DEPARTMENT OF TAXATION

Income tax

- Increases the income tax dependent exemption amount by $2,500 for each dependent under age 18, beginning for 2023.
- Removes the requirement for employers who withhold and remit employee income taxes on a partial weekly basis to file quarterly reconciliation returns, instead requiring such employers to file an annual return, starting in 2024.

Municipal income taxes

- Corrects an erroneous cross-reference governing the deduction of net operating losses and requires municipal corporations to incorporate the change in 2023.
- Requires the Department of Taxation (TAX) to provide information to municipal corporations on any businesses that had municipal taxable income apportioned to such a municipal corporation in the preceding six months as opposed to in any prior year.
- Requires a municipal corporation to notify TAX any time there is a decrease in the municipal corporation's income tax rate.

Sales and use tax

- Exempts children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax, beginning October 1, 2023.
- Allows the Tax Commissioner to cancel a sales tax vendor's license obtained while another of the vendor's licenses is suspended or by any person that makes retail sales without a vendor's license on more than one occasion.
- Modifies the criminal penalties and culpable mental state for certain sales and use tax offenses.

Commercial activity tax

- Delays the year in which a commercial activity tax (CAT) credit for certain net operating losses accrued under the defunct corporation franchise tax becomes refundable, rather than nonrefundable, from calendar year 2030 to 2040.
- Clarifies a CAT provision that governs how gross receipts from transportation and delivery services are allocated to Ohio.

Financial institutions tax

- Clarifies which entities are included in a taxpayer group subject to the financial institutions tax (FIT).
- Repeals an expired FIT deduction allowed for investments in a qualifying real estate investment trust.

Sports gaming tax

- Increases the sports gaming receipts tax rate, from 10% to 20%, beginning July 1, 2023.

Cigarette tax

- Extends the deadline for renewing annual cigarette tax licenses to June 1 instead of the 4th Monday in May.

Fuel use tax

- Imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax for a taxpayer.

Tax credits

Low-income housing tax credit

- Authorizes a nonrefundable credit against the insurance premiums, financial institutions, or income tax for the development of low-income rental housing that is awarded in conjunction with the federal low-income housing tax credit (LIHTC).
- Allows the Ohio Housing Finance Agency (OHFA) to reserve a state tax credit for any project in Ohio that receives a federal LIHTC allocation, as long as the project is located in Ohio and begins renting units after July 1, 2023.
- Prohibits OHFA from reserving any credits after June 30, 2027.
- Generally limits the amount of state credits that may be reserved in a fiscal year to $100 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Limits the amount of credit reserved for any single project to an amount necessary, when combined with the federal credit, to ensure financial feasibility.
- Requires OHFA to reserve credits in a manner that ensures projects create additional housing units they would not otherwise create.

Single-family housing development credit

- Authorizes a nonrefundable tax credit against the insurance premiums, financial institutions, or income tax for investment in the development and construction of affordable single-family homes.
- Requires local governments and quasi-public development entities to submit applications for the credit, but allows them to allocate credits to project investors.
- Allows OHFA to reserve a tax credit for any project in Ohio that may qualify for the credit, as long as the project meets affordability qualifications adopted by OHFA.
- Prohibits OHFA from reserving any credits after June 30, 2027.

- Generally limits the amount of credits that may be reserved in a fiscal year to $50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Limits the amount of credit reserved for any single project to the amount by which the fair market value of the project's homes exceed the project's development costs.

Film and theater credit

- Increases the total amount of film and theater tax credits that may be awarded each fiscal year, from $40 million to $75 million.

Historic building rehabilitation credit

- Increases, from $60 million to $120 million, the amount of historic building rehabilitation tax credits that DEV may award in FY 2025.

Job creation and retention credits

- Authorizes the Tax Credit Authority to adjust the amount that a noncompliant taxpayer must repay from a job creation or job retention tax credit one time within 90 days after initially certifying a repayment.

Research and development credits

- Modifies the manner in which a taxpayer that consists of multiple individuals or entities may compute and claim a research and development (R&D) tax credit against the FIT or CAT.
- Requires a taxpayer claiming a R&D credit to retain records substantiating the claim for four years.
- Allows TAX to audit a representative sample of a taxpayer's R&D expenses to verify that the taxpayer correctly computed the R&D credit.

Tax administration

- Authorizes TAX to send any tax notice currently required to be sent by certified mail by ordinary mail or electronically.
- Removes a requirement that taxpayers must consent to electronic delivery before receiving certain tax notices electronically.
- Removes required recordkeeping standards a delivery service must meet before it may be used by TAX to deliver tax notices.
- Requires county auditors to accept real property and manufactured home conveyance forms electronically.
- Eliminates a requirement that taxpayers file amended reports with respect to the defunct corporation franchise tax.
- Streamlines the authority of TAX to share confidential tax information with state agencies.

- Directs the Tax Commissioner and Treasurer of State to jointly study and design a tax-favored savings account for home purchases and improvements.

Local Government and Public Library Funds

- Permanently increases the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, from 1.66% to 1.7%.

Income tax

Dependent exemption increase

(R.C. 5747.025)

The bill increases the income tax exemption amount available for a dependent under age 18 by $2,500. Under continuing law, a taxpayer can claim a tax exemption for themselves, their spouse, and each dependent. Typically, dependents are 18 or younger, though adults who are supported by the taxpayer may also qualify. For 2022, the exemption amount for each person ranges from $1,900 to $2,400, depending on the taxpayer's income. These amounts are adjusted for inflation each year.

Beginning for 2023, the exemption amount for each dependent under 18 will increase by $2,500. For example, for 2022, a taxpayer who earns $40,000 per year and has one dependent can claim $2,400 for that dependent. Beginning for 2023, the taxpayer may claim $4,900 ($2,500 + $2,400, before adjusting the latter amount for inflation). The $2,500 increase does not adjust with inflation.

Eliminate quarterly employer reconciliation return

(R.C. 5747.07 and 5747.072; Section 803.60)

The bill removes the requirement in current law that employers who withhold and remit employee income taxes on a partial weekly basis, i.e., two times in a single week, file quarterly withholding reconciliation returns. Instead, these employers will only be required to file the annual reconciliation returns required for other employers under continuing law starting on January 1, 2024. Reconciliation returns allow an employer to calculate and pay any required employee withholding that was not remitted in the preceding period.

Under continuing law, employers are required to remit employee withholding on a partial weekly basis if they withhold and accumulate a significant amount of it. Employers with smaller accumulated withholding may remit it monthly or quarterly.

Municipal income taxes

Net operating loss deduction cross-reference

(R.C. 718.01; Section 803.10)

The bill corrects an erroneous cross-reference in the municipal income tax law governing the deduction of net operating loss (NOL). From 2018-2022, a business was allowed to deduct 50% of its NOL from its taxable net profits. Beginning in 2023, the 50% limitation is discontinued and a business may deduct the full amount of its NOL. The bill's correction clarifies that the 50% limitation ceases to apply in 2023. The bill requires municipalities that levy an income tax to incorporate this cross-reference change into their municipal tax ordinances and apply it to taxable years beginning in 2023.

Net profits tax reports and notifications

(R.C. 718.80 and 718.84; Section 803.80)

Under continuing law, a business that operates in multiple municipalities, and is therefore subject to multiple municipal income taxes, may elect to have the Department of Taxation (TAX) serve as the sole administrator for those taxes. For electing taxpayers, a single municipal net profit tax return is filed through the Ohio Business Gateway for processing by TAX, which handles all administrative functions for those returns, including distributing payments to the municipalities, billing, assessment, collections, audits, and appeals. The bill modifies, as described below, the reporting and notification requirements associated with this state-administered municipal net profits tax.

TAX's municipal income tax report

The bill requires that twice a year, in May and November, TAX provide information to municipalities on any businesses that had net profits apportioned to the municipality, as reported to TAX, in the preceding six months only. (Net profits apportionable to the municipality, e.g., earned in the municipality, are generally subject to the municipality's income tax.) Under current law, this twice-per-year notification is required to list information for businesses that had net profits apportioned to the municipality in any prior year. This change applies to reports required to be filed after the bill's 90-day effective date.

Rate decrease notification

Under continuing law, by January 31 of each year, a municipal corporation levying an income tax must certify the rate of the tax to TAX. If the municipality increases the rate after that date, the municipality must notify TAX of the increase at least 60 days before it goes into effect. The bill requires a municipality to notify TAX, within the same 60-day notice period, when there is any change in its municipal income tax rate, including a decrease.

Sales and use tax

Baby product exemption

(R.C. 5739.01 and 5739.02; Section 803.50)

The bill exempts, beginning October 1, 2023, children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax. Under continuing law, sales of both children and adult diapers are exempt during the first weekend of August each year as part of Ohio's "sales tax holiday" for school supplies and clothing. In addition, adult diapers are exempt under continuing law if sold to a Medicaid recipient pursuant to a prescription.

Vendor's license suspensions

(R.C. 5739.31)

Continuing law requires every retail vendor to obtain a vendor's license from TAX or a county auditor and collect and remit state and local sales taxes. TAX may suspend the license of a vendor that repeatedly fails to timely file sales tax returns or remit taxes.[80] A vendor with a suspended vendor's license is prohibited from obtaining another vendor's license from TAX or "the" county auditor during the suspension period. The bill clarifies that the prohibition on duplicate licenses applies to those obtained from any – as opposed to "the" – county auditor. The bill also allows TAX to cancel any duplicate vendor's license obtained by a vendor during the suspension period or obtained by any person who has violated the prohibition on making retail sales without holding a vendor's license more than once.

Criminal penalties and mental states

(R.C. 5739.99)

The bill modifies the criminal penalties for certain sales and use tax offenses. In particular, the bill classifies several offenses, typically to the closest classified misdemeanor or felony based on current penalties:

Offense	Current penalty	Classification and penalty under the bill
Failure to pay or collect sales or use tax, or providing a false tax exemption certificate	Fine between $25-$100 for the first offense; for each subsequent offense, a fine between $100-$500 (corporations) or between $25-$100 and imprisonment of up to 60 days (individuals).	Minor misdemeanor of the first offense (up to $150 fine); for each subsequent offense, a misdemeanor of the third degree (fine of up to $500 or imprisonment of up to 60 days).
Failing to file a sales or use tax return or filing a fraudulent return	Fine between $100-$1,000 or imprisonment of up to 60 days.	Misdemeanor of the third degree.
Making retail sales without a vendor's license	Fine between $25-$100 for the first offense, and a felony of the fourth degree; for each subsequent offense (fine of up to $5,000 or imprisonment of 6-18 months).	Minor misdemeanor for the first offense; misdemeanor of the first degree for the second offense (fine of up to $1,000 or imprisonment of up to 180 days); felony of the fourth degree for each subsequent offense.
Making retail sales as a transient	Fine between $100-$500 or imprisonment of up to 10 days for the first offense; for each subsequent	Minor misdemeanor for the first offense; misdemeanor of the fourth degree for each subsequent offense

[80] R.C. 5739.30(B)(2), not in the bill.

Offense	Current penalty	Classification and penalty under the bill
vendor without a license	offense, a fine of between $1,000-$2,500 or imprisonment of up to 30 days.	(fine of up to $250 or imprisonment of up to 30 days).
Making retail sales with a suspended license	Felony of the fourth degree.	Misdemeanor of the first degree for the first offense; felony of the fourth degree for each subsequent offense.

The bill also lowers the requisite culpable mental state for these offenses, from "recklessly" to "negligently." Current sales tax law does not specify a mental state for the offenses described above, but under continuing law generally, if no mental state is specified, "recklessly" is considered the default.[81] A person acts recklessly when with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. The bill overrides this default rule by only requiring negligence on the part of the offender, i.e., because of a substantial lapse from due care, the offender fails to perceive or avoid a risk that the offender's conduct may cause a certain result or may be of a certain nature.[82]

Commercial activity tax

Tax credit for prior net operating losses

(R.C. 5751.53 and 5751.98)

The bill delays the year in which a commercial activity tax (CAT) credit for certain net operating losses accrued under the defunct corporation franchise tax (CFT) becomes refundable, rather than nonrefundable, from calendar year 2030 to 2040.

In 2005, the CFT was repealed, and corporations were required to begin paying the CAT. At that time, corporations were allowed a tax credit to offset some of the immediate financial statement effects of losing the ability to deduct net operating losses and certain other deferred tax items on the business's CFT returns. The credit, which allows the corporation to claim those losses against the corporation's CAT liability, is currently nonrefundable until 2030, at which time any remaining balance becomes refundable.

Situsing of transportation services

(R.C. 5751.033; Section 803.30)

The bill clarifies a CAT provision that governs how gross receipts from transportation and delivery services are allocated, or "sitused," to Ohio. The bill specifies that this situsing provision applies to services provided by common carriers, rather than motor carriers. The term "motor

[81] R.C. 2901.21(C)(1), not in the bill.

[82] R.C. 2901.22, not in the bill.

carriers" applies only to transportation or delivery by motor vehicle, while the phrase "common carriers" includes transportation by other means, such as trains and aircraft.

The statute had previously applied to common carriers, but, in 2012, the terminology was changed as part of a larger overhaul of motor carrier regulations.[83] The bill states that this change is intended to be remedial and to clarify the law as it existed before the amendment.

Financial institutions tax

Financial institution taxpayer group

(R.C. 5726.01; Section 803.70)

Continuing law imposes the financial institutions tax (FIT) on financial institutions, including all entities that are reported on the institution's federal regulatory FR Y-9 or call report. The bill clarifies that a "financial institution" includes all of the entities consolidated, rather than "included," in the institution's report. The bill further clarifies that, in the case of a small bank holding company that is not required to file a FR Y-9 under federal law, the financial institution includes all of the entities that would be included in statement FR Y-9 if the company were required to file one.

Repeal deduction for REIT investments

(R.C. 5726.04; repealed R.C. 5726.041)

The bill repeals an expired FIT deduction that was allowed for an institution's investment in a qualifying real estate investment trust. The deduction was available between 2014, the first year the FIT was levied, and 2017. It essentially allowed an institution that owned shares of a publicly traded REIT to phase in the value of that investment into the institution's tax base over those four years.

Sports gaming tax

Tax rate

(R.C. 5753.021; Section 803.40)

The bill increases the rate of the state's sports gaming tax, from 10% to 20%. Under the continuing law, the tax is levied on the "sports gaming receipts" of online and in-person sports gaming businesses, other than those that offer gaming through lottery terminals. A business' sports gaming receipts include the total amount the business receives as wagers, less winnings paid, voided wagers, and, beginning in 2027, a portion of the promotional gaming credits wagered by patrons.

The rate increase applies to sports gaming receipts received on and after July 1, 2023.

[83] H.B. 487 of the 129th General Assembly.

Cigarette tax

License renewal deadline

(R.C. 5743.15; Section 757.10)

The bill extends the deadline for renewing annual cigarette tax licenses. Under continuing law, a retailer, wholesaler, importer, or manufacturer of cigarettes is required to hold a license issued by TAX before selling or otherwise trafficking in cigarettes in Ohio. Such cigarettes are subject to state and county cigarette excise taxes. Under current law, each license expires on, and must be renewed by, the 4th Monday in May. The bill extends the renewal deadline to June 1.

The bill applies the renewal extension to existing licenses, so those licenses will remain valid until June 1, 2024, rather than May 27, 2024.

Fuel use tax

Personal liability

(R.C. 5728.16)

The bill imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax on behalf of a business taxpayer. An individual's personal liability under the bill is not discharged by the dissolution, termination, or bankruptcy of the business. If more than one individual has personal liability under the bill for the unpaid taxes, all of those individuals will be joint and severally liable. Several other state taxes have similar personal liability imposed.[84]

Fuel use tax background

In addition to a motor fuel tax imposed on motor fuel dealers, the state imposes a motor vehicle fuel use tax on heavy trucks on the amount of motor fuel consumed in Ohio, but purchased outside Ohio. The rate of this tax is the same as for the dealer-imposed motor fuel tax. A refund or credit is allowed for the fuel use tax on fuel purchased in Ohio for use in another state, provided that the other state imposes a tax on such fuel and allows a similar credit or refund.

Tax credits

Low-income housing tax credit

(R.C. 175.16, 5725.36, 5726.58, 5729.19, and 5747.83 with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The bill authorizes a nonrefundable tax credit for the development of low-income rental housing that is awarded in conjunction with an existing federal low-income housing tax credit (LIHTC). The credit may be claimed against the insurance premiums, financial institutions, or income tax. The Director of the Ohio Housing Finance Agency (OHFA) reserves credit amounts for

[84] E.g., R.C. 5735.40 (motor fuel tax), 5743.57 (tobacco and vapor products taxes), and 5747.07 (employer income tax withholding), not in the bill.

federal LIHTC projects up to the amount necessary to ensure the project's financial feasibility. The total amount of state credits reserved by OHFA is limited to $100 million per fiscal year, though unreserved or recaptured amounts in one fiscal year may be carried forward and reserved in the next. Eligibility begins for projects placed in service on or after July 1, 2023, and OHFA is prohibited from reserving credits after June 30, 2027.

Federal LIHTC

The federal LIHTC is a federal income tax credit that offsets a portion of a developer's construction costs in exchange for reserving a certain number of rent-restricted units for lower-income households in a new or rehabilitated facility. In Ohio, the federal LIHTC is administered by the OHFA.

To receive a federal LIHTC, developers must apply to OHFA before undertaking a project. If the project preliminarily qualifies for credit, based on federal criteria and the state's allocation plan, OHFA may set aside (or "allocate") a credit. Receipt of the credit is contingent upon completion of the project and the project entering service, i.e., beginning to rent units, generally within two years of allocation.[85] In practice, developers typically sell the rights to claim federal LIHTCs upon receiving an allocation to secure up-front financing necessary to undertake the project.

Ohio LIHTC

Any project that is allocated a federal LIHTC may also qualify for the bill's Ohio LIHTC, as long as the project is located in Ohio and placed into service at any time on or after July 1, 2023.

Reserved credit

A developer does not need to separately apply for the Ohio LIHTC. Instead, OHFA may reserve a state credit for any qualified project when allocating a federal LIHTC. When reserving a state credit, OHFA must send written notice of reservation to each of the qualified project's owners, which must include the aggregate amount of the credit reserved for all years of the qualified project's ten-year credit period and state that the receipt of the credit is contingent upon issuance of an eligibility certificate after the project is placed into service. After receipt of that notice, the projects owners must identify to OHFA the party that will issue annual credit allocation reports to OHFA (see "***Claiming the credit and reporting requirements***," below). This "designated reporter" may be the owner or its member, shareholder, or partner.

The amount of credit reserved for any particular qualified project is determined by OHFA, but in no case may the reserved credit, combined with the allocated federal credit, exceed the amount necessary to ensure the financial feasibility of the project. The bill additionally requires OHFA to reserve credits in a manner that ensures the qualified project is creating housing units that would not otherwise be created.

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[85] 26 U.S.C. 42.

Awarded credit

After the project for which a credit is reserved is placed into service and OHFA approves the federal LIHTC, OHFA must issue an eligibility certificate to each project owner and send a copy to TAX and the Superintendent of Insurance (INS). The certificate must state the amount of the credit that may be claimed for each year of the ten year credit period, which is the lesser of:

- The amount of the federal LIHTC that would be awarded for the first year of the federal credit period absent a first-year reduction required by federal law;
- $^1/_{10}$ of the reserved credit amount stated in the notice reserving the state LIHTC.

This provision effectively caps the amount of a state LIHTC at the amount of the corresponding federal credit.

Claiming the credit and reporting requirements

The bill allows the qualified project's owners, or the equity owners of a pass-through entity that is the project owner, to claim the state LIHTC. An owner is a person holding a fee simple or ground lease interest in the project. The credit may be applied against more than one tax over more than one year, and the credit may be allocated amongst various owners and their equity owners by agreement. The total credits claimed in connection with the applicable year of the project's credit period must not, however, exceed the amount stated on the eligibility certificate. Even though the credit is nonrefundable, any unclaimed amounts may be carried forward for up to five years.

Each year, a project's designated reporter must report to OHFA a list of each project or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to OHFA within a time frame that OHFA must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

Recapture

Federal law allows for the recapture of federal LIHTCs. Under the bill, if any portion of the federal LIHTC allocated to a qualified project is recaptured, OHFA must recapture a proportionate amount of the state credit allocated to the same project. To effectuate this recapture, OHFA must request that TAX or INS, as applicable, issue an assessment to recover any previously claimed credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

Fees and rules

The bill allows OHFA to assess application, processing, and reporting fees to cover the cost of administering the tax credit. It also allows the OHFA, in consultation with TAX and INS, to adopt rules necessary to administer the credit. The bill specifies that these rules are not subject to the requirements in continuing law governing agency review of rules to identify regulatory restrictions. In addition, with respect to those rules, OHFA is exempted from the provision of that law requiring the removal of two regulatory restrictions upon adoption of one regulatory restriction.

Single-family housing development credit

(R.C. 175.17, 5725.37, 5726.59, 5729.20, and 5747.84 with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The bill authorizes a nonrefundable tax credit against the insurance premiums, financial institutions, or income tax for investment in the development and construction of affordable single-family homes. To obtain a credit, a local government or quasi-public development entity, in partnership with a private "development team," must submit an application to OHFA. Upon approving an application, OHFA reserves a credit for the applicant to be awarded when the project is completed. The credit equals the amount by which the fair market value of the project's completed homes exceed the project's development costs. The applicant may allocate credits to taxpayers of the credit-eligible taxes who invest capital in the project. The total credit amount is claimed in equal increments over the ten years after the project's completion, and each project home is subject to an OHFA-prescribed affordability requirement for the ten years following its initial sale to a qualified buyer ("affordability period").

Application process

A county, township, municipal corporation, regional planning commission, community improvement corporation, economic development corporation, port authority, or county land reutilization corporation, i.e., a land bank, may apply for a credit. Each application must identify a project's development team, a person that will make annual credit allocation reports on behalf of the applicant ("designated reporter"), and an estimate of the project's total development costs. OHFA may charge application, processing, and reporting fees to cover the cost of administering the credit.

Credit reservation and limits

The bill requires OHFA to develop a plan for competitively awarding tax credits by establishing criteria and metrics by which projects will be evaluated. OHFA is allowed to reserve a credit for any single-family housing development project that is located in Ohio and that meets the plan's qualifications. OHFA's plan may allocate credits in a pooled manner. The bill sets forth several criteria, described below, that OHFA may consider when evaluating applications, but allows OHFA to adopt rules, in consultation with TAX and INS, specifying the exact criteria to be considered.

Suggested criteria to consider
Underwriting criteria to assess the risk associated with a project and criteria by which the sponsoring applicant shall be responsible for risk associated with the project, such as homeowner abandonment, default, or foreclosure.
Requirements that the applicant provide capital assets or other investments to the project.

Suggested criteria to consider
Criteria regarding the purchase, ownership, and sale of completed project homes.
Measures to maintain affordability of project homes during the affordability period, which may include a deed restriction for some or all of the tax credit value or appreciated value of the home.

OHFA must notify each applicant, in writing, whether or not the applicant's project is approved for a credit reservation. If a project is approved, the notice will include the tax credit reservation amount with the stipulation that final receipt of the credit is contingent upon the project's completion and meeting certain reporting requirements. The amount of credit reserved for any single project is limited to the amount by which the fair market value of the project's homes, as appraised by OHFA, exceed the project's estimated development costs. However, this amount can be increased or decreased depending on the actual development costs as they are certified at the time the credit is issued after completion of the project.

The bill generally limits the amount of total credits that may be reserved in a fiscal year to $50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year. OHFA is prohibited from reserving any credits after June 30, 2027.

Project completion and claiming the credit

When a project is completed, the bill requires the original applicant to notify OHFA and provide a final development cost certification. At that time, OHFA is required to appraise the project's finished homes and, after approving the applicant's final cost certification, compute the amount of the tax credit. OHFA then issues an eligibility certificate to the applicant that states the amount of the credit, i.e., $^1/_{10}$ of the amount issued in the initial certification, subject to any increase or decrease as a result of the final appraisal and cost certifications. That credit amount may then be claimed in each year of the ten year credit period listed on the certificate. OHFA is required to certify a copy of each eligibility certificate to TAX and INS.

The applicant may allocate all or a portion of the annual credit amount for any year of the credit period to one or more project investors or equity owners of a pass-through entity project investor. An investor or owner allocated a credit may claim it against the insurance premiums, financial institution, or income taxes after the eligibility certificate has been issued and the annual reporting requirements discussed below have been complied with. To do so, the investor or owner must submit a copy of the certificate with the tax return for the year in which they claim the credit. The bill authorizes TAX and INS to request other documentation which an investor or owner must provide to claim the credit. If the credit exceeds the taxpayer's tax liability for that year, the credit may be carried forward for up to five years.

If a project ceases to qualify for a credit, OHFA may disallow and recapture any credit issued by requesting that TAX or INS, as applicable, issue an assessment to recover any previously claimed credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

Continuing obligations and reporting requirements

Throughout the development of the project, the applicant must maintain ownership of the homes until they are sold to qualified buyers. The bill authorizes OHFA to establish, by rule, criteria to evaluate the qualifications for buyers. A qualified buyer must occupy a home constructed as part of a covered project as the buyer's primary residence for all ten years of the affordability period. During this period, the affordability of the home, as determined by OHFA by rule, is to be maintained and services are to be provided by the applicant's development team.

Each year, a project's designated reporter must report to OHFA a list of each investor or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to OHFA within a time frame that OHFA must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

Rules

As discussed above, OHFA may adopt any administrative rule necessary to administer the tax credit program. The bill specifies that rules adopted under the bill are not subject to the requirements in continuing law governing agency review of rules to identify regulatory restrictions. In addition, with respect to the rules adopted under the bill, OHFA is exempted from the provision of that law requiring the removal of two regulatory restrictions upon adoption of one regulatory restriction.

Film and theater credit cap

(R.C. 122.85)

The bill increases the total amount of film and theater tax credits that may be awarded each fiscal year, from $40 million to $75 million. Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least $300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the CAT, FIT, or income tax.

Under continuing law, DEV awards credits in two rounds, with the first ending on the last day of July and the second ending on the last day of January. Currently, DEV may only award up to $20 million in the first round, plus any unused credits from the previous year. The bill increases that limit to $37.5 million. For FY 2024, however, the first round limit remains $20 million because this provision will not have taken effect before the July 31 application deadline.

Historic building rehabilitation credit cap

(R.C. 149.311)

The bill extends a temporary increase in the amount of historic building rehabilitation tax credits that DEV may award to FY 2025. Continuing law generally limits the amount of rehabilitation tax credit certificates that may be awarded by DEV to $60 million per fiscal year, plus any unallocated credits from previous fiscal years. That cap was previously increased to $120 million for both FYs 2023 and 2024.[86] The bill extends this increase to FY 2025. The cap reverts to $60 million in FY 2026.

Continuing law authorizes a historic rehabilitation tax credit equal to a percentage, generally 25%, of the qualified expenditures incurred by the owner or, in some cases, lessee of a building of historical significance to rehabilitate the building in accordance with certain preservation criteria. Credits are awarded through a competitive application process administered by DEV, in consultation with the State Historic Preservation Officer. Credit recipients are issued a rehabilitation tax credit certificate, which may be used to claim a credit against the income tax, financial institutions tax, or insurance premiums taxes.

Job creation and retention credit recapture adjustments

(R.C. 122.17 and 122.171)

Under continuing law, when DEV discovers that a taxpayer that has received a job creation or job retention tax credit (JCTC or JRTC) is not in compliance with the agreement for the credit, DEV may report that noncompliance to the Tax Credit Authority (TCA). After giving the taxpayer an opportunity to explain the noncompliance, TCA may require the taxpayer repay a portion of the credit by certifying the repayment to TAX or INS. The bill authorizes TCA to adjust that repayment amount if circumstances change after this, but only once within 90 days after the certification. However, no adjustment is allowed if the taxpayer has already repaid the amount or if TAX's or INS's assessment has been certified to the Attorney General for collection.

Background

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention 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 tax credit agreement). The credits may be claimed against the CAT, FIT, petroleum activity tax, domestic or foreign insurance premiums taxes, or personal income tax. The JCTC is a refundable credit, while the JRTC is nonrefundable. To ensure compliance with the terms of the agreement, each employer must file an annual report with TCA in which it reports its number of employees and payroll, among other metrics.

Research and development tax credits

(R.C. 5726.56 and 5751.51)

Continuing law allows a nonrefundable tax credit against the FIT and CAT equal to 7% of the taxpayer's excess qualified research and development (R&D) expenses above the average of the taxpayer's R&D expenses in the three preceding years. Unclaimed credits may be carried

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[86] S.B. 225 of the 134th General Assembly.

forward for up to seven years. The bill changes the way certain taxpayers calculate and claim that credit, imposes recordkeeping requirements, and allows TAX more flexible audit authority.

Taxpayer groups

The bill modifies how a taxpayer comprised of more than one person – e.g., a pass-through entity with several owners – may calculate and claim R&D credits. Both the FIT and CAT require or allow such a "taxpayer group" to file and pay the tax as a single taxpayer.

The bill requires a taxpayer group to compute the R&D credit on a member-by-member basis, rather than across the entire taxpayer group. In other words, the group's total R&D credit equals the aggregate credit computed against each member's qualified R&D expenses. This computation and the R&D credit that may be claimed must be made on a form prescribed by TAX.

The bill also limits the members whose R&D expenses may be included in a group's aggregate credit amount by only allowing such members to include their portion of the credit if they are members of the group on December 31 of the year during which the R&D expenses are incurred. A similar membership requirement applies to the computation of any R&D credit carryforwards.

Recordkeeping requirements

The bill requires a taxpayer claiming an R&D credit to retain records substantiating the claim. The records must be kept for four years after the due date for the return on which the credit is claimed, or four years after it is actually filed, whichever is later. Records required to be retained include those relating to any R&D expenses used in calculating the credit and incurred in the year for which the credit was claimed and for the three preceding years.

Audits

In addition to TAX's general audit authority, the bill authorizes TAX to audit a representative sample of a taxpayer's R&D expenses to verify that the taxpayer has correctly computed its R&D credit. In undertaking this audit, the bill requires that TAX make a good faith effort to agree on a representative sample, but it does not preclude a representative sample audit absent such an agreement.

Tax administration

Delivery of tax notices

(R.C. 5703.056 and 5703.37; conforming changes in numerous other R.C. sections)

The bill expands the means by which TAX may send tax notices by authorizing that, for any tax notice currently required to be sent by certified mail, TAX may alternatively send the notice electronically or by ordinary mail.

In addition, in order to receive a notice electronically, current law generally requires the taxpayer to give prior consent. The bill removes this consent requirement. It further adds that electronic notices can be sent to a taxpayer's authorized representative, and specifies that the notice can be made by any electronic means, including email and text message. Under continuing law, if an electronic notice is not accessed after two attempts, TAX must send it by ordinary mail.

The bill requires TAX to establish a system to issue notifications of tax assessments to taxpayers through secure electronic means.

The bill also eliminates certain recordkeeping requirements that a delivery service must meet before it can be used by TAX to deliver tax notices. Specifically, it eliminates the requirement that the delivery service record the date on which the document was sent and delivered.

Electronic conveyance forms

(R.C. 319.20)

Under continuing law, whenever real property or a manufactured or mobile home is transferred, the grantee is required to file a statement with the county auditor attesting to the property's value and acknowledging that certain information related to the property's eligibility for the homestead exemption or current agricultural use valuation (CAUV) status has been considered as part of the transfer. The statement must be accompanied by any required property transfer tax.

Continuing law requires the grantee to file three copies of this statement, but the bill alternatively allows a grantee to submit a single copy of the statement electronically.

Corporation franchise tax amended filings

(R.C. 5733.031; Section 757.30)

The bill eliminates a requirement that taxpayers file amended corporation franchise tax (CFT) reports. The CFT was fully repealed in 2013, but if an adjustment to a corporation's federal tax return alters the corporation's previous CFT tax liability, the corporation must still file an amended CFT report. Under the bill, corporations are no longer required to file amended reports after December 31, 2023. Similarly, no corporation may request a refund after that date.

Disclosure of confidential tax information

(R.C. 5703.21 with conforming changes in R.C. 1346.03, 1509.11, 4301.441, and 5749.17)

The bill streamlines the authority of TAX to share confidential tax information with state agencies. Under continuing law, unless an exception applies, tax return information is confidential and cannot be disclosed by an employee of TAX or any other individual. Currently, the law lists several exceptions authorizing the disclosure of information to specific state agencies. The bill replaces much of this list, which involves specific state agencies, with a general authorization for TAX to share information with any state or federal agency when disclosure is necessary to ensure compliance with state law. The receiving agency is prohibited from disclosing any of this shared information, except as otherwise authorized by state or federal law.

Tax-favored home purchasing savings account research

(Section 701.10)

The bill directs the Tax Commissioner and Treasurer of State, or their designees, to jointly study and design a tax-favored savings account for home purchases and improvements.

Local Government and Public Library Funds

Permanent increase

(R.C. 131.51; Section 387.20)

The bill permanently increases, beginning in FY 2024, the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, to 1.7%.

Under current law, the LGF and PLF are each allocated 1.66% of the total tax revenue credited to the GRF each month. This percentage has been set in permanent law since FY 2014, following a series of decreases in allocations to both funds. Over the past decade, however, the actual percentage of tax revenue allocated to the LGF and PLF has fluctuated slightly. The General Assembly has repeatedly authorized "temporary" increases to the PLF allocation, ranging from 1.68% to 1.70%. The PLF allocation for FYs 2022 and 2023 currently stands at 1.70%. The LGF allocation was temporarily increased once, to 1.68% for FYs 2020 and 2021, but the current allocation stands at 1.66%.[87]

Under continuing law, most of the money in the LGF and PLF is distributed monthly to each county's undivided local government or public library fund, largely based upon that county's historical share. Each county distributes its share among local governments or libraries, respectively, according to a locally approved formula or, in a few counties, a statutory need-based formula. A smaller portion of the LGF is paid directly to townships, smaller villages, and municipalities.

[87] Section 387.20 of H.B. 110 of the 134th General Assembly, Section 387.20 of H.B. 166 of the 133rd General Assembly, Section 387.20 of H.B. 49 of the 132nd General Assembly, and Section 375.10 of H.B. 64 of the 131st General Assembly.