a member of the SSUTA, which generally requires member states to conform their sales and use tax law to its uniform guidelines.

Remission of tax on vehicle sales and leases (VETOED)

(R.C. 4505.06, 5703.21, 5739.029, 5739.12, 5739.122, 5739.13, 5739.17, and 5741.12)

The Governor vetoed a provision that would have allowed Ohio-licensed motor vehicle dealers with more than $20 million in annual sales to remit sales and use tax collected on vehicle sales directly to the state. Under continuing law, sales and use tax on vehicle sales is collected by the Clerk of the Court of Common Pleas along with the application for a certificate of title. The Clerk is not permitted to issue the certificate before collecting the taxes.

Under the vetoed provision, dealers would have to have made one-year elections to remit taxes directly. Electing dealers would have to submit monthly reports to the Tax Commissioner and notify the Clerk of the purchaser's county of residence. The Commissioner would have been permitted to revoke an election made by a dealer if the dealer failed to comply with the act's requirements.

The "poundage" fee normally retained by clerks from the tax collections and used by clerks to support their vehicle titling functions would have been paid to them from the GRF each month. Under continuing law, the poundage fee equals 1.01% of the tax collected.

Lodging taxes

Counties, townships, municipal corporations, and certain convention facilities authorities are authorized to levy lodging taxes. In general, the maximum lodging tax rate permitted in any location is 6%. Municipalities and townships may levy a lodging tax of up to 3%, plus an additional 3% if they are not located, wholly or partly, in a county that already levies a lodging tax. Counties may levy a lodging tax of up to 3%, but only in municipalities or townships that have not already enacted an additional 3%

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[156] Section 313 of the Streamlined Sales and Use Tax Agreement (adopted November 12, 2002 and amended through December 16, 2016); "Direct Mail Sourcing and Definitions," Ohio Department of Taxation Information Release ST 2013-01 (August 2013), available at http://www.tax.ohio.gov/Portals/0/communications/information_releases/DirectMailSourcing82013.pdf.

levy. On occasion, the General Assembly has authorized certain counties to levy additional lodging taxes for special purposes.

Unless specifically authorized otherwise, a county that levies a lodging tax must return up to one-third of its net lodging tax revenue to the municipalities and townships within the county that do not levy a lodging tax. The remaining revenue must be used to support a convention and visitors' bureau. The bureau must generally use the revenue for tourism sales, marketing, and promotion.

Extension in Summit County

(R.C. 5739.09(A)(6))

In 2007 the General Assembly temporarily authorized a charter county that, at the time, levied a 4.5% lodging tax (i.e., Summit County) to increase the rate of the tax by up to an additional 1% for up to ten years. The act authorizes the county to extend the term of the rate increase for an additional ten years by vote of the county legislative authority. Revenue from the tax must be used to finance and operate a convention center by a convention and visitors bureau.

Rate increase in Stark County

(R.C. 5739.09(A)(11))

The act authorizes a county having a population of between 375,000 and 400,000 and that currently levies a 3% lodging tax (i.e., Stark County) to increase the rate of the tax by up to an additional 3%. As with the original tax, the revenue derived from the increase in rate would primarily be allocated to the county's convention and visitor's bureau. The county would be permitted, but not required, to designate a portion of the revenue to each township or municipal corporation in which lodging transactions occurred.

Rate increase in Clermont County

(R.C. 5739.09(A)(12))

The act authorizes a county with a 2010 population of between 190,000 and 200,000 and that already levies a 3% lodging tax (i.e., Clermont County) to increase the rate of the tax up to an additional 1%. The revenue derived from the increase in rate must be used to fund the construction and maintenance of a professional sports facility and to promote tourism with respect to that facility through the county's convention and visitors' bureau.

The tax may only take effect after the convention and visitors' bureau enters into a contract for the construction or maintenance of the facility. If the bureau has not entered into such a contract by January 1, 2019, the authority to levy the tax expires.

The revenue from the tax may be used for the development of a facility intended to house a minor or major league sports team, including a stadium, as well as parking, walkways, and other auxiliary facilities. Unlike the tax already levied, no portion of the revenue derived from the increase in rate would be returned to the townships and municipal corporations in which the lodging transaction occurred.

Rate increase in an eligible city

(R.C. 5739.09(B)(3))

The act authorizes a city that currently levies a 3% lodging tax and that is located in a county having a population of between 300,000 and 350,000 and that currently levies a 3% county lodging tax (Lorain County) to increase the rate of the municipal lodging tax by up to an additional 3%. The revenue derived from the increase must be used for economic development and tourism-related purposes.

Use of revenue in Warren County

(R.C. 5739.09(A)(1) and (8))

The act specifies that the proceeds of a 1% lodging tax that may be levied only by a county with a population between 175,000 and 225,000, that levied a lodging tax rate of 3% in 2014, and has an amusement park with annual attendance of more than two million (i.e., Warren County) may be used to pay the construction and maintenance costs of a sports facility owned by a port authority. Previously, the revenue could only cover the costs of a county-owned sports facility.

The act also authorizes that county to use or pledge any or all of the proceeds from its special 1% or its general 3% lodging tax to service securities issued to construct, operate, or maintain such sports facilities, including any portion of the general lodging tax that, under prior law, had to be returned to townships and municipal corporations in the county that do not levy a lodging tax.

Severance tax

Exemption and fee for small gas wells

(R.C. 5749.03; Section 803.220)

The act replaces a previous severance tax exemption for natural resources having an annual value of $1,000 or less and severed from land owned by the severer with a new exemption for natural gas severed from an exempt domestic well. Generally, an exempt domestic well is a gas well owned by a landowner primarily for the purpose of providing gas for the owner's domestic use. Prior law did not explicitly exempt natural gas severed by exempt domestic wells from severance tax, but, as a practical matter, at least some of those wells might have qualified for the homestead exemption repealed by the act.

Notwithstanding the new severance tax exemption, exempt domestic wells designated on or after June 30, 2010, will continue to be subject to the annual "cost recovery assessment" of $60. The assessment is payable to the Department of Natural Resources (DNR) and is credited to the Oil and Gas Well Fund.

Severance tax administrative provisions

The act makes several changes related to the administration of severance taxes levied on the mining or other severance of oil, natural gas, coal, gravel, clay, salt, and sand, as described below. These changes apply beginning October 1, 2017.

Severance tax permits

(R.C. 5749.04; Section 803.220)

Prior law permitted a severer to either obtain a license from the Tax Commissioner or, if required to do so under another provision of law, a permit from DNR before severing or selling natural resources from Ohio's soil or water. Under the act, the Commissioner would no longer issue severance tax licenses. Instead, severers would have to obtain a permit from, or register with, DNR. However, before severing natural resources, severers would have to apply to the Commissioner to open a severance tax account. But those severing natural gas from an exempt domestic well, which the act exempts from severance tax, are not required to register for the account (see "**Exemption and fee for small gas wells**," above).

The act also authorizes the Commissioner to request that DNR revoke a severer's permit or registration if the Commissioner finds that the severer failed to comply with Ohio severance tax law. In response, DNR may revoke the severer's permit or registration.

Return due dates

(R.C. 5749.06; Section 803.220)

Under continuing law, severers are generally required to file severance tax returns for natural resources severed in each calendar quarter unless the Tax Commissioner prescribes a different reporting period. The filing deadline under prior law was 45 days after the end of a calendar quarter or other prescribed reporting period. The act sets the deadline as the 15th day of the second month following the end of each quarter or other reporting period.

Revenue transfers

(R.C. 5749.06(H); Section 803.220)

The act provides for monthly distribution of severance tax revenues instead of prior law's quarterly distribution schedule. Prior law required the Tax Commissioner, by the 15th day of the month following the end of each calendar quarter (i.e., January 15, April 15, July 15, and October 15) to certify to the Director of OBM the total amount in the fund that holds all severance tax revenue – the Severance Tax Receipts Fund – after accounting for amounts set aside for severance tax refunds. The certification must include the proportion of such revenue attributed to the tax on each type of natural resource.

The act instead requires the Tax Commissioner to make this certification by the 25th day of each month. Additionally, after making this certification, the Commissioner must pay severance tax revenue from the Severance Tax Receipts Fund to the funds to which each severance tax is required to be credited.

Disclosure of severance tax information

(R.C. 5749.17; Section 803.220)

Prior law could be read to authorize DNR to publicly disclose severance tax information given to it by the Tax Commissioner for the purpose of enforcing oil and gas regulatory laws. The act explicitly limits the ability of DNR to disclose severance tax information by allowing disclosure only to the Attorney General for purposes of enforcing those laws.

Excise taxes

Cigarettes and other tobacco products

Ohio levies an excise tax on the sale, distribution, or use of cigarettes at the rate of $1.60 per pack. The tax is paid primarily by wholesale dealers through the purchase of stamps that are affixed to packs of cigarettes. Retail sellers must pay the tax on cigarettes that are not taxed at the wholesale dealer level. A separate tax is levied on tobacco products other than cigarettes at the rate of 17% of the wholesale price, or 37% of wholesale price for "little cigars" – noncigarette, filtered smoking rolls wrapped in any substance containing tobacco, other than natural leaf tobacco. This tax is often referred to as the other tobacco products (OTP) tax. Revenue from the cigarette and OTP taxes is credited to the GRF.

Monthly returns

(R.C. 5743.03 and 5743.081; Sections 803.180 and 812.20)

The act requires that cigarette tax returns be filed monthly rather than semiannually. Under continuing law, wholesale dealers that purchase cigarettes and affix tax stamps are required to file tax returns detailing the dealer's entire purchases and sales of cigarettes and stamps for the reporting period. The return must also include accurate inventories of cigarettes and stamps as of the beginning and end of each period.

Under prior law, wholesale dealers were required to submit a return and remit payment of any tax deficiency every six months. The return for the period running from January 1 to June 30 was due on July 31, and the return and payment for the period running from July 1 to December 31 were due on January 31. The act instead requires that such returns and payments be filed on a monthly basis. Each month's return is due on the last day of the following calendar month.

Tax on premium cigars

(R.C. 5743.01, 5743.51, 5743.62, and 5743.63; Section 803.370)

The act creates a new category of tobacco products – "premium cigars" – with respect to which the OTP tax is capped at 50¢ per cigar. Premium cigars are defined to be rolls of tobacco with (1) a binder and wrapper consisting entirely of leaf tobacco, (2) no tip or filter or mouthpiece that is not made of tobacco, and (3) a weight of at least six pounds per 1,000 rolls.

The act's OTP tax ceiling for premium cigars is effective July 1, 2017. The Tax Commissioner is required to annually increase the 50¢ ceiling at the same rate as an increase in the Consumer Price Index.

Kilowatt-hour tax: chlor-alkali manufacturing process exemption

(R.C. 5727.80 and 5727.81)

The act allows an exemption from the kilowatt-hour tax for the distribution of electricity to consumers who use that electricity in a chlor-alkali manufacturing process. A "chlor-alkali manufacturing process" is defined to be a "process that uses electricity to produce chlorine and other chemicals through the electrolysis of a salt solution."

The kilowatt-hour tax is a tax imposed on the distribution of electricity to end users in Ohio, at rates depending on the kilowatt-hour consumption of the end user. Continuing law exempts the distribution of electricity used in a "qualifying manufacturing process" – i.e., an "electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured" – but that exemption only applies to consumers who use at least 3 million kilowatt-hours of electricity in the process per day.

The act's exemption applies to any consumer without regard to the amount of kilowatt-hours used in the process per day. However, unlike the qualifying manufacturing process exemption, the exemption for electricity used in a chlor-alkali manufacturing process does not apply to electricity provided by a municipal electric company unless the consumer first obtains the consent of the legislative authority of the municipal corporation that owns or operates the utility.

Most revenue from the kilowatt-hour tax is credited to the GRF. The remainder is distributed to municipal corporations for taxes paid on the basis of electricity distributed by municipal utilities to users within municipal territory.

Publication of information on motor fuel dealers

(R.C. 5735.07; Sections 120.30 to 120.32)

The act reinstates language in a motor fuel tax statute that was recently amended by Sub. H.B. 26 of the 132nd General Assembly (the transportation appropriations act). The statute requires the Tax Commissioner to publish certain information about motor fuel taxpayers each month. Under prior law, that information included the number of gallons of motor fuel upon which dealers were required to pay tax. H.B. 26 removed this requirement, effective January 1, 2018. The act reinstates the requirement, thereby requiring the publication of such information to continue uninterrupted.

Petroleum activity tax licensing

(R.C. 5736.06)

Continuing law levies the petroleum activity tax (PAT) on suppliers of motor fuel on the basis of each supplier's "calculated gross receipts" – the volume of the supplier's first sales of motor fuel in the state multiplied by the average price for unleaded gasoline or diesel fuel, as applicable. Suppliers are prohibited from distributing, importing, or causing the importation of motor fuel into the state without applying for and obtaining a supplier's license from the Tax Commissioner. The act clarifies the deadline by which a new motor fuel supplier must apply for a supplier's license and stipulates an annual expiration date for all supplier's licenses.

Under prior law, persons subject to the PAT had to apply for a supplier's license by March 31, 2014, or within 30 days of first becoming subject to the tax, whichever was earlier. This provision, enacted in 2013 by H.B. 59 of the 130th General Assembly, set up a mass licensing date as part of the initial phase-in of the PAT. Now that the tax is fully implemented, the provision is outdated. The act eliminates the reference to March 31, 2014, and instead requires that new motor fuel suppliers apply for a license within 30 days after first becoming subject to the PAT.

The act also specifies that supplier's licenses expire on the last day of February each year. Continuing law requires each person issued a supplier's license to annually apply for renewal on or before March 1. However, the prior provision did not explicitly state that the supplier's license would otherwise expire.

Property taxation

Current agricultural use value (CAUV) changes

(R.C. 5713.31, 5713.34, and 5715.01)

The act changes the state's policy for valuing agricultural land for property tax purposes (known as current agricultural use valuation, or CAUV). Specifically, it prescribes in statute two elements of a capitalization rate that must be used to calculate CAUV values. The act also effectively places a ceiling on the taxable value of CAUV land that is used for conservation purposes, thereby reducing the taxable value of any such land not otherwise valued according to the lowest-valued soil type.

Codification of aspects of administrative formula

Continuing law does not prescribe the specific method for determining CAUV values. Instead, it requires the Tax Commissioner to adopt a formula by administrative rule that "reflect[s] standard and modern appraisal techniques."[157] The formula adopted by the Commissioner is published annually in CAUV "land tables," which apply to CAUV land in counties undergoing reappraisal or update that year and continue to apply in those counties for the following two years until the ensuing reappraisal or update year.

The act codifies the inclusion of some of the factors used in the CAUV formula. It states that the valuation method must take into consideration "typical cropping and land use patterns" and "typical production costs," both of which were required by the administrative rules but were not required by statute. The act deletes a statutory requirement that market value of land for agricultural purposes be taken into consideration, but doing so is not expressly prohibited. (In the administrative rules, estimating the agricultural market value is stated to be the objective to be achieved by the valuation method.[158])

Capitalization rate

Prior law did not expressly provide for the capitalization rate; it was incorporated into the CAUV method by administrative rule. The capitalization rate is intended to represent the combined, after-tax rate of return that an investor and lender would expect to earn from an average Ohio farm, considering only agricultural factors (i.e., the farm's income-producing potential). The calculation of the capitalization rate takes into account supposedly typical farm mortgage terms, the average return on equity for investors, the expected depreciation or appreciation of agricultural land values, and average tax rates.

The act expressly requires the Tax Commissioner to determine the CAUV capitalization rate using "standard and modern appraisal techniques" but changes the determination in two specific ways explained below. The act also expressly requires the capitalization rate (before considering taxes) to be added to a "tax additur," which reflects the statewide effective property tax rate on agricultural land. (The preexisting CAUV calculation rule included such a tax additur.) The act states that the sum of the pre-tax capitalization rate and the tax additur "shall represent as nearly as possible the rate of return a prudent investor would expect from an average or typical farm in [Ohio] considering only agricultural factors."

The computation of the capitalization rate employed in the pre-existing administrative formula adopts a real estate valuation formulation known as the

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[157] R.C. 5715.01(A).

[158] O.A.C. 5703-25-31(C).

"Akerson mortgage-equity method," and, under prior rules, was computed as follows (the 2015 inputs are in square brackets):

Debt factor

(Loan % [80%] × Annual payments as % of loan amount [6.15% interest rate loan for a 25-year term – referred to in the act as the "loan interest rate"])

plus

Equity factor

(Equity % [20%] × Owner's required rate of return [5.25% – referred to in the act as the "equity yield rate"]) *minus*

Equity build-up factor

(Equity build-up over 5-year holding period – i.e., Loan % × % of loan paid off × Sinking fund factor)

(The equity build-up factor is meant to account for the increasing equity a landowner gains as part of the loan principal is paid off over a given period of the loan term (assuming, as is typical, that part of the loan principal is being paid – i.e., amortized – with each loan installment). The rationale for the equity build-up factor is that, since the loan principal is partly repaid by the time the land is eventually sold, the part of principal that has been repaid by that time – the built-up equity – is a positive cash flow to the landowner realized at the time the landowner sells the land.)

minus

Appreciation factor

(Land value appreciation over 5-year holding period × Sinking fund factor)

(The land value appreciation deduction reflects changes in farm values in Ohio as measured by the U.S. Department of Agriculture. The administrative rules call for this measure to be adjusted to disregard the influence of speculation so that it indicates land value changes brought about by improvements in technology and farming practices.)

plus

Tax additur

Effective tax rate as % of land market value[159]

Under the administrative CAUV calculation, taxable land value is computed by dividing net income by the capitalization rate. Accordingly, any factor that increases the capitalization rate reduces taxable land value, and vice versa. In turn, a decrease in taxable CAUV land value will tend to reduce property tax revenue derived from unvoted levies ("inside millage"), shift some tax liability to all non-CAUV property (both real and utility tangible personal) to the extent of fixed-sum levies, and shift some tax liability from other levies to residential property and non-CAUV agricultural land through the operation of the "H.B. 920" tax reduction factor mechanism. An increase in taxable CAUV land value arising from a reduction in the capitalization rate would have the opposite effects.

Equity yield rate

The act statutorily prescribes the manner in which the equity yield rate is calculated. Under prior CAUV methodology, the equity yield rate equaled the seven-year average of the prime rate plus 2% from the Wall Street Journal's bank survey with the highest and lowest rates for those years disregarded, a method that rendered an equity yield rate of 5.25% for 2015. The act instead specifies that the equity yield rate equals the 25-year average of the "total rate of return on farm equity" published by the U.S. Department of Agriculture (or another source) – a rate that would have equaled 7.9% if used for 2015 – but cannot exceed the loan interest rate used in the debt factor of the capitalization rate computation, which was 6.15% for 2015.[160]

Changing the method of calculating the equity yield rate affects not only the equity factor, but also the equity build-up and appreciation factors. Had this new method been in effect for 2015, the equity yield rate would have increased, ultimately increasing the capitalization rate and decreasing the calculated taxable value of CAUV land for that year.

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[159] "Explanation of the Calculation of Values for Various Soil Mapping Units for Tax Year 2015," Ohio Department of Taxation, May 28, 2015, available at http://www.tax.ohio.gov/Portals/0/personal_property/Explanation2015.pdf.

[160] The 7.9% rate was calculated from annual rates available from the USDA's Economic Research Service.

Holding period

The act statutorily sets the period for which farmland is assumed to be held (holding period) for purposes of the equity build-up and appreciation factors at 25 years. The assumed holding period under the prior CAUV formula was five years. Had the increased holding period been in effect for 2015, the equity build-up factor would have increased and the appreciation factor would have decreased, and the net effect of the adjustments to these two factors would have ultimately increased the capitalization rate and decreased the calculated taxable value of CAUV land for that year.

Conservation land

One of the factors that influence a farm's CAUV is the soil type or types underlying the farm. There are about 3,500 soil types, each with an associated productivity, plotted according to a soil map of Ohio. A given farm's soil type is determined according to where the farm appears on that map. Each year, the Tax Commissioner determines the value associated with each soil type.

The act requires land devoted to conservation practices or enrolled in a federal land retirement or conservation program on the first day of a tax year to be valued as though the land's soil type is the lowest valued of all soil types according the Tax Commissioner's annual determination. For the purposes of the formula, such land would be considered to consist of that soil type even if the soil map indicated otherwise. This change effectively reduces the CAUV of such lands that overlie any soil type other than the soil type or types with the least associated value for the year. Under the act, if a county auditor discovers that such land has ceased to be used for those purposes, the county auditor must levy a charge on the land equal to the extra tax savings for the most recent three years that the land was valued at the lowest-valued soil type.

Under continuing law, farmland in a federal land retirement or conservation program is eligible for CAUV. Land used for conservation practices is eligible for CAUV if such land comprises 25% or less of the landowner's total CAUV land. Conservation practices are farm management practices to abate soil erosion, including the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops.[161]

Publication of capitalization rate

The act explicitly requires the Tax Commissioner to annually publish the capitalization rate and tax additur and the individual components used in computing

[161] R.C. 5713.30, not in the act.

those amounts at the same time the Commissioner publishes the values for each soil type. Under prior practice, the Commissioner published this information annually in the land tables.

Phase-in of CAUV formula changes

The act requires that the changes to the CAUV formula be phased in over two reassessment cycles, beginning with counties undergoing a reappraisal or triennial update in 2017.

Under continuing law, any change in the CAUV valuation method applies in a county for the first time when that county undergoes a reappraisal or update, which occurs every three years in each county. The act requires, however, that instead of the full effect of the act's changes applying at a county's first reappraisal or update after the provision's effective date (September 29, 2017), values for that reassessment cycle will reflect only one-half of that effect. Then, at the next reappraisal or update, the effects of the act's changes will be fully applied.

As an example, consider a parcel of farmland that is reappraised at $100,000 in 2015. Suppose that, at the 2018 update, the act's changes would otherwise result in a decrease in the value of that parcel to $80,000. Under the act, the parcel would be valued for purposes of that update at $90,000, to reflect only one-half of the effect of the new formula. Then, at the 2021 reappraisal, assuming no other changes, the parcel would be valued at $80,000. (In actuality, changes in the CAUV formula inputs – e.g., the average interest rate, tax rate, crop prices – after the 2018 update would be reflected in the 2021 reappraisal, so the value would likely vary somewhat from $80,000.)

Publication of CAUV values

(R.C. 5713.33)

The act requires the Tax Commissioner to combine information related to agricultural land values into one state-wide report. The report – which must be published electronically on an annual basis – must include, for each taxing district, the aggregate value of the district's parcels at their CAUV and the aggregate value such parcels would have if they were not valued according to their CAUV. The report must be compiled in such a manner that the information can be sorted by county and by school district.

Appeals of Board of Tax Appeals decisions

(R.C. 5717.04)

The act disallows an appeal of a decision of the Board of Tax Appeals (BTA) from being filed directly with the Ohio Supreme Court, instead requiring that such appeals be filed initially with a Court of Appeals. Prior law authorized appeals of BTA decisions to be filed with a Court of Appeals or the Supreme Court, except for decisions on BTA's small claims docket, which, under continuing law, are conclusive and not appealable.

However, the act authorizes a party to the appeal to file a petition with the Supreme Court requesting that the Court take jurisdiction over the appeal from the Court of Appeals, which the Supreme Court may do if the appeal involves a substantial constitutional question or a question of great general or public interest. The petition must be filed within 30 days after the appeal is filed with a Court of Appeals. If jurisdiction is transferred, the appeal proceeds as though it was originally filed with the Supreme Court.

Nonprofit housing organization retail store exemption

(R.C. 5709.12; Section 757.90)

The act exempts from tax certain property owned and operated by a charitable nonprofit organization that constructs or rehabilitates residences for eventual transfer to low-income families. The exemption applies to a retail store and underlying land owned by such an organization, provided the store sells primarily donated items suitable for residential housing purposes and the proceeds of those sales are used solely for the purposes of that organization.

The exemption begins to apply in tax year 2017 and also applies to any tax year at issue in an exemption proceeding pending on September 29, 2017 (the act's 90-day effective date), i.e., a pending exemption application or exemption challenge pending before the Tax Commissioner or in the Board of Tax Appeals or a state court.

Property tax exemption for certain municipal property

(R.C. 5709.101; Section 803.250)

The act authorizes a property tax exemption for property that meets all of the following criteria: (a) the property is owned by a municipality, was conveyed to that municipality by a community improvement corporation (CIC), and was conveyed to that CIC by a federal agency, (b) the property is subject to an agreement under which the municipality is required to convey the property back to the CIC before it is developed, and (c) less than 75% of the rentable square footage of the property is rented to tenants.

The exemption applies to tax year 2016 and thereafter. Because the deadline for applying for tax exemptions for the 2016 tax year has passed, the act allows the property owner, until August 1, 2017, to apply for an exemption for that year. If the owner has already paid taxes for the 2016 tax year with respect to the property and the exemption application is approved, the owner is entitled to a refund of those taxes.

Property tax penalty waiver appeals

(R.C. 5715.20 and 5715.39)

Penalties and interest are charged for late property tax and manufactured home tax payments. Continuing law requires county auditors to remit (i.e., waive) late payment penalties under certain circumstances, including the following: the taxpayer is incapacitated; mail delivery fails; the county auditor or treasurer errs; the taxpayer does not receive the bill but tries, in good faith, to obtain the bill within 30 days after the due date; or the property owner satisfies a mortgage, the lender fails to notify the county auditor that the mortgage has been satisfied and the tax bill is not mailed to the property owner. In all other cases, the failure to receive a tax bill does not excuse a taxpayer from having to pay taxes on time or prevent the imposition of late payment penalties, unless the county board of revision finds that the lateness is "due to reasonable cause and not willful neglect."

Under continuing law, the county auditor, in consultation with the county treasurer, makes the initial decision with respect to applications for remission. If the auditor determines that waiver of the penalty and interest is not warranted, the application is submitted to the board of revision for further review. The act clarifies the manner in which the board of revision must issue its determination and revises the procedure for appealing that determination.

The act specifies that the board of revision must send notice of its determination by certified mail to the person who submitted the application for remission. Prior law referred to the date on which the board's determination was mailed, but did not explicitly require certified as opposed to regular mail.

The act also requires that appeals of the board of revision's determination be filed with the BTA. BTA appeals must be filed within 30 days of the date the board of revision mails its determination. The appeal may be filed in person or by certified mail, express mail, facsimile transmission, electronic transmission, or authorized delivery service. Under prior law, the determination of the board of revision was appealable first to the Tax Commissioner, then to the BTA. The applicant had 60 days to file an appeal to the Tax Commissioner in person or by certified mail.

Property tax exemption procedures

(R.C. 5715.27)

The Tax Commissioner is responsible for approving or disapproving exemption applications for most kinds of property. However, in the case of some kinds of publicly owned property, including property of state universities, the county auditor, not the Tax Commissioner, decides on the application.

Under the act, exemption applications respecting state university property must be reviewed by the Tax Commissioner rather than the county auditor.

Homestead exemption: application deadline for mobile homeowners

(R.C. 4503.066; Section 803.330)

The act extends, by 18 months, the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from June of the year before the tax year for which the exemption is sought, to December 31 of the tax year.

Homestead exemption background

Continuing law authorizes a homestead exemption for homeowners, including owners of manufactured and mobile homes, who are aged 65 or older, permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption. The exemption reduces the taxes that would be charged on up to $25,000 of the fair market value of the homeowner's property ($50,000 in the case of qualified disabled veterans). This essentially exempts $25,000 (or $50,000) of the value of the homestead from taxation.

Extension of application deadline

Under prior law, owners of manufactured and mobile homes had to apply for the homestead exemption on or before the first Monday in June of the year before the tax year for which the exemption is sought. So, for example, in order to receive the homestead exemption in tax year 2017, the homeowner must have applied before June 6, 2016.

The act extends the application deadline for such homeowners to December 31 of the year for which the exemption is sought. Using the example above, a homeowner would have until December 31, 2017, to apply for the exemption.

Overpayments

Under continuing law, if a manufactured or mobile home is located in Ohio on January 1 of a tax year, the homeowner's property taxes for that tax year are due on or before March 1 and July 31. Consequently, the act's deadline extension allows homeowners to apply for the exemption after they have paid taxes for a tax year. (Following the example above, the owner would pay taxes in March and July of 2017, but would have until December 31, 2017, to apply for the exemption.) The act allows homeowners whose applications are approved after they have paid their taxes to receive a refund of the amount overpaid.

Extension of deadline for reporting change in circumstances

The act correspondingly extends, by the same dates, the deadline by which such homeowners must report changes in circumstances that would affect the owner's homestead exemption. In addition, the county auditor must provide such homeowners with the form for reporting changes in circumstances in February, rather than January, of each year.

Application date

The act's changes apply beginning in the 2017 tax year, meaning that homeowners will have until December 31, 2017, to apply for a reduction in the first half installment of taxes that were due this past March 1 and the second half installment falling due July 31, 2017.

Transfer of taxing authority funds

(R.C. 5705.16)

The act removes a requirement that a subdivision authorized to levy property tax (a "taxing authority") petition and receive approval from a court of common pleas before transferring revenue between certain of the subdivision's funds, but maintains the requirement that the taxing authority receive approval of the Tax Commissioner before making such a transfer.

Continuing law regulates a taxing authority's ability to transfer revenue between its funds. Some funds may not be transferred at all, e.g., proceeds of funds derived from a tax or license fee imposed for a specific purpose.[162] In contrast, a taxing authority may

[162] R.C. 5705.15.

make certain fund transfers unilaterally, without obtaining approval from any official or court – e.g., transfers from the subdivision's general fund to another fund.[163]

Under prior law, any other type of fund transfer had to be approved by both the Tax Commissioner and a common pleas court. Under this process, the taxing authority petitioned the Commissioner and the court to allow the transfer. If the Commissioner approved the transfer, the petitioned court had to hold a hearing and accept comments, and could approve the transfer upon finding it is justified or necessary and that no injury would result.

The act removes the requirement that the taxing authority obtain permission from a court before making such a funds transfer, but continues to require the Commissioner to approve a transfer, provided the Commissioner finds that the transfer is justified or necessary and that no injury will result.

Pre-1995 township TIF extension

(R.C. 5709.73(L); Section 803.400)

Townships may grant property tax exemptions under a tax increment financing (TIF) resolution that enables the township to essentially divert the property tax revenue from increased property values on parcels (i.e., the increment) to finance public infrastructure improvements that benefit the parcels. The tax exemptions may be for up to 30 years, but continuing law authorizes the board of trustees of a township with a population of at least 15,000 to extend a TIF exemption originally granted before December 31, 1994, for up to 15 additional years. The township must notify the affected school district board and the board of county commissioners at least 14 days before taking formal action to approve the extension.

The act requires the township, before extending the term of such a pre-1995 TIF, to obtain the approval of each school board whose property tax collections will be affected by that extension. To do so, the township must notify each affected school board not later than 45 days before adopting the TIF extension. A school board may adopt a resolution approving or disapproving the extension, or may condition its approval on a mutually agreeable arrangement with the township under which the township compensates the school district for all or a portion of property tax collections the district will forgo because of the extension. The procedures for obtaining school board approval largely mirror a process under continuing law for a township to obtain school board approval for a TIF exemption that is for a term longer than ten years or that exempts more than 75% of a parcel's value. Ultimately, the township may not

[163] R.C. 5705.14.

proceed with the extension unless it receives an approval resolution from each affected school board.

However, the township is not required to obtain the approval of an affected school board that, under a provision of continuing law, adopts or has adopted a resolution waiving the need for its approval to be obtained. In that case, the township is only required to give that school board 14-day notice before taking formal action to approve the extension, as under continuing law.

Pre-1994 community reinvestment area term extension

(R.C. 3735.661)

The act authorizes a county or municipal corporation, under certain circumstances, to extend the term of a community reinvestment area (CRA) property tax exemption without triggering an existing law requiring that the CRA conform to various requirements and limitations enacted in 1994.

Under continuing law, a CRA is a geographic area designated by a municipal corporation or county in which new construction or improvements to existing structures are exempted from taxation. CRAs created after mid-1994 are subject to various limitations and requirements such as school board approval in some circumstances, standardized agreements, and clawbacks, among others, which would apply even to pre-existing CRAs altered later. However, certain pre-1994 CRAs were given limited ability to be altered by up to two amendments before the post-1994 provisions would be triggered.[164] Continuing law specifies the substance of amendments that would or would not count towards triggering application of the 1994 limitations and requirements. One such action that counts as one of those triggering amendments is any increase in the term of any CRA tax exemption or category of exemptions.

H.B. 463 of the 131st General Assembly increased the maximum CRA exemption term for improvements to 15 years from what had been 10 or 12 years depending on the type of property and the cost of renovations. The act allows a municipal corporation or county to amend its CRA resolution to increase the term of a CRA exemption for improvements without the change counting as an amendment that could trigger the 1994 law, provided the increase is no more than the 15-year term authorized in H.B. 463, and that the CRA's prior maximum term was the 10 or 12 maximum year term authorized before H.B. 463.

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[164] Section 3(B) of Am. Sub. S.B. 19 of the 120th General Assembly.

Community reinvestment area designation approval

(R.C. 3735.66)

The act extends the deadline by which a municipal corporation or county must petition the Director of Development Services to approve the subdivision's designation of a CRA from 15 to 60 days after the subdivision's adoption of a designating resolution. Under continuing law, property located in a CRA may be eligible for property tax exemptions on new construction or remodeling projects. However, a CRA is not established until the Director determines that a resolution designating a CRA comports with zoning regulations and contains valid findings that (1) housing facilities or historical structures are located in the CRA and (2) new housing construction and repair of existing facilities is discouraged within the CRA.

County treasurer tax collection compensation

(R.C. 321.26)

The act revises the schedule for the fees that are exacted from taxes collected by county treasurers by increasing the fee amounts, by establishing a minimum fee when collections are less than $5 million per semiannual settlement, by reducing the number of fee brackets, and by causing the fees to be adjusted upward if and as statewide taxes charged on real property and public utility property increase.

Under the revised schedule there would be two fee brackets beginning in 2018: 0.9495% on collections up to $5 million and 0.1996% on collections in excess of $5 million; the first $5 million would generate $47,475 in fees, and this amount would be set as the minimum initial fee when collections are less than $5 million. After 2018, the $5 million threshold would be increased to the nearest $10,000 each year by the same percentage (to the nearest 0.1%) by which total statewide real and public utility property taxes charged increase.

Under prior law there were four brackets: 0.29947% on collections up to $100,000, 0.9982% on $100,000 to $2.1 million, 0.7986% on $2.1 million to $4.1 million, and 0.1996% on collections in excess of $4.1 million; thus, the first $5 million would generate $38,032 in fees. There was no adjustment for increases in taxes charged as there is in the act.

The fees are subtracted from the tax distributions to local taxing units and credited to the county general fund. They are not directly related to the county treasurers' compensation, which is a fixed salary.

Contents of property tax resolutions

(R.C. 5705.03)

The act requires a subdivision proposing to submit the question of a property tax to voters ("taxing authority") to provide additional details on the scope and nature of the tax to the appropriate county auditor and board of elections. To initiate the process under continuing law, a taxing authority is required to certify a resolution to the county auditor of each county in which the subdivision has territory to obtain the tax rate required to generate a certain amount of revenue or the amount of revenue that a particular tax rate will generate, based on the current tax valuation within the subdivision's territory.

Under prior law, the taxing authority's initial resolution had to state only the purpose of the tax, the law authorizing submission of the tax, and whether the tax was an additional tax or the renewal or replacement of an existing tax. The act requires the following additional information:

(1) If the proposed tax is a renewal or replacement of an existing tax, whether the tax also increases or decreases the rate of the existing tax;

(2) The term of the tax;

(3) The subdivision's territory in which the tax will be voted upon and levied;

(4) The date of the election;

(5) The first tax year to which the tax will apply;

(6) Each county in which the subdivision has territory.

Under prior law, after obtaining rate information from the county auditor, the taxing authority could proceed to submit the tax to voters by certifying a resolution, a copy of the auditor's rate certification, and the proposed rate of the tax to the appropriate board of elections. The act clarifies this procedure by explicitly requiring the taxing authority to adopt and certify a second resolution stating the proposed rate and that the taxing authority will proceed with submitting the tax to voters. The taxing authority also must submit its original tax resolution and a copy of the county auditor tax rate certification to the board of elections.[165]

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[165] Prior law did not clearly distinguish between the initial resolution seeking the auditor's rate certification and the resolution submitted to the board of elections. The Secretary of State's Ballot Questions and Issues Handbook refers to them as district resolutions (pp. 2-9 to 2-11).

Property tax exemption for burial grounds

(R.C. 1721.01 and 5709.17; repealed R.C. 759.24)

The act eliminates several superfluous provisions in the law pertaining to the property tax exemption for burial grounds. Under continuing law, R.C. 5709.14 (not in the act) exempts all lands used exclusively as burial grounds except those that are held by a person, company, or corporation with a view to profit. This exemption is broad enough to fully encompass all property described in the exemptions eliminated by the act (i.e., cemeteries established and operated by a village and land held exclusively for cemetery or burial purposes with no view to profit by a company or association incorporated for such purposes).

Tax credits and exemptions

Biennial forecasts for business incentive tax credits

(R.C. 107.036; Section 757.40)

The act requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to "business incentive" tax credits in the current biennium and future biennia. The estimates must be provided for the Job Creation Tax Credit, Job Retention Tax Credit, Historic Preservation Tax Credit, Motion Picture Tax Credit, New Markets Tax Credit, Research and Development Credit, and InvestOhio small business investment tax credit. For each credit, the bill must include estimates of (a) the amount of credits that may be authorized in each year of that biennium, (b) the amount of credits that may be claimed in each year of that biennium, and (c) the total amount of authorized credits that could be claimed in future biennia. The estimates must be provided in the state budget that the Governor submits to the General Assembly, and in the final bill passed by the General Assembly.

The act itself includes estimates for the listed business incentive tax credits for the FY 2018-2019 biennium.

Job creation tax credit

(R.C. 122.17; Section 803.270)

The act allows employers that apply for a job creation tax credit (JCTC) on or after September 29, 2017, to count compensation paid to certain "work-from-home" employees for the purposes of qualifying for and complying with the terms of the JCTC agreement.

Under continuing law, the Tax Credit Authority (TCA) is authorized to enter into JCTC agreements with employers to foster job creation and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the JCTC agreement). The credit may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), petroleum activity tax (PAT), domestic or foreign insurance company premiums taxes, or personal income tax. If the amount of the credit exceeds the tax otherwise due, the excess is refundable.

Continuing law allows employers to receive a JCTC based on "home-based employees," but special conditions and reporting requirements apply. For example, all of the employees must reside in Ohio and be paid at least 131% of the federal minimum wage. Furthermore, the JCTC agreement must not include any employees who work at the project location and must expire before 2019.

Under the act, a new category of "work-from-home" employees is created. They are treated the same as employees who work at the project location as long as the work-from-home employees reside in Ohio and are supervised from the project location. The act also specifies that the movement of a work-from-home employee to another residence or the migration of their work duties to the project location does not trigger a provision under continuing law that requires employers subject to a JCTC agreement to notify the impacted political subdivisions before relocating a substantial number of employment positions.

Motion picture tax credit

(R.C. 122.85)

The act makes the following changes to Ohio's motion picture tax credit:

(1) Requires that, to be eligible for the credit, a motion picture company must show that it has already secured funding equal to at least 50% of the motion picture's total production budget. This requirement is more specific than prior law, which required only that the company document its "financial ability" to "complete the motion picture."

(2) Provides that, if the amount of credits allowed in any fiscal year is less than continuing law's annual $40 million credit cap, the difference may be carried forward and added to the cap in the following fiscal year.

(3) Requires the Director of Development Services to charge a tax credit application fee equal to 1% of the estimated value of the credit or $10,000, whichever is less. Under prior law, the Director was authorized, but not required, to charge an application fee. At the time of enactment, the Director had exercised this discretion to charge a fee equal to .5% of the estimated value of the credit or $10,000, whichever is less.

(4) States that the Director must give priority to tax credit-eligible productions that are television series or miniseries.

Continuing law authorizes the refundable motion picture tax credit for companies that produce at least part of a motion picture in Ohio and incur at least $300,000 in Ohio-sourced expenditures. The credit is allowed against the commercial activities tax, financial institutions tax, or personal income tax.

Annual cap on New Markets Tax Credit

(R.C. 5725.33)

The act modifies the annual cap on the New Markets Tax Credit. Under prior law, the cap was expressed as a limit on the amount of credits that taxpayers may claim in a year. The act converts the cap into a limit on the amount of credits the Director of Development Services may approve in a year. The amount of the annual cap – $10 million – remains the same.

The New Markets Tax Credit is modeled on the federal New Markets Tax Credit program. The credit is nonrefundable and may be claimed against the insurance and financial institution taxes. The credit is awarded to insurance companies and financial institutions that purchase and hold securities issued by Community Development Entities to finance investments in qualified businesses operating in low-income communities in Ohio.

Enterprise zone agreement extension

(R.C. 5709.62, 5709.63, and 5709.632)

The act removes the October 15, 2017, sunset on local governments' authority to enter enterprise zone agreements. Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development Services for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. However, the authority to do so was set to expire October 15, 2017. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for property tax exemptions and other incentives.

Exemption for computer data center equipment

(R.C. 122.175)

The act increases, from five to six, the number of years that the operator of a 2013 computer data center project has to meet the capital investment requirement associated with an existing sales and use tax exemption. Continuing law authorizes the Tax Credit Authority (TCA) to fully or partially exempt from taxation the purchase of certain computer data center equipment if the operator of the data center agrees to make a $100 million capital investment at a site in this state within a specified number of years. The exemption applies to computer equipment, cooling systems, electricity management devices, construction materials, and other tangible personal property to be used in the construction and operation of a data center.

The extension applies only to such projects that began in 2013. For projects beginning in 2014, the capital investment must continue to be made within four years, and for all subsequent projects the investment must continue to be made within three years.

Temporary historic rehabilitation CAT credit

(Section 757.70)

The act extends, to July 1, 2019, the temporary authorization for owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2019 ("qualifying certificate owner"). Additionally, the act authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than $150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or that is a nonprofit organization, to claim a tax "credit" as if the business or organization were a CAT taxpayer.

Uncodified law enacted in 2014 by H.B. 483 of the 130th General Assembly authorized certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015. H.B. 64 of the 131st General Assembly extended the authorization for tax periods ending between July 1, 2015, and June 30, 2017. Except for these prior temporary provisions, a certificate holder may claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

Required filing of tax credit certificates

(R.C. 122.17, 122.171, 122.175, and 5703.0510)

Under continuing law, before claiming certain tax credits, a taxpayer must receive a tax credit certificate demonstrating the taxpayer's eligibility for the credit. The certificate may indicate the credit amount for which the taxpayer is eligible, the tax year in which the credit may be claimed, or other relevant information. Examples of tax credits for which certificates are issued include: the job retention and creation tax credits, the historic building rehabilitation tax credit, and the motion picture tax credit.

Under prior law, for many tax credits, taxpayers were only required to submit tax credit certificates to the Tax Commissioner upon the Commissioner's request. The act instead provides that taxpayers must always submit an accompanying certificate whenever claiming a tax credit. In addition, the act allows the Commissioner to create, and requires taxpayers to submit, a form tracking the credits claimed by a taxpayer. If a taxpayer fails to submit that form or any tax credit certificate, the Commissioner may deny the tax credit.

Tax credit administrative fees

(R.C. 122.17, 122.171, 122.174, 122.175, 122.85, 122.86, 3735.672, 5709.68, and 5725.33)

The act credits existing administrative fees charged by the Development Services Agency (DSA) to administer several economic development tax incentive programs to a new Tax Incentives Operating Fund to pay the expenses of DSA's Business Services Division and expenses DSA otherwise incurs in administering those programs. The fees affected are those for the job creation, job retention, motion picture, small business investment, and New Markets Tax credits; community reinvestment area and enterprise zone property tax exemptions; and a computer data center sales and use tax exemption. The amounts of the fees are unchanged.

Under prior law, administrative fees DSA charges for the small business investment tax credit and the New Markets Tax Credit were credited to separate funds used exclusively to fund those programs. Administrative fees charged by DSA to administer the other incentive programs were credited to the Business Assistance Fund and used exclusively to fund the administrative expenses of DSA's Business Services

Division. (Under continuing law and practice, this Division administers many of these incentive programs.)

Rural and high growth industry investment credit (VETOED)

(R.C. 122.15, 122.151, 122.152, 122.153, 122.154, 122.155, 122.156, 5725.98, 5726.98, and 5729.98)

The Governor vetoed a provision that would have authorized a nonrefundable tax credit for insurance companies and financial institutions that invested in special purpose "rural and high-growth industry funds" certified by the Development Services Agency (DSA) if the fund contributed capital to certain types of businesses with substantial operations in Ohio.

The credit would have equaled the amount of the investor's "credit-eligible capital contribution" and would have been spread evenly over a four-year period beginning three years after the date of the contribution. The total amount of credits awarded under the program would have been limited to $60 million. The vetoed provision would have required that 50% of a fund's loans and investments be made in rural businesses and 50% be made in businesses engaged in certain specified "high-growth industries" or certified by DSA as being beneficial to the economic growth of the state.

The vetoed provision would have also stipulated various procedures and requirements related to the process of certifying a rural and high-growth industry fund, investment benchmarks, progress reports, limited credit recapture, and decertification of funds.

Tax Administration

Temporary tax amnesty program

(Sections 409.20, 512.140, and 757.110)

The act requires that the Tax Commissioner administer a six-week tax amnesty program from January 1 through February 15, 2018, with respect to delinquent personal income tax, commercial activity tax, sales and use tax, school district income tax, financial institutions tax, alcoholic beverage tax, and the cigarette and tobacco excise taxes. The program applies only to such taxes that were due and payable as of May 1, 2017, which were unreported or underreported, and which remain unpaid. The amnesty does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending. Nor does the amnesty apply to any unpaid tax that pertains to a tax period that ends after September 29, 2017.

If, during the amnesty, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The act authorizes the Commissioner to require a person participating in the amnesty to file applicable returns or reports, including amended returns or reports.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the amnesty is immune from criminal prosecution or any civil action with respect to the taxes paid through the amnesty. The act specifies, further, that no assessment may be issued against any person with respect to tax paid through the amnesty.

The act requires that the Commissioner issue forms and instructions for the amnesty, and take any other actions necessary to implement it. The act directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Revenue from the amnesty is not allocated in the same manner as it would be if it were not collected through the amnesty. Under the amnesty, the first $20 million that would otherwise be credited to the GRF is instead to be credited to the Budget Stabilization Fund. Collections from taxes that normally are destined for the GRF in excess of $20 million would then be credited to the GRF. To the extent that amnesty collections are from taxes that are not credited to the GRF (e.g., school district income taxes or local sales and use taxes), or not credited entirely to the GRF (e.g., commercial activity tax), those collections would be credited as they normally would be and would not be diverted to the BSF.

Licensing and permitting issues

(R.C. 3734.9011, 4303.26, 4303.271, 5703.21, 5703.26, 5735.02, and 5743.61; Section 803.120)

General authority to deny fraudulently obtained licenses

The act generally authorizes the Department of Taxation, the Treasurer of State, and certain county officials to deny or revoke a license if certain prohibited acts are performed in relation to an application to approve or renew the license.

Continuing law generally prohibits any person from providing false or fraudulent information to the Department of Taxation, the Treasurer of State, a county auditor, a county treasurer, or a county clerk of courts. Similarly, assisting a person in providing false or fraudulent information, or altering records upon which such information is based in an attempt to defraud the state, are also prohibited. The act adds that, when such fraudulent acts relate to an application to approve or renew a license, such acts are cause for the denial or revocation of the license. Although the Revised Code includes license-specific provisions for denying or revoking a fraudulently obtained license, the act provides a blanket authorization that applies to any license administered by such officials.

Tax compliance: licenses administered by the Tax Commissioner

Continuing law requires certain businesses to register with or obtain a license from the Tax Commissioner in order to operate in the state. The act modifies the registration or licensing requirements for four such business classes: (1) retail tire dealers, (2) wholesale tire distributors, (3) motor fuel dealers, and (4) distributors of tobacco products other than cigarettes.

Under the act, when a person registers or applies for a new or renewal license to operate as a dealer or distributor listed above, the Commissioner must specifically confirm that the person has filed any tax returns, paid any outstanding taxes or fees, and submitted any required information that, to the Commissioner's knowledge, are due at the time of registration or application. Under prior law, the Commissioner was already required to confirm that an applicant for one of the licenses described above – the motor fuel dealer license – was in compliance with Ohio's tax laws, but that provision did not specifically mention delinquent returns, payments, or information.

Tax compliance: liquor permits

Continuing law requires that, before approving the transfer or renewal of a liquor license, the Division of Liquor Control must confirm with the Tax Commissioner that the applicant is not delinquent in remitting any sales tax or withheld income taxes. The act additionally requires the Commissioner to confirm that the applicant is not delinquent in paying, filing returns for, or providing information regarding the following: horse-racing taxes, alcoholic beverage taxes, motor fuel taxes, petroleum activity taxes, cigarette and other tobacco product taxes, and casino gross receipts taxes.

Under continuing law, the Commissioner is also required to annually review the Department of Taxation's sales and income tax records and notify the Division of Liquor Control if any liquor permit holder is delinquent in paying or filing returns for either of those taxes. The act adds that the Commissioner must also review the records for the taxes listed above and notify the Division of any related delinquencies. The act also expressly authorizes Department of Taxation agents and employees to disclose such information to the Division of Liquor Control. (Under continuing law, taxpayer information possessed by the Department of Taxation may not be disclosed to anyone unless the law specifically authorizes disclosure.)

Public utility excise tax collection

(R.C. 5727.26, 5727.28, 5727.31, 5727.311, 5727.38, 5727.42, 5727.47, 5727.48, 5727.53, and 5727.60)

The act transfers from the Treasurer of State to the Tax Commissioner the collection and refund responsibilities for the public utility excise tax. Under prior law, the Commissioner determined the amount of tax due and certified it to the utility company and the Treasurer, and the company paid the tax to the Treasurer; estimated tax installments also were paid to the Treasurer, and tax reports were filed with the Commissioner. The Treasurer also issued refunds, although the Commissioner determined refund amounts. The act requires all payments to be made to, and all refunds to be made by, the Commissioner, except for tax payments required to be made by electronic funds transfer, which will continue to be paid to the Treasurer.

The act also shortens the maximum tax filing extension that the Tax Commissioner may allow for public utilities, from 60 to 30 days; removes a requirement that excise tax penalties not paid within 15 days be certified to the Attorney General for collection (another existing law still provides for certification of tax debts but not within 15 days); and states that the Commissioner may assess the excise tax against utilities, but is not required to (the effect of this change is not clear since utilities subject to the tax still must report and pay the tax).

The public utility excise tax is imposed on the basis of the gross receipts of various classes of utilities, including natural gas, water-works, and pipe-line companies. All revenue from the public utility excise tax is credited to the General Revenue Fund.

CAT administrative expense earmark

(R.C. 5751.02; Section 812.20)

The act reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.85% to 0.75%, beginning July 1, 2017. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures."

Pollution control, energy facility tax exemption fees

(R.C. 5709.212)

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

Applicants for such exemptions must pay an application fee. Under prior law, one-half of the fee revenue was allocated to the Department and one-half was allocated to the agency that certifies the facility's eligibility – EPA or DSA. The act instead allocates all revenue arising from the administrative fees to that certifying agency.

Fee payments and refunds: $1 minimum

(R.C. 5703.75)

The act establishes a $1 minimum payment floor for all fees administered by the Tax Commissioner. A person liable for such a fee is not required to pay it if the amount due is $1 or less. Similarly, the Commissioner is not required to issue a refund of any such fee if the amount of the refund is $1 or less. Under prior law, these $1 minimums applied only to taxes administered by the Commissioner. Fees administered by the Commissioner include a wireless 9-1-1 fee and a tire fee.

Interest on wireless 9-1-1 fees

(R.C. 5739.132)

The act conforms two statutes pertaining to charging or paying interest for late wireless 9-1-1 fee remittances or for refunds of overpaid fee remittances. The wireless 9-1-1 fee is a state fee imposed on wireless telephone service (both prepaid and other) payable by the subscriber to the provider of the wireless service, who must remit the fee collections to the state in a manner similar to vendors remitting sales tax collections. Revenue from the fees provides financial support for 9-1-1 systems. The act expressly incorporates the interest provisions into the appropriate sales and use tax statute. Prior law incorporated that statute only by cross reference.

Estate tax: annual settlements

(R.C. 319.54, 321.27, 5731.46, and 5731.49; Section 803.110)

The act reduces the number of times each year that county auditors and treasurers are required to distribute estate tax revenue. Under prior law, treasurers were required to make semiannual settlements for all received estate tax revenue on February 25 and August 20 each year. The act eliminates the August settlement and instead requires treasurers to distribute all revenue received in the preceding calendar year on February 25.

The estate tax has been repealed and does not apply to any person whose death occurred after 2012. Generally, the tax is due within nine months of death. However, extensions (with interest) were permitted in some cases and are still being collected. Eighty per cent of the revenue is distributed to the municipal corporation or township where the tax originates and 20% (less administrative costs) is allocated to the state GRF.

Local Government Fund and other revenue distributions

Local Government Fund: township and village set-aside

(R.C. 131.44, 131.51, 5747.50, 5747.502, and 5747.503; Sections 757.20 and 803.210)

The act codifies and makes permanent a monthly $1 million set-aside of Local Government Fund (LGF) money for townships and smaller villages that was allowed in temporary law for FYs 2016 and 2017. Under the act, the $1 million is paid each month to villages with a population of less than 1,000 (16.6%) and to all townships (83.3%). This money is divided among the townships and villages half in equal amounts, and half based on the road miles in each subdivision. As an example, each month, the $833,333 allocated to townships would be distributed as follows: (a) one-half divided equally among all townships and (b) one-half allocated to townships based on the proportion of the township-controlled road miles in that township as compared to the total miles of all township-controlled roads in the state.

The set-aside payments are made to county LGFs, and county treasurers are responsible for distributing the payments among townships and villages. Each month, the Tax Commissioner must identify the amount to be distributed to each subdivision. The Commissioner must also update the road mile information used to determine the payments at least once every five years.

Under continuing law, the LGF receives 1.66% of the total state tax revenue credited to the General Revenue Fund each month. Most of these funds are distributed to county undivided local government funds (county LGFs). A smaller portion of the funds has been used to make direct payments to municipal corporations.

The $1 million used to make the act's set-aside payments each month is subtracted from the LGF money that would otherwise be used to make direct payments to municipal corporations. Those funds were also used to make the set-aside payments in FYs 2016 and 2017.

Local Government Fund: allocation for addiction services

(R.C. 757.20)

For FYs 2018 and 2019 only, the act combines the remaining LGF money that would otherwise be used to make direct payments to municipal corporations each month, after the $1 million set-aside, and allocates it to a new Targeting Addiction Assistance Fund. Money in that Fund must be used to provide specified substance abuse and mental health services.

Public Library Fund

(R.C. 131.51(B); Section 387.20)

The act requires that the share of General Revenue Fund revenue earmarked for the Public Library Fund (PLF) equal 1.68% during the FY 2018-2019 biennium. This percentage is a temporary increase from the 1.66% required in permanent law, but is less than the 1.70% allocated to the PLF in the FY 2016-2017 biennium pursuant to a prior temporary increase authorized in H.B. 64 of the 131st General Assembly.

Under continuing law, county undivided public library funds in every county receive a distribution from the state PLF. Agreements among local governments (and, in a few cases, the county budget commission) determine the amounts to be allocated to libraries within the county, and county treasurers distribute the amounts accordingly. (In a few counties, other kinds of local governments receive a share of the county PLF.) The amount a county undivided PLF receives in a given year depends upon the Fund's "guaranteed share" and its "share of the excess." A fund's "guaranteed share" is the amount the fund received in the previous year after an adjustment for inflation. In any year, if the guaranteed shares of all counties exceed the total balance of the state PLF, then the share of county funds must be reduced proportionately. Alternatively, if the balance of the state PLF exceeds the guaranteed shares of the counties, then each county may receive a "share of the excess." That share is calculated by determining an equalization ratio for each county that is based on the county's population and its guaranteed share from the previous year, with the effect that a greater share of the excess is paid to county PLF funds that have received a relatively smaller share of PLF money on a per-capita basis.

Commercial activity tax revenue

(R.C. 5751.02; Section 812.20)

Beginning for FY 2018 and thereafter, the act reallocates commercial activity tax (CAT) revenue, less 0.85% of such revenue allocated for administrative expenses and "tax reform" measures, as follows:

(1) Increases the share credited to the General Revenue Fund from 75% to 85%;

(2) Decreases the share allocated to reimburse school districts for the loss of tangible personal property taxes from 20% to 13%;

(3) Decreases the share allocated to reimburse taxing units other than school districts for the loss of tangible personal property taxes from 5% to 2%.

Columbus water and sewer LGF penalties (VETOED)

(R.C. 5747.504, 5747.51, 5747.53; Section 803.210)

The Governor vetoed a proposal to penalize a municipal corporation with a population in excess of 700,000 for engaging in certain actions related to its provision of water and sewer services outside of its territory by reducing or withholding payments the municipal corporation receives from the LGF. Only Columbus would have met this population threshold at the time the proposal would have gone into effect.

The vetoed provision required the Tax Commissioner to withhold all LGF payments that would otherwise have been made to the city of Columbus if it had taken any of the following actions after 2017 with respect to providing sewer and water service to an area outside its territory (referred to for purposes of this analysis as "offending conditions or actions"):

(1) Required as a condition of providing such services that such an area be annexed to Columbus;

(2) Required as a condition of providing such services that the township or municipal corporation in which such an area is located make direct payments to Columbus in excess of those reasonably related to the cost of providing sewer or water services in that territory;

(3) Required as a condition of providing such services that the township or other municipal corporation comply with any condition not reasonably related to the cost of providing sewer or water services in that territory;

(4) Withdrew or threatened to withdraw sewer or water service from the territory of a township or another municipal corporation if that subdivision failed to make any direct payment or comply with any condition described in (2) or (3), above.

The vetoed provision also would have reduced LGF payments to the city of Columbus by 20% if Columbus either (1) failed to develop and publish, within two years after the provision took effect, a plan to equalize the sewer and water rates it charges to residents and nonresidents by 2022 and continued to charge different sewer and water rates for residents and nonresidents after the publication deadline or (2) charged different sewer and water rates for residents and nonresidents after 2021.

School district tangible personal property tax reimbursements (VETOED)

(R.C. 5709.92)

The Governor vetoed a provision that would have modified the phase-out of payments that school districts receive as reimbursement for their loss of tangible personal property (TPP) tax revenue. The payments compensate districts for the revenue lost due to legislated reductions in the taxable value of utility company TPP and by the repeal of taxes on TPP used in business.

The act would have affected payments that are based on tax losses from local operating levies that are imposed at a fixed millage rate (i.e., not emergency levies or bond levies). Under continuing law, reimbursement payments for such levies are scheduled to phase-down each year according to a fixed percentage of each district's taxable property valuation. Specifically, payments will begin to decline in FY 2018 by $\frac{1}{16}$ of 1% of a district's taxable property valuation averaged over the three-year period from 2014 to 2016 ($\frac{1}{16}$ of 1% is the equivalent of $\frac{5}{8}$ mills per dollar of valuation, or 0.0625%). In each year thereafter, a district's payment will equal the preceding year's payment minus 0.0625% of the three-year average valuation, until the payment amount reaches zero.

The act would have established separate phase-out schedules for joint vocational school districts (JVSDs) and all other school districts. For JVSDs, each year's payment would have equaled the preceding year's payment minus 3.5% of the district's "total resources." In general, a district's "total resources" would have equaled the district's combined tax revenue, state aid, and TPP reimbursements for a fiscal year.

For school districts other than JVSDs, payments would have equaled the following:

(1) In FY 2018, the greater of (a) the amount the district would have received under pre-existing law (the district's FY 2017 TPP reimbursement, not including any supplemental payment authorized in S.B. 208 of the 131st General Assembly, minus 0.0625% of its average property valuation, which is equivalent to the taxes raised by a ⅝-mill levy), or (b) the district's FY 2017 reimbursement, including any supplemental payment, minus 3.5% of the district's total resources.[166]

(2) In FY 2019, the district's FY 2018 TPP reimbursement minus 0.0625% of its average property valuation.

(3) In FY 2020 and thereafter, the district's preceding year's payment minus 0.025% of the district's average taxable property valuation averaged over the three-year period from 2016 to 2018 (equivalent to the taxes raised by a one-fourth mill levy).

For districts other than JVSDs, the effect of these formula changes would have been to slow the phase-out of payments, beginning in FY 2018 for some districts and in FY 2020 for all others that continued to receive payments.

Special taxing districts

Tourism development district modifications

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

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[166] S.B. 208 provided for a separate "supplemental" payment for city, local, and exempted village school districts. The payment guaranteed that the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that a district received in FY 2017 equaled at least 96% of the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that the district received in FY 2015.

Tourism development district creation

(R.C. 503.56(B) and 715.014)

Under prior law, a TDD could consist of no more than 200 contiguous acres, and new TDDs could not be designated after 2018. The act increases the maximum permissible size of a TDD to 600 contiguous acres and allows municipal corporations and townships in Stark County to designate new TDDs through 2020.

Tourism development district lodging taxes

(R.C. 5739.09(N))

The act requires a county, township, or municipal corporation in which a TDD is located (again, only Stark County and townships and municipalities therein) to use the proceeds collected from its lodging tax on hotels located in the TDD exclusively to foster and develop tourism in that TDD. Stark County must divert such revenue for all lodging taxes it levies, including the special lodging tax increase authorized by the act (see "**Rate increase in Stark County**," above). Also, any municipal corporation or township that designates a TDD must use all lodging tax proceeds collected from hotels located in the TDD to foster and develop tourism in that TDD.

Before a county, township, or municipal corporation may make use of such proceeds to foster and develop tourism in the TDD, it must obtain the approval of the convention and visitors' bureau (CVB) operating there. After obtaining the CVB's approval, it may pay the proceeds to the CVB for it to use for that purpose in an agreed-upon manner.

Under continuing law, county lodging tax proceeds generally are used to fund the county's convention and visitors' bureau, though up to one-third of the proceeds may be paid to municipal corporations and townships where hotels are located but that have not levied a lodging tax. (Stark County has special authority to use up to $500,000 of lodging tax proceeds annually to finance the cost of constructing or maintaining a stadium or pay the debt charges on obligations issued for that purpose.) Continuing law requires one-half of municipal and township lodging tax revenue to be used to make contributions to the county's convention and visitors' bureau, while the other one-half supplements the subdivision's general fund. Various exceptions to these revenue allocation requirements have been enacted previously; the act adds these additional exceptions for Stark County and townships and municipalities in that county with a TDD.

Report of affected taxpayers

The act changes a reporting date concerning businesses located in a TDD. TDDs may generate revenue through the imposition of a gross receipts tax of up to 2% on local businesses located in the TDD. The township or municipal corporation that has created a TDD must provide the Tax Commissioner with a list of businesses that will be subject to the TDD gross receipts tax, which will be collected and enforced by the Commissioner. Previously, the list had to be submitted by January 1 and June 1 of each year. Under the act, the second report is due on July 1.

Tourism development district infrastructure financing

(R.C. 307.678 and 5739.09(A)(1) and (J)(2); Section 803.290)

The act modifies a provision that had, until the end of 2015, authorized Stark County to enter into a cooperative agreement with the county's convention and visitors' bureau under which parties agreed to use up to $500,000 of annual revenue from the county's existing lodging tax to fund the improvement of a stadium, including by issuing bonds for that purpose. Additional parties to the agreement could have included: the municipal corporation and school district within which the stadium was located, a port authority, and a nonprofit corporation that has authority under its organization documents to acquire, construct, renovate, or otherwise improve a stadium.

The act removes that date restriction and essentially transforms this cooperative stadium financing mechanism into an authorization for local governments and private parties to enter into a cooperative agreement to finance the costs of constructing, renovating, or maintaining any permanent improvements located in a TDD designated by a municipal corporation. As part of that transformation, the act expands the types of subdivisions that may be parties to a cooperative agreement to include a transit authority whose territory overlaps with the TDD, which may agree to contribute proceeds from the growth of its sales tax from sales within the TDD, or a new community authority, which may agree to pledge bond proceeds to support the construction or maintenance of such improvements.

For the county and other subdivisions that may be parties to such a cooperative agreement, the act further specifies the revenue sources that may be pledged or contributed to finance such permanent improvements, including by the servicing of debt obligations. For example, while a county may contribute up to $500,000 of lodging tax annually for that purpose, the act also permits a county to contribute its sales tax growth from sales within the TDD, and allows a municipal corporation, county, or transit authority to contribute revenue from a tax imposed by that subdivision to the extent such revenue is derived from property located or activities conducted in the TDD and is not prohibited from being used for that purpose.

The act's modifications to cooperative infrastructure financing agreements apply to any future TDD project and any TDD project that has already commenced or been completed.

Tourism development district interstate signage

(R.C. 5516.20)

The act specifically authorizes a sign incorporating LED lights to be located within a TDD next to an interstate highway, provided the sign complies with all state and federal interstate highway signage requirements and limitations prescribed under continuing law.

Regional Transportation Improvement Projects (RTIPs)

Continuing law authorizes the boards of county commissioners of two or more counties to enter into a cooperative agreement creating a regional transportation improvement project (RTIP). The purpose of an RTIP is to complete transportation improvements within the territory of the participating counties. The improvements may include construction, repair, maintenance, or expansion of streets, highways, parking facilities, rail tracks and necessary related rail facilities, bridges, tunnels, overpasses, underpasses, interchanges, approaches, culverts, and other means of transportation. The improvements may also include the erection and maintenance of traffic signs, markers, lights, and signals.

An RTIP is governed by a cooperative agreement that describes the scope of the project and includes a comprehensive plan for its completion. The agreement is administered by a governing board consisting of one county commissioner and the county engineer from each participating county.

Revenue pledges

(R.C. 5595.06, 5709.45, 5739.021, 5739.023, 5739.026, 5741.021, and 5741.022; Section 803.300)

The governing board of an RTIP does not have direct taxing authority, but it may solicit and receive pledges of revenue and issue securities backed by that revenue for the purpose of funding the transportation improvements. The state, participating counties, and political subdivisions or taxing units located within the participating counties may pledge revenue to the governing board. The revenue may come from the state General Revenue Fund, payments in lieu of taxes derived from tax increment financing (TIF), income tax revenue derived from a joint economic development zone (JEDZ) or joint economic development district (JEDD), revenue derived from special assessments levied in a special improvement district (SID), and revenue derived from an income source of a new community district.

The act adds additional possible tax sources by permitting municipal corporations to pledge contributions of income tax revenue and counties and transit authorities to pledge contributions of sales tax revenue to the RTIP if the revenue may lawfully be spent for that purpose. The act also specifies that contributions of revenue to an RTIP by the state, a political subdivision, or a taxing unit may take any form and may be made subject to any terms that are mutually agreeable to the revenue contributor and the governing board of the RTIP.

Dissolution

(R.C. 5595.03 and 5595.13; Section 803.300)

The act limits the duration of an RTIP to 15 years or, if the governing board is authorized to issue securities, 20 years after the first such issuance. The governing board is required to fulfill all contractual duties and repay all bonds before that date. Previously, an RTIP could continue for any number of years specified in the cooperative agreement.

The act requires unencumbered funds held by the governing board upon the dissolution of an RTIP to be distributed proportionally to the state and to each political subdivision and taxing unit that contributed revenue to the RTIP (unless the cooperative agreement provides otherwise). Under continuing law, the boards of county commissioners that created the RTIP assume title to all real and personal property acquired by the governing board upon its dissolution. That property is divided and distributed in the manner specified by the cooperative agreement.

Transportation financing districts

(R.C. 5595.06, 5709.48, 5709.49, and 5709.50)

The act establishes a procedure by which one or more counties participating in an RTIP may designate "Transportation Financing Districts" (TFDs) for the purpose of funding the transportation improvements described in the cooperative agreement for the RTIP. The rules and procedures associated with TFDs are similar to those that apply, under continuing law, to tax increment financing (TIF) incentive districts. Under the act, the counties are authorized to exempt a percentage of the increased value of parcels located within the TFD from property taxation and require the owners of the parcels to make service payments in lieu of taxes for the RTIP.

Prerequisites to creation

Creating a TFD is a four-step process that starts with notifying and obtaining the approval of each subdivision and taxing unit within the proposed district. The boards of county commissioners may, in the process of seeking approval, negotiate compensation agreements with any or all of the subdivisions and taxing units. Then, each property owner must be notified and give their approval, after which the boards of county commissioners may adopt a resolution creating the district. The resolution must describe the area included in the district, the percentage of improvements to be exempted from taxation, the number of years the district will exist (which cannot exceed the remaining life of the RTIP), and a plan describing the transportation improvements and how they will benefit the property owners.

Finally, one of the participating boards of county commissioners must submit a copy of the resolution and supporting documentation to the Director of Development Services for approval. The Director must evaluate the proposed district and determine if the boards of county commissioners have met all substantive and procedural TFD requirements.

Area of the district

A TFD may include territory in more than one county as long as each such county has adopted the resolution creating the district and is a participant in the RTIP. A TFD may not include areas used exclusively for residential purposes or exempted from taxation under an existing TIF or Downtown Redevelopment District (DRD) ordinance. The district need not be enclosed by a continuous boundary. The resolution creating the TFD may designate excluded parcels located within the general boundary of the district that are not included in the district and noncontiguous parcels that are outside the general boundary of the district to be included in the district.

Service payments

A TFD would generate revenue in the same manner as a TIF. The boards of county commissioners that adopted the TFD resolution may exempt up to 100% of improvements to parcels located within the district. In lieu of the taxes on the exempted portion of increased property value, the counties would receive annual payments, called "service payments," from the owners of the exempted property. Service payments equal the amount of real property taxes that would have been charged on the value exempted from taxation and would be distributed to the regional transportation improvement project fund (RTIP Fund) of the county in which the exempted parcel is located.

As with TIFs, revenue from certain special-purpose levies may not be diverted; the revenue continues to be received by the taxing unit that imposes it.