DEPARTMENT OF TAXATION

Income tax

- Reduces nonbusiness income tax rates by 3%.
- Eliminates the highest income tax bracket – reducing the number of brackets from five to four – and further lowers the rate of the new highest bracket to 3.99%.
- Increases the income level at which the first tax bracket begins, from $22,150 to $25,000.
- Suspends the annual inflation indexing adjustment of income tax brackets for taxable years beginning in 2021 and of personal exemption amounts for both 2021 and 2022.
- Authorizes a full or partial income tax deduction for capital gains received by investors in certain Ohio-based venture capital operating companies (VCOCs) for taxable years beginning in and after 2026, provided the VCOC is certified by the Director of Development.
- Beginning with the 2026 taxable year, allows an income tax deduction for taxpayers with capital gains from the sale of an ownership interest in a business equal to the lesser of the capital gain or a percentage of the business's payroll over a specified period based on the taxpayer's proportionate interest in the business.
- Explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law.
- Clarifies that nonresident income not subject to personal income tax based on a reciprocity agreement between Ohio and another state may be deducted on a taxpayer's Ohio return.
- Clarifies that a taxpayer may claim a credit for any income tax withheld on behalf of the taxpayer, including from a taxpayer's wages, retirement income, unemployment compensation, or lottery and casino winnings.
- Extends the amount of time within which a taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's resident credit for income that is taxed in another state or the District of Columbia.
- Declares that the state does not intend to impose income tax on unemployment compensation reported to a person whose identity was fraudulently used by a third party to collect unemployment compensation.
- Authorizes a nonrefundable tax credit of up to $750 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.
- Authorizes a nonrefundable income tax credit of up to $250 for certain home school education expenses incurred by a taxpayer for one or more of their dependents.

- Authorizes a means-tested, nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school.
- Delays by one year, from 2022 to 2023, the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients.
- Requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis.
- Eliminates the requirement that, if claiming the business income deduction, each business or professional activity generating income for a taxpayer be reported on their annual income tax return.
- Increases, from $1 million to $2 million, the limit on the amount of Ohio opportunity zone investment income tax credits that may be awarded to an individual during a fiscal biennium.

Municipal income tax

- Reinstates, until December 31, 2021, and modifies a temporary municipal income taxation rule for employees who are working from home due to COVID-19.
- States that, beginning on January 1, 2021, the temporary rule applies only for the purposes of municipal income tax withholding and the situsing of an employer's net profits, and not for the purpose of determining an employee's actual tax liability.
- Temporarily shields employers from certain penalties associated with withholding municipal income tax as long as the employer withholds such tax for an employee's principal place of work.
- Makes several changes to the general procedure for creating a joint economic development district (JEDD).

Sales and use taxes

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

Lodging taxes

- Authorizes the convention facilities authority (CFA) of a county with a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County) to increase the rate of a previously authorized lodging tax from 3% to 4%.
- Authorizes a county with a population between 300,000 and 350,000, and that already levies a 3% lodging tax (Lorain County) to levy an additional lodging tax of up to 3% for purposes of constructing, maintaining, operating, and promoting a convention facility.

Commercial activity tax

- Requires that a taxpayer's preceding year's taxable gross receipts be used to calculate the commercial activity tax owed on its first $1 million in gross receipts, instead of its current year's receipts.
- Makes permanent a temporary CAT exemption for Bureau of Workers' Compensation dividends paid to employers.
- Would have reduced the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.65% to 0.5% beginning July 1, 2021. (VETOED)

Kilowatt-hour tax

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

Estate tax

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

Property tax

- Authorizes a municipal corporation or township to permanently impose, with voter approval, a combined levy for fire, emergency medical, and police services.
- Modifies an existing property tax exemption for property used as housing for individuals with developmental disabilities.
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a qualifying tax-exempt nonprofit arts institution.
- Temporarily exempts property owned by certain nonprofit arts institutions from special assessments levied by a municipality, special improvement district, or conservancy district.

- Expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.
- Imposes a charge against any property that improperly received the homestead exemption if the property owner or occupant fails to notify the county auditor that the owner or occupant no longer qualifies for the exemption.
- Requires the owner of tax-exempt property to notify the county auditor if the property ceases to qualify for an exemption.
- Imposes a charge on property whose owner fails to give such notice equal to the tax savings for up to the five preceding years that the property did not qualify for the exemption.
- Establishes a temporary procedure by which a 501(c)(3) organization may apply for tax exemption and abatement of more than three years of unpaid property taxes, penalties, and interest due on certain property.
- Allows political subdivisions to use tax increment financing (TIF) district or downtown redevelopment district (DRD) service payments for off-street parking facilities.
- Allows municipalities that create certain types of TIFs the discretion to designate the beginning date of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance.
- Creates the Federally Subsidized Housing Study Committee and requires it to submit a report to the General Assembly, making recommendations about the property tax valuation and valuation process of federally subsidized residential rental property.

TPP supplement payments

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

Tax cross-references

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

Tax administration

- Extends the time allowed for the Tax Commissioner to approve or deny a political subdivision's request to transfer money between certain funds of the subdivision.
- Allows the Department of Taxation to disclose to the State Racing Commission confidential taxpayer information to assist the Commission with administering horse racing permits and taxes on horse racing.

- Explicitly authorizes the Tax Commissioner to review additional information provided by an applicant for a state tax refund and to adjust the amount of the refund multiple times before issuing a final refund determination.
- Adds resort area and tourism development gross receipts taxes to the list of tax obligations respecting which the Tax Commissioner must periodically verify the compliance of liquor permit holders.
- Requires the monthly disbursements made by the Tax Commissioner from the Wireless 9-1-1 Government Assistance Fund to county treasurers to be made in the same proportion distributed to that county in the corresponding calendar month of the previous year, instead of basing them on 2013 distributions made by the Public Utilities Commission (PUCO).
- Requires any shortfall in distributions resulting from the timing of funds received in a previous month to be distributed in the following month, instead of calculating the county's share of the fund by proportionally reducing the distributions to be equivalent to the amount available in the fund.
- Eliminates the Tax Expenditure Review Committee.
- Repeals a provision recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill's intent.
- Reduces, from $1 million to $250,000, the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to qualify for funds from the Wishes for Sick Children Income Tax Contribution Fund.

Income tax

Rate reduction

(R.C. 5747.02; Section 803.97(A))

The act makes several changes to income tax rates and brackets applicable to nonbusiness income, beginning with the 2021 taxable year. First, the act reduces tax rates for all brackets by 3%. Second, the act eliminates the highest tax bracket – reducing the number of brackets from five to four – and further lowers the tax rate of the new highest bracket to 3.99%. (If previous rates were only reduced by 3%, the rate applicable to that bracket (income greater than $110,650 in 2021) would have been 4.281%). Third, the act increases the income level at which the first tax bracket begins, from $22,150 to $25,000. The tax table for taxable years ending in 2020 compares to the 2021 tax table, as modified by the act, as follows:

TY 2020		TY 2021, as modified by the act	
Ohio taxable income	Marginal tax rate	Ohio taxable income	Marginal tax rate
$0 - $22,150	0%	$0 - $25,000	0%
$22,151 - $44,250	2.85%	$25,001 - $44,250	2.765%
$44,251 - $88,450	3.326%	$44,251 - $88,450	3.226%
$88,451 - $110,650	3.802%	$88,451 - $110,650	3.688%
$110,651 - $221,300	4.413%	$110,651 and up	3.990%
$221,301 and up	4.797%		

Inflation indexing adjustment

(Section 803.97(B))

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis.[125] The act suspends the adjustments to income tax brackets for taxable years beginning in 2021, and the adjustments to personal exemption amounts for both 2021 and 2022. Consequently, the 2020 income tax brackets will also apply in 2021 (although the tax rates corresponding with those brackets will be reduced as described above). Indexing of income tax brackets resumes in 2022, and indexing of personal exemption amounts resumes in 2023.

Deduction for venture capital gains

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

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

Eligible VCOC certification

Under the act, the deduction is only available for the gains from investments by an eligible Ohio-based VCOC (referred to in the act as an "Ohio VCOC"), which must be certified as such by the Director of Development. The act employs the definition of a VCOC used in federal

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

pension rules, pursuant to which a VCOC is an investment fund that invests at least 50% of its assets in operating companies or derivative investments in which the fund has direct contractual management rights. Additionally, the fund must actually exercise "management rights" with respect to at least one operating company, i.e., substantially participate in, or substantially influence the conduct of, its management.[126]

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

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

Reporting and administrative requirements

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

- The name, Social Security or federal employer identification number, and ownership percentage of each investor with a qualifying interest in the VCOC, i.e., a direct or indirect ownership interest in the VCOC acquired through an investment of cash in, or provision of services to, the VCOC while it was certified as an Ohio VCOC.
- The amount of capital gains generated during the portion of the previous calendar year during which the VCOC was certified.
- A description of the VCOC's investments that generated the capital gains, including the date of sale and whether the investment was in an Ohio business. An Ohio business is a business with its headquarters in Ohio that employs over 50% of its full-time equivalent employees in this state, based on more than 50% of an employee's compensation being subject to, Ohio income tax withholding.
- The amount of, and basis in, any business's equity interests or securities distributed to an investor while the VCOC was certified, including reporting whether the business is an Ohio business.

The Director must review the information submitted by the Ohio VCOC, and, if the VCOC either generates capital gains that qualify for the deduction or distributes equity interests or securities that, when sold, would qualify for the deduction once the income is recognized from

[126] 28 C.F.R. 2510.3-101.

their disposition, the Director must issue a certificate to the VCOC that includes all of the following information:

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

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

Deduction amounts; business income deduction

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

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

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

Deduction for capital gains from sale of business

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

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

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

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

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

Deduction amount

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

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

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

Relationship to business income deduction

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

Taxation of railroad retirement benefits

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

The act explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law. Current Ohio law allows a deduction for Tier I railroad retirement benefits, but does not specifically allow a deduction for other types of railroad retirement benefits that are exempted from state taxation under federal law, i.e., any railroad retirement annuities and supplemental annuities.[127]

Deduction for certain nonresident income

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

Continuing law authorizes the Tax Commissioner to enter into an agreement with the Commissioner's counterparts in another state or the District of Columbia pursuant to which residents of that state are exempted from Ohio's income tax on income earned or received in

[127] 45 U.S.C. 231m.

Ohio, as long as the other state provides the same tax treatment for Ohio residents. In the absence of such a reciprocity agreement, Ohio's income tax generally applies to the income of nonresidents earned in Ohio. Currently, Ohio has entered into such agreements with its bordering states – Indiana, Kentucky, West Virginia, Michigan, and Pennsylvania.[128]

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

Income tax credit for tax withholdings

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

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

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

Resident credit amended return period

(R.C. 5747.05(B))

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

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

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

Tax on fraudulent unemployment compensation

(Sections 757.10 and 812.23)

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

The Internal Revenue Service (IRS) requires the Department of Job and Family Services (JFS) to issue IRS Form 1099-G to every person who was issued unemployment benefits. The act strongly encourages any taxpayer who receives a Form 1099-G that includes fraudulent unemployment benefits to report the fraud to JFS for the purpose of receiving a corrected Form 1099-G. Although the IRS, in Information Release 2021-24, instructs taxpayers who are victims of identity theft to only report actual unemployment benefits received, the IRS warns that a corrected Form 1099-G is required to avoid receiving an unexpected federal tax bill for unreported income.[129]

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

Education tax credits

Credit for donations to scholarship organizations

(R.C. 5747.73 and 5747.98; Section 803.97)

The act authorizes a nonrefundable tax credit of up to $750 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.

To qualify for the credit, a taxpayer must make a cash donation to a certified "scholarship granting organization" and provide a receipt acknowledging the donation to the Tax Commissioner. The credit cannot exceed $750 per year. If the donation is made by a pass-through entity, the total credit claimed by all owners with an interest in the entity may not exceed that amount.

A nonprofit corporation may apply to the Attorney General to be certified as a scholarship granting organization. The Attorney General must certify the organization if all of the following apply:

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

1. It is a 501(c)(3) tax-exempt organization;

2. It primarily awards academic scholarships to primary and secondary school students;

3. It prioritizes awarding scholarships to low-income students.

The Attorney General must approve or deny a certification application within 30 days of receipt, maintain a list of all scholarship granting organizations, and provide the list to the Tax Commissioner each time it is updated. The Commissioner must post the list to the Department of Taxation's website. The Attorney General may adopt rules as necessary to determine eligibility for and administer the credit.

Home school expense credit

(R.C. 5747.72, 5747.08, and 5747.98; Section 803.97)

The act authorizes a nonrefundable personal income tax credit for certain education expenses incurred by a taxpayer for the benefit of one or more home schooled dependents. The credit equals the full amount of these expenses, up to a maximum of $250 per taxable year. Amounts paid for books, supplementary materials, supplies, computer software, applications, or subscriptions qualify for the credit so long as the item is used directly for instruction of the home schooled dependent. Expenses for computers, electronic devices, or accessories to computers or electronic devices are not credit-eligible. The credit is first available for taxable years beginning in 2021.

Nonchartered, nonpublic school tuition credit

(R.C. 5747.75, 5747.08, and 5747.98; Section 803.180)

The act authorizes a nonrefundable personal income tax credit for a taxpayer with one or more dependents who attend a nonchartered, nonpublic school. The credit equals the amount of tuition paid during the year by the taxpayer and, if filing a joint return, the taxpayer's spouse for those dependents to attend such a school – up to $500 for taxpayers whose household federal adjusted gross income (FAGI) is less than $50,000, and up to $1,000 for taxpayers whose household FAGI is between $50,000 and $100,000. Taxpayers whose household FAGI is $100,000 or more do not qualify for the credit. The credit is available for nonchartered, nonpublic school tuition paid on or after January 1, 2021.

A nonchartered, nonpublic school is a private primary or secondary school that, because of truly held religious beliefs, chooses not to be chartered by the State Board of Education.

Unemployment compensation income tax withholding

(R.C. 5747.065; Sections 610.02 and 610.03, amending Section 8 of S.B. 18 of the 134th General Assembly)

The act makes two changes to the law governing state income tax withheld from a taxpayer's unemployment compensation benefits. First, the act delays by one year the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients. Under continuing law, individuals may request, at the time they apply for benefits, that JFS withhold federal income tax on their benefits. S.B. 18 of the 134th General Assembly modified the law to also allow individuals to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2022. The act delays the application of this provision by one year, allowing unemployment compensation recipients to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2023.

Second, the act requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis. The Director of JFS must electronically file a return each month with the Tax Commissioner identifying the total amount of unemployment compensation paid and state income tax withheld during the preceding month for each taxpayer that elected to have state income tax withheld, and remit all such amounts electronically. Prior law required JFS to report and remit these amounts using the frequencies prescribed for employer withholding, which could be daily, every three days, monthly, or quarterly depending upon the overall amount of accumulated withholdings.

Business reporting requirement

(R.C. 5747.08(L); Section 803.130)

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

Ohio opportunity zone investment tax credit limit

(R.C. 122.84)

The act increases, from $1 million to $2 million, the limit on the amount of Ohio opportunity zone investment income tax credits that may be awarded to an individual during a fiscal biennium.

Opportunity zone credit background

Federal law allows states to designate economically distressed areas that meet certain criteria as "opportunity zones."[130] Certain investments made to benefit the zone are eligible for preferential federal tax treatment. Specifically, when a taxpayer reinvests capital gains (i.e., income from the sale of stock or other asset) in an "opportunity zone fund" – an investment fund that holds at least 90% of its assets in property, stock, or ownership interests that benefit opportunity zones – the tax on those capital gains is deferred until the investment is sold or exchanged from the fund. Additional federal benefits are available if the investment is held in the fund for at least five years.[131]

[130] 26 U.S.C. 1400Z-1. A map of opportunity zones designated in Ohio is available at https://development.ohio.gov/bs/bs_censustracts.htm.

[131] 26 U.S.C. 1400Z-2.

Continuing law authorizes an Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio and apply to the Director of Development for a tax credit certificate.

Individual credit limit

Under prior law, the total amount of such credits allowed to a particular recipient in any fiscal biennium was limited to $1 million. The act increases this amount to $2 million and specifies that the revised limit is on the amount that the Director of Development may allocate in a biennium rather than on the amount that might be claimed by the credit recipient in the biennium. The total amount of credits available for all taxpayers remains limited to $50 million per biennium.

Municipal income tax

Municipal income taxation during the COVID-19 pandemic

(Sections 610.115 and 610.116, amending Section 29 of H.B. 197 of the 133rd General Assembly; Section 757.40)

The act reinstates, until December 31, 2021, and modifies a temporary rule that had governed the municipal income taxation of employees who were working at a temporary worksite – including their home – due to the COVID-19 pandemic.[132] The temporary rule expired on July 18, 2021.

Under the reinstated temporary rule, if an individual has to work at a temporary worksite because of the pandemic, that employee is still considered to be working at his or her regular place of employment, or principal place of work. This treatment affects which municipality the employer must withhold income taxes for, which municipality may tax the employee's pay, and whether and how much of the employer's own income is subject to a municipality's income tax.

Temporary rule extension

The original terms of the temporary rule provided that it would expire 30 days after the end of the Governor's COVID-19 emergency declaration, which was rescinded on June 18, 2021.[133] Thus, the rule expired on July 18, 2021, but the act reinstates and extends the rule through December 31, 2021. However, the reinstated rule does not take effect until September 30, 2021 – the act's 90-day effective date. Consequently, it appears that between July 18, 2021 and September 29, 2021, the law will revert back to the law preexisting the temporary rule. Then, on September 30, 2021, the temporary rule will take effect again.

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[132] The temporary rule was enacted in Section 29 of Am. Sub. H.B. 197 of the 133rd General Assembly.

[133] Executive Order 2021-08D, Rescinding Executive Order 2020-01D and Ending the Declared State of Emergency, available at https://coronavirus.ohio.gov/static/publicorders/executive-order-2021-08d.pdf.

Since the emergency declaration has ended, the act removes the rule's previous requirement that the employer required the offsite work arrangement as a result of that declaration. The reinstated rule would apply to employees who are working at another location "in response to the COVID-19 pandemic," and without regard to whether or not the employer requires the employee to do so.

Effect of temporary rule on tax withholding and tax liability

Under the temporary rule, considering an employee's income to be earned at their principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee's temporary worksite is located and prevents the employer from becoming subject to that municipality's income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.[134]) The full effect of the expired provision is not clear, however, because courts have generally found that a municipality cannot tax a nonresident's income that is not earned in that municipality and that taxpayers are entitled to a refund of tax withheld on that income.[135] This prohibition arises from due process protections – the Ohio Supreme Court has held that a municipal corporation taxing nonresident income may violate constitutional due process if there is no "fiscal relation" between the tax and the protections, opportunities, and benefits provided by the taxing municipality to the nonresident (e.g., police and fire protection).[136]

The act states that, beginning on January 1, 2021, the temporary rule will apply only for the purposes of municipal income tax withholding and the situsing of an employer's net profits, and not for the purpose of determining the employee's actual tax liability. In effect, the act requires municipalities to approve a nonresident employee's request for a refund of taxes withheld on and after January 1, 2021, under the temporary rule, provided the income was earned while the employee was not actually working in that municipality for which taxes were withheld.

The act does not provide similar guidance for the treatment of taxes withheld in 2020. The issue of whether municipalities are required to approve requests for refunds of taxes withheld in 2020 under the temporary rule on the due process basis described above is already the subject of litigation.[137]

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[134] R.C. 718.01(A)(1)(b), not in the act.

[135] See, e.g., *Miley v. City of Cambridge*, No. 96 CA 44, 1997 Ohio App. LEXIS 3243 (5th Dist. June 25, 1997) (granting refund where city ordinance was held unconstitutional because it taxed nonresidents for work outside the city if the employer's principal place of work was in the city).

[136] *McConnell v. Columbus*, 172 Ohio St. 95, 99-100 (1961).

[137] See, e.g., *Buckeye Institute v. Kilgore*, Franklin County Court of Common Pleas Case No. 20-CV-4301 (2020).

If an employee requests a refund of any taxes withheld under either the expired or reinstated temporary rule, the act also prohibits a municipal tax administrator from requiring the employer to provide any documentation to support the refund claim, other than a statement verifying the number of days the employee worked at the employee's principal place of work and that the employer did not refund any withheld taxes directly to the employee.

If an employee does not request a refund of taxes withheld after January 1, 2021, the act specifies that the municipality in which the employee resides must treat the taxes withheld to the principal place of work municipality as validly paid. Consequently, the employee will owe tax to the municipality of residence only if that municipality does not offer a 100% credit for taxes paid to another municipality or has a higher tax rate than the principal place of work municipality.

Employer liability

The act also provides that, if an employer withheld municipal income tax to an employee's principal place of work between March 9, 2020 (when the temporary rule took effect), and December 31, 2021, a tax administrator may not assess taxes, penalties, or interest against that employer for the failure to withhold those taxes to the municipality in which the employee actually worked or for the failure to situs the employee's wages to that municipality for purposes of the employer's net profit tax liability. This "safe harbor" applies regardless of whether the employee worked in the other municipality because of the COVID-19 pandemic or by order of their employer and whether the temporary withholding rule was in effect or not.

Under continuing law, a tax administrator may assess taxes, penalties, and interest against an employer that improperly withholds tax from an employee's income or that improperly pays its municipal net profits tax.[138]

Preexisting law governing transitory employees

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality's tax withholding requirements and the employee becoming subject to that municipality's income tax. And, if an employee does not exceed the 20-day threshold, that employee's pay is not counted toward the business's payroll factor, one of three factors – along with property and sales – that determines whether, and the extent to which, an employer's own income is subject to the municipality's tax on net profits.[139]

JEDD notice and procedures

(R.C. 715.72)

The act makes several changes to one of the three statutory procedures for creating a joint economic development district (JEDD). The changes apply to only JEDDs created under the

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[138] R.C. 718.27, not in the act.

[139] R.C. 718.01(C)(16) and (17), 718.011, 718.02, and 718.82, not in the act.

general procedure available to subdivisions throughout the state. The act does not affect the two restricted procedures available to subdivisions located in charter counties, subdivisions that are part of or contiguous to certain transportation improvement districts, and subdivisions that create (or that have previously created) a JEDD composed solely of municipal territory that includes an airport.[140]

JEDDs are territorial districts created by a contract between municipal corporations, townships, and, under certain circumstances, counties. A JEDD is governed by board of directors which may impose an income tax within the district to promote economic development or redevelopment, create or preserve jobs, and improve the economic welfare of the district. Revenue from the tax may be used to enhance infrastructure in the area surrounding the district, provide new and additional services and facilities to the district, and supplement the revenue of each subdivision.

The act makes three changes to the general procedure for creating a JEDD. First, it allows the owner of property that is part of the territory of a proposed JEDD to opt out of the district if all or part the property (a) is located within ½ mile of a municipal corporation that is not part of the JEDD (referred to by the act as a "noncontracting municipal corporation"), or (b) receives water or sewer service under certain agreements from a noncontracting municipal corporation.

Second, the act requires that notice of a proposed JEDD be sent to noncontracting municipal corporations that are (a) located within ½ mile of the proposed JEDD, or (b) obligated to provide water or sewer services to all or part of the proposed JEDD under certain agreements.

Finally, if the territory of the proposed JEDD includes property to which any non-JEDD party would provide water or sewer services, the act requires that the JEDD contract include certain information relating to the district's public utility infrastructure, including a professional estimate of the cost of providing utility services to the JEDD, an analysis of funding sources, and evidence or estimates indicating that at least part of the necessary utility infrastructure will be constructed within five years of creating the JEDD.

Sales and use taxes

Exempt employment services and employment placement services

(R.C. 5739.01(B)(3)(k) and (l), (JJ), and (KK), 5739.02(B)(11) and (41), and 5739.03; Section 803.93)

The act exempts employment services and employment placement services from state and local sales and use tax beginning October 1, 2021. Under continuing law, the sale or use of

[140] See R.C. 715.70 and 715.71, not in the act.

services is generally not taxable unless expressly made subject to the tax. Employment services and employment placement services have been expressly subject to the tax since 1993.[141]

Under prior law, taxable "employment services" were transactions in which a service-provider furnished personnel to perform work under the supervision or control of the purchaser. The personnel could have been assigned to a purchaser for a short period of time or on a long-term basis. The personnel were paid by the service-provider or a third party that supplies the personnel to the service-provider. Transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, and the permanent assignment of an employee over a contract of at least one year were not taxable "employment services." Furthermore, if employment services were supplied by a third party to a service-provider, and then by the service-provider to a purchaser, only the transaction between the service-provider and the purchaser was taxable. The hallmark of employment services were personnel that work under the direction or control of a purchaser but were employed and paid by the service-provider (or a third party that provided the personnel to the service-provider).

Prior law defined taxable "employment placement services" as a transaction in which a service-provider located employment for a job-seeker or located an employee to fill an available position.

Investment bullion and coin exemption

(R.C. 5739.02(B)(57); Section 803.93)

The act reinstates the sales and use tax exemption for the sale of investment metal bullion and coins. The exemption was repealed in the preceding biennial budget act (H.B. 166 of the 133rd General Assembly). Investment metal bullion is gold, silver, platinum, or palladium bullion in excess of the minimum fineness required by a contract market for delivery in satisfaction of a commodity futures contract. (The definition is derived from federal law governing whether the purchase of something by an individual retirement account is a "collectible," and therefore considered a distribution from the IRA; bullion satisfying the federal law definition is not considered a collectible.[142]) An investment coin is any coin composed primarily of gold, silver, platinum, or palladium.

The reinstated exemption applies to the sale or use of investment bullion and coins beginning on or after October 1, 2021.

County sales and use taxes for jail operations

(R.C. 5739.021)

The act allows for certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of such facilities.

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[141] Ohio Department of Taxation, "ST 1993-08 – Employment Service," revised February 2007.

[142] 26 U.S.C. 408(m)(3).

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

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

Remote sellers

(R.C. 5741.01, 5741.03, and 5741.17; R.C. 5741.032, repealed; Section 610.30, repealing Section 757.50 of H.B. 59 of the 130th General Assembly)

The act repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax on internet and catalog transactions. The repealed provisions expressed the General Assembly's intent, upon the enactment of such a federal act, to enact conforming legislation, earmarked a small portion of new collections for administrative costs and the remainder for the Income Tax Reduction Fund, and exempted remote sellers with annual sales of $1 million or less.

In 2018, the U.S. Supreme Court struck down a long-standing interpretation of the Commerce Clause (Article 1, Section 8 of the U.S. Constitution) that prevented states from compelling remote sellers to collect and remit state sales or use taxes.[143] Following that decision, many states (including Ohio) began requiring remote sellers with sufficient local "contacts" to collect and remit the taxes. (Continuing Ohio law requires the consumer to pay use tax directly to the state in instances where it is not remitted by the seller.) Since this extension of state tax collection authority was sanctioned by a holding of the U.S. Supreme Court rather than an act of Congress, the provisions repealed by the act were never operable.

Lodging taxes

Levy by a convention facilities authority (CFA)

(R.C. 351.021)

Continuing law, changed in part by the act, authorizes a lodging tax of up to 3% for the convention facilities authority (CFA) of a county that had a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County). This tax is in addition to the 3% lodging tax authority granted to all counties. To levy the tax, the board of directors of the CFA must have adopted a resolution imposing the tax on

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

or before November 1, 2009. The Clark County CFA adopted the full 3% lodging tax within that period.

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

Levy by a board of county commissioners

(R.C. 5739.09)

The act authorizes the board of county commissioners of a county with a population, according to the most recent decennial census, greater than 300,000 and less than 350,000, and that levies a 3% lodging tax (Lorain County) to levy an additional lodging tax at a rate not exceeding 3%, provided the tax is approved by county voters. Revenue derived from the tax not used to pay the costs of administering the tax generally must be pledged to a CFA established by the board of county commissioners and used to pay the cost of constructing, maintaining, operating, or promoting a convention facility.

Commercial activity tax

Minimum commercial activity tax computation

(R.C. 5751.03; Section 812.20)

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

The CAT is levied on the basis of a business's gross receipts from Ohio sales. A business with $150,000 or less in annual taxable gross receipts pays no CAT. Otherwise, the CAT rate equals 0.26% of a business's taxable gross receipts in excess of $1 million annually. A differently calculated "minimum tax" applies to the taxpayer's first $1 million of taxable gross receipts. The amount of minimum tax owed varies according to the business's total taxable gross receipts received, under prior law, in the year for which the tax is being calculated, as follows:

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

Exemption for workers' compensation dividends

(R.C. 5751.01(F)(2)(mm); Section 803.170)

The act permanently extends a CAT exemption for dividends paid to employers by the Bureau of Workers' Compensation (BWC). Dividends paid to employers in 2020 and 2021 are exempt from the CAT under continuing law, so the act exempts all dividend payments received by employers on and after January 1, 2022.[144]

Continuing law requires BWC to return excess workers' compensation premiums to employers if the board of directors determines that the surplus of earned premiums over losses is larger than needed to maintain solvency. Such payments are generally referred to as "dividends" and are, in the absence of an exemption, considered to be taxable gross receipts for purposes of the CAT.

Administrative expense earmark (VETOED)

(R.C. 5751.02)

The Governor vetoed a provision that would have reduced the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from 0.65% to 0.5%, beginning July 1, 2021. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures."

Kilowatt-hour tax

Exemptions

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

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

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

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

[144] Section 6 of S.B. 18 of the 134th General Assembly.

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

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

Estate tax

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

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

Newly discovered property and refunds

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

Administrative fees

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

The act also fixes additional compensation paid to county auditors to enforce real property, manufactured home, and estate tax law.[145] Under prior law, auditors were compensated based on a sliding per capita scale that varied according to the county's population based on the most recent census, up to $3,000 annually. The act prohibits the fee from varying with future censuses by fixing the compensation according to the county's 2010 census population.

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

Property tax

Emergency and police services combined levy

(R.C. 5705.19; Section 803.90)

The act authorizes a municipal corporation or a township to permanently impose, with voter approval, a combined levy for fire and emergency medical services (EMS) and police services. Under prior law, such a combined levy was limited to a five-year term, but a levy for either fire and EMS or police services, but not both, could be permanent, i.e., levied for a "continuing period of time."

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

The act's modifications to combined emergency and police services levies apply to property tax questions considered at any election held on or after January 8, 2022 – the 100th day after the act's 90-day effective date.

Developmental disability housing exemption

(R.C. 5709.121(E); Section 803.220)

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

The act expands the county BDD funding requirement to provide that property may qualify for exemption if either (a) the organization itself receives such funding or (b) the organization contracts with an entity that receives such funding to provide services to the individuals who use the property as housing. If this latter requirement is met, however, the exemption will only apply to property that is leased to individuals who are eligible for Medicaid-funded "home and community-based care" services administered by the Department of Developmental Disabilities and to common areas used by all residents. Home and community-based care services are provided to encourage individuals to receive care at home and in their communities, rather than at care facilities, and include services like employment training, assistive technology, and transportation.

The modification applies to tax year 2021 and thereafter.

Renewable energy facility exemption extension

(R.C. 5727.75)

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

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

Exemption for nonprofit arts institution property

Parking garage property tax exemption

(R.C. 5709.121(G))

The act temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a tax-exempt nonprofit institution whose primary purpose is to host or present performances in music, dramatics, or the arts ("nonprofit arts institution"), or a limited liability company whose sole member is such an institution, but only if that owner does not currently owe any delinquent property tax or related interest or penalties.

Under continuing law, real property used exclusively for charitable purposes is exempt from taxation, regardless of whether the property is owned by a charitable or noncharitable institution.[146] In limited circumstances, the property's ownership by a charitable institution does qualify it for the charitable use exemption, provided the property is used for a particular delineated purpose, including to present performances in music, dramatics, the arts, and related fields to promote public interest or education in those fields or used without a view to profit.[147] In any case, charitable use of revenue generated from the property is not relevant in determining whether the property qualifies for the exemption.[148]

The act's temporary extension of the charitable use exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

Special assessments exemption

(R.C. 727.031, 1710.06, 6101.48, and 6101.53)

The act temporarily exempts any real property owned and operated by a nonprofit arts institution, or a limited liability company whose sole member is such an institution, from special

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[146] R.C. 5709.12(B), not in the act. See *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 118 (2001).

[147] R.C. 5709.121(A).

[148] *Hubbard Press v. Tracy*, 67 Ohio St.3d 564, 566 (1993).

assessments levied by a municipality, special improvement district, or conservancy district. The exemption only applies to property located in a county with a population between 500,000 and 540,000 (i.e., Montgomery County), and if the owner does not currently owe any delinquent special assessments or related interest or penalties. The special assessment exemption applies regardless of whether the property qualifies for a property tax exemption.

The special assessments exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

Special assessments are charges levied by a local government against a property for services provided by that government to that property, such as street lighting or flood control. In general, they may be imposed against most types of property, including many types of property that are otherwise exempt from property tax.

Tax year 2020 refunds

(Section 803.30)

The act allows the owner and operator of a parking garage that qualifies for the act's extended charitable use exemption to file a special exemption application for tax year 2020 to allow the parking garage to qualify for the tax exemption for that tax year and to receive a refund of any taxes paid. The owner and operator must file an exemption application with the Tax Commissioner no later than October 30, 2021 – 30 days after the act's 90-day effective date.

Similarly, the county auditor is required to refund special assessments paid for tax year 2020 by an owner and operator of any property that qualifies for the act's special assessments exemption, except that the owner is not required to submit an application to receive that refund.

Fraternal organization property tax exemption

(R.C. 5709.17; Section 803.150)

The act expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.

Continuing law authorizes a property tax exemption for fraternal organizations that have operated in Ohio for at least 85 years, that are exempt from federal income taxation, and that operate under the lodge, council, or grange system. To qualify for exemption, the property must be used primarily for meetings, administration, or providing not-for-profit educational or health services. The property cannot generate more than $36,000 in rental income per year.

Under prior law, the exemption was available only to organizations with a state governing body. The act expands the exemption to include organizations with a national governing body.

The expansion of the exemption applies to tax year 2021 and every tax year thereafter.

Improper homestead exemption recovery

(R.C. 323.153 and 4503.066)

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

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

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

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

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

Notice requirement for tax-exempt property

(R.C. 5713.083; Section 803.190)

The act requires an owner of tax-exempt property to notify the county auditor if the property ceases to qualify for the tax exemption, so that property tax is correctly assessed and charged against that property. An owner required to make such notice must do so on or before December 31 of the tax year the property ceases to qualify for the tax exemption and on a form prescribed by the Tax Commissioner. Upon receipt of the notice, the auditor must return the property to the tax list without first verifying whether the property ceases to qualify for the tax exemption as stipulated by the owner.

Under continuing law, a property owner may apply to the Tax Commissioner or, in a few instances, to the county auditor for a property tax exemption. The application must be filed on or before the last day of the tax year for which the exemption is sought. The Commissioner notifies the county auditor of any approved exemption applications so that the county auditor may remove the exempted property from the tax list. A county auditor may return an exempted property to the tax list if the auditor finds that the property no longer qualifies for an exemption.[149]

Recoupment charge

If the county auditor discovers that a property owner required to make such a notice failed to do so, the act requires the auditor to impose a charge on that property. The charge equals the sum of the tax savings realized due to the improperly received tax exemption for each year during the prior five years the auditor determines that the property did not qualify for the exemption and was owned by that same owner.

The auditor must notify the owner, by ordinary mail, of the charge, the owner's right to appeal the charge, and how the owner may do so. The owner may appeal the charge by filing an exemption application with the Tax Commissioner. If the Commissioner determines that the owner's property was entitled to an exemption for a tax year in which the auditor assessed the charge, the Commissioner may order the charge to be removed and may refund any taxes, penalties, and interest paid by the owner for that tax year. The charge is assessed as delinquent property tax, which, if collected, is distributed proportionally to each local government that assesses tax on that property.

The notice requirement and recoupment charge apply to tax year 2022 and every tax year thereafter.

Abatement for charitable use property

(Section 757.50)

The act establishes a temporary procedure by which a 501(c)(3) tax-exempt charitable organization that acquired property from a school district may apply for a tax exemption and the abatement of more than three years of unpaid property taxes, penalties, and interest due on the property, provided the property qualifies for continuing law's charitable use exemption, which exempts property used exclusively for charitable purposes or, in some cases, owned by a nonprofit institution.

The application for exemption and abatement may be filed with the Tax Commissioner within 12 months of September 30, 2021 – the act's 90-day effective date, and list the name of the county in which the property is located; the property's parcel number or legal description; its assessed value; the amount in dollars of the unpaid taxes, penalties, and interest; and any other information required by the Commissioner.

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[149] R.C. 5713.08 and 5715.27, not in the act.

Under continuing law, property may not obtain a tax exemption if more than three years' worth of taxes remain unpaid on the property, even if it qualifies for the exemption.[150]

Tax increment financing and downtown redevelopment districts

(R.C. 5709.40 and 5709.41; Section 803.100)

TIF background

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

DRD background

Continuing law also allows municipal corporations to designate Downtown Redevelopment Districts (DRDs) for the purposes of rehabilitating historic buildings, creating jobs, and encouraging economic development in commercial and mixed-use commercial and residential areas. The rules and procedures associated with DRDs are similar to those that apply, under continuing law, to TIF districts. A municipal corporation that establishes a DRD is authorized to exempt a percentage of the increased value of parcels located within the DRD from property taxation. The owners of the parcels make service payments, which are used for economic development purposes.[151]

The act's modifications

The act makes two modifications to the law governing TIFs and DRDs – one related to the use of service payment revenues and one related to the commencement of certain TIF exemptions.

First, the act allows subdivisions to use TIF or DRD service payments for the construction or renovation of off-street parking facilities, even if all or a portion of the parking spaces are reserved for specific economic development uses. Continuing law allows TIF and DRD service payments to be used to finance various public infrastructure improvements, including roads and water and sewer lines.

Under continuing law, municipal corporations may establish a special type of TIF district in which the municipal corporation, engaging in urban redevelopment, acquires land, leases or conveys it to another person, and exempts from taxation the improvements on the land. The

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[150] See R.C. 5713.081, not in the act.

[151] R.C. 5709.45, not in the act.

act allows municipal corporations that establish these TIFs to designate the beginning tax year of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance, as follows:

- In the tax year specified in the designating ordinance, as long as that year begins after the effective date of the ordinance;
- If no tax year is specified in the ordinance or the tax year specified begins before that effective date, in the tax year that begins after that effective date in which an exempted improvement first appears on the tax list;
- In the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, as long as that tax year begins after that effective date;
- In different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

This discretion is already allowed under continuing law to subdivisions creating DRDs and other types of TIFs.

The act's modifications governing TIFs and DRDs apply to any proceedings pending on the act's 90-day effective date (September 30, 2021) and to proceedings commenced or ordinances adopted after that date.

Federally Subsidized Housing Study Committee

(Section 757.70)

The act creates the Federally Subsidized Housing Study Committee, which must author a report making recommendations about the property tax valuation and valuation process of federally subsidized residential rental property. The Committee is required to submit the report to the President of the Senate, the Speaker of the House, and the Minority Leaders of the Senate and the House not later than July 1, 2022, at which time the Committee will dissolve.

The Committee is to be comprised of the following members, who will serve at the pleasure of the appointing authority and without compensation:

- Three members of the Senate, two members of the majority party and one member of the minority party, appointed by the President;
- Three members of the House, two members of the majority party and one member of the minority party, appointed by the Speaker;
- One member from each of the following, appointed by the Governor:
  - The Ohio Bankers League;
  - The Ohio Housing Council;
  - The Ohio Homebuilders Association;
  - Ohio REALTORS;

- The Ohio Insurance Institute;
- The County Auditors Association of Ohio;
- The Ohio School Boards Association;
- The County Commissioners Association of Ohio;
- The International Association of Assessing Officers, who must be an Ohio resident; and
- The Ohio Society of CPAs.

Valuation of subsidized residential rental property

The Ohio Constitution requires, with a few exceptions, real property to be "taxed by uniform rule according to value."[152] To comply with this constitutional requirement, county auditors are generally required to appraise real property according to the value at which the unencumbered property would be sold between a willing buyer and a willing seller, often referred to as "fair market value."[153]

Special considerations are required in valuing subsidized residential rental property, generally related to how federal subsidies and rental and usage restrictions should be figured into the properties' taxable value. These considerations have been developed in a series of court cases in which tax appraisals of such property were challenged.[154] The Committee would presumably study these considerations.

TPP supplement payments

Payments for subdivisions with a nuclear power plant

(R.C. 5709.92 and 5709.93)

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

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

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[152] Ohio Constitution, Article XII, Section 2.

[153] R.C. 5713.03 and 5715.01, not in the act.

[154] See *Columbus City Schs. Bd. of Educ. v. Franklin Co. Bd. of Revision*, 151 Ohio St.3d 12, 15-16 (2017) for examples of such cases.

For joint fire districts, any payment required by the act is in addition to another payment authorized for certain districts under continuing law. That payment is available to joint fire districts with a nuclear power plant that experienced an at least 30% decrease in taxable value between 2016 and 2017. The payment is made through the Local Government Fund and compensates the district for public safety-related tax revenue losses due to that reduction in value. Those payments began in FY 2018 and run through FY 2028.[155]

Cross-reference corrections

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

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

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

Tax administration

Local funds transfer approval period

(R.C. 5705.16)

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

Continuing law regulates the ability of a taxing authority to transfer revenue between its funds. Some funds may be transferred unilaterally, without obtaining approval from any official, e.g., transfers from the taxing authority's general fund to another fund. On the other hand, some transfers are outright prohibited, such as the transfer of funds derived from a tax or license fee imposed for a specific purpose.[156] Any other transfer that is neither unilaterally permitted nor prohibited must first be approved by the Tax Commissioner, pursuant to an application of the taxing authority. The Commissioner may authorize the transfer of funds if the

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

[156] R.C. 5705.14 and 5705.15, not in the act.

Commissioner finds that the transfer is justified or necessary and that no injury would result from the transfer.

Disclosing taxpayer information to the State Racing Commission

(R.C. 5703.21(C)(21))

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

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

State tax refund review process

(R.C. 5703.70)

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

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

Tax obligations of liquor permit holders

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

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

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

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

Wireless 9-1-1 Government Assistance Fund

(R.C. 128.55)

Ongoing law requires the Tax Commissioner to make monthly disbursements, plus accrued interest, from the Wireless 9-1-1 Government Assistance Fund to county treasurers. Under the act, the disbursements are to be made in the same proportion that the Tax Commissioner distributed to that county in the corresponding calendar month of the previous year. If a shortfall in distributions results because of the timing of funds received in a previous month, the act requires that the shortfall amount be distributed in the following month.

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

Under continuing law, Ohio wireless subscribers and purchasers of prepaid wireless service pay a charge that provides funds to support 9-1-1 systems. Wireless subscribers pay a 25¢ monthly charge, and purchasers of prepaid wireless service pay 0.5% of the sale price for the wireless service. The charges are deposited in the Wireless 9-1-1 Government Assistance Fund, the Wireless 9-1-1 Administrative Fund, the Wireless 9-1-1 Program Fund, and the Next Generation 9-1-1 Fund. The Wireless 9-1-1 Government Assistance Fund receives 97% of the charges collected, plus interest.[157]

Tax Expenditure Review Committee

(R.C. 5703.95, repealed, and 107.03(D)(7))

The act sunsets the Tax Expenditure Review Committee. The Committee, consisting of six legislators and a representative of the Tax Commissioner, was created in 2017 to review tax expenditures – tax incentives that exempt all or part of something from a tax levied by the

[157] R.C. 128.021, 128.03, 128.42, and 128.54, not in the act.

state, such as a deduction, exemption, or credit. It was required to make recommendations about whether each should be maintained, repealed, or modified. It was required to study every tax expenditure once every eight years and publish biennial reports of its studies for inclusion with the Governor's budget.

The act also repeals law, enacted at the same time as the Committee, recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill's intent.

Wishes for sick children eligibility change

(R.C. 3701.602)

The act reduces, from $1 million to $250,000, the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to be eligible to receive funds from the Wishes for Sick Children Income Tax Contribution Fund.