

**10:00 a.m. (EST)**  
**1-866-362-9768**  
**552-970-8972#**



# **Tax Committee**

**November 6, 2019**

| <b>Table of Contents</b>                   | <b>Page #</b> |
|--|---------------|
| <b>Agenda</b>                              | <b>2</b>      |
| <b>Bios</b>                                | <b>3</b>      |
| <b>OBM Monthly Financials</b>              | <b>5</b>      |
| <b>Clark Schaefer Hackett Presentation</b> | <b>14</b>     |
| <b>OMA Public Policy Report</b>            | <b>23</b>     |
| • <b>Budget in Brief</b>                   | <b>28</b>     |
| • <b>Tax Budget Items</b>                  | <b>32</b>     |
| • <b>DSA Budget Items</b>                  | <b>68</b>     |
| • <b>JRTC Bricker Memo</b>                 | <b>77</b>     |
| • <b>SB 153 Analysis</b>                   | <b>79</b>     |
| • <b>SB 26 Analysis</b>                    | <b>81</b>     |
| • <b>JobsOhio Blog</b>                     | <b>86</b>     |
| <b>OMA Counsel's Report</b>                | <b>88</b>     |
| <b>OMA News and Analysis</b>               | <b>91</b>     |
| <b>OMA Tax Legislation</b>                 | <b>97</b>     |

## **2019 Tax Committee Calendar**

**Meetings begin at 10:00 a.m.**  
**2020 Meeting Dates Coming  
Soon!**

## **OMA Tax Committee Meeting Sponsor:**





**OMA Tax Policy Committee**  
November 6, 2019

**AGENDA**

|  |  |
|--|--|
| <b>Welcome &amp; Self-Introductions:</b> | Meredith Mullett, Chairman<br>The J.M. Smucker Company |
| <b>State Financial Update</b>            | Rob Brundrett, OMA Staff                               |
| <b>Connections Presentation</b>          | Phil Hurak, Shareholder<br>Clark Schaefer Hackett      |
| <b>OMA Public Policy Report</b>          | Rob Brundrett, OMA Staff                               |
| <b>Guest Speaker</b>                     | State Representative Sara Carruthers                   |
| <b>OMA Counsel's Report</b>              | Justin Cook, Bricker & Eckler LLP                      |

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: [dlocke@ohiomfg.com](mailto:dlocke@ohiomfg.com) or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

**Thanks to Today's Meeting Sponsor:**



## Representative Sara Carruthers

### 51<sup>st</sup> House District

---



State Representative Sara Carruthers is currently serving her first term as state representative. She represents the 51st House District, which encompasses portions of Butler County, including the cities of Hamilton and Fairfield, Ross Township, and portions of Fairfield, Hanover, and St. Clair townships.

Representative Carruthers hails from Hamilton, Ohio, where she is an active community leader and philanthropist for a number of charitable causes. She has served or serves on many boards including the Hamilton Community Foundation, The Michael Feinstein Great American SongBook Foundation and Fort Hamilton Hospital. She is a member of P.E.O., Hamilton Garden Club, Arronoff Center for the Arts, Pyramid Hill Sculpture Park, Fitton Center, Christ Church Glendale, Delta Zeta Sorority and the Butler County (Ohio) Republican Party.

In addition to her extensive community involvement, she also has a media background working for such stations as, WKRC-TV, WKRC 55, WKRQ, TCI, and TvHamilton. She has done commercial work, voice-overs, show hosting and industrial film work. She was a White House Press assistant during the Ronald Reagan and George H. W. Bush administrations.

A mother of twins, Elizabeth and Rogue, Representative Carruthers attended Miami University and continues to work for Delta Zeta Sorority. She made the Women of Achievement rooms at the Delta Zeta Historical Museum a reality.



Philip Hurak

Shareholder

Clark Schaefer Hackett

Philip Hurak is a multifaceted business leader who leverages tax and financial strategies to help clients achieve strategic cost savings and business growth goals. He is well-versed in optimizing in State & Local Tax (SALT) and helps clients across multiple industries understand the various rules for each taxing jurisdiction, including those that cross state lines.

His expertise includes determining economic nexus, multistate sales tax registration and sales tax filing, exemption certificates, sales tax refund analysis, transactional tax planning, credits and incentives, and resolution of sales tax controversies.

Phil earned a JD and MBA from the University of Dayton and a BS in Business Administration and Finance from The Ohio State University. He is an active member of the Ohio State Bar Association, is an alumni of the Cincinnati Chamber C-Change Class 6 and is a sought after speaker at industry events.

October 10, 2019

MEMORANDUM TO: The Honorable Mike DeWine, Governor  
The Honorable Jon Husted, Lt. Governor

FROM: Kimberly Murnieks, Director 

SUBJECT: Monthly Financial Report

### Report Overview



September GRF personal income tax receipts totaled \$930.9 million and were \$33.1 million (3.7%) above the estimate for the month.



September non-auto sales and use tax collections were \$729.0 million, \$6.9million (0.9%) below the estimate for the month. Year-to-date non-auto sales tax revenue is over the estimate by \$12.1 million (0.5%).



Year-to-date, GRF revenue from federal grants is below estimate by \$48.8 million (1.8%) primarily due to GFR Medicaid spending remaining below estimate by \$62.5 million.



U.S. nonfarm payroll employment increased by 136,000 jobs in September, about as expected. At 161,000, the average monthly change year-to-date is a step down from the average of 220,000 the same period last year.



The consensus among forecasters is that real GDP growth will remain between 1.5 and 2 percent during the third quarter calendar year 2019. This is consistent with leading economic indicators suggesting slow growth.



The US employment rate decreased to 3.5 percent in September, which is the lowest level seen since December 1969.

## ECONOMIC SUMMARY

### Economic Growth

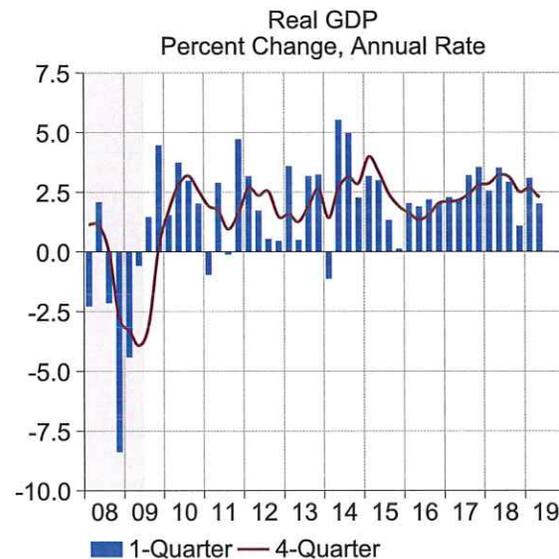
Signs of slower growth have continued to accumulate, with large declines in the Purchasing Managers Indexes for manufacturing and nonmanufacturing for September being the most recent indicator. This change is consistent with contraction in manufacturing and slower growth in services. Additionally, housing construction has trended down for a year and a half, U.S. exports are down from a year ago, and forecasts of global growth have been revised lower. Overall, leading indicators remain more consistent with growth than contraction.

**Real GDP** expanded at a revised annual rate of 2.0 percent during the second quarter, down slightly from the previous report of 2.1 percent and 3.1 percent in the first quarter. Growth was 2.3 percent on a year-over-year basis. The year-over-year growth rate has slowed from 3.2 percent in the second quarter of 2018. This economic expansion became the longest in U.S. history in July, surpassing the previous record set in the 1990s. During the past decade, real GDP has expanded at an annual rate of 2.3 percent, about one-third slower than the 3.6 percent rate during the 1990s expansion.

The increase in real GDP in the second quarter reflected positive contributions from personal consumption expenditures (+3.03 percentage points) and government (+0.82pp). Subtracting from growth were the change in private inventories (-0.91pp) and net exports (-0.68pp). Consumer spending was strong across categories, with durables, nondurables, and services all making substantial contributions. Both federal and state as well as local government spending made positive contributions, with federal nondefense expenditures making the largest.

Nonresidential fixed investment subtracted slightly after twelve consecutive quarters of sizable additions. Investment in residential structures also made a small negative contribution, extending the string of negative quarters to six, leaving it down 5.4 percent since its fourth-quarter 2017 peak. Within net exports, a large decline in exports was responsible for the decline, as imports were essentially unchanged after a decline in the previous quarter, which effectively added to GDP growth.

The slowing in growth from the first quarter reflected a swing from positive to negative changes in nonresidential fixed investment, the change in inventories, and net exports. The drag from fixed investment occurred mostly in structures and intellectual property. The drag from the change in inventories might have been related to softness in imports this year, which followed a surge last year that went into inventories presumably to protect against disruptions in trade arising from international disputes. The drag from net exports was due mostly to the decline in exports after an increase the quarter before. Real net exports peaked in the second quarter of 2018 and are down 1.7 percent since then, comparable to the 1.5 percent drop from the fourth quarter of 2014 to the fourth quarter of 2015.



Sentiment among small businesses continued to wobble in August near all-time highs but below the peak reached a year ago, according to the Index of Small Business Optimism from the **National Federation of Independent Business (NFIB)**. Hiring picked up, the quarter-to-quarter change in sales remained strong, profit trends were favorable, and capital spending improved. The index decreased slightly primarily due to a deterioration in expectations regarding business conditions and sales.

The Ohio economy stalled in August, according to the **Ohio coincident economic index** from the Philadelphia Federal Reserve, which was unchanged after a long string of increases. Compared with a year ago, the index was higher by 2.3 percent, up from a recent low of 1.6 percent in February. Economic activity in and around Ohio was reported to be steady on balance well into August, according to a regular survey of businesses conducted by the Cleveland Federal Reserve Bank.

The diffusion of **state-level coincident economic indexes** was mixed in August. The level was lower than the month before for six states, down from eight the prior month, which was revised down from the initial report of nine states. Compared with three months earlier, the index was lower for four states, up from two states the month before. While representative of some weakness, both readings remain below levels observed shortly before recessions in the past.

The number of negative readings among individual **state-level composite leading indexes** compiled by the Philadelphia Federal Reserve edged down to five in August from six in the prior month, which was revised down from the initial report of seven states. On average for the most recent three recessions, the index has been negative for fourteen states in the first month of recession and has been negative for eleven states three months before recession.

The **Ohio leading index**, which is designed to predict growth in the coincident index during the next six months, was essentially unchanged at -0.02 percent in August. The reading is the lowest since June 2009, although it has dipped into negative territory on several occasions in recent years before being revised to positive levels.

The yield on the 10-year Treasury note remained below the yield on the 1-year Treasury bill for the second straight month in September, continuing what is called an inversion of the **yield curve** and sustaining concerns that the economy will transition into recession in the near future. The recent inversion is noteworthy and might very well portend more slowing in the pace of economic activity.

The Conference Board's composite **Leading Economic Index (LEI)** is a well-known composite index with a long track record. In contrast to other composite indicators, the LEI was unchanged in August and rates of change over longer periods remained positive but decreased. The 6-month smoothed rate of change slowed to 0.9 percent from 1.2 percent the month before compared with a recent peak of 6.8 percent in February 2018. Among the five of ten components that made positive contributions, building permits made the largest. The Conference Board stated that the index remains "consistent with a slow but still expanding economy, which has been primarily driven by strong consumer spending."

As shown in the table below, the **consensus among forecasters** is that real GDP growth is continuing in the third quarter at a 1.5-2 percent pace, somewhat weaker than in the second quarter.

| Source  | Date    | 2019-Q3 GDP Forecast |
|---|---------|----------------------|
| Atlanta FRB (GDPNow)  | 10/4/19 | 1.8%                 |
| New York FRB (Nowcast)  | 10/4/19 | 2.0%                 |
| Philadelphia FRB (SPF*)   | 8/9/19  | 2.0%                 |
| Blue Chip   | 10/4/19 | 2.0% (1.6%-2.5%)     |
| IHS   | 10/4/19 | 1.5%                 |
| *Survey of Professional Forecasters (2 <sup>nd</sup> month of each quarter) |         |                      |

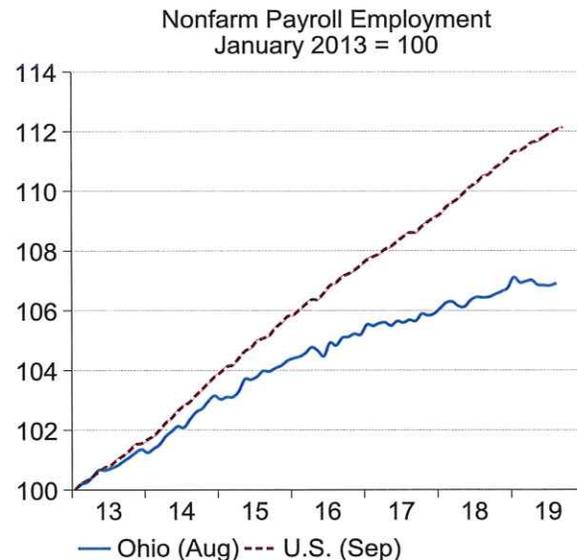
## Employment

**Nonfarm payrolls** across the country increased by 136,000 jobs in September, about as expected. The changes in the previous two months were revised up by a total of 45,000 jobs. The recent pattern of upward revisions to initial September job change reports suggests that the increase in payrolls eventually could be adjusted higher to more than 150,000. At 161,000, the average monthly change year-to-date is a step down from the average of 220,000 during the first nine months last year, although the upcoming annual revision is widely expected to adjust the 2018 figure down. Compared with a year earlier, employment is up by 2.15 million jobs, or 1.4 percent.

A key contributor to job growth again in September was the 22,000 job increase in the Government sector, where hiring of about 15,000 temporary Census workers boosted the total. The government sector added a total of 112,000 jobs in the third quarter. The largest job generator in the private sector was Education and Health Services (+40,000), where Health Care added 38,800 jobs. The next largest contributor was Professional and Business Services (+34,000), where Temporary Help Services contributed 10,200 net new jobs. The third largest contributor was Leisure and Hospitality, which added 21,000 net new jobs, mainly in Amusements, Gambling, and Recreation (+13,400).

Manufacturing employment decreased 2,000 jobs, with no real strength across industries. The average monthly gain during the most recent eight months was down to 3,000 jobs from 22,000 on average during the previous five months. Construction employment also has slowed, rising by just 7,000 jobs in September and with the 8-month average falling to 7,000 from 24,000 during the previous 5-month period. Employment changes in other sectors were modest.

In a key sign that the economy is not on the verge of recession, the **unemployment rate** decreased to 3.5 percent – its lowest level since December 1969. While the low level of unemployment is not a guarantee of future growth, the fact that the rate remains on a downtrend is a reliable indication that a business cycle downturn is not in the immediate future. The rate has typically increased at least 0.4 percentage points above its low during the previous twelve months just before or as the economy has transitioned into recession in the past.



**Average hourly earnings** unexpectedly decreased 0.1 percent during the month for a year-over-year increase of 2.9 percent. The year-over-year rate of change is down from an expansion-peak of 3.4 percent in February and 3.2 percent in August, but still up from 2.5 percent two years ago. The median year-over-year change in wages across individual workers, which is calculated with a lag by the Atlanta Federal Reserve Bank, was +3.7 percent in August.

**Ohio nonfarm payroll employment** increased by 3,700 jobs in August, but the July change was revised down from a gain of 4,500 jobs to a loss of 500 jobs. Employment has increased by 8,400 jobs year-to-date. Monthly gains have slowed to an average of 2,067 per month during the most recent twelve months from 3,250 during the same period a year earlier. The slowdown has occurred in the Trade, Transportation, and Utilities, Manufacturing, and Construction sectors.

Compared with a year earlier, Ohio employment was higher by 24,800 jobs in August. Educational and Health Services (+12,500), Leisure and Hospitality (+8,400), and Manufacturing (+5,000) made the largest positive contributions. Employment decreased in Trade, Transportation, and Utilities (-4,100), Construction (-3,600), and Information (-1,400).

The **Ohio unemployment rate** ticked higher by 0.1 percentage point to 4.1 percent in August from the expansion-low of 4.0 percent in the two previous months. The rate dropped below the 4.5 percent to 4.7 percent range in which it had fluctuated from late 2017 to early this year. The recent stretch near 4.0 percent is the lowest since spring 2001. Total employment increased by 6,434 workers in August and the number of unemployed people increased by 2,583, reflecting an increase in the labor force of 9,017 people.

Employment was said to be steady in and around Ohio, according to the Cleveland Fed survey, with hiring varying by industry. Professional and business services firms continued adding workers due to strength in demand. Construction contractors added some workers, but generally had sufficient staff to handle activity. Employment at trucking firms and retailers was stable. Manufacturers did not lay off workers, but some reported cutting shifts, reducing overtime, using more temporary workers, or reducing headcount by attrition.

Across the country in August, the unemployment rate decreased notably from the month before in five states – Alabama, Illinois, and South Carolina (-0.2 percentage points each) and Maine and Virginia (-0.1 percentage points each). The unemployment rate increased in three states – Delaware, Wisconsin, and Wyoming (+0.1 point each). Changes in the unemployment rate in the remaining 42 states and the District of Columbia were not statistically significant.

Among the contiguous states, employment increased on a year-over-year basis in Kentucky (+1.0%), West Virginia (+0.7%), Indiana and Pennsylvania (+0.6%), and Ohio and Michigan (+0.4%). Manufacturing employment increased year-over-year by 1.4 percent in Kentucky, 0.9 percent in West Virginia, 0.7 percent in Ohio, and 0.3 percent in Michigan, and decreased 0.6 percent in Indiana and 1.4 percent in Pennsylvania.

## Consumer Income and Consumption

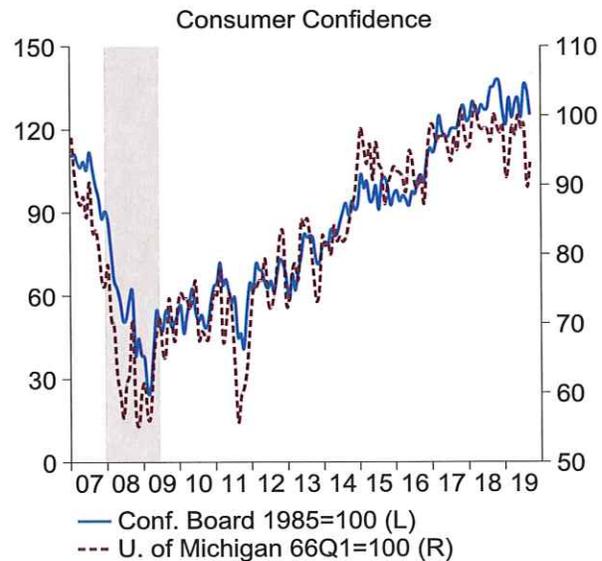
Healthy labor markets continued to support further growth in household incomes. **Personal income** increased by 0.4 percent after a 1-month slowdown to 0.1 percent the month before. **Wage and salary disbursements** increased 0.6 percent, following a 0.2 percent increase in July. Compared with a year earlier, personal income was higher by 4.6 percent and wage and salary disbursements were up by 5.3 percent.

All of these measures of income growth are above inflation, resulting in gains in real purchasing power. The Consumer Price Index (CPI) increased 0.1 percent in August to 1.8 percent year-over-year, whereas the price index for personal consumption expenditures was unchanged on the month and up just 1.4 percent from a year earlier. The median CPI calculated by the Cleveland Fed, which often in the past has been a useful indicator of future inflation, was up 2.4 percent from a year ago – still below increases in broad measures of household income.

Despite the strong growth in income, **personal consumption expenditures** increased just 0.1 percent in August after five strong months. Spending on durable goods increased 0.7 percent in August in line with the increase in unit sales of light motor vehicles during the month. Vehicle sales increased an additional 1.1 percent in September to 17.2 million units. Purchases of non-durable goods decreased 0.2 percent after five straight monthly gains, reflecting weaker spending on food and gasoline. Spending on services increased 0.2 percent, extending the long string of gains, due in part to a large pull-back in spending on food services.

In and around Ohio, retail spending increased modestly in recent weeks, according to the Cleveland Fed survey. Food retailers reported seasonal sales increases related to children returning to school. Apparel retailers said that while activity had been flat in recent weeks, many had positive expectations for near-term sales. Auto dealers indicated that lease returns and sales incentives added to sales in July.

**Consumer attitudes** deteriorated sharply in September, based on the Conference Board survey, but improved a bit as measured by the University of Michigan survey. The overall Conference Board index fell 6.8 percent due to a 10.0 percent decline in expectations and a 4.0 percent decline in assessments of current conditions. The Michigan index was marginally higher on small gains in both expectations and current conditions. The deterioration in the Conference Board index appears to reflect reactions to the announcement of additional increases in tariffs in early August and the subsequent drop in stock prices. Nonetheless, strength in employment and earnings is likely to continue to maintain a sufficiently high level of confidence and support recent trends in spending.



## Industrial Activity

**Industrial production** increased 0.6 percent in August and the July decrease was revised up from -0.2 percent to -0.1 percent, lifting the index to 0.9 percent above its April low. Manufacturing output increased 0.5 percent after an unrevised decrease of 0.4 percent the month before. Mining was up 1.4 percent, almost reversing the hurricane-related decline the month before, and Utility output increased 0.6 percent on top of a large positive weather-related swing in the prior month.

The increase in manufacturing production reflected gains in most major categories of durable goods, with the exception of motor vehicles and parts, which fell by 1.0 percent, as assemblies dropped below early-August production schedules. Production in other major sectors with a disproportionate share of Ohio manufacturing employment was higher the month before but generally still below levels for the previous year. Primary Metal production was up 1.3 percent on the month and down 1.1 percent on the year. Fabricated Metal production was up 0.2 percent on the month and up 0.2 percent on the year. Machinery production rebounded 1.6 percent on the month but was down 2.0 percent from a year ago.

In and around Ohio manufacturing activity seemed to soften according to the Cleveland Fed survey. Trade tensions and related sources of uncertainty were said to have curtailed capital spending. In addition, weaker overseas demand resulted in lower prices and greater competition with foreign manufacturers. A few sources said that inventories increased because demand fell more than anticipated. Expectations ranged from positive to negative across individual manufacturers.

Production at General Motors (GM) stopped in mid-September, when its approximately 48,000 workers went on strike. GM accounts for approximately one-fifth of domestic auto production, which in turn accounts for approximately 2 percent of GDP, according to Macroeconomic Advisors. The strike is expected to affect third, fourth, and possibly first quarter real GDP by a few tenths of a percentage point, depending on the duration of the shutdown and the extent to which production is raised above trend after production restarts.

Consistent with this picture of slowing manufacturing activity and possibly pointing to additional weakness ahead, purchasing managers in manufacturing reported more signs of weakening than of strengthening activity again during September. The **Purchasing Managers Index (PMI)** decreased by 1.3 points to 47.8 – matching the January 2016 level that occurred during a stretch of five consecutive readings below 50 and the lowest since June 2009. The August reading represents contraction in the manufacturing sector although it remains consistent with continued, albeit slower, real GDP growth.

Of the eighteen industries tracked by the Manufacturing ISM<sup>®</sup> *Report on Business*, only three reported growth in the latest month, down sharply from nine in the previous month. Almost all eighteen industries reported growth just a few months ago. Among industries with a major effect on Ohio



manufacturing employment, Fabricated Metal Products, Primary Metals, Transportation Equipment, and Machinery all reported contraction.

A source in the Transportation Equipment industry said the “outlook remains cautious. Orders seem to be decreasing.” A contact in the Machinery industry reported “Demand is softening on some product lines, backlogs have reduced, and dealer inventories are growing.” A source in Fabricated Metal Products reported that the “General market is slowing even more than a normal fourth-quarter slowdown.” Negative effects from trade disputes or tariffs were cited by contacts in a number of industries, including Electrical Equipment, Appliances & Components and Food, Beverage & Tobacco Products.

### **Construction**

**Construction put-in-place** was weak again in August, rising just 0.1 percent after no change in July and declines in May and June. Private sector construction was flat in August, extending a string of weak monthly performance stretching back two years and was down 4.0 percent from a year ago. Within the Private sector, weakness has been centered in Residential, which has experienced declines in the Single-Family and Improvements categories during the past year. Activity picked up in the most recent two months with gains in Single-Family construction lifting overall Residential construction by 0.6 percent in July and 0.9 percent in August.

Private Nonresidential construction put-in-place fell 1.0 percent in August for the second monthly decline in a row and the fourth in five months. Leading the decline was construction in the Commercial and Power segments. Construction activity increased in Communications and Manufacturing without making meaningful contributions to the total. Public construction moved higher by 0.4 percent after a 1.4 percent gain the month before mainly due to increases in Education and Highway construction.

In and around Ohio construction was steady according to the Cleveland Fed survey. Nonresidential builders continued to report stable and strong demand, with new projects in multiple sectors and generally strong backlogs. Expectations are positive through 2020. In contrast, homebuilders noted slightly weaker demand, and in some cases blamed a deterioration in assessments of the economy. Realtors, on the other hand, reported better traffic and sales, which they attributed to lower mortgage rates, stronger household formation and rising rents.

The **Housing Market Index (HMI)** from the National Association of Homebuilders (NAHB) improved again in September, extending the partial recovery from the steep drop during 2018. The index, which is based on assessments of current sales, expected sales in six months, and traffic of prospective buyers of new homes, remains 8.1 percent below the recent high in December 2017. The HMI for the Midwest was unchanged at its



highest level since last October but remains 22.4 percent below its December 2017 level.

Housing activity strengthened in August. **Housing starts** increased by 2.7 percent in August on a 3-month moving average basis, more than recouping a 1.5 percent decline in July that originally reported as -2.1 percent. The gain was entirely due to a 4.1 percent increase in Single-Family starts, as Multi-Family starts edged down by 0.4 percent. Similarly, starts increased 10.0 percent on a 3-month moving average basis across the Midwest, reflecting a 7.2 percent rise in Single-Family starts and a 16.0 percent rise in Multi-Family starts. Compared with a year earlier, starts were up 4.6 percent across the country and 8.5 percent in the Midwest. The year-over-year increase in the Midwest was the first since September 2018. The more-forward-looking housing permits exhibited similar strength.

**Home sales** also increased in August on a 3-month moving average basis, rising 0.8 percent across the country and 2.1 percent in the Midwest. New home sales were also strong across the country, rising 4.0 percent, but fell 5.6 percent in the Midwest for the fourth straight monthly decline. Compared with a year ago, new home sales were up 11.7 percent nationally but down 13.3 percent in the Midwest based on 3-month moving averages.

**Home prices** posted their 89<sup>th</sup> straight monthly increase in July to 3.2 percent above the year earlier level, 53.4 percent above the cyclical low reached in February 2012 and 13.5 percent above the previous peak in February 2007, according to the Case-Shiller index. Prices continued to decelerate in most major metropolitan areas.



CLARK SCHAEFER HACKETT  
CPAs & ADVISORS

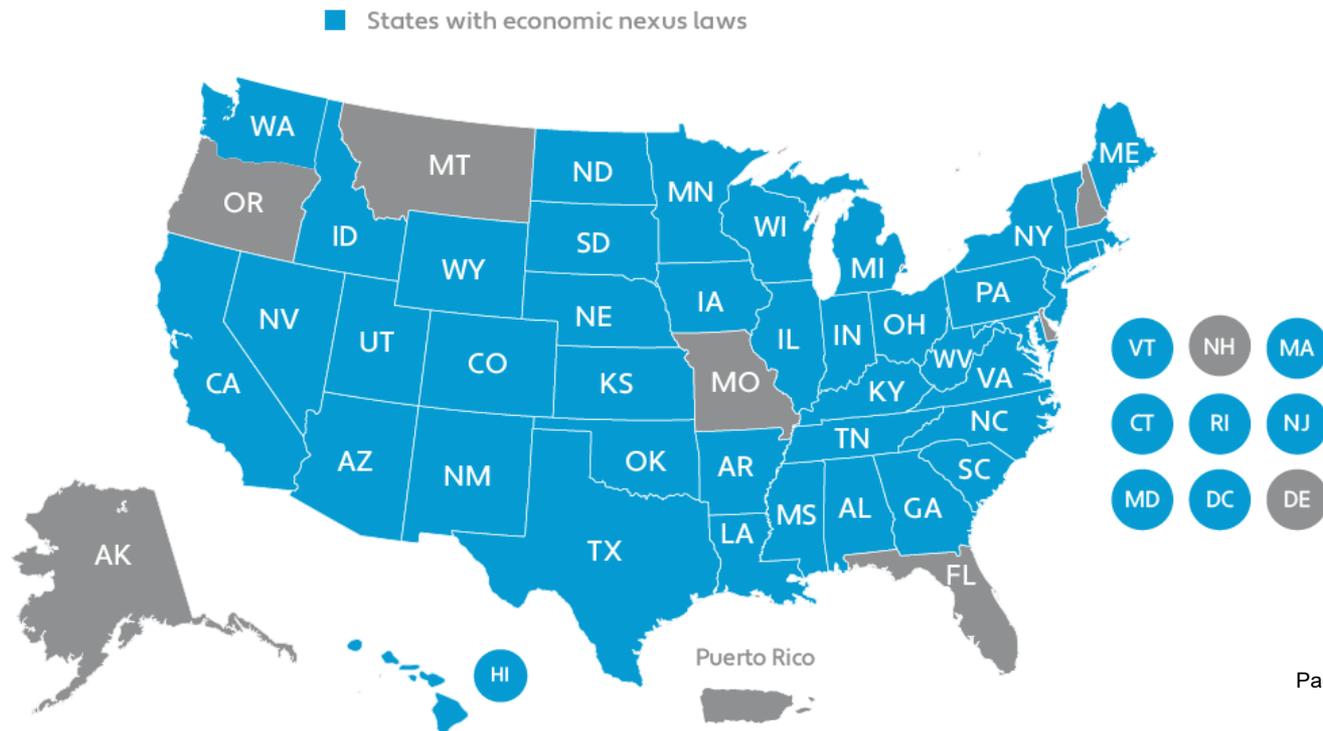
# Ohio Manufacturers Association State and Local Tax Update

Presented by:

**Phil Hurak, Shareholder**

# Wayfair – 18 months out

- Wayfair decided by US Supreme Court in June 2018, since this time, nearly all states have responded with a formal “economic nexus” law change
- Additionally, 4 states have responded legislative with an economic nexus test for income tax (PA, HI, MA, TX – pending)



# Implications of Wayfair

- If your company has no physical presence but meets the threshold requirements of \$100,000 or 200 transactions (or other state requirements), you should register and begin collecting sales tax as soon as your system allows.
- A seismic shift in the state sales and use tax landscape, now expanding into income/franchise taxes under same “economic nexus” approach.
- States increasingly are signaling a willingness to test the limits of their constitutional authority.
- Expect new gross receipts taxes (i.e. Ohio CAT).
- Beware of the historical positions on PL 86-272 with regard to income tax.
- Action at the local level, by both large and small cities, is next.

# Ohio Legislative Update

- After a delay into late July, Ohio passed its biennial budget for FY2020-2021
- Highlights include:
  - New Opportunity Zone tax credit equal to 10% of an individuals investment in a qualified Ohio Opportunity Zone investment fund
  - New TechCred program providing business with up to \$30K of cash grant funding for technology related training
  - Reduction of individual income tax rates by 4% across the board
  - Adopted “Wayfair” standards for SUT - \$100,000 sales/200 transactions
  - Expansion of Ohio Job Retention Tax Credit program

# Ohio Credits & Incentives Update

- Expansion of Ohio Job Retention Tax Credit
- New Opportunity Zone Tax Credit
  - A nonrefundable 10% tax credit of total qualified Opportunity Zone investments in Ohio (all investment must be done in Ohio to qualify)
  - Up to \$1M in credit per individual (total cap of \$50M in credits)
  - Applications open during January following the year of investment, first application to open January 1, 2020
- InvestOhio Program – A nonrefundable 10% investment tax credit against the personal income tax (PIT) for an eligible investor that makes a qualifying investment in a small business entity (SBE) that, within 6 months of the investment incurs eligible costs
  - Requirement of assets less than \$50M or annual sales of \$10M or less to qualify
  - Eligible expenditures for new equity include building, M&E, new employees

# 2020 Capital Agenda

- Now is the time for 2020+ planning
  - Trade implications
  - Low interest rates
  - Continued deal-flow
  - Reshoring/Foreign Investment
  - Technology in all we do
- Capital Agenda Analysis
  - Hard Capital – Building/M&E
  - Human Capital – Hiring/Relocation/Training
  - R&D Capital – Investments in innovation
  - Technology Capital – Investments in technology

# 2020 Capital Agenda

- Every type of “Capital” offers various tax or non-tax credits or incentives at the Federal/State/Local levels
- End-of-year planning is the time to share Capital Agenda plan with advisors to help maximize potential incentives
- Common incentives include:
  - Job creation tax credits
  - R&D tax credits
  - Property tax abatements
  - Training Grants
  - Sales tax exemptions for technology investments

# Closing Thoughts

- Continue to see focus on audits, especially SUT
- Federal R&D permanent and recent focus in Ohio on the R&D tax credit
- Future economic uncertainty – how can tax contribute to the organization

# Questions?

**TO: OMA Tax and Finance Committee**  
**FROM: Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: November 6, 2019**

---

### **Overview**

The state budget bill was the key tax bill over the first nine months of the General Assembly. True to his word Governor DeWine introduced a bill with minimal tax implications. The House and Senate had different ideas and competing tax proposals were offered. At the end of the day an overall tax cut was agreed to and manufacturers had several provisions included to their benefit. More tax legislations impacting manufacturers is expected this fall.

### **Tax Legislation**

#### **Senate Bill 8 – Ohio Opportunity Zone Tax Credits**

The bill would authorize tax credits for investments in an Ohio Opportunity Zone. Federal law allows states to designate economically distressed areas. Once the zone is certified by the Secretary of the Treasury, certain investments made to benefit the zone are eligible for preferential federal tax treatment that meets certain criteria as "opportunity zones." The bill would allow state tax incentives to compliment the federal tax treatment. The CAT is not an included tax credit. The bill shot through the Senate and was passed by the full body earlier this month. The House has held two hearings on the bill. The budget bill included opportunity zone legislation.

#### **House Bill 19 – Pink Tax Exemption**

The bill would exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation. The bill had four hearings in the House Ways and Means Committee before being amended into Senate Bill 26 which also restored the tax exemption for lawyers and lobbyists.

#### **Senate Bill 26 – Tax Deductions for Teachers and Businesses**

The bill became a hodgepodge of tax proposals and used as the vehicle to restore tax provisions which were removed in the budget. The bill authorizes a state income tax deduction for teachers' out-of-pocket expenses for professional development and classroom supplies. The bill also restores the business income deduction for lawyers and lobbyists and exempts feminine hygiene products from sales and use tax (the Pink Tax). The bill passed both the House and Senate last month.

#### **Senate Bill 37 – Motion Picture Tax Credit**

The bill makes a variety of changes to the current motion picture tax credit and expands it to allow for more types of entertainment productions. There is no new money tied with this bill, however its sponsor, Senator Schuring has indicated he would like to see the credit more than double to \$100 million. The Senate voted out the bill after six hearings. No new money was included in the bill.

#### **House Bill 60 – Diaper Sales Tax Exemption**

The bill exempts from sales and use tax the sale of child and adult diapers. It has had three hearings in the House Ways and Means Committee.

### House Bill 62 – Transportation Budget

The transportation budget bill makes appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021.

The Governor, based on the recommendations from a diverse group of experts including OMA members, introduced a budget that would increase the motor vehicle fuel tax by 18 cents and would index the tax beginning in 2020.

The House gutted the Governor's proposal and instead passed a bifurcated tax rate. The House placed a 20 cent increase on diesel and a 10.7 cent increase on gasoline. The House included a new \$200 registration fee for electric vehicles and a \$100 fee for hybrid vehicles.

In better news the House removed the 150-mile radius restriction for travel under the special regional heavy hauling permit, thus allowing vehicles under the permit to travel further distances that exceed standard size and weight restrictions.

The Senate was adamant that the motor fuel tax should be lower. The Senate passed version included a 6 cent increase on the current motor vehicle fuel tax. Senators also lowered the registration fees by \$25 for electric and hybrid vehicles to \$175 and \$75 respectively.

This set up a showdown in conference committee on who would prevail and where the tax increase would be set. After much delay, including missing the statutory deadline, the House and Senate came to an agreement. The final bill version reinserted the bifurcated approach. Diesel fuel will be increased by 19 cents and gasoline by 10.5 cents. Electric vehicles will have a registration fee of \$200 and hybrids \$100.

The heavy haul permit survived, which will make overweight truck hauling less cumbersome in Ohio.

The OMA testified in support of the Governor's original proposals and a reasonable fee on electric vehicles. The OMA was adamantly opposed to any bifurcation of the fuel rates since truck companies simply pass on any fuel tax to business customers. OMA notified the conference committee of these problems along with working with other business groups to amplify the problems of a bifurcated rate.

### House Bill 92 – County Sales Tax Voting

The bill would require voter approval of any increase in the rate of a county sales tax. The bill has had one hearing.

### Senate Bill 95 – State and Local Tax Inducements

The bill will enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers. The bill provides a CAT credit the integrated supply chain to a qualifying project. The OMA submitted a letter with likeminded allies regarding protecting the integrity of the CAT. The Senate passed the bill. The House Ways and Means Committee held their first hearing on the bill at the end of October.

#### Senate Bill 109 – Workforce Scholarship Program

SB 109 establishes the Workforce Scholarship Program. The bill would terminate the provisions of the Scholarship Program on December 31, 2023 and authorize tax credits for graduates of the Scholarship Program and their employers. The bill includes a CAT credit. It had its second hearing in early October.

#### House Bill 134 – March Sales Tax Holiday

The bill provides a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes. The bill had its first hearing in October.

#### Senate Bill 153 – Job Retention Tax Credit Manufacturer Eligibility

This bill was crafted by the OMA Tax Committee working with Chairman Dolan.

The purpose of Ohio's Job Retention Tax Credit ("JRTC"), as its name implies, is to foster job retention through increased capital investment in Ohio. However, over the years, too few Ohio job creators have taken advantage of the JRTC. The qualifying criteria with respect to applicants' minimum workforce size and capital investment threshold are too high and have been a barrier for most companies to apply for the credit.

In order to ensure we are supporting Ohio companies that are competing globally, this new legislation is designed to increase the number of manufacturers and eligible Foreign Trade Zone companies to apply for the JRTC, thereby creating an incentive for Ohio employers to make capital investments that preserve existing jobs.

The bill would:

- Allow companies headquartered in Foreign Trade Zones to be eligible to apply without meeting current payroll and employee count minimums
- Eliminate the minimum payroll size and number of employees required for manufacturers to apply for the JRTC
- Require a minimum capital investment for manufacturers of the lesser of \$50,000,000 or an amount equal to five percent of the tangible personal property at the project site
- Require manufacturers to maintain their FTE count during the term of the credit

While the bill does expand the number of companies and projects eligible to apply for a JRTC, it would not alter the existing cap on the amount of credits that may be awarded annually by the tax credit authority. In 2019, the JRTC is capped at \$130MM. Each year the cap increases by \$13MM until 2024. For 2024, and for each year thereafter, the maximum credits that may be awarded annually will be capped at \$195MM.

The bill had one hearing in the Senate and was included in the state operating budget.

#### House Bill 162 – Motion Picture Tax Credit

The bill increases the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium. The OMA has successfully fought a lonely battle recently against increasing this tax credit. It appears once again the General Assembly will try hard to increase this credit.

The bill has not had a hearing. It would appear that the House does not have much interest in expanding the amount of the credit since the House passed version of the budget bill eliminates the credit in its entirety.

#### House Bill 166 – State Operating Budget

On March 15<sup>th</sup> Governor DeWine unveiled his first operating budget. Unlike most recent budgets, this version did not include major tax reforms. Instead the Governor focused on investing in the following:

- Ohio's Workforce and Innovation
- Ohio's Local Communities
- Recovery
- Ohio's Children and Families
- Ohio's Natural Wonders

The final passed version made several major changes to the tax code impacting manufacturers.

Included in the final language were two priorities of the OMA Tax Committee, as well as a provision that was a priority for Ohio's general business community. Thank you to the members who worked on these efforts.

Key tax provisions affecting manufacturers include:

- **EXEMPTION FOR FOOD MANUFACTURERS:** Expands the sales-and-use tax exemption for cleaning equipment and supplies used to clean equipment that produces or processes food. The exemption, which had applied only to dairy food processors, will now be afforded to the makers of any food for human consumption.
- **CREDITS FOR CAPITAL INVESTMENT:** Expands eligibility for the state's Job Retention Tax Credit. Aimed at manufacturers, the provision expands eligibility based on new capital investment, as opposed to payroll or employee count.
- **BUSINESS INCOME TAX DEDUCTION:** Retains the business income tax deduction at the current level of \$250,000 for pass-through entities, as well as the 3% special flat tax rate for income above that threshold. Provides an across-the-board state income tax cut of 4%. The OMA worked with business allies to save the existing deduction, which at times seemed doomed during the process.

#### House Bill 175 – Tax Exemption on Goods Movement

The bill provides an exemption from sales and use tax for things used primarily to move completed manufactured products or general merchandise. The bill has been referred to the House Ways and Means Committee and has had two hearings this fall.

### House Bill 197 – Tax Code Corrections

The bill would enact the Tax Code Streamlining and Correction Act to make technical and corrective changes to the laws governing taxation. Last month the House voted unanimously to pass the bill.

### House Bill 378 – Striking Worker Unemployment Benefit

The bill would provide unemployment benefits to striking workers. This adds a new group of workers eligible to receive benefits in Ohio and would put even more stress on the system.

### **Tax News**

#### Sales Tax Exemption for All Food Manufacturers Now in Effect

Good news for all food manufacturers! During last summer's debate on the state budget (House Bill 166), the OMA led tax changes for food manufacturers as lawmakers approved an expanded sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. (Previously, the exemption applied only to dairy food processors. Now it applies to all Ohio food manufacturers.)

The expanded exemption went into effect Oct. 1, 2019. Make sure you are tracking the necessary information.

#### Ohio Supreme Court Grants Jurisdiction to Hear Muni Tax Case

Earlier this month, the Ohio Supreme Court granted jurisdiction to hear the municipalities' appeals to the municipal income tax cases. The Court granted the appeal on the Home Rule amendment issue. The Court will now schedule oral arguments. The OMA is joining a group of business associations in filing an amicus brief.

#### Tax Foundation: Ohio is a Top 10 State for Business Property Taxes, Unemployment Insurance

The Washington, D.C.-based Tax Foundation has released its 2020 State Business Tax Climate Index, with the Buckeye State in the study's top 10 for business property taxes (No. 9) and unemployment insurance taxes (No. 7).

Overall, the index ranked Ohio 38th out of 50 — due in large part to the foundation's philosophical opposition to the state's Commercial Activity Tax (CAT). As reported earlier, the foundation has criticized the CAT even as analysis from other organizations indicates that Ohio is one of the top states in which to do business.

Ohio's broad-based 0.26% flat CAT on business gross receipts in excess of \$1 million was created by a 2005 law with strong support from the OMA. Prior to its enactment, Ohio was at a major disadvantage in attracting new manufacturing due to the machinery and inventory tax.

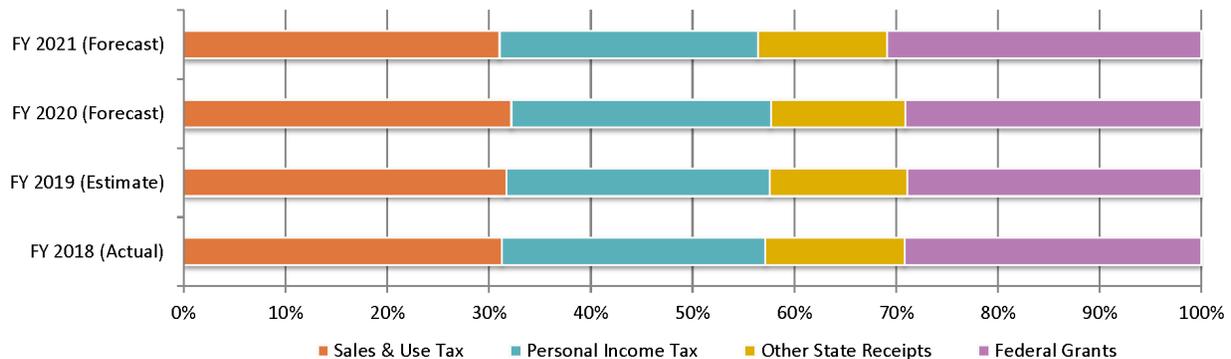
## Main Operating Budget in Brief

### House Bill 166 – As Enacted

[www.lsc.ohio.gov/BudgetCentral](http://www.lsc.ohio.gov/BudgetCentral)

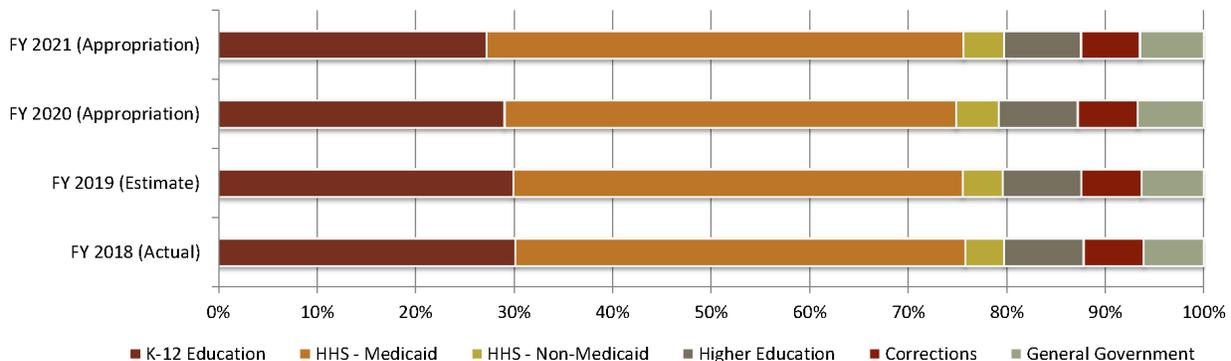
#### Where do GRF moneys come from?

| Source (\$ millions)         | FY 2018 (Actual)  | FY 2019 (Estimate) | FY 2020 (Forecast) | FY 2021 (Forecast) |
|------------------------------|-------------------|--------------------|--------------------|--------------------|
| Sales & Use Tax              | \$10,148.1        | \$10,551.4         | \$11,014.1         | \$11,181.9         |
| Personal Income Tax          | \$8,411.0         | \$8,600.0          | \$8,721.6          | \$9,155.2          |
| Other Tax & Non-Tax Receipts | \$4,442.2         | \$4,500.5          | \$4,515.4          | \$4,564.5          |
| Federal Grants               | \$9,469.9         | \$9,615.8          | \$9,954.5          | \$11,146.2         |
| <b>GRF Source Total</b>      | <b>\$32,471.2</b> | <b>\$33,267.7</b>  | <b>\$34,205.6</b>  | <b>\$36,047.8</b>  |
| <b>% Change</b>              | —                 | 2.5%               | 2.8%               | 5.4%               |
| <b>GRF Tax Total</b>         | <b>\$22,423.2</b> | <b>\$23,093.5</b>  | <b>\$23,725.9</b>  | <b>\$24,326.3</b>  |
| <b>% Change</b>              | —                 | 3.0%               | 2.7%               | 2.5%               |



#### Where do GRF moneys go?

| Program Category (\$ in millions)    | FY 2018 (Actual)  | FY 2019 (Estimate) | FY 2020 (Appropriation) | FY 2021 (Appropriation) |
|--------------------------------------|-------------------|--------------------|-------------------------|-------------------------|
| K-12 Education                       | \$9,562.9         | \$9,728.3          | \$9,838.0               | \$9,754.0               |
| Health & Human Services—Medicaid     | \$14,482.5        | \$14,825.6         | \$15,549.9              | \$17,388.6              |
| Health & Human Services—Non-Medicaid | \$1,255.8         | \$1,309.9          | \$1,453.8               | \$1,470.1               |
| Higher Education                     | \$2,553.7         | \$2,596.9          | \$2,721.3               | \$2,807.4               |
| Corrections                          | \$1,940.3         | \$1,993.0          | \$2,069.5               | \$2,149.8               |
| General Government                   | \$1,932.0         | \$2,046.9          | \$2,267.3               | \$2,321.7               |
| <b>GRF Program Total</b>             | <b>\$31,727.2</b> | <b>\$32,500.6</b>  | <b>\$33,899.8</b>       | <b>\$35,891.7</b>       |
| <b>% Change</b>                      | —                 | 2.4%               | 4.3%                    | 5.9%                    |



The budget provides state and federal GRF appropriations totaling \$33.90 billion for FY 2020 and \$35.89 billion for FY 2021, increases of 4.3% and 5.9%, respectively. Medicaid and K-12 Education account for 47.2% and 28.1%, respectively, of the biennial total. State-source GRF appropriations total \$23.94 billion in FY 2020 and \$24.74 billion in FY 2021, increases of 4.7% and 3.3%, respectively. K-12 Education and Medicaid represent 40.2% and 24.3%, respectively, of the biennial total. Across all funds, main operating budget appropriations total \$70.28 billion in FY 2020, an increase of 5.2%, and \$72.99 billion in FY 2021, an increase of 3.8%.

### Medicaid, Health, and Other Human Services

- Across all agencies and funds, the Medicaid budget totals \$28.64 billion in FY 2020, an increase of 5.8%, and \$30.74 billion in FY 2021, an increase of 7.3%. About two-thirds of this spending will be reimbursed by the federal government. The GRF portion of this spending is \$15.55 billion (54.3%) in FY 2020 and \$17.39 billion (56.5%) in FY 2021.
  - \* The state share of GRF Medicaid spending is \$5.59 billion in FY 2020 and \$6.24 billion in FY 2021. This spending grows (7.7% in FY 2020 and 11.5% in FY 2021) faster than overall Medicaid spending due partly to the decreases in federal reimbursement rates for the Children’s Health Insurance Program (CHIP) and the Affordable Care Act (ACA) expansion population (Group VIII). The reimbursement rate for CHIP decreases from the current ACA-enhanced rate of 97% to about 85% beginning October 1, 2019 and then back to the regular match rate of about 74% beginning October 1, 2020. The rate for Group VIII decreases from 93.5% in FY 2019 to 91.5% in FY 2020 and 90.0% beginning in FY 2021. In FY 2021, lower growth in state non-GRF Medicaid spending also contributes to higher growth in state GRF Medicaid spending.
  - \* The budget provides additional funding to increase the hourly rates for direct support personnel under Waiver programs administered by the Department of Developmental Disabilities and for certain PASSPORT and Assisted Living services. It also provides additional funding for ICFs/IID and nursing facilities and a supplemental dispensing fee for retail pharmacies under the care management system. The specified rate increases were vetoed by the Governor but the funding levels recommended by the Conference Committee on H.B. 166 are maintained.
- The budget provides \$9.75 million per year for the Recovery Ohio Law Enforcement initiative and earmarks in each year: (1) \$3.4 million for creating narcotics task forces focusing on cartel trafficking interdiction, (2) \$3.25 million for a specialized Narcotics Intelligence Center, (3) \$2.5 million for the task forces to build partnerships with local law enforcement, and (4) \$600,000 for a uniform records management and data intelligence system. It also provides \$5.2 million in FY 2020 to fund a forgivable loan to Ohio State for the development and clinical evaluation of a non-opiate, non-addictive pharmaceutical treatment intervention.
- The budget increases Fund 5T20 funding for ADAMHS Boards from \$5 million in FY 2019 to \$21 million in FY 2020 and earmarks \$9.25 million of the increase to develop and expand crisis services infrastructure to support families in a variety of settings. FY 2021 funding for ADAMHS Boards is \$11 million. It also increases funding for Chronic Disease, Injury Prevention and Drug Overdose by 119.6% to \$7.7 million in FY 2020 and 3.0% to \$7.9 million in FY 2021 to increase naloxone access, to create a loan repayment program, and to expand public health education.
- The budget increases the Veterans’ Homes appropriation by 51.6% to \$41.4 million in FY 2020 and 9.6% to \$45.4 million in FY 2021 to serve veterans with more complex health-related challenges with person-centered care in Ohio’s veterans homes. It also provides \$3 million per year for the transcranial magnetic stimulation pilot program for veterans with substance use disorders or mental illness.
- The budget provides \$186.1 million in FY 2020 for Family and Children Services, an increase of 140.9% over FY 2019, and \$186.4 million in FY 2021. It requires not less than \$125.0 million per year to be used to support county public children services agencies (PCSAs) and earmarks another \$25.0 million per year to prevent youth from entering custody of a PCSA and to provide support services from multiple systems and \$8.5 million per year to support the Kinship Care Navigator Program. The budget also provides \$2.5 million per year to fund services to reduce homelessness in youth and pregnant women.
- Funding for Continuum of Care Services increases from \$76.7 million in FY 2019 to \$84.0 million in FY 2020 and \$82.8 million in FY 2021. The increased funding is primarily used to expand OhioSTART, an intervention program that serves children who have a parent with a substance abuse issue. The budget provides \$6 million in FY 2020 and \$12 million in FY 2021 in Medicaid funding to prevent custody relinquishment of multi-system children and youth. It also provides \$4.8 million per year, an increase of \$3.3 million over FY 2019, for rape crisis centers and \$1.0 million per year for domestic violence programs.
- The budget increases funding for Environmental Health/Radiation Protection to \$2.8 million per year, an increase of \$1.6 million over FY 2019, to abate and demolish lead-blighted properties for lower-income families and reimburse individuals for the cost of becoming licensed in lead abatement. The budget also creates a nonrefundable lead abatement tax credit with a cap of \$5 million per year.
- FY 2021. The significant funding increase in FY 2020 will be used to support several largely one-time funding initiatives, including \$18.0 million for the K-12 prevention education material and resource initiative, \$13.0 million to expand statewide multi-media prevention, treatment, and stigma reduction campaigns, and \$5.0 million to expand the number of individuals, including law enforcement, trained in mental health first aid.
- The budget increases funding for Help Me Grow by 51.5% to \$30.3 million in FY 2020 and 29.7% to \$39.3 million in FY 2021 to increase home visiting services for at-risk, expectant mothers to reduce infant mortality and increases funding for Infant Mortality Health Grants from \$1.0 million in FY 2019 to \$3.0 million per year. It also provides \$5 million in FY 2020 to support childhood literacy efforts in the state.

### K-12 Education

- School foundation aid is appropriated at \$8.66 billion in FY 2020, an increase of \$290.5 million (3.5%) over FY 2019, and \$8.79 billion in FY 2021, an increase of \$132.5 million (1.5%) over FY 2020. The budget distributes this aid in three components: (1) the first component provides every school district and joint vocational school district (JVSD), in both FY 2020 and FY 2021, the same amount of formula aid received in FY 2019; (2) the second component provides \$275 million in FY 2020 and \$400 million in FY 2021 under the new Student Wellness and Success Funds (SWSF) initiative; and (3) the third component provides \$15.5 million in FY 2020 and \$23 million in FY 2021 for districts experiencing enrollment growth between FY 2016 and FY 2019. SWSF and enrollment growth funds will both be distributed based on where students are enrolled.
  - \* The enrollment growth supplement provides a base per pupil funding of \$20 in FY 2020 and \$30 in FY 2021, which will then be adjusted up or down based on a district’s average annual enrollment growth between FY 2016 and FY 2019.

\* The base SWSF will be allocated to school districts, JVSs, and community schools based on the number of students they educate and according to a sliding scale based on federal census poverty data. The per pupil amounts range from \$20 to \$250 per pupil in FY 2020 and from \$30 to \$360 per pupil in FY 2021. The enhanced SWSF provides rural low-income districts with an additional per pupil amount of \$50 in FY 2020 and \$75 in FY 2021 adjusted by the district's poverty index. Every school district, JVS, and community school is guaranteed to receive a minimum of \$25,000 in FY 2020 and \$36,000 in FY 2021. Schools are required to use the SWSF funds for certain services that address the non-academic barriers to student success. They are also required to coordinate with at least one community partner in utilizing SWSF funds and report annually on how the SWSF funds were spent.

- The budget increases the current biennium's capital funding for the school building assistance program by \$100 million and provides \$20 million in FY 2021 to reestablish the school bus purchase assistance program.
- The budget provides \$57.2 million in FY 2020 and \$121.0 million in FY 2021, increases of 20.0% and 111.5%, respectively, for the income-based EdChoice expansion. These increases are used to provide additional scholarships as the program expands to all grades for the first time beginning in FY 2021. The budget maintains the FY 2019 maximum amounts of \$6,000 for high school students and \$4,650 for elementary school students for both EdChoice and Cleveland Scholarship programs.
- The budget provides \$30 million per year for the newly established Quality Community School Support initiative. This funding will be distributed to a community school designated as a Community School of Quality on a per pupil basis (\$1,750 for each economically disadvantaged student and \$1,000 for each student who is not designated as economically disadvantaged). It also provides \$20.6 million per year, an increase of \$4 million over FY 2019, to fund community school facilities.
- The budget provides \$3 million in FY 2020 to support graduate coursework for high school teachers to earn credentialing to teach College Credit Plus courses in a high school setting and \$1.5 million in FY 2020 to support teachers to receive credentialing to teach computer science.

### Higher Education and Workforce Development

- The budget limits the increases to in-state undergraduate tuition charged by state universities and their regional campuses to 2% per year and authorizes community and technical colleges to increase the tuitions by up to \$5 per credit hour per year. The budget subjects certain fee increases to the approval of the Department of Higher Education (DHE). It also requires, instead of authorizes as under current law, each state university to establish an undergraduate tuition guarantee program.
- The state share of instruction (SSI) is funded at \$2.02 billion in FY 2020, an increase of 2.1%, and \$2.04 billion in FY 2021, an increase of 1.0%. The budget earmarks \$1.55 billion in FY 2020 and \$1.57 billion in FY 2021 for universities and their regional campuses and \$465.4 million in FY 2020 and \$470.1 million in FY 2021 for community and technical colleges. The budget requires institutions to use the annual increases to provide need-based aid, counseling, support services, and workforce preparation services to students. It establishes the Employment Metrics Consultation to study weights for post-graduation employment measures to be incorporated into the SSI formula.
- The budget increases overall funding for the Ohio College Opportunity Grant (OCOG), a need-based student financial aid program by 21.2% per year to \$122.3 million in FY 2020 and \$148.2 million in FY 2021. The earmark for public and private nonprofit institution students increases from \$95.4 million in FY 2019 to \$116.6 million in FY 2020 and \$142.6 million in FY 2021. The remainder (about \$5.6 million per year) is for private for-profit career college students.
- Funding for Choose Ohio First Scholarships increases by 74.1% to \$28.2 million in FY 2020 and 42.6% to \$40.2 million in FY 2021 to fund additional scholarships that target under-represented student populations in STEM disciplines and education. Funding for War Orphans and Severely Disabled Veterans' Children Scholarships increases by 33.3% to \$11.2 million in FY 2020 and 12.0% to \$12.5 million in FY 2021. National Guard Scholarship funding increases by 1.0% to \$20.6 million in FY 2020 and 3.0% to \$21.2 million in FY 2021.
- The budget provides \$25 million per year for the newly established Industry-Recognized Credentials High School Students initiative and earmarks this funding in each year as follows: (1) \$8 million for payments to schools whose students earn an industry-recognized credential or an equivalent certification, (2) \$12.5 million for the Innovative Workforce Incentive Program that will provide \$1,250 for each qualifying credential earned by a student, and (3) \$4.5 million to assist schools in establishing credentialing programs that qualify for the Innovative Workforce Incentive Program.
- The budget provides \$15 million per year for the new TechCred program and \$2.5 million per year for regional industry sector partnership grants. It also increases capital funding for workforce based training and equipment by \$8 million.
- The budget provides \$25.0 million in FY 2020 to reestablish the Rural Industrial Park Loan program. Funding for Appalachia Assistance increases from \$7.6 million in FY 2019 to approximately \$15.0 million in each of FY 2020 and FY 2021. State funding for Adult Basic and Literacy Education increases from \$7.1 million in FY 2019 to \$8.1 million per year (14.1% over FY 2019).

### H2Ohio, Natural Resources, and State & Local Governments

- The budget creates the H2Ohio Fund and directs \$172 million of FY 2019 GRF surplus revenue to be deposited into the Fund to support programs that align with the statewide strategic vision and comprehensive water protection and restoration strategy. Appropriations for these programs total \$85.2 million in FY 2020 under the agency budgets of Agriculture, EPA, and Natural Resources. The budget allows the Controlling Board to establish additional appropriations in FY 2021 and requires 50% of FY 2021 GRF surplus revenue to be deposited into H2Ohio.
- The budget provides additional capital funding of \$50 million to purchase the land around the new Jesse Owens State Park area and \$20 million to supplement state park operations. It also provides \$4.7 million in capital funding for county and independent agricultural societies.
- The budget increases GRF funding for county indigent defense reimbursements by \$60.1 million (177.8%) in FY 2020 to \$94.0 million and by \$37.7 million (40.1%) in FY 2021 to \$131.7 million. The budget also provides \$1 million in FY 2020 to defray the costs of ongoing capital case litigation in Pike County and \$3 million per year to support staff retention for community based correctional facilities.
- The budget provides new funding of \$10 million per year to partially offset the costs of financial and performance audit services performed by the Auditor of State for local governments and school districts.
- The budget provides \$11 million in FY 2020 to assist eligible local governments in meeting the match requirement for federal disaster aid.
- The Public Library Fund's share of total GRF tax revenue increases from 1.68% in FY 2019 to 1.70% in FY 2020 and FY 2021 while the Local Government Fund's share increases from 1.66% in FY 2019 to 1.68% in FY 2020 and FY 2021.
- The budget provides \$11.0 million in FY 2020 and \$12.0 million in FY 2021 for marine cargo terminal construction and repair grants.
- InnovateOhio is funded at \$9.0 million per year to use data and technology to improve state agency operations and efficiencies.

# Total (State and Federal) GRF Appropriations by Agency

| Agency   | FY 2018<br>(Actual)     | FY 2019<br>(Estimate)   | FY 2020<br>(Appropriation) | FY 2021<br>(Appropriation) |
|--|-------------------------|-------------------------|----------------------------|----------------------------|
| Department of Medicaid                             | \$13,806,565,296        | \$14,142,519,498        | \$14,770,121,958           | \$16,593,035,654           |
| Department of Education                            | \$7,994,050,683         | \$8,117,761,609         | \$8,187,203,556            | \$8,079,038,142            |
| Department of Higher Education                     | \$2,553,677,184         | \$2,596,873,372         | \$2,721,287,310            | \$2,807,425,214            |
| Revenue Distribution Fund                          | \$1,802,418,596         | \$1,814,800,000         | \$1,842,600,000            | \$1,858,251,000            |
| Department of Rehabilitation and Correction        | \$1,732,198,252         | \$1,776,999,596         | \$1,843,040,272            | \$1,914,273,370            |
| Department of Job and Family Services              | \$750,693,273           | \$782,633,463           | \$916,880,385              | \$907,616,562              |
| Department of Developmental Disabilities           | \$674,344,871           | \$679,962,005           | \$735,826,663              | \$751,961,612              |
| Ohio Facilities Construction Commission            | \$408,435,353           | \$442,590,743           | \$452,920,833              | \$462,079,134              |
| Department of Mental Health and Addiction Services | \$401,319,351           | \$423,316,557           | \$444,090,887              | \$457,479,940              |
| Public Works Commission                            | \$250,749,698           | \$260,928,572           | \$273,557,600              | \$276,149,300              |
| Department of Youth Services                       | \$208,142,634           | \$215,974,377           | \$226,464,976              | \$235,507,551              |
| Judiciary/Supreme Court                            | \$159,405,697           | \$173,182,592           | \$187,899,715              | \$191,269,380              |
| Department of Administrative Services              | \$162,702,824           | \$154,207,716           | \$152,533,075              | \$163,853,139              |
| Development Services Agency                        | \$128,834,339           | \$136,629,778           | \$162,465,102              | \$156,085,975              |
| Department of Natural Resources                    | \$107,354,962           | \$110,141,779           | \$129,732,941              | \$134,631,850              |
| Department of Health                               | \$74,352,289            | \$75,779,412            | \$99,192,943               | \$108,189,610              |
| Department of Taxation                             | \$66,524,041            | \$69,903,545            | \$61,437,717               | \$62,529,386               |
| Attorney General                                   | \$47,749,067            | \$60,836,372            | \$87,229,809               | \$87,619,995               |
| Department of Agriculture                          | \$21,741,800            | \$47,633,938            | \$54,909,927               | \$54,429,329               |
| Ohio Public Defender Commission                    | \$36,372,578            | \$38,043,406            | \$99,686,145               | \$138,265,240              |
| Department of Veterans Services                    | \$36,977,532            | \$35,322,770            | \$51,107,964               | \$55,730,291               |
| Legislative Service Commission                     | \$26,447,962            | \$33,410,668            | \$32,727,020               | \$33,555,020               |
| Auditor of State                                   | \$29,117,496            | \$30,290,670            | \$30,290,670               | \$30,359,612               |
| Department of Public Safety                        | \$19,581,978            | \$27,774,799            | \$50,517,099               | \$40,107,900               |
| House of Representatives                           | \$21,595,856            | \$25,917,274            | \$25,917,274               | \$25,917,274               |
| Pension Subsidies                                  | \$20,346,475            | \$25,900,000            | \$34,703,000               | \$35,053,000               |
| Opportunities for Ohioans with Disabilities Agency | \$16,055,715            | \$16,056,210            | \$17,931,310               | \$19,350,210               |
| Senate   | \$12,144,616            | \$15,902,029            | \$15,902,029               | \$15,902,029               |
| Department of Aging                                | \$14,684,780            | \$14,949,726            | \$19,342,491               | \$20,816,004               |
| Ohio Arts Council                                  | \$14,991,914            | \$14,677,781            | \$17,177,781               | \$17,273,578               |
| Department of Transportation                       | \$15,242,442            | \$13,424,886            | \$8,444,687                | \$8,444,687                |
| Ohio History Connection                            | \$11,800,447            | \$11,800,448            | \$14,698,948               | \$14,734,948               |
| Treasurer of State                                 | \$10,880,552            | \$11,464,056            | \$11,463,075               | \$11,464,675               |
| Ohio School for the Deaf                           | \$10,656,702            | \$11,228,591            | \$13,082,919               | \$13,594,347               |
| Ohio State School for the Blind                    | \$9,979,046             | \$10,507,510            | \$12,440,519               | \$12,576,088               |
| Secretary of State                                 | \$1,532                 | \$10,000,000            | \$12,100,196               | \$14,263,396               |
| Broadcast Educational Media Commission             | \$9,259,206             | \$9,260,928             | \$9,801,131                | \$9,726,131                |
| Environmental Protection Agency                    | \$8,957,192             | \$8,919,594             | \$12,811,610               | \$12,546,610               |
| Adjutant General                                   | \$10,893,355            | \$8,609,764             | \$10,985,897               | \$10,992,258               |
| Ohio Civil Rights Commission                       | \$5,039,347             | \$5,664,776             | \$5,863,161                | \$5,863,161                |
| State Library Board                                | \$5,307,686             | \$5,343,236             | \$5,343,236                | \$5,343,236                |
| Office of Budget and Management                    | \$4,239,673             | \$5,092,522             | \$4,613,824                | \$4,439,089                |
| State Employment Relations Board                   | \$3,666,636             | \$3,939,380             | \$3,998,046                | \$4,136,626                |
| Capitol Square Review and Advisory Board           | \$3,834,297             | \$3,866,631             | \$5,171,204                | \$5,188,267                |
| Court of Claims                                    | \$2,946,148             | \$3,189,699             | \$3,549,611                | \$3,579,473                |
| Office of the Governor                             | \$2,107,849             | \$2,775,943             | \$2,914,740                | \$2,973,034                |
| Commission on Minority Health                      | \$2,453,163             | \$2,592,851             | \$4,667,407                | \$4,687,654                |
| Veterans' Organizations                            | \$1,853,665             | \$1,887,986             | \$2,105,256                | \$2,105,424                |
| Board of Tax Appeals                               | \$1,425,735             | \$1,857,751             | \$1,845,494                | \$1,857,751                |
| Ethics Commission                                  | \$1,457,245             | \$1,745,873             | \$1,821,515                | \$2,068,492                |
| Inspector General                                  | \$1,329,305             | \$1,401,581             | \$1,512,881                | \$1,509,581                |
| Board of Embalmers of Funeral Directors            | \$0                     | \$0                     | \$1,000,000                | \$1,000,000                |
| Judicial Conference of Ohio                        | \$716,365               | \$715,163               | \$963,500                  | \$911,305                  |
| Joint Legislative Ethics Committee                 | \$520,603               | \$644,486               | \$625,000                  | \$625,000                  |
| Environmental Review Appeals Commission            | \$549,365               | \$613,445               | \$634,000                  | \$651,000                  |
| Joint Medicaid Oversight Committee                 | \$305,195               | \$588,597               | \$361,365                  | \$528,681                  |
| Joint Committee on Agency Rule Review              | \$411,222               | \$576,885               | \$570,000                  | \$570,000                  |
| Commission on Hispanic/Latino Affairs              | \$427,907               | \$463,777               | \$464,888                  | \$464,047                  |
| Ohio Elections Commission                          | \$418,774               | \$435,221               | \$435,221                  | \$435,221                  |
| Joint Education Oversight Committee                | \$301,663               | \$398,336               | \$100,000                  | \$0                        |
| Expositions Commission                             | \$363,750               | \$363,750               | \$363,750                  | \$363,750                  |
| Commission on Service and Volunteerism             | \$301,000               | \$305,593               | \$307,176                  | \$305,971                  |
| <i>GRF - State</i>                                 | \$22,248,138,878        | \$22,867,703,622        | \$23,940,570,170           | \$24,739,163,423           |
| <i>GRF - Federal</i>                               | \$9,479,085,299         | \$9,632,895,893         | \$9,959,196,340            | \$11,152,542,781           |
| <b>GRF - Total</b>                                 | <b>\$31,727,224,177</b> | <b>\$32,500,599,515</b> | <b>\$33,899,766,510</b>    | <b>\$35,891,706,204</b>    |
| <b>Medicaid</b>                                    |                         |                         |                            |                            |
| <i>GRF - State</i>                                 | \$5,003,429,744         | \$5,192,683,622         | \$5,590,665,878            | \$6,236,062,612            |
| <i>GRF - Federal</i>                               | \$9,479,085,299         | \$9,632,895,893         | \$9,959,196,340            | \$11,152,542,781           |
| <b>GRF - Total</b>                                 | <b>\$14,482,515,043</b> | <b>\$14,825,579,515</b> | <b>\$15,549,862,218</b>    | <b>\$17,388,605,393</b>    |
| Non-GRF - Total                                    | \$11,860,144,030        | \$12,233,167,548        | \$13,088,058,578           | \$13,353,194,488           |
| <b>All-Funds - Total</b>                           | <b>\$26,342,659,073</b> | <b>\$27,058,747,063</b> | <b>\$28,637,920,796</b>    | <b>\$30,741,799,881</b>    |

---

## DEPARTMENT OF TAXATION

### Income taxes

- Reduces income tax rates by 4%.
- Eliminates the lowest two income tax brackets, thereby reducing the number of brackets from seven to five.
- Disallows the business income tax deduction and 3% flat rate on business income greater than \$250,000 if the income arises from the practice of law or from lobbying.
- Requires that income excluded under the business income deduction be “added back” when determining a taxpayer’s eligibility for means-tested tax benefits.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2019; indexing resumes in 2020.
- Extends, from 60 to 90 days, the time in which an individual must file an amended state return after an adjustment is made to the individual’s federal tax return.
- Establishes reporting and payment procedures for pass-through entity owners whose state tax liability is affected by an IRS partnership-level audit.
- Repeals the income tax credit for contributions to campaigns for state offices.
- Repeals the income tax credit for a pass-through entity investor’s share of the financial institutions tax (FIT).
- Authorizes the Director of Health to award nonrefundable income tax credits for up to \$10,000 in costs incurred to abate lead in an Ohio residence constructed before 1978 and limits the amount of credits to \$5 million per fiscal year.
- Eliminates the Ohio political party fund income tax checkoff.
- Prohibits tax return preparers from engaging in certain conduct and prescribes penalties for preparers that engage in that conduct.
- Requires that, for purposes of school district income taxes that use “earned income” as the tax base, earned income includes business income that a taxpayer deducts under the business income deduction.

### Municipal income taxes

- Would have allowed taxpayers up to 24 months to terminate the taxpayer’s initial election to opt-in to the state-administered tax (VETOED).
- Requires a municipal corporation to pay money to the Treasurer of State if the net distribution amount for the municipal corporation’s state-administered municipal income tax accounts is less than zero in any month.
- Allows the Tax Commissioner to recover unpaid amounts by reducing a delinquent municipal corporation’s various state administered tax distributions.

- Creates a separate Municipal Net Profit Tax Fund to receive revenue solely from the state-administered municipal tax on business income.
- Requires that income from any retirement benefit plan, including one that does not qualify for favorable federal tax treatment, be exempt from municipal income tax.

## **Sales and use taxes**

- Modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax.
- Requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated (“marketplace facilitators”) to register as a seller and collect and remit the use tax due on all transactions facilitated through that marketplace.
- Repeals the sales tax exemption for sales of vehicles, parts, and repair services to a professional motor racing team.
- Repeals the sales tax exemption for sales of investment bullion and coins.
- Exempts from sales and use tax sales of equipment and supplies used to clean equipment that is used to produce or process food for people.
- Specifies that a peer-to-peer car sharing program operator is a vendor for sales and use tax purposes and therefore required to collect taxes for such services.
- Would have specified the manner by which any other technology platform operator’s services are subject to sales and use tax (VETOED).
- Allows counties and transit authorities to levy their local sales and use taxes in increments of 0.05%.

## **County sales tax**

- Authorizes noncharter counties to levy an additional ½% sales and use tax to be used exclusively to construct, acquire, equip, or repair detention facilities, provided the tax is approved by voters.
- Reduces the maximum sales and use tax rate available to an overlapping transit authority commensurately.
- Allows for the extension of an existing county lodging tax that is levied by a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees.
- Allows a convention facilities authority (CFA) created between July and December of 2019 to levy an additional lodging tax of up to 3%.

- Increases from 15% to 25% the maximum amount of lodging tax revenue received by the Muskingum County CFA that may be diverted by the CFA to various county fairground purposes.

## **Property taxes**

- Authorizes the board of trustees of a state community college district to levy a property tax for permanent improvements, or a combination bond issuance and tax levy for that purpose.
- Authorizes the board of education of a school district to propose a tax levy for school safety and security and give some of the revenue to chartered nonpublic schools located in the district to be used for that purpose.
- Modifies the calculation of rental income when determining eligibility for existing tax exemptions for property held or occupied by a fraternal or veterans' organization.
- Authorizes a partial real property tax exemption for child care centers that serve children from households that receive public assistance.
- Excuses community schools from the requirement to file annual applications with the Tax Commissioner as a condition of obtaining a property tax exemption.
- Limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities.
- Imposes restrictions on a county budget commission's ability to reduce the amount of taxes that a county levies on behalf of a county board of developmental disabilities.
- Requires certain county websites to display the percentage of property taxes charged by each taxing unit.
- Would have modified information conveyed in and the form of property tax election notices and ballot language (VETOED).
- 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.
- Clarifies the calculation of payments-in-lieu-of-taxes (PILOTs) that must be paid by solar energy facilities that receive the renewable energy property tax exemption.
- Exempts from real property taxation convention centers and arenas owned by the Hamilton County CFA and leased to a private enterprise.
- Establishes a temporary procedure by which a municipal corporation may apply for tax exemption and the abatement of unpaid taxes, penalties, and interest due on certain municipal property.
- Would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses (VETOED).

- Would have exempted from property tax the value of unimproved land subdivided for residential development in excess of the fair market value of the property from which that land was subdivided, apportioned according to the relative value of each subdivided parcel (VETOED).

## **Financial institutions tax**

- Limits the tax base upon which the financial institutions tax (FIT) is computed for institutions that report total equity capital in excess of 14% of total assets.

## **Commercial activity tax**

- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.75% to 0.65% beginning July 1, 2019.
- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax.

## **Nicotine vapor products tax**

- Levies an excise tax on the distribution, sale, or use of liquid or other consumable vapor products containing nicotine at a rate of 1¢ per 0.1 milliliter or gram of product.
- Applies the new tax at the first point at which the vapor product is received in Ohio.
- Administers the new tax in a similar manner to an existing excise tax on tobacco products other than cigarettes.
- Excludes gross receipts used to pay the new tax from those gross receipts taxable under the commercial activity tax (CAT).
- Requires monthly vapor products tax returns and all existing monthly tobacco products tax returns to be filed by the 23<sup>rd</sup> of the following month.
- Changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state."

## **Other tax provisions**

- Extends the authority for townships and municipal corporations to levy a new gross receipts tax (up to 2%) on businesses within a tourism development district (TDD) until December 31, 2020.
- Authorizes townships and municipal corporations to enter into agreements with owners of property located within a TDD to impose a development charge equal to a percentage (up to 2%) of gross receipts derived from sales made at the property.
- Temporarily increases the amount to be credited to the Local Government Fund (LGF) in FYs 2020 and 2021, from 1.66% to 1.68% of the state tax revenue credited to the GRF each month.

- Modifies the formula for making direct payments from the LGF to municipalities.
- Allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet income eligibility requirements.
- Modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

## **Income taxes**

The act includes several changes to Ohio's income tax, principally: a reduction in income tax rates on nonbusiness income, the elimination of the two lowest income tax brackets, and a new limitation on the business income deduction.

### **Tax bracket elimination**

Continuing law prescribes tiered tax brackets for nonbusiness income, with increasingly greater rates assigned to higher income brackets. In 2017 and 2018, there were seven brackets (reduced from nine in 2016). For 2018, the lowest bracket began at \$10,850 of adjusted gross income and the highest applied to income of \$217,400 or more. Individuals with an adjusted gross (nonbusiness) income of less than \$10,850 were exempt from the tax.<sup>97</sup>

The act eliminates those first two tax brackets (\$10,850-\$16,300 and \$16,300-\$21,750 for the 2018). Beginning in 2019, individuals with an adjusted gross (nonbusiness) income (minus personal exemptions) of less than \$21,750 will be exempt from the tax. (Similar to current law, individuals with income of more than \$21,750 will still pay the tax on their first \$21,750 of income. That tax is reflected as a dollar amount added to the remaining tax brackets.)<sup>98</sup>

### **Reduction in tax rates**

The act reduces the tax rates applicable to the remaining five tax brackets by 4% beginning with 2019. Previously, the rates in those five brackets ranged from 2.969% to 4.997%. Under the act, those rates will range from 2.850% to 4.797%.<sup>99</sup>

### **Taxation of business income**

Under continuing law, a taxpayer may deduct the first \$250,000 of the taxpayer's business income from the taxpayer's adjusted gross income. (For married taxpayers that file separate returns, the deduction equals \$125,000 per spouse.) A 3% flat tax applies to all business income in excess of that amount.

---

<sup>97</sup> These income amounts reflect inflation-indexing adjustments for 2018.

<sup>98</sup> R.C. 5747.02(A)(3) and 5747.06 and Section 757.150.

<sup>99</sup> R.C. 5747.02(A)(2) and (3) and Sections 757.150 and 757.160.

## **Exclusion for income from lobbying or legal services**

Beginning in 2020, income earned from the practice of law or from lobbying will not be eligible for either the business income deduction or the 3% flat rate. This new exclusion applies specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics Committee. Instead, such income will be subject to the same graduated tax rates applicable to nonbusiness income.<sup>100</sup>

## **Eligibility for tax benefits**

The act requires that income excluded under the business income deduction be “added back” when determining a taxpayer’s eligibility for means-tested tax benefits. The affected benefits include the homestead exemption, personal and dependent exemptions, \$20 personal and dependent credit, joint filer credit, retirement income credits, and senior citizen credit.

As an example: Consider Business Owner, a taxpayer with total business income of \$275,000, and Nurse, a taxpayer with nonbusiness income of \$50,000. Under current law, after taking the \$250,000 business income deduction, Business Owner’s Ohio AGI is \$25,000. Nurse’s Ohio AGI is \$50,000.

Under prior law, Business Owner would have been eligible for several means-tested benefits, while Nurse would not. Under the act, Business Owner will be required to add back any amount taken as a business income deduction when determining eligibility for means-tested benefits. Consequently, for the purposes of those benefits, Business Owner’s AGI is considered to be \$250,000 and Business Owner will not be eligible for any of the means-tested benefits.<sup>101</sup>

## **Inflation indexing adjustment**

(R.C. 5747.02 and 5747.025; Section 757.160)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The act suspends these adjustments for taxable years beginning in 2019. Consequently, the 2018 income tax brackets will also apply in 2019 (although the number of those brackets, and the tax rates corresponding with those brackets, will be reduced as described above). Indexing resumes in 2020.

## **Individual amended returns**

(R.C. 5747.10 and 5747.11; Section 757.70)

The act extends, from 60 to 90 days, the time in which an individual must file an amended state return after an adjustment is made to the individual’s federal tax return.

---

<sup>100</sup> R.C. 5747.01(A)(31), (B)(2), and (HH).

<sup>101</sup> R.C. 323.151, 5747.01(JJ), 5747.022, 5747.025, 5747.05, 5747.054, 5747.055, and 5748.01 and Section 757.150.

Under continuing law, if an individual's state tax liability will change due to adjustments made on the individual's federal tax return – whether by the individual or by the IRS – the individual is required to file an amended state return.

### **Timeline for refunds**

When the changes on an amended return result in a refund, the application for refund must be filed by the same deadline prescribed for the amended return (previously, 60 days) or, if still applicable, before the general deadline to apply for refunds (four years from the date of the overpayment).

The act correspondingly extends this former deadline to 90 days.

### **Partnership level audits**

The act also prescribes reporting and payment procedures for pass-through entity owners whose state tax liabilities are affected by an IRS audit. The procedures apply to partnerships and to LLCs that are taxed as partnerships under federal law (hereinafter, simply referred to as "partnerships").

### **Federal partnership level audit changes**

The new procedures are in response to changes in federal law governing the payment and collection of taxes when a partnership is audited. The new rules, enacted in the "Bipartisan Budget Act of 2015" (BBA), apply to federal returns filed for 2018 and thereafter.

Partnerships file a federal tax return on their partners' behalf, but each partner separately reports and pays the partner's share of the entity's tax liability on the partner's own return. Before the BBA, audits functioned similarly – a partnership could be audited at the entity level, but, generally, any increase or decrease in tax liability was "passed through" to each partner's return and taxes were collected at the partner level.

Under the BBA, the IRS will audit partnerships at the partnership level and, if additional tax is due, the partnership will generally pay that tax, rather than pass the tax through to its partners.

Partnerships may elect to "push out" the tax liability to individual partners, in which case the liability shifts from the entity level to the individual partner level. In addition, certain partnerships may elect to "opt out" of the new BBA rules, and instead operate under the rules in place before the BBA.<sup>102</sup>

### **New state procedures**

The act prescribes new procedures in response to this change in federal law. Under the act, the default method for reporting changes in state tax liability arising from a federal audit is similar to the federal "push out" procedure. First, the audited partnership must report the

---

<sup>102</sup> Internal Revenue Code Subtitle F, Chapter 63, Subchapter C. Generally, to opt out, the partnership must have fewer than 100 partners and each partner must be a qualifying individual or entity.

changes in federal liability (“adjustments”) to the Tax Commissioner, notify its direct partners of each partner’s share of the adjustments, and submit an amended return that includes any additional tax that would have been due from the entity’s nonresident direct partners if the items requiring adjustment had been reported correctly. Each direct partner is then responsible for filing a separate report and paying any additional tax due (less any amount already paid by the partnership on the partner’s behalf). If the partner is itself a pass-through entity, that entity would follow the same reporting and payment procedures on behalf of its own partners (i.e., the “indirect” partners of the audited partnership).

However, a partnership may elect to pay the additional tax liability directly, at the partnership level. Under this election, the partnership pays an amount “in lieu of” the taxes due from its partners: the amount generally equals the portion of the partnership’s federal adjustments that can be apportioned to Ohio (but includes a resident partner’s entire share of the adjustments), multiplied by the state’s highest income tax rate.

Under this election, a partnership might pay more than the actual tax due from each partner as a result of the federal adjustments, but the partners avoid the administrative burden of each filing a separate report with the Department of Taxation. If the election is made, a partner may, later, file an amended return to receive a refund of the difference between the amount paid on the partner’s behalf and the amount actually due from that partner.

The act also allows a partnership to request an alternative reporting and payment method, which the Tax Commissioner may approve at the Commissioner’s discretion.

### **Partnership representative**

Federal law requires a partnership to designate a “partnership representative” to act on the partnership’s behalf during a federal audit. Individual partners are bound by the representative’s actions.

The act requires that the partnership also designate a state partnership representative. By default, the state representative is the same individual designated during the federal audit. However, the act allows partnerships to designate a different individual as the state representative, in accordance with rules adopted by the Department of Taxation.

### **Automatic extension for large partnerships**

Under the act, an audited partnership with more than 10,000 partners may automatically extend the reporting and payment deadlines prescribed in the new rules by an additional 60 days, provided that the partnership notifies the Tax Commissioner that it will take the extension.

### **Application date**

The new procedures apply to final federal adjustments made on or after October 1, 2019.

## **Tax credit repeal**

(R.C. 5747.01, 5747.02, 5747.29, 5747.65, and 5747.98; Section 757.150)

The act repeals two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor's share of the financial institutions tax (FIT).

The campaign contribution tax credit was a nonrefundable credit for contributions made to the campaign committees of candidates for a statewide office (e.g., Governor or member of the General Assembly). The credit could not exceed \$50 per individual taxpayer.

The second credit repealed by the act allowed a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner's share of the institution's FIT tax payments. The refundable credit equaled the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.

The credits are repealed for taxable years beginning in 2019 or thereafter.

## **Lead abatement income tax credit**

(R.C. 3742.50, 5747.02, 5747.08, 5747.26, and 5747.98; Section 757.10)

The act authorizes a nonrefundable income tax credit for expenses incurred by a taxpayer to abate lead in an Ohio residence constructed before 1978. Specifically, the credit is based on the sum of the following "lead abatement costs" incurred in a taxable year, up to \$10,000 per taxpayer:

- Costs for a licensed specialist to conduct a lead risk assessment, lead abatement project, or clearance examination (a test conducted to verify that the lead hazard has been abated);
- Costs to relocate the dwelling's occupants to protect them during the lead abatement process.

The credit is not available on the basis of any lead abatement cost for which the taxpayer is reimbursed or that the taxpayer deducted or intends to deduct for federal or state income tax purposes.

To obtain a credit, the taxpayer must submit an application to the Director of Health listing the taxpayer's lead abatement costs incurred during the taxable year. After verifying those costs and that the dwelling was constructed before 1978 and has passed a clearance examination, the Director issues a certificate authorizing the applicant to claim a nonrefundable income tax credit equal to the lesser of the costs listed on the application, the actual costs verified by the Director, or \$10,000.

The Director may not issue credit certificates lead abatement costs incurred in taxable years beginning before 2020, nor may the Director issue more than \$5 million in certificates in a fiscal year. The Director may adopt rules for the administration of the lead abatement credit program, in consultation with the Tax Commissioner.

The taxpayer may claim, for the taxable year in which the certificate is issued, a nonrefundable income tax credit equal to the amount stated on the certificate. Any unclaimed

balance may be carried forward for up to seven years. Upon request, the taxpayer must furnish the Commissioner with documentation verifying the taxpayer's credit eligibility.

### **Political party fund checkoff**

(R.C. 5747.081, 131.44, 3501.05, 3517.01, 3517.10, 3517.102, 3517.1012, 3517.11, 3517.12, 3517.153, 3517.16, 3517.17, 3517.18, 3517.23, 3517.99, 3517.992, 5703.05, 5747.03, and 5747.04; Sections 757.240 and 815.10)

The act eliminates the Ohio political party fund income tax checkoff for taxable years beginning in or after 2019 – generally meaning returns filed in 2020 and thereafter. Prior law allowed an individual to choose an option on their return to credit \$1 (or \$2 for married couples filing joint returns) of their income tax liability to the fund. Money in the fund is divided among Ohio's major political parties. The money could not be used to further the election or defeat of any particular candidate or to influence the outcome of an issue election.

Under the act, the fund is dissolved on January 1, 2020, or earlier if the Commissioner determines that all or substantially all of the checkoff contributions for taxable years beginning before the termination date have been received by the fund. Amounts received by the fund before its dissolution must be distributed and utilized in the same manner prescribed by prior law.

The act relieves the Auditor of State of a prior duty to conduct annual audits of the use of money distributed from the fund. The audit requirement is eliminated after the fund is dissolved and all money is distributed by the treasurers of the state executive committees of the major political parties.

### **Requirements for tax return preparers**

(R.C. 5703.263; Section 757.281)

The act prohibits tax return preparers from engaging in certain conduct and authorizes the Tax Commissioner to impose penalties or request that the Attorney General seek an injunction against a tax return preparer that engages in that conduct. For this purpose, a "tax return preparer" is defined to be a person operating a business that prepares tax returns or applications for refund for a taxpayer in exchange for compensation. The definition expressly excludes attorneys admitted to the Ohio bar, accountants registered in Ohio or elsewhere, and individuals working for a public accounting firm under the supervision of an accountant.

Also excluded are persons that only do any of the following:

- Perform typing, reproducing, or other mechanical assistance;
- Prepare a return or application for refund on behalf of their employer or an officer or employee of that employer;
- Prepare an application for refund as a fiduciary; or
- Prepare a return or application for refund in response to a notice of deficiency or a waiver of restriction after the commencement of an audit.

The act authorizes the Commissioner, beginning in 2020, to require a tax return preparer to include their federal tax identification number on any state tax form they prepare. If the Commissioner imposes such a requirement, the penalty for failing to provide the number or for providing false, inaccurate, or incomplete information is \$50 for each incident. The maximum penalty is \$25,000 per calendar year.

The act expressly prohibits tax return preparers from doing any of the following:

- Recklessly, willfully, or unreasonably understating the taxpayer’s tax liability;
- Failing to properly file returns or keep records;
- Failing to cooperate with the Commissioner or comply with tax law;
- Failing to act diligently to determine a taxpayer’s eligibility for tax reductions;
- Misrepresenting their experience or credentials;
- Cashing a refund check without the taxpayer’s permission;
- Guaranteeing tax refunds or credits; or
- Engaging in other fraudulent and deceptive conduct.

Each time a tax return preparer engages in prohibited conduct, the Commissioner may request that the Attorney General apply to a court for an injunction against the tax return preparer. Generally, if the court determines an injunction is appropriate, the tax return preparer is enjoined only from continuing the prohibited conduct. However, if the court finds that the tax return preparer has continually or repeatedly engaged in prohibited conduct and that a standard injunction is not a sufficient deterrent, the court may enjoin the tax return preparer from preparing tax returns and applications for refund in Ohio. The act specifies that a prior injunction for engaging in prohibited conduct issued to the same tax return preparer by a federal or any state’s court in the preceding five years is sufficient evidence for a court to conclude that another injunction is appropriate in response to subsequent violations.

If the Commissioner has previously warned a tax return preparer in writing of the consequences of continuing to engage in prohibited conduct, the Commissioner may impose a penalty of up to \$100 for each incident. This penalty and the penalty for failure to include a federal tax identification number on a return or application for refund is collected in the same manner as delinquent taxes. The act allows the Commissioner to abate the penalties for good cause.

### **School district income tax base**

(R.C. 5748.01(E)(1)(b); Section 757.150)

The act requires that, for purposes of school district income taxes that use “earned income” as the tax base, amounts that a taxpayer deducts under the state business income deduction must be added back when computing a taxpayer’s earned income.

Under continuing law, school districts that levy an income tax may use Ohio adjusted gross income (OAGI) or “earned income” as a tax base. “Earned income” includes compensation

and self-employment earnings, but only to the extent that such income is included in OAGI. (In computing their OAGI, most taxpayers may deduct up to \$250,000 of their business income see “**Business income deduction**,” above.) Under prior law, the deducted amount had to be added back when computing the taxable income of taxpayers in school districts that use OAGI as a base, but not in districts that had an earned income tax base.

This change applies to taxable years commencing in 2019 or thereafter.

## **Municipal income taxes**

### **State administration of municipal income taxes**

Continuing law allows businesses (other than sole proprietors) to choose between filing a separate tax return for each municipal corporation in which the business operates and filing a single return with the Department of Taxation that covers the business’ total tax liability to all municipalities. Each municipality continues to administer its tax on businesses that choose to file separate returns. The Department assumes all aspects of administering the taxes of businesses that choose to file a single return. The Tax Commissioner is required to distribute municipal income tax revenue on a monthly basis, after deducting 0.5% of such revenue to cover the Department’s administrative expense.

### **Taxpayer opt-in (VETOED)**

(R.C. 718.80; Section 757.220)

The Governor vetoed a provision that would have allowed a business to reverse its initial election to opt-in to the state-administered municipal income tax within 24 months after making that initial election by notifying the Tax Commissioner. Under the vetoed provision, if a business reversed its decision to opt-in during that time, the business’s initial election would have terminated 60 days after the notice was sent to the Commissioner.

Continuing law unchanged by the act requires a business to make the election to opt-in or opt-out of the state-administered tax on or before the first day of the third month after the beginning of their taxable year (March 1 for calendar year taxpayers).

### **Net distribution deficiency**

(R.C. 718.83, 321.24, and 5745.05; Section 812.20)

The act addresses negative cash-flow issues with the state’s Municipal Income Tax Fund that arise when a municipal corporation’s net distribution of revenue from tax accounts administered by the Department is less than zero. This might happen if audit adjustments and refunds exceed collections in a given month. In such cases, the act requires the municipal corporation to remit payment to the Treasurer of State within 30 days of receiving a notice of deficiency from the Department. If a municipal corporation does not reimburse the state in a timely manner, the act authorizes the Commissioner to recover the deficiency by reducing the municipal corporation’s future municipal income tax distributions, electric and telephone company income tax distributions, and property tax distributions.

## **Municipal Net Profit Tax Fund**

(R.C. 718.83, 718.85, and 718.90; Sections 701.20 and 812.20)

In addition to administering the municipal income taxes of businesses that opt-in to central filing and collection, the Department of Taxation also administers a separate municipal income tax on electric and telephone companies.

Under prior law, revenue from both taxes was deposited into a single Municipal Income Tax Fund. The act creates a separate fund – the Municipal Net Profit Tax Fund – to receive revenue from the state-administered municipal tax on business income. Revenue from municipal taxes on electric and telephone companies continues to be credited to the Municipal Income Tax Fund.

Amounts credited to both funds are returned to the municipal corporations that levy the underlying taxes, after an allowance for the Department’s administrative costs.

## **Municipal taxation of retirement plans**

(R.C. 718.01; Section 757.220)

The act specifies that income from any retirement benefit plan, including a “nonqualified plan” that is not eligible for favorable federal tax treatment, is exempt from municipal income tax. Continuing law prescribes categories of income that a municipal corporation must exempt from its municipal income tax. One category of exempt income is pension income.

Prior law did not define the term “pension,” so presumably municipal corporations had some authority to clarify what plans they consider to qualify as a pension and, thus, exempt from municipal income tax. For example, the City of Cleveland argued it had the authority to impose municipal income tax on income from a type of nonqualified employee benefit plan on the ground that the plan was not a pension. In *Macdonald v. Cleveland Income Tax Board of Review*, the Ohio Supreme Court considered Cleveland’s argument that it could impose a tax on income from supplemental executive retirement plans (SERPs) or “top hat plans” (see “**SERPs and other nonqualified plans**,” below). The Court held that the term “pension,” as used in Cleveland’s ordinances, encompassed SERPs and that Cleveland could not tax SERP income because it had exempted pension compensation from its municipal income tax.<sup>103</sup>

The act specifically defines pensions to include SERPs and other nonqualified plans, essentially requiring every municipal corporation to exempt income from such plans from its municipal income tax. Under the act, a pension is defined as any retirement benefit plan regardless of (1) whether the plan qualifies for favorable federal income tax treatment, (2) whether the plan is subject to federal Medicare and Social Security withholding taxes, and (3) whether and when the plan is included in the employee’s taxable wages. A retirement benefit plan, in turn, is defined to be any arrangement by which benefits are provided to

---

<sup>103</sup> 151 Ohio St.3d 114 (2017).

individuals on or after their retirement or termination of service, excluding wage continuation, severance, or leave accrual payments.

The act specifically ensures that SERPs and other nonqualified retirement plans are exempt from municipal income taxes regardless of how they may be treated under a given municipality's ordinance. SERPs are unfunded employee benefit plans maintained by an employer primarily to provide deferred compensation for a select group of management or highly compensated employees. Income from SERPs, and several other types of nonqualified plans, may be subject to federal and state income tax as part of the beneficiary's taxable wages before the beneficiary actually withdraws money from the plan.<sup>104</sup> In addition, nonqualified plans are generally (1) exempt from certain federal pension regulations, i.e., ERISA<sup>105</sup> ("Employee Retirement Income Security Act") and (2) subject to Social Security and Medicare withholding taxes<sup>106</sup> (referred to collectively as "Federal Insurance Contributions Act" taxes, or FICA taxes). In contrast, qualified plans are generally tax-exempt until distributed to beneficiaries, exempt from FICA taxes, and subject to ERISA regulations. Among the requirements for such favorable federal tax treatment is that a plan does not discriminate among employees in terms of contributions or benefits; accordingly, SERPs and other nonqualified plans that discriminate do not receive favorable treatment.

The exemption changes apply to municipal taxable years beginning on or after January 1, 2020.

## **Sales and use taxes**

### **Use tax collection**

The act modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax. The act also requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers (i.e., "marketplace facilitators") to register as a seller with the Tax Commissioner and collect and remit the use tax due on all transactions facilitated through that marketplace. (For example, a company operates an Internet-accessible platform permitting third-party sellers to use the platform to offer products for sale; the company is therefore a marketplace facilitator.)

Continuing law imposes use tax on tangible personal property and certain taxable services purchased outside of, but used, consumed, or stored in Ohio. Use taxes are levied at the same rate as state and local sales taxes, and all revenue from the tax is credited to the General Revenue Fund.

---

<sup>104</sup> 26 U.S.C. 401(a).

<sup>105</sup> See, e.g., 29 U.S.C. 1002 and 1051(2).

<sup>106</sup> 26 U.S.C. 3121(a)(5).

## Substantial nexus

(R.C. 5741.01(I); Sections 757.80 and 812.20)

### Background

The authority of states to require out-of-state sellers to collect and remit taxes is limited by the Commerce Clause of the U.S. Constitution. The U.S. Supreme Court held in *Complete Auto Transit v. Brady* that taxation of interstate commerce is permissible only if (1) the seller has a substantial nexus with the taxing state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is related to the services the state provides.<sup>107</sup>

“Substantial nexus” is a connection or link between a seller and the taxing state that is sufficient to justify requiring the seller to collect and remit use tax to that state. Until 2018, the controlling legal precedent on the subject required a physical presence by the seller in the taxing state to establish substantial nexus.<sup>108</sup> Most states, including Ohio, tailored their sales and use tax collection requirements for out-of-state sellers in conformance with that standard.

The U.S. Supreme Court overturned the *Quill* standard in a 2018 case, *South Dakota v. Wayfair, Inc.*, determining that substantial nexus is not established by physical presence, but instead when the seller avails itself of the privilege of carrying on business in the taxing state. In its decision, the Court declined to strike down South Dakota’s substantial nexus standard which requires out-of-state sellers that engage in a high volume of sales into the state to collect and remit the state’s sales tax irrespective of whether the sellers have a physical presence in the state.<sup>109</sup>

### Ohio’s standard

Ohio law requires out-of-state sellers to collect and remit use tax on sales into the state to the maximum extent permissible under the Commerce Clause of the U.S. Constitution. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.<sup>110</sup>

Continuing law prescribes several examples of activities that, if conducted by an out-of-state seller, create a presumption that the seller has substantial nexus with Ohio. For example, an out-of-state seller is presumed to have substantial nexus with Ohio if the seller uses an Ohio warehouse or regularly uses agents in Ohio to conduct business. In general, these presumptions may be overcome if the seller demonstrates that those activities are not significantly associated with the seller’s ability to establish or maintain the seller’s Ohio market.

---

<sup>107</sup> 430 U.S. 274, 279 (1977).

<sup>108</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

<sup>109</sup> 585 U.S. \_\_\_\_, 138 S.Ct. 2080.

<sup>110</sup> R.C. 5741.12(B), not in the act.

The act modifies the activities sufficient to establish a presumption of substantial nexus with Ohio so that they are more closely aligned with the South Dakota nexus standard that withstood the scrutiny of the U.S. Supreme Court in the *Wayfair* case. The act adds a presumption that a seller has substantial nexus with Ohio if the seller (1) has gross receipts in excess of \$100,000 from sales into Ohio, or (2) engages in 200 or more separate sales transactions into Ohio, during the current or preceding calendar year. As a conforming change, the act eliminates a narrower presumption of substantial nexus under prior law for a seller that has gross receipts in excess of \$500,000 from sales into Ohio and that (1) uses computer software stored or distributed in Ohio to make Ohio sales, or (2) provides, or enters into an agreement with a third party to provide, content distribution networks in Ohio to accelerate or enhance the delivery of the seller's website to Ohio consumers. This prior presumption is subsumed by the act's new presumption of substantial nexus for sellers with more than \$100,000 in gross receipts from sales into Ohio.

The act also eliminates a presumption of substantial nexus under prior law for a seller that has a "click-through" agreement with an Ohio resident that referred more than \$10,000 in sales to the seller in the preceding 12 months. A click-through agreement is an agreement where the Ohio resident receives a commission or other form of compensation for referring potential customers to the seller (e.g., by including a link on a website, in-person communication, or telemarketing).

### **Marketplace facilitators**

(R.C. 5741.01, 5741.04, 5741.05, 5741.07, 5741.071, 5741.11, 5741.13, and 5741.17; Sections 757.80 and 812.20)

The act requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated on behalf of other sellers ("marketplace facilitators") to collect and remit use tax on all transactions facilitated through that marketplace. A marketplace facilitator's use tax collection and remission duties begin the first day of the first month that begins at least 30 days after the marketplace facilitator first has substantial nexus with Ohio. For the most part, marketplace facilitators have the same rights and obligations as other sellers under the administrative provisions of the use tax, such as the requirements to register with the Tax Commissioner and file returns.

After a marketplace facilitator's use tax collection and remission duties begin, the marketplace facilitator is treated as the seller for all sales it facilitates regardless of whether the "marketplace seller" for whom the sale is facilitated has substantial nexus with Ohio and irrespective of the amount of the price paid by the consumer that is retained by the marketplace facilitator. Marketplace sellers that are otherwise required to collect and remit use tax in Ohio retain that duty for all sales other than those for which a marketplace facilitator is treated as the seller.

### **Substantial nexus**

The general standard for determining whether a marketplace facilitator has substantial nexus with Ohio is the same as for other sellers (i.e., to the fullest extent allowable under the Commerce Clause of the U.S. Constitution). However, the act prescribes only two examples of

activities that, if done in the current or preceding calendar year, are sufficient to establish a presumption of substantial nexus for a marketplace facilitator: (1) obtaining gross receipts in excess of \$100,000 from sales made or facilitated into Ohio, or (2) making or facilitating 200 or more separate sales into Ohio. These presumptions are identical to the presumptions added by the act for other sellers except that, for marketplace facilitators, direct sales and sales facilitated on behalf of marketplace sellers are treated cumulatively. As with other sellers, the presumption of substantial nexus may be overcome if the marketplace facilitator demonstrates that the activities are not significantly associated with the marketplace facilitator's ability to establish or maintain the Ohio market.

### **Meaning of “facilitated”**

The act establishes criteria for determining whether a sale is “facilitated” by a marketplace facilitator, thereby activating the marketplace facilitator's use tax collection and remission duties. In general terms, the duties apply when a marketplace facilitator (1) supports or enables a marketplace seller in establishing a connection with a consumer through the provision of advertising, communication, infrastructure, software research and development, fulfillment or storage services, price-setting, customer service, or brand identification, and (2) collects payment from the consumer, provides payment processing services, or provides virtual currency used by the consumer in the sale.

Sales of hotel lodging are expressly excluded from the types of transactions that activate a marketplace facilitator's use tax collection and remission duties. Therefore, any use tax due on sales of hotel lodging must either be remitted by the seller or by the consumer.

### **Advertising exception**

The act expressly exempts from the definition of “marketplace facilitator” any advertisers that do not collect payment from the consumer, provide payment processing services, or provide virtual currency used by the consumer in the sale and, consequently, exempts such advertisers from having to collect and remit use tax on behalf of marketplace sellers.

### **Waiver**

The act establishes a process by which certain marketplace sellers may request a waiver from the requirement that a marketplace facilitator collect and remit use tax on the seller's sales. The Commissioner is required to grant the waiver if the marketplace facilitator consents and if the seller: (1) has annual gross receipts within the U.S. of at least \$1 billion (including the gross receipts of affiliates), (2) is publicly traded or has an affiliate that is publicly traded on a major stock exchange, (3) is current on all taxes, fees, and charges administered by the Department of Taxation (excluding charges that are the subject of a bona fide dispute), (4) has not canceled a waiver or had a waiver revoked by the Commissioner related to the same marketplace facilitator in the preceding 12 months, and (5) has not repeatedly failed to file Ohio sales tax returns.

The act requires the Commissioner to notify both the seller and the marketplace facilitator of whether the request is granted or denied and also requires the seller to keep the

marketplace facilitator apprised of the status of the request. If the request is not granted or denied within 30 days of the date it was filed, it is deemed to have been granted.

A seller may cancel the waiver at any time by sending notice to the marketplace facilitator and the Commissioner. The Commissioner may revoke a waiver only if the seller no longer meets the criteria described above.

### **Destination-based sourcing**

The act requires marketplace facilitators to use destination-based sourcing to determine the amount of use tax to collect and remit for each facilitated sale. Continuing law prescribes rules for assigning where a sale is deemed to have occurred. Determining the appropriate taxing jurisdiction (i.e., state and county or transit authority) under these rules is instrumental in ensuring that the tax is collected at the appropriate rate and that the proper taxing authority receives the revenue.

Applying the destination-based method means that a sale will generally be deemed to have occurred where the goods or services are received by the consumer. Under destination-based sourcing, the following rules are applied, in order, to determine the location of the sale:

- The location where the consumer receives the tangible personal property or service;
- The address of the consumer according to the marketplace facilitator's business records;
- An address obtained from the consumer during the consummation of the sale (e.g., a billing address associated with the consumer's credit card);
- The address from which the tangible personal property was shipped or the service was provided.

### **Liability relief**

Generally, a seller is personally liable for any use tax the seller is required, but fails, to collect and remit. The act relieves a marketplace facilitator from personal liability if the marketplace facilitator was unable to obtain accurate or sufficient information regarding the terms of the sale from an unaffiliated marketplace seller despite reasonable efforts. This liability relief applies only to a marketplace facilitator's failure to collect the tax. Once the tax is collected, the marketplace facilitator is fully liable for any amount that is not remitted as required by law.

If the marketplace facilitator is relieved of personal liability, the marketplace seller and the purchaser remain liable for the unpaid use tax.

### **Audits**

The act prohibits the Tax Commissioner from auditing any person other than the marketplace facilitator respecting sales for which the marketplace facilitator is required to collect and remit use tax. Generally, the Commissioner may audit either the seller or the consumer if the Commissioner has information that indicates that the amount of use tax paid is less than what is due.

## **Class action lawsuits**

The act prohibits any person from filing a class action lawsuit related to an overpayment of use tax against a marketplace facilitator on behalf of consumers. Under continuing law, consumers may seek a refund of overpaid use tax from the Tax Commissioner.<sup>111</sup>

## **Repeal of sales tax exemptions**

(R.C. 122.175, 5739.01(TT), 5739.02(B)(38) and (54), 5739.03, and 5739.05; Section 757.140)

The act repeals two sales tax exemptions:

1. The exemption for sales of vehicles, parts, and repair services to qualified motor racing teams. To qualify for the exemption, the racing team had to employ at least 25 full-time employees and conduct its business with the purpose of competing in at least ten professional racing events per year.

2. The exemption for sales of investment bullion and coins.

The repeal of both exemptions takes effect October 1, 2019.

## **Sales tax exemption for food manufacturing equipment**

(R.C. 5739.011; Section 757.140)

The act expands a sales tax exemption for equipment and supplies used to clean other equipment that is used to produce or process food for people. The exemption previously applied only if the food being produced or processed was a dairy product. The expanded exemption applies beginning October 1, 2019.

## **Taxation of technology platform operators**

(R.C. 5739.01(C) and (SSS); Section 757.301)

### **Peer-to-peer car sharing program operators**

Continuing law requires a vendor – i.e., a person that makes retail sales of goods or services – to collect sales tax. The act specifies that the operator of a peer-to-peer car sharing program is a vendor, requiring an operator of a peer-to-peer car sharing program to collect sales tax from the consumer for car sharing services (see “**Peer-to-peer car sharing**” under **ATTORNEY GENERAL**). The act states that the provision “clarifies the status of vendors . . . and does not change the existing application of” the sales tax law.

### **Other technology platform operators (VETOED)**

The Governor vetoed a provision that would have specified that an operator of any technology platform (other than a peer-to-peer car sharing platform) that “connects” a consumer with another person who is providing a taxable service is a vendor. The act would have required an operator of any technology platform that facilitates a taxable service, rather

---

<sup>111</sup> R.C. 5741.10, not in the act.

than the person providing the taxable service, to collect sales tax from the consumer, even if the person providing the service (e.g., the driver) is not an agent of the operator. Except for peer-to-peer car sharing program operators (see above), it is unresolved under continuing law whether other technology platform operators, including transportation network companies, e.g. Uber or Lyft, are vendors required to collect sales tax.<sup>112</sup>

### **Local sales and use tax rate increments**

(R.C. 5739.021, 5739.023, and 5739.026; Section 757.331)

The act allows counties and transit authorities to levy their local sales and use taxes in rate increments of 0.05% beginning October 1, 2019. Under former law, a county or transit authority could only levy or increase a rate in increments of 0.1% or 0.25%.<sup>113</sup>

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that “piggyback” on the state sales and use tax. All of Ohio’s counties, plus eight transit authorities, levy sales and use taxes. Counties and transit authorities each may levy a tax of up to 1.5%.

### **County sales tax: detention facility**

(R.C. 5739.021 and 5739.023; Section 757.331)

The act authorizes a county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) to levy up to a 0.5% sales and use tax exclusively to construct, acquire, equip, or repair detention facilities (referred to in this analysis as “detention facility purposes”). Continuing law authorizes any county to levy a sales and use tax of up to 1% for general operations, or for supporting criminal and administrative justice services (including, among others, detention facility purposes) or funding a regional transportation improvement project. A county may levy an additional tax of up to 0.5% for any of one dozen special purposes. The act increases the maximum rate a county may levy overall from 1.5% to 2%, but it requires the extra 0.5% to be dedicated exclusively for detention center purposes and approved by county voters before taking effect.

However, this 0.5% additional detention facility tax rate is reduced commensurately in a county with a transit authority that levies a sales or use tax, to the extent the transit authority’s tax exceeds 1%. Under continuing law, a transit authority may levy up to a 1.5% sales and use tax rate. So, for instance, if the transit authority levies a 1.25% tax, the county would only be able to levy a detention facility tax of 0.25%. Similarly, if the transit authority’s rate equals 1.5%, the county would not be allowed to levy an additional detention facility tax.

---

<sup>112</sup> The question of whether Uber is a vendor required to collect sales tax currently is pending in the Board of Tax Appeals. *Uber Technologies, Inc. v. Testa*.

<sup>113</sup> The 0.1% increment was authorized recently, in H.B. 69 of the 132nd General Assembly. Before July 1, 2018, rates could only be levied in increments of 0.25%.

Conversely, if a county does levy an additional tax for detention facility purposes, the maximum rate of tax that the overlapping transit authority may levy is reduced commensurately. Thus, for instance, if the transit authority levies a 1.25% tax and the county levies a detention facility tax of 0.25%, the transit authority would not be able to increase its tax an additional 0.25% to reach the otherwise-allowable 1.5% maximum transit authority rate.

These commensurate rate-reduction mechanisms ensure that the detention facility tax rate will not exceed the maximum tax rate that could have been levied in the county had the transit authority levied the full rate of tax to which it was otherwise entitled.

The provision begins to apply October 1, 2019.

## **Lodging tax**

### **For county agricultural societies**

(R.C. 5739.09(L))

Continuing law authorizes a lodging tax of up to 3% for a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees. This tax is in addition to the 3% lodging tax authority that all counties have. The additional lodging tax revenue must be used by the county to pay for the construction, maintenance, and operation of permanent improvements at sites where the agricultural society conducts fairs or exhibits. The additional tax is proposed by resolution of the board of county commissioners and is subject to voter approval.

Under former law, the term of the additional lodging tax could not exceed five years. The act allows the board of county commissioners to extend the term of the tax for an additional period not exceeding 15 years. The extension could be approved by resolution of the board and would not be subject to voter approval, but it would be subject to referendum.

### **For new convention facilities authorities (CFAs)**

(R.C. 351.021(C)(3); Section 757.311)

Continuing law authorizes a board of county commissioners to create CFAs with the authority to administer convention, entertainment, or sports facilities located within their respective territories and, in a few counties, to levy a lodging tax. The act authorizes an additional lodging tax of up to 3% for any convention facilities authority created between July and December of 2019 and subjects the creation of a CFA during that period to a referendum if a petition signed by electors equal in number to 10% of the votes cast in the county for Governor in the most recent gubernatorial election, is filed within 90 days after the creating resolution is adopted.

The act requires the additional lodging tax to be adopted, if at all, by December 30, 2020. The tax is proposed by resolution of the CFA and must be approved by the board of county commissioners before it is levied. Like most other CFA lodging taxes, the revenue must be used to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility, including associated debt, the CFA's operating costs, and costs to administer the tax.

The additional lodging tax itself is not subject to voter approval or referendum. However, if a referendum is held on the board of county commissioners' resolution creating the CFA, the tax does not take effect unless the board's resolution is upheld by the referendum. The CFA may adopt a resolution proposing the lodging tax at any time after its creation (and before December 30, 2020) but the tax cannot take effect until the 90-day referendum period on the board of county commissioners' resolution has expired.

### **For county fairground purposes**

(R.C. 351.021(F))

The act increases from 15% to 25% the amount of lodging tax revenue received by a CFA located in a county with a 2010 population between 80,000 and 90,000 (i.e., Muskingum County) that the CFA may allocate to tourism-related sites or facilities and programs, the improvement and maintenance of county fairgrounds, and any other purpose connected with the use of a county fairground. The act also specifies that unspent lodging tax revenue that was previously allocated to such purposes may be used in subsequent years without counting towards the 25% cap.

Generally, CFAs that levy a lodging tax are required to use the revenue to pay the costs of constructing, operating, and maintaining a convention, entertainment, or sports facility including associated debt, the convention facilities authority's operating costs, and costs to administer the tax. However, in 2013, H.B. 59 allowed the Muskingum County CFA to allocate a portion of its lodging tax revenue to tourism-related sites or facilities and programs and county fairgrounds.

## **Property taxes**

### **State community college permanent improvements levy**

(R.C. 3358.11, 3333.59, 3358.02, and 3358.06)

The act authorizes the board of trustees of a state community college district to propose a property tax levy for permanent improvements, or a combination bond issuance and tax levy for permanent improvements. In either case, the issue is subject to voter approval. In the case of a tax levy without bond issuance, the tax may be levied for any specified number of years, or for a continuing period of time, and may be renewed or replaced before its expiration.

Under continuing law, a state community college district is a political subdivision created by the Ohio Board of Regents upon receiving a proposal from a technical college district or a state university or upon a proposal by boards of county commissioners or initiative petition. The purpose of the district is to establish, own, and operate a state community college. It is governed by a board of trustees consisting of nine members appointed by the Governor. The territory of the district is composed of the territory of a county, or of two or more contiguous counties. The district must have a population of at least 150,000.<sup>114</sup>

---

<sup>114</sup> R.C. 3358.01, not in the act.

The tax levy and bond issuance authorized by the act are nearly identical to the tax levy and bond issuance authorized under continuing law for community college districts, except that the existing community college district levy may also be used for operating expenses. Community college districts and state community college districts perform similar functions but there are some administrative differences between the two, such as how they are formed and how trustees are appointed.

### **Tax levy for safety and security of private schools**

(R.C. 5705.21(F))

Continuing law allows the board of education of a school district to propose a property tax levy in excess of the ten-mill limitation exclusively for school safety and security purposes. Such purposes include funding permanent improvements to provide or enhance security, employing or contracting with safety personnel, providing mental health services and counseling, or providing training in safety and security practices and responses. The tax may be levied for a term of up to five years.

The act allows a school board proposing to levy such a tax to share the proceeds with private schools that hold a valid charter issued by the State Board of Education (“chartered nonpublic schools”). The resolution and ballot language proposing the levy must specify the portion of the proceeds that will be allocated to chartered nonpublic schools. If approved by the voters of the school district, the chartered nonpublic school portion of the proceeds would be divided proportionally among all such schools located within the territory of the school district based on the number of district resident students enrolled in each chartered nonpublic school.

The act specifies that a “resident student” is a student who is entitled to attend school in the district levying the tax. Every chartered nonpublic school that is located within the territory of the school district and that enrolls one or more resident students would receive its statutorily prescribed portion of the levy proceeds. The act requires the school district to pay each chartered nonpublic school its portion of the proceeds at least twice each year, after the February and August tax settlements. All such revenue received by chartered nonpublic schools must be used for school safety and security purposes.

### **Fraternal and veterans’ organization exemptions**

(R.C. 5709.17; Section 757.90)

The act modifies existing tax exemptions for property held or occupied by a fraternal or veterans’ organization. Under continuing law, property that generates more than \$36,000 in rental income in a year does not qualify for either exemption. For the purpose of determining this rental-income threshold for fraternal organizations, the act excludes rent received from other fraternal organizations. Similarly, for purposes of qualifying for the veterans’ organization exemption, the act excludes rent received from other veterans’ organizations in determining whether or not the rental income produced by the property exceeds that limit.

These modifications apply beginning in tax year 2019.

## **Partial property tax exemption for child care centers**

(R.C. 319.302, 323.155, and 323.16; Section 757.350)

The act authorizes a partial property tax exemption for child care centers that serve children from households that receive public assistance.

To qualify for the partial exemption, a child care center must meet the following requirements:

- The center must be licensed by the Department of Job and Family Services (JFS).
- The center may only serve children who are 5 years old or younger.
- At least 25% of the children that attend the center must reside in a household that receives public assistance. Such assistance may include Medicaid, Ohio Works First (Ohio's TANF program), SNAP (food stamps), WIC (the supplemental nutrition program for women, infants, and children), or state child care benefits.
- The center cannot be operated from the administrator's primary residence or from a location that is used for a separate commercial purpose.

If a child care center meets these requirements, the partial exemption will equal a percentage reduction in the taxes levied on the property. If at least 25%, but less than 50%, of the children who attend the center reside in a household that receives public assistance, the reduction equals 25% of the taxes imposed. If 50% or more of the children who attend the center reside in such households, the reduction equals 75% of the taxes imposed.

To obtain the exemption, the owner of the child care center must file an annual application with the county auditor. The application is due on or before the last day of the tax year for which the exemption is sought (December 31), and the auditor must approve or deny an application within 30 days. Applicants who are initially denied may appeal the denial to the Board of Tax Appeals.

The exemption applies beginning in tax year 2019. Local governments are not reimbursed by the state for revenue lost as a result of the partial exemption.

## **Community school property tax applications**

(R.C. 5713.08 and 5715.27)

The act excuses community schools from filing annual tax exemption applications with and obtaining the approval of the Tax Commissioner as a condition of obtaining a property tax exemption.

Under continuing law, property used for an educational purpose, including such community school property, qualifies for a property tax exemption.<sup>115</sup> Prior law, with only a few exceptions, required property owners to apply annually to the Tax Commissioner to obtain an

---

<sup>115</sup> R.C. 5709.07(A).

exemption for the tax year. Under continuing law, the Commissioner evaluates and decides whether to approve the exemption.

The act changes the exemption process for community schools. Instead of obtaining the Tax Commissioner's approval every year, community schools applying for an educational purpose exemption will only need to obtain the Commissioner's approval in the first tax year for which the exemption is sought. Then, the property will continue to be exempt for all future tax years, provided the community school submits an annual statement to the Commissioner attesting that its property continues to qualify for the educational purpose exemption. But the Commissioner may order the exemption removed if the Commissioner discovers that the community school's property does not actually qualify for that exemption.

Public school districts and other noncommunity schools seeking the educational purpose exemption are still required to file for and obtain annual approval from the Commissioner.

### **County DD board funding**

The act limits the amount that can be held in the reserve balance account (i.e., rainy day fund) of a county board of developmental disabilities (county DD board) and imposes new restrictions on a county budget commission's authority to reduce the amount of taxes that a county levies on a county DD board's behalf.

Under continuing law, each year the county budget commission reviews the budget and projected tax revenue of each subdivision in the county. The commission may reduce a subdivision's tax levy if it determines that the revenue from that tax, as currently levied, would exceed the actual needs of the subdivision as set forth in the subdivision's own budget.<sup>116</sup>

Continuing law also requires each county to establish a board of developmental disabilities and to levy taxes on its behalf. Under current law, if the amount that would be raised from such a tax, in combination with the county DD board's existing funds, would exceed the board's actual needs for a tax year, the county budget commission may reduce the rate of that tax accordingly.

### **Rainy day funds**

(R.C. 5705.222)

Under the act, the balance of a county DD board's rainy day fund would not be permitted to exceed 40% of the board's expenditures for all services during the preceding year. Prior law specified no limit.

The act also provides that, when determining whether or not to reduce the amount of taxes a county levies on behalf of the county DD board, the county budget commission may not take into account any rainy day fund balance that is under that limit. Similarly, the act specifies that any balance in a board's capital improvements account that is within existing law's

---

<sup>116</sup> R.C. 5705.32, not in the act.

statutory limit likewise may not be considered. (Under continuing law, the balance of a county DD board's capital improvements account is limited to 25% of the replacement value of the board's capital facilities and equipment.)

### **General funds**

(R.C. 5705.322)

In addition, the act requires that, before reducing a county's taxing authority as a result of the balance of a county DD board's general fund, the county budget commission must (1) take into account the county DD board's five-year projection of revenues and expenditures and (2) hold a separate, public hearing on the proposed reduction. If the commission holds such a hearing, the proposed reduction must be the sole topic of the hearing, the commission must publish notice of the hearing, and the commission must allow county representatives an opportunity to appear and explain the county DD board's financial needs.

### **Tax allocation information online**

(R.C. 323.131; Section 757.210)

The act requires each county auditor and treasurer to post on their respective websites, or on the county's website, the percentage of property taxes charged by each taxing unit and, where counties are concerned, the percentage of taxes charged by the county for each of the county purposes for which taxes are charged (e.g., developmental disabilities, detention facilities, senior services, public safety communications). The requirement begins to apply in 2021.

### **Property tax notices and ballot language (VETOED)**

(Sections 130.80, 130.81, and 130.82)

The Governor vetoed a provision that would have modified information conveyed in, and the form of, property tax election notices and ballot language as follows:

1. Required notices and ballot language to convey a property tax levy's rate in dollars for each \$100,000 of fair market value instead of in dollars for each \$100 of taxable value.
2. Required notices and ballot language to display the estimated amount the levy would collect annually.
3. Prohibited any portion of a property tax question from being printed on the ballot in boldface type or with differing font size, with some exceptions.

The vetoed provision wholly comprises H.B. 76 of the 133<sup>rd</sup> General Assembly. A detailed description of the vetoed provision is available as LSC's analysis of H.B. 76, as Reported by House Ways & Means. The analysis is available online at <https://www.legislature.ohio.gov/download?key=11653&format=pdf>.

## **Property tax exemption for renewable energy facilities**

(R.C. 5727.75; Section 757.200)

The act extends, by two years, the deadline to apply for existing 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. Prior to the act, the owner or lessee of the facility must have applied for the exemption and begun construction on the facility by January 1, 2021. The act extends this deadline to January 1, 2023.

When a property tax 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 which the facility is located. The act makes a technical correction to out-of-date language regarding the calculation of PILOTS that must be paid with respect to solar energy facilities. The correction causes each year's PILOTS to be calculated on the basis of generating capacity rating as of the last day of the preceding year instead as of December 31, 2016.

## **Exemption for convention centers and arenas**

(R.C. 5709.084; Section 757.90)

The act authorizes a real property tax exemption for a convention center or arena that is owned by a convention facilities authority (CFA) of a county with a population between 750,000 and 1 million and is leased to a private enterprise. According to the 2010 U.S. census, Hamilton County is the only county in Ohio that has a population within that range. The exemption applies to tax year 2019 and every tax year thereafter.

Continuing law exempts property owned by a CFA from taxation unless the property is leased to, or used exclusively by, a private enterprise.<sup>117</sup> There are several exceptions to this rule for certain arenas and convention centers such as Nationwide Arena in Franklin County.

## **Property tax abatement for certain municipal property**

(Section 757.340)

The act establishes a temporary procedure by which a municipal corporation may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest due on certain municipal property.

To qualify, the property must be owned by a municipal corporation that, within the past 25 years (1) was part of a federal disaster area declared because of severe storms or flooding and (2) following that declaration, obtained the title to property pursuant to the terms of a hazard mitigation grant from the Federal Emergency Management Agency (FEMA). The property must also currently be used for a tax-exempt purpose.

---

<sup>117</sup> R.C. 351.12, not in the act.

The application for exemption and abatement must be filed with the Tax Commissioner within 12 months of the provision's effective date (October 17, 2019).

Under continuing law, municipally owned property is tax-exempt if it is used "exclusively for a public purpose," but such property may not be exempted if more than three years' worth of taxes remain unpaid.

### **School district property tax reduction for certain property owners (VETOED)**

(R.C. 319.302 and 323.18)

The act would have authorized a property tax reduction for certain property owners whose taxes comprise a relatively high proportion of a school district's operating expenses. The reduction would have essentially functioned as a cap on the property taxes paid by such property owners to the school district. If the school district taxes charged against such owners' property exceeded the cap, the owners' taxes would have been reduced accordingly.

To qualify, property would have had to be in a "qualifying area," which is an area that is located in both a village and in a school district with an enrollment of at least 1,300 students and per-pupil operating spending of at least \$6,500 greater than the statewide average. The act would have capped the amount of school district property taxes paid by property owners in the qualifying area at four times the operating expenses the district paid in the previous year on account of students who reside in the qualifying area.

The reduction would have decreased the school district property taxes collected from all real property in the qualifying area so that collections did not exceed the cap. So, the amount of the total reduction would have equaled the difference between the cap amount and the total school district property taxes that would have been collected absent the cap.

Once the total tax reduction for the qualifying area was determined, it would have been applied to each parcel of real property within the area. The reduction available to a particular parcel's owner would have been based on the proportion of the total school district property taxes paid by the parcel's owner as compared to all parcel owners in the qualifying area.

In tax years when a reduction was applied, a school district would have collected less revenue from the property located in the qualifying area than it otherwise would have. In such cases, the district would have had to proportionately reduce the amounts credited to each of the district's funds, other than funds created to pay off bonds or other debt charges.

### **Exemption of residential development property (VETOED)**

(R.C. 5709.54)

The Governor vetoed a provision that would have exempted from property tax a portion of the value of land subdivided for residential development for up to five years (see "**Exempted portion**," below). Specifically, the exemption would have applied to any unimproved parcel subdivided pursuant to a plat and on which construction of residential buildings, e.g., single- or multi-family dwellings, was planned but not started. A detailed description of the vetoed provision is available on pages 394-396 of LSC's analysis of H.B. 166,

As Passed by the House. The analysis is available on line at <http://www.legislature.ohio.gov/download?key=12043&format=pdf>.

## **Financial institutions tax**

The act limits the tax base of the financial institutions tax (FIT) for certain highly capitalized institutions.

The FIT is a tax on banks and other kinds of financial institutions. The tax is based on the portion of an institution's equity capital attributable to its Ohio operations, as measured by the relative amount of its gross receipts that arise from activities in Ohio. The rate of the tax is tiered according to an institution's Ohio equity capital, as follows: 0.8% on the first \$200 million, 0.4% on the next \$1.1 billion, and 0.25% for equity capital in excess of \$1.3 billion. The minimum tax is \$1,000. All revenue from the tax is credited to the General Revenue Fund.

### **Limitation on tax base**

For tax years beginning in 2020 or thereafter, the act limits the tax base upon which the FIT is computed for any financial institution having total equity capital in excess of 14% of its total assets. Total equity capital in excess of 14% of an institution's total assets is excluded from the FIT base. In other words, if total equity capital exceeds 14% of total assets, only the amount of equity capital equal to 14% of assets will be apportioned to Ohio on the basis of the institution's gross receipts and multiplied by the applicable tax rates.

An institution's total assets are derived from information that must be filed with federal regulatory authorities (i.e., FR Y-9 or call reports), as is an institution's total equity capital. For institutions that are not covered by such a filing, assets is determined according to generally accepted accounting principles (GAAP).

### **Technical amendment**

The act strikes language in the FIT law that is no longer operative. This language is part of the original enactment of the FIT, and provided for offsetting adjustments in the initial top-tier tax rate if revenue proved to be substantially more or less than specified targets at two junctures within the first few years the tax was in effect. (No rate adjustments were necessary.)

## **Commercial activity tax**

### **CAT administrative expense earmark**

(R.C. 5751.02; Section 812.20)

The act reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.75% to 0.65%, beginning July 1, 2019. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures."

## **Temporary historic rehabilitation CAT credit**

(Section 757.40)

The act extends, to July 1, 2021, the temporary authorization for owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2021 (“qualifying certificate owner”). Additionally, the act authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than \$150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or that is a nonprofit organization, to claim a tax “credit” as if the business or organization were a CAT taxpayer.

Uncodified law enacted in 2014 by H.B. 483 of the 130<sup>th</sup> General Assembly authorized certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015. Two subsequent acts extended the authorization for tax periods ending between July 1, 2015, and June 30, 2019. Except for these prior temporary provisions, a certificate holder may claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

## **Other tax provisions**

### **Vapor products tax**

(R.C. 1346.04, 5743.01, 5743.025, 5743.03, 5743.14, 5743.20, 5743.41, 5743.44, 5743.51, 5743.52, 5743.53, 5743.54, 5743.55, 5743.59, 5743.60, 5743.61, 5743.62, 5743.63, 5743.64, 5743.66, and 5751.01; Sections 757.260 and 757.270)

The act levies an excise tax on the distribution, sale, or use of nicotine vapor products, effective October 1, 2019. Similar to the existing tax on tobacco products other than cigarettes (OTP), the vapor products tax would be levied primarily on distributors and all revenue from the tax is credited to the GRF. However, unlike the OTP tax, which is based on the wholesale price of the OTP product, the vapor products tax will be based on the volume of nicotine-containing liquid or other nicotine substance consumed in an electronic smoking product.

A corresponding “use” tax is imposed on persons using, storing, or consuming vapor products for which a vapor distributor has not paid the tax. (That is, the use tax applies, for example, to vapor products purchased outside Ohio and brought into Ohio, or otherwise acquired from someone other than a vapor distributor or retail dealer, in a manner analogous to the cigarette and OTP use taxes levied under continuing law.)

### **Tax base and rate**

The act defines a vapor product as any liquid solution or other substance that (1) contains nicotine, (2) is consumed by use of an electronic smoking product, and (3) is not regulated as a drug or device by the U.S. Food and Drug Administration (FDA). An electronic smoking product is a noncombustible product, except for a cigarette or an OTP, that (1) is designed to use vapor products, (2) employs some mechanical, electronic, or chemical means to

produce vapor from such products, and (3) is not regulated as a drug or device by the FDA. An example includes an electronic cigarette or “vape pen.”

The tax is imposed on the volume of vapor products at the first point the products are received in Ohio by a vapor distributor or seller. The rate equals 1¢ per 0.1 milliliters (mL) of liquid vapor product or 1¢ per 0.1 grams of nonliquid vapor product. A vapor product is taxed only once, and, even if a tax-paid product is later reprocessed, diluted, or otherwise altered, the altered product is not subject to the tax.

### **Taxpayer**

The tax is payable by vapor distributors and sellers of vapor products. A “seller” is any person located outside the state who is engaged in the business of selling vapor products to Ohio consumers. A distributor includes any person that:

1. Sells vapor products to retail dealers;
2. Is a retail dealer that receives vapor products upon which the tax has not been paid by another person;
3. Is a wholesaler that receives vapor products from a manufacturer or upon which the tax has not been paid by another person;
4. Is a wholesaler outside Ohio that sells vapor products to an Ohio wholesaler;
5. Is a “secondary manufacturer,” i.e., a person that repackages, reconstitutes, dilutes, or reprocesses vapor products for resale to consumers.

Similar to OTP taxes, a manufacturer of vapor products may avoid payment of the tax if it notifies the Commissioner that the retailer will pay the tax.

The use tax is payable by any person who uses, stores, or consumes vapor products for which the tax has not already been paid.

### **Tax returns and payments**

Vapor distributors must file returns and pay the tax due on a monthly basis, by the 23<sup>rd</sup> day of each month, unless the Commissioner allows a longer reporting interval. Returns must be filed electronically. Vapor distributors must also maintain the invoice from each vapor product transaction. For each vapor product transaction, the invoice must indicate the vapor distributor’s account number, whether or not the tax has been paid, and the weight or volume of each vapor product, rounded to the nearest 0.1 mL or 0.1 gram, as applicable.

### **Licensing requirements**

The act requires vapor distributors to obtain an annual license to operate in the state. A licensed vapor distributor may sell vapor products only to retail dealers, other licensed vapor distributors, or, if the vapor distributor is also a retail dealer, to consumers. However, a licensed distributor may sell vapor products to another licensed distributor only if the seller first obtains the Commissioner’s permission to do so and receives the products directly from a manufacturer or importer. (A similar requirement exists under continuing law for transfers of OTP.)

The licensing process for vapor distributors is identical to the process for wholesale dealers of OTP. The act requires only a single license for distributing OTP and vapor products, so an OTP distributor that already holds the OTP license before the vapor tax takes effect on October 1, 2019, may distribute vapor products after that date without obtaining an additional license.

Vapor distributors that do not already hold an OTP distributor license must apply to the Tax Commissioner for the license, which is valid for one year beginning on the first day of February. The annual application fee is \$125 per business location for a license solely to distribute vapor products or \$1,000 per business location for a combined OTP and vapor products license. (Under continuing law, a licensing fee to distribute OTP is \$1,000.) If a license is issued after February 1, the application fee is reduced proportionately for the remainder of the year. As the vapor tax begins to apply October 1, 2019, the act requires a vapor distributor that does not hold an OTP license before that date to apply for a license by September 30, 2019. This initial license will remain in effect until February 1, 2021. Revenue from the license fee is deposited in the Cigarette Tax Enforcement Fund, which funds the Department of Taxation's expenses in enforcing cigarette, OTP, and vapor product tax law.

As with existing OTP licenses, the Commissioner may refuse to issue or reissue a vapor distributor license if the applicant has any outstanding tax liability or has failed to file any prior vapor products tax return. The Commissioner may also suspend a license if a taxpayer fails to file a return or pay the tax. In addition, the Commissioner may cancel a license at the request of the licensee.

### **Administration and enforcement**

The act incorporates vapor products into many of the existing provisions for the administration and enforcement of the state cigarette and OTP taxes. These provisions include:

- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Records retention, fraud prevention, and inspections.
- Seizure and forfeiture of products when the Commissioner has reason to believe that a person is avoiding paying the tax.
- Requirements for transporting or distributing untaxed vapor products.
- Registration and reporting of vapor product importers and manufacturers, which the act requires beginning in July 2020.
- Civil and criminal penalties.
- Prohibition against municipal corporations imposing a similar tax.<sup>118</sup>

---

<sup>118</sup> R.C. 715.013, not in the act.

The act also explicitly requires secondary manufacturers to comply with federal packaging laws when reconstituting, diluting, or reprocessing vapor products.

### **CAT exclusion**

The act authorizes a vapor distributor to exclude from its gross receipts subject to the CAT an amount equal to the vapor products excise tax remitted to the state. A similar CAT exclusion already exists for distributors of cigarettes and tobacco products subject to state excise taxes. Under continuing law, the CAT is a business privilege tax levied on the basis of a business's taxable gross receipts.

### **Tobacco products tax return due dates and nexus**

(R.C. 5743.62, 5743.63, and 5743.66)

The act adjusts the due date for several types of monthly OTP returns to the 23<sup>rd</sup> day of the following month, instead of the last day of the month. Under prior law, returns of OTP distributors were due on the 23<sup>rd</sup> day of the next month, but OTP seller and use tax returns and importer and manufacturer reports were not due until the last day of the next month. The act also sets the monthly return due date for the new vapor products tax as the 23<sup>rd</sup> day of the following month.

The act changes the phrasing of three nexus-related references involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state," which is consistent with phrasing involving sellers of items or services subject to the general use tax.

### **Tourism development districts**

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

### **Gross receipts tax**

(R.C. 5739.101)

The act extends until December 31, 2020, the authority of townships and municipal corporations to levy a new gross receipts tax within the territory of a TDD. Under prior law, such a tax was allowed only if it was adopted before January 1, 2019. Canton is the only subdivision that adopted a TDD gross receipts tax before that date.<sup>119</sup>

Under continuing law, a TDD gross receipts tax is levied on businesses' gross receipts derived from making sales in the TDD (excluding food sales) at a rate not exceeding 2%. The tax

---

<sup>119</sup> Ohio Department of Taxation, Resort Tax, available at: <https://www.tax.ohio.gov/resorttax.aspx>.

is administered and collected by the Tax Commissioner in the same manner as the gross receipts tax that is permitted in certain “resort areas” such as Kelleys Island and Put-in-Bay.

### **Development charge**

(R.C. 505.56, 505.58, 715.014, and 715.015)

The act authorizes a township or municipal corporation to enter into agreements with owners of property located within the TDD to impose a development charge on the property equal to a percentage (up to 2%) of gross receipts derived from sales made at the property (excluding food sales). The development charge is subject to approval of the board of county commissioners. It is collected and enforced in the same manner, and has the same lien status, as real property taxes regardless of changes in ownership of the property.

A township or municipal corporation that levies a gross receipts tax within the TDD is prohibited from entering into or enforcing a development charge agreement within the same district.

### **Local Government Fund**

(R.C. 5747.50; Sections 387.10, 387.20, 757.230, and 812.20)

#### **LGF temporary increase**

The act temporarily increases the amount to be credited to the Local Government Fund (LGF) each month. Generally, the LGF receives 1.66% of the total state tax revenue credited to the General Revenue Fund. The act increases that percentage to 1.68% for each month in FYs 2020 and 2021.

Most of the funds credited to the LGF are distributed to county undivided local government funds (county LGFs), from which the funds are allocated amongst subdivisions within the county using either a statutory or an alternative, county-specific formula. One million dollars of the LGF is set aside each month to make payments to villages with a population of less than 1,000 and to townships, and the remainder (around 5% of total LGF funds) has been used to make direct payments to municipal corporations.

#### **Direct distributions to municipalities**

The act modifies the formula for distributing these direct payments among municipalities. Previously, only municipalities that levied an income tax in 2006 received a distribution; each municipality’s distribution was based on that municipality’s share of the payments in 2006 (with that share being based on the municipality’s relative income tax collections).

Under the act, every municipality in the state with a population of 1,000 or more will receive a distribution. (Villages with a population of less than 1,000 will continue to receive a portion of the \$1 million set-aside.) Each such municipality’s share is based on population, with the caveat that cities with a population of more than 50,000 will be capped at that amount. So, when each municipality’s share is calculated, cities with a population of more than 50,000 will be considered to have a population of 50,000. The share paid to a municipality with a population of less than 50,000 will be based upon that municipality’s actual population.

## **Verifying and disclosing scholarship eligibility**

(R.C. 5703.21(C)(19))

The act allows the Department of Taxation to disclose to the Department of Education whether students applying for or receiving scholarships under the Educational Choice Scholarship Pilot Program meet the program's income eligibility requirements. Eligibility for the Educational Choice Scholarship Pilot Program is based in part on a student's family income.<sup>120</sup> The Department of Education must request the verification and provide sufficient information about the student and their family to allow the Department of Taxation to make the verification.

Continuing law permits disclosure of certain information in the possession of the Department of Taxation to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the disclosure of taxpayer information is prohibited and subjects the violator to employment termination and a fine.

## **Job Retention Tax Credit**

(R.C. 121.171)

The act modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Continuing law authorizes the JRTC for businesses that agree to make a minimum capital investment in Ohio and to retain a specified number of employees in connection with that capital project. The business must be engaged in either manufacturing or corporate administrative functions. To receive the tax credit, the business applies to the Tax Credit Authority, which reviews the application and offers a tax credit agreement. The credit will equal an agreed-upon percentage of the business' payroll, and can be allowed for up to 15 years.

Previously, to receive the credit, a business was required to employ at least 500 employees or have an annual payroll in Ohio of at least \$35 million. In addition, for manufacturing projects, the business had to make a capital investment in Ohio of at least \$50 million over three years. For corporate administrative projects, the investment must equal at least \$20 million.

The act makes several changes to these requirements. First, the act provides that, if a corporate administrative project is located in a foreign trade zone, the business does not have to meet the 500 employee or \$35 million payroll requirement. The project must still involve an investment of at least \$20 million over three years.

---

<sup>120</sup> See R.C. 3310.02 and 3310.032.

For manufacturing projects, the act entirely removes the requirement that a business have at least 500 employees or \$35 million payroll. In addition, the act modifies the \$50 million capital investment requirement, such that a manufacturer's investment may equal either (a) \$50 million or (b) 5% of the net book value of the tangible personal property located at the project site on the last day of the three-year investment period.

---

## **DEVELOPMENT SERVICES AGENCY**

### **Opportunity zones and business investment credits**

- Authorizes a nonrefundable tax credit equal to 10% of a taxpayer's investment in an Ohio Opportunity Zone fund.
- Limits individual credits to \$1 million per fiscal biennium and total credits to \$50 million per biennium.
- Reduces the total biennial cap on the existing small business investment credit from \$100 million to \$50 million and otherwise modifies that credit.

### **Motion picture tax credit**

- Extends eligibility for the motion picture tax credit to certain live theater productions and production contractors.
- Requires that production companies and production contractors be registered with the Secretary of State as a condition of receiving the credit.
- Adds post-production, advertising, and promotional expenses to the kinds of expenditures for which the credit may be claimed.
- Disqualifies productions that do not begin within a specified period after being certified as eligible for the credit.
- Stipulates that tax credit certificates are to be awarded in two rounds – in July and January – each fiscal year.
- Requires each round's applications to be ranked on the basis of the economic and workforce development impact of the production and granted tax credits in the order of the ranking.
- Terminates a tax credit recipient's authority to transfer its right to claim the credit to a third party.

### **Community reinvestment areas**

- Specifies that an amendment that adds affordable housing requirements to the terms of a community reinvestment area (CRA) in existence on July 21, 1994, will not subject the CRA to state law requirements that subsequently became effective.

### **Rural Industrial Park Loan Fund**

- Reinstates the Rural Industrial Park Loan Fund, which was repealed in 2015 and has not received appropriations since FY 2010-2011.
- Requires the fund to support the Rural Industrial Park Loan Program.
- Appropriates \$25 million to the fund.

## Sports event grant program

- Authorizes the Development Services Agency to award a sports event grant on the basis of an Ohio sporting event that had been held in Ohio within the two preceding years.

## Opportunity zone investment credit

(R.C. 107.036, 122.84, 122.86, 5747.82, and 5747.98)

The act authorizes a nonrefundable income tax credit for taxpayers that invest in Ohio opportunity zones. The credits enhance existing federal and Ohio tax benefits for investments in such zones.

### Opportunity zone background

Beginning in 2018, federal law allows states to designate economically distressed areas that meet certain criteria as “opportunity zones.”<sup>23</sup> Once the zone is certified by the Secretary of the Treasury, 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.<sup>24</sup>

Moreover, if the investment is held in the opportunity zone fund for five years, the investment’s basis is increased by 10% of such deferred gain (effectively a 10% decrease in tax on the original gain). If held for at least seven years, the basis is increased by 15%. If held for ten years, not only is the basis increased by 15%, but any capital gains accrued while the investment was held in the opportunity zone fund is exempt from tax.<sup>25</sup>

Because Ohio law uses federal adjusted gross income as a starting point for Ohio income tax liability, the federal deferral and reduction in capital gain taxes also defers or reduces a taxpayer’s Ohio income tax. These federal and Ohio tax benefits are available regardless of where the zone is located.

### Ohio income tax credit

The act adds to these existing incentives a new Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in

---

<sup>23</sup> 26 U.S.C. 1400Z-1. The Opportunity Zone law was enacted in December of 2017 by the federal “Tax Cut and Jobs Act.” A map of opportunity zones designated in Ohio is available at [https://development.ohio.gov/bs/bs\\_censustracts.htm](https://development.ohio.gov/bs/bs_censustracts.htm).

<sup>24</sup> 26 U.S.C. 1400Z-2. To qualify, the reinvestment must be made within 180 days after the gain is realized.

<sup>25</sup> 26 U.S.C. 1400Z-2.

an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio (referred to in the act as an “Ohio qualified opportunity fund”). Unlike the federal tax incentives, the act’s credit is available even for investors that do not have capital gains to reinvest.

The credit equals 10% of the taxpayer’s investment. The taxpayer may claim the credit in the year in which the Ohio qualified opportunity fund invests the taxpayer’s investment in a project located in an Ohio opportunity zone, or in the following year (in case the taxpayer’s credit is approved after the tax filing deadline for the year in which the investment was made).

The credit is nonrefundable, but any unused credit can be carried forward for up to five subsequent taxable years. The total amount allowed to a particular taxpayer in any fiscal biennium is limited to \$1 million. The total amount of credits available for all taxpayers is limited to \$50 million per biennium. Because of this limit, investors must apply for the credit.

### **Application process**

The taxpayer must apply to the Development Services Agency (DSA) between January 1 and February 1 following the year in which the taxpayer makes the investment. The taxpayer must include in the application (1) the total investment the taxpayer made in Ohio qualified opportunity funds and (2) a statement from an employee or officer of each fund certifying the amount the taxpayer invested in that fund, the amount of that investment that the fund directed to opportunity zone projects, and a description of each project funded by the investment.

DSA must consider applications in the order in which they are received. If the taxpayer qualifies for the credit, DSA must issue the taxpayer a credit certificate that lists the amount of the credit. The taxpayer must file a copy of the certificate with the taxpayer’s return.

### **Qualifying Ohio opportunity zones**

The act provides details for determining whether an opportunity zone fund’s assets are invested in an Ohio-designated zone for the purposes of the credit. In the case of assets in the form of tangible property, the property must be used exclusively in the opportunity zone during the fund’s holding period of the property. In the case of assets in the form of stock or partnership interests in a business, all of the business’ tangible property must be used exclusively in the Ohio zone during the fund’s holding period of the stock or interest. (These are stricter investment standards than those that federal law requires for an investment to qualify for the federal tax [and Ohio flow-through tax] benefits: federal law requires only 90% of a fund’s investments to be in an opportunity zone, and requires “substantially all,” instead of all, of a business’ tangible property to be used in a zone during “substantially all” of the time the fund holds its investment in the property or business. Under the proposed Treasury regulations, “substantially all,” when used in reference to the percentage of a business’ tangible property it uses in an opportunity zone, may be as little as 70%.)

### **Transfer of credits**

A credit certificate may be transferred once to another person, but the credit must be claimed within the original five-year carryforward period even if transferred.

## **Annual report**

The act requires DSA to issue an annual report that includes information about the number of taxpayers that applied for, and were awarded, credits during the preceding year; the amount of credits awarded; the projects funded by taxpayer investments; and the opportunity zones in which those projects are located.

## **Biennial forecast of foregone revenue**

Continuing law requires that every main biennial budget act include detailed estimates of the state revenue that will be foregone due to “business incentive” tax credits in the current biennium and future biennia. The act adds the new opportunity zone investment credit to the list of tax credits that are included in these estimates.

## **Small business investment credit**

(R.C. 122.86)

The act modifies an existing income tax credit for investments in smaller businesses, principally by reducing the total biennial limit on the credit allotment. Under prior law, the amount of the credits awarded each fiscal biennium was limited to \$100 million; the act reduces the limit to \$50 million.

The act also modifies qualifications a business must satisfy in order for a taxpayer’s investment to qualify for the credit. Whereas prior law required a business to employ at least 50 full-time equivalent employees, the act specifies that this requirement is to be satisfied throughout the two-year period leading up to a taxpayer’s investment.

Prior law also required the business to incur costs for payroll or for one or more of four different categories of assets in an amount equal to, or more than, the taxpayer’s investment amount for which the credit is granted, and to have done so within six months of the taxpayer’s investment. The categories include real property, tangible personal property, vehicles used primarily in the business, and intangible property (e.g., royalties, trademarks, licenses).

The act modifies these qualifications as follows:

- Eliminates the requirement that the business’ costs equal the amount of the investment for which the credit is claimed, requiring only that some such costs be incurred.
- Modifies the payroll qualification by permitting increased pay for owners, officers, or managers to count toward payroll, and by disallowing pay for retained employees to count toward payroll. Only the pay of employees hired after the investment would count. (Under prior law, the payroll qualification referred to the pay of “new employees,” but expressly allowed pay for retained employees to count as pay for new employees. The act removes reference to retained employees’ pay.)
- Allows the business to count installation costs toward the cost of tangible personal property.
- Replaces the cost of intangible property with the cost of leasehold improvements or construction.

The act also modifies the administration of the credit. As under former law, taxpayers must apply to DSA to qualify for the credit, or the business may apply on a taxpayer's behalf. The act specifies that, in either case, the application must be made within 60 days after the investment is made and within the same fiscal biennium in which the investment is made. And, whereas under former law the right to claim a credit was represented by a "certificate," which could be used to claim the tax credit once the investment's required two-year holding period concluded, the act refers to this right as an "allocation," which may be converted to a certification once the holding period is over, allowing the credit to be claimed thereafter. Credit allocations are made only after an applicant provides DSA with all documentation needed to demonstrate that a business satisfies the qualifications.

Under continuing law, the credit is available for investments in businesses having assets of \$50 million or less, or annual sales of \$10 million or less, and employing no more than 50 full-time-equivalent employees or employing more than 50% of their U.S. employees in Ohio.

The act's changes apply to investments made on or after July 1, 2019.

## **Motion picture tax credit**

(R.C. 122.85, 107.036, 5726.98, 5733.98, 5747.98, and 5751.98; Section 757.250)

The act modifies the motion picture tax credit – a refundable credit for companies that produce all or part of a motion picture 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 and may be claimed against the commercial activity tax (CAT), the financial institutions tax (FIT), or the personal income tax. A company seeking the credit must first apply to the Director of Development Services for certification of the project as a "tax credit-eligible production." Then, upon completion of the project, the company must hire an independent certified public accountant to compile a report of the company's Ohio-sourced expenditures and apply to the Director for a tax credit certificate based on that amount (or the amount of expenditures estimated in the company's initial application, whichever is less).

### **Broadway theatrical productions**

The act extends eligibility for the motion picture tax credit to "Broadway theatrical productions" that are directly associated with New York City's Broadway Theater District and are rehearsed or performed by a professional cast and crew at a qualified production facility – an Ohio facility that is used in the development or presentation to the public of live stage theater. Such a theatrical production qualifies for the credit if (1) the production is scheduled for presentation in New York City's Broadway Theater District after it is performed in Ohio (a "pre-Broadway production"), (2) the production is scheduled to be performed in Ohio for more than five weeks with an average of at least six performances per week (a "long run production"), or (3) the activities comprising the technical period of the production are conducted in Ohio before the beginning of a performance tour (a "tour launch").

The procedures for certifying Broadway theatrical productions as "tax credit-eligible" and awarding a tax credit certificate upon the completion of the production are mostly the

same as those that apply to motion pictures. However, the act makes a few adjustments to the information that is required to be submitted with the application for certification of the project (see, “**Application requirements,**” below).

### **Production contractors**

The act also extends eligibility for the credit to companies that are involved in a motion picture certified as a tax credit-eligible production but are not themselves the production company. These “production contractors” receive a credit based on Ohio-sourced expenditures incurred in performing services under contract with the production company related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution.

Production contractors are included in the same credit application and evaluation process as the production company producing the motion picture so no separate credit application or progress reporting on the motion picture is required. Following completion of the motion picture, each involved production contractor receives a tax credit certificate – separate from the tax credit certificate awarded to the production company – for a credit equal to 30% of the contractor’s Ohio-sourced expenditures paid or incurred performing services related to the motion picture (or the amount of such expenditures estimated in the production company’s initial application, whichever is less).

### **Registration with Secretary of State**

The act requires, as a condition of receiving the motion picture tax credit, that a production company or production contractor first be registered with the Secretary of State.

### **Eligible expenditures**

The act broadens the types of expenses upon which the credit is based to include postproduction, advertising, and promotional expenditures. Under prior law, only expenditures for goods, services, and payroll used directly for the production itself could be included in computing the amount of the credit and in meeting the \$300,000 minimum expenditure threshold. The act requires the Director to adopt rules as to the specifics of what constitutes “postproduction” activities.

### **Application requirements**

The act makes several adjustments to the information that is required to be submitted for a motion picture or Broadway theatrical production to be certified as eligible for the credit. All applicants are required to submit an estimate of the amount of state and local taxes that will be generated from the project and of the project’s overall economic impact. Furthermore, in addition to the list of preproduction and production dates required under continuing law, the application must include a list of the post-production dates associated with the motion picture or Broadway theatrical production.

If the application concerns a Broadway theatrical production, the application need not include the percentage of the production “being shot in Ohio” or the shooting script. In lieu of submitting an address for an Ohio production office, the company may provide the address of

the qualified production facility at which the Broadway theatrical production will be rehearsed or performed. In addition, the application must include a list of each scheduled performance of the production at that facility.

If the application concerns a motion picture, it must state the name and address of each production contractor that is contracted to perform services involving the motion picture and the amount of eligible expenditures paid or incurred under the contract.

### **Rescinding certification**

The act requires the Director to rescind certification of a production if the production process does not begin within a specified period. The production process for motion pictures and Broadway theatrical productions that are certified as credit-eligible on or after the act's 90-day effective date, October 17, 2019, must begin within 90 days of such certification unless the production company demonstrates that the delay is due to unforeseeable circumstances beyond its control or due to action or inaction by a government agency. The production process for previously certified motion pictures must begin within one year of such certification or before October 17, 2019, whichever is later.

Continuing law requires production companies to submit "sufficient evidence of reviewable progress" within 90 days of the eligibility certification and any time thereafter at the Director's request. The Director may (but is not required to) revoke a production's eligibility if a company fails to report sufficient progress. If eligibility is revoked, the company may reapply for the eligibility certification.

### **Awarding tax credits**

The act requires the Director to award tax credit certificates in two rounds each fiscal year. The first round of applications would be approved by July 31, and the second round would be approved by January 31. The amount of credits awarded in the first round of applications is limited to \$20 million plus any credit allotment that was not used in the previous fiscal year. Under continuing law, the maximum amount of credits that may be awarded in any fiscal year is \$40 million.

For each round, the Director must rank the applications on the basis of the extent of positive economic impact a production would have and the effect of the production on developing a permanent Ohio workforce in the motion picture or live theater industries. Priority must be given to television series and miniseries. For the purposes of ranking applications, the "economic impact" of a production is determined based on the production company's total expenditures in Ohio that are directly associated with the production. The production's impact on developing a permanent Ohio workforce in the motion picture and live theater industries is determined "first by the number of new jobs created and second by the amount of payroll added" for Ohio employees.

After ranking the applications, the Director must award tax credits to productions in the order of their ranking, starting with the productions that have the greatest economic and workforce development impact. The act requires the Director to adopt rules prescribing a schedule and deadlines for applications to be submitted and reviewed.

Prior law specified that applications concerning television series and miniseries were to be prioritized, but did not otherwise specify how and when certificates were to be awarded. Based on the Development Services Agency's website, it appears that the Director awarded credits whenever they were available (i.e., when the annual credit cap resets) in the order in which applications were received.<sup>26</sup>

### **Transferability of credits**

The act terminates the authority for a credit recipient to transfer all or part of the credit to another person. Under prior law, a motion picture company was permitted to transfer the authority to claim the credit to a third party only if the company provided certain details of the transfer to the Director. A transferred credit had to be claimed by the transferee for the same tax period for which the company could have claimed the credit. A motion picture company was permitted to divide portions of a transferred credit between different transferees but could not transfer the same portion of the credit to more than one transferee.

The act specifies that credits transferred to a third party before the act's 90-day effective date, October 17, 2019, may continue to be claimed to the extent authorized under that transfer.

### **Application of changes**

The act's modifications to the process of ranking applications and awarding credits – including the requirement that credits be awarded in two annual cycles – apply beginning with the 2021 fiscal year. The Director is required to adopt rules necessary to implement those modifications on or before the first day of that fiscal year. The other changes made by the act apply to productions that are certified as tax credit-eligible productions on or after the act's 90-day effective date, October 17, 2019.

### **Community reinvestment areas**

(R.C. 3735.661)

Under continuing law, a municipal corporation or county may amend the ordinance or resolution governing a Community Reinvestment Area (CRA) that was in existence on July 21, 1994, in specified ways, without subjecting the CRA to state law requirements that became effective after that date. The act adds to the list of specified amendments that will not bring a CRA under the newer state law requirements. Specifically, the act allows municipal corporations and counties to require that developers and property owners agree to provide affordable housing as a condition of receiving tax benefits through a CRA that existed on July 21, 1994, without bringing that CRA under the law's subsequently enacted requirements.

---

<sup>26</sup> Ohio Development Services Agency, "Ohio Film Office – Tax Credit Overview and Frequently Asked Questions," <https://development.ohio.gov/filmoffice/Incentives.html>.

## Rural Industrial Park Loan Fund

(R.C. 122.26; Sections 259.10 and 259.50)

The act reinstates the Rural Industrial Park Loan Fund and appropriates \$25 million to it from the Facilities Establishment Fund. Under the act, the Director of Development Services must use the Rural Industrial Park Loan Fund to support the Rural Industrial Park Loan Program, which allows loans and loan guarantees for the development and improvement of industrial parks in rural areas of Ohio. There have been no appropriations to the program since FY 2011. The Rural Industrial Park Loan Fund was repealed in 2015. It had a zero balance at the time of its repeal.<sup>27</sup>

Under current law, the Director of Development Services must adopt rules governing the program, including rules governing criteria for evaluating applications for assistance and reporting and monitoring procedures. The Director also must establish fees, interest rates, payment schedules, and local match requirements; require each applicant for assistance to develop a project marketing plan and management strategy; inform local governments of the availability of the program; and issue an annual report regarding program activities. Generally, an applicant, as a condition of receiving assistance under the program, must agree, for a period of five years, not to relocate jobs from inside Ohio to a site that is developed or improved with assistance from the program.<sup>28</sup>

## Sports event grant program

(R.C. 122.121)

Under continuing law, grants may be awarded by the Director of Development Services to counties, municipalities, or nonprofit organizations acting on behalf of a county or municipality to support the selection of a site for a national or international sports competition. Grants may be used solely to defray the county's, municipality's, or local organizing committee's cost to host the event pursuant to an agreement with the event's sponsor.

Under prior law, a sporting event was disqualified for a grant if it has been held in Ohio in either of the last two years. The act removes the two-year restriction, allowing grants to be awarded even for events that have been held in the two-year period preceding the new event.

---

<sup>27</sup> See Am. Sub. H.B. 1, 128<sup>th</sup> General Assembly (2009) and Am. Sub. H.B. 64, 131<sup>st</sup> General Assembly (2015).

<sup>28</sup> R.C. 122.24, not in the act.



COLUMBUS | CLEVELAND  
**BRICKER & ECKLER LLP**  
100 South Third Street  
Columbus, OH 43215-4291  
MAIN: 614.227.2300  
FAX: 614.227.2390

www.bricker.com  
info@bricker.com

Justin D. Cook  
614.227.4836  
jdcCook@bricker.com

## MEMORANDUM

**TO:** Robert A. Brundrett, Esq.  
The Ohio Manufacturers' Association

**FROM:** Justin D. Cook, Esq.  
Bricker & Eckler LLP

**DATE:** June 3, 2019

**RE:** Job Retention Tax Credit – Summary of S.B. 153

Ohio's Job Retention Tax Credit ("JRTC") is codified under R.C. 122.171. As the name implies, its purpose is to foster job retention through increased capital investment in the State of Ohio. Over the years, very few manufacturers have taken advantage of the JRTC. The enormous minimum workforce size and capital investment thresholds are a significant impediment.

Currently, R.C. 122.171 provides that "eligible businesses" may apply for a JRTC. An eligible business must employ at least 500 full-time equivalent employees or have an annual Ohio employee payroll of at least \$35,000,000. Further, if the taxpayer is a manufacturer, it must make a capital investment of at least \$50 million (in the aggregate) over a three-year period to qualify.

On May 21, 2019, with the support of the Ohio Manufacturers' Association (the "OMA"), Senator Dolan introduced S.B. 153, which would expand the number of manufacturers and projects eligible to apply for the JRTC. These amendments to the JRTC would incentivize Ohio's employers to make additional capital investments that preserve existing jobs. S.B. 153's proposed adjustments to the JRTC are summarized below:

- The minimum payroll size and number of employees required to apply for the JRTC would be eliminated for manufacturers. For businesses engaged in significant corporate administrative functions (as opposed to manufacturing), the minimum payroll size and number of employees requirement is also eliminated, but only if the business is located in a foreign trade zone.
- The minimum capital investment required for manufacturers to apply for the JRTC would be adjusted to the lesser of \$50,000,000 or an amount equal to five percent of the net book value of all tangible personal property used by the manufacturer at the project site as of the end of the three-year investment period.
- Manufacturers would have to maintain a minimum number of full-time employees specified in the tax credit agreement during the entire term of the credit (as opposed to maintaining at least 500 employees or an annual Ohio payroll of \$35,000,000).

While S.B. 153 would expand the number of manufacturers and projects eligible to apply for a JRTC, it would not alter the existing cap on the amount of

Robert A. Brundrett, Esq.  
The Ohio Manufacturers' Association  
June 3, 2019  
Page 2

credits that may be awarded annually by the tax credit authority. In 2019, the JRTC is capped at \$130MM. Each year the cap increases by \$13MM until 2024. For 2024 and each year thereafter, the maximum credits that may be awarded annually will remain \$195MM.



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 153  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Dolan

Mackenzie Damon, Attorney

### SUMMARY

- Modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

### DETAILED ANALYSIS

#### Job Retention Tax Credit

The bill modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

##### Current requirements

Continuing law authorizes the JRTC for businesses that agree to make a minimum capital investment in Ohio and to retain a specified number of employees in connection with that capital project. The business must be engaged in either manufacturing or corporate administrative functions. To receive the tax credit, the business applies to the Tax Credit Authority, which reviews the application and offers a tax credit agreement. The credit will equal an agreed-upon percentage of the business' payroll, and can be allowed for up to 15 years.

To receive the credit, currently, a business must employ at least 500 employees or have an annual payroll in Ohio of at least \$35 million. In addition, for manufacturing projects, the business must make a capital investment in Ohio of at least \$50 million over three years. For corporate administrative projects, the investment must equal at least \$20 million.

##### The bill

The bill makes several changes to these requirements. First, the bill provides that, if a corporate administrative project is located in a foreign trade zone, the business does not have to meet the 500 employee or \$35 million in payroll requirement. The project must still involve an investment of at least \$20 million over three years.

For manufacturing projects, the bill entirely removes the requirement that a business have at least 500 employees or \$35 million in payroll. In addition, the bill modifies the \$50 million capital investment requirement, such that a manufacturer’s investment may equal either (a) \$50 million or (b) 5% of the net book value of the tangible personal property located at the project site on the last day of the three-year investment period.<sup>1</sup>

---

## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 05-21-19 |

---

S0153-I-133/ks

---

<sup>1</sup> R.C. 122.171.



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 26  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for S.B. 26's Fiscal Note](#)

**Version:** As Reported by H. Finance\*

**Primary Sponsor:** Sen. Kunze

Michael Hinel and Sam Benham, Attorneys

## SUMMARY

### Income tax

- Allows teachers to claim an income tax deduction of up to \$250 for amounts paid out-of-pocket for professional development and classroom supplies.
- Removes a provision that makes income earned from the practice of law or from lobbying ineligible for the business income deduction and 3% flat tax rate.
- Requires all taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) codes associated with each source of their business income.
- Delays the repeal of the income tax credit for contributions to campaigns for state offices until taxable years beginning in or after 2020.
- Delays the repeal of the income tax credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT) until taxable years beginning in or after 2020.

### Sales and use tax

- Exempts from sales and use tax the sale of feminine hygiene products associated with menstruation.
- Exempts from sales and use tax the sale of prescription diapers or incontinence pads covered by Medicaid.

---

\* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

## Public Office Compensation Advisory Commission

- Abolishes the Public Office Compensation Advisory Commission.

---

---

### DETAILED ANALYSIS

#### Income tax deduction for teacher expenses

The bill authorizes Ohio teachers to deduct up to \$250 of unreimbursed expenses incurred each year for professional development and classroom supplies.

The deduction piggy-backs on an existing federal income tax deduction for teacher expenses. As with the federal deduction, the Ohio deduction would apply to the following expenses, when not reimbursed to the teacher:

1. Books, supplies, computers and other equipment, and supplementary materials used in the classroom. With respect to supplies for a health or physical education class, the deduction only applies to amounts spent on athletic supplies.
2. Expenses paid to participate in professional development courses related to the teacher's curriculum or students.

To qualify, a teacher must be licensed in Ohio or hold an Ohio-issued certificate or permit and be eligible for the federal deduction. Persons eligible for the federal deduction include any kindergarten through 12th grade teacher, instructor, counselor, principal, or aide who works in a primary or secondary school for at least 900 hours per school year.

The deduction applies to expenses that exceed what the teacher may claim as a federal deduction. For example, if a teacher incurs \$350 of qualifying expenses in a year, the teacher may claim \$250 as a federal deduction, and the remaining \$100 as a deduction from Ohio taxes. (The first \$250 deduction is already factored into the teacher's Ohio tax liability, since Ohio uses federal adjusted gross income as the starting point on the Ohio income tax return and the federal deduction directly reduces FAGI.)<sup>1</sup> The deduction would be allowed for taxable years beginning in or after 2020.<sup>2</sup>

#### Business income deduction

The bill removes a recently enacted provision that excludes income earned from the practice of law or lobbying from being eligible for the business income deduction and 3% flat tax rate. The exclusion, enacted in H.B. 166, applies specifically to income from (1) legal services provided by an attorney admitted to practice in Ohio or registered as corporate counsel in Ohio or (2) lobbying activity by a person required to register with the Joint Legislative Ethics

---

<sup>1</sup> R.C. 5747.01(A)(34) and (JJ) and 26 U.S.C. 62.

<sup>2</sup> Section 3 of the bill.

Committee.<sup>3</sup> The exclusion currently is scheduled to apply to taxable years beginning in or after 2020.<sup>4</sup>

The bill specifies that taxpayers having business income and required to make estimated tax payments in 2020 must calculate payment amounts based on their annual tax liability assuming repeal of the business income deduction exclusion.<sup>5</sup> That is, a taxpayer whose 2020 tax liability is affected by the bill's repeal of the exclusion must compute estimated payments as if the taxpayer may claim the business income deduction for 2020.

The bill also requires taxpayers claiming the business income deduction to indicate on their tax returns the North American Industry Classification System (NAICS) code or codes for each of the business or professional activities from which their business income was derived, pursuant to administrative rules adopted by the Department of Taxation.<sup>6</sup>

The repeal of the business income deduction exclusion and the enactment of the NAICS code reporting requirement apply to taxable years beginning in or after 2020.<sup>7</sup>

### **Delays application of repealed tax credits**

H.B. 166 repealed two income tax credits: (1) the credit for campaign contributions and (2) the credit for a pass-through entity investor's share of the entity's financial institutions tax (FIT). The credits were repealed for taxable years beginning in 2019 or thereafter.<sup>8</sup> The bill delays the application date to taxable years beginning in 2020 or thereafter.<sup>9</sup>

The campaign contribution tax credit is a nonrefundable credit for contributions made to the campaign committees of candidates for a state office (e.g., Governor or member of the General Assembly). The credit may not exceed \$50 per individual taxpayer.<sup>10</sup>

The second repealed tax credit allows a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner's share of the institution's FIT tax payments. The refundable credit equals the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.<sup>11</sup>

---

<sup>3</sup> R.C. 5747.01(A)(31), (B)(2), and (HH).

<sup>4</sup> Section 757.150(C) of H.B. 166.

<sup>5</sup> Section 6(B) of the bill.

<sup>6</sup> R.C. 5747.08(L). The rules must be adopted in accordance with the general administrative rules procedures in R.C. Chapter 119.

<sup>7</sup> Section 6(A) of the bill.

<sup>8</sup> Section 757.150(B) of H.B. 166 (referring to R.C. 5747.29 and 5747.65).

<sup>9</sup> Section 4 of the bill.

<sup>10</sup> R.C. 5747.29, not in the bill.

<sup>11</sup> R.C. 5747.65, not in the bill.

## **Feminine hygiene product sales tax exemption**

The bill exempts from sales and use tax feminine hygiene products principally used in connection with the menstrual cycle, e.g., tampons, panty liners, menstrual cups, and sanitary napkins. The exemption does not extend to general grooming and hygiene products such as soaps, cleaning solutions, and shampoo.<sup>12</sup> Unlike with many other sales and use tax exemptions, a consumer will not be required to furnish an exemption certificate to the vendor as a condition of obtaining the exemption.<sup>13</sup> The exemption applies to all such items purchased on or after the first day of the first full month that begins at least 30 days after the bill's effective date.<sup>14</sup>

## **Sales tax exemption: Medicaid-covered incontinence products**

The bill authorizes a sales and use tax exemption for prescription adult diapers and incontinence pads, provided the products are (1) purchased by or for a person who has been diagnosed as incontinent and (2) covered, i.e., reimbursed, by Medicaid. An incontinence pad is defined to be an absorbent product not worn on the body that is designed to protect furniture and other items from damage from human incontinence.<sup>15</sup> The exemption applies beginning on the first day of the first month that begins at least 30 days after the bill's effective date.<sup>16</sup>

Current law exempts from sales and use tax durable medical equipment, mobility enhancement equipment, and prosthetic devices purchased pursuant to a prescription.<sup>17</sup> However, the Tax Commissioner considers diapers and incontinence pads to fall outside those categories, thus subjecting them to sales and use tax.<sup>18</sup> Currently the only circumstance under which a diaper is specifically exempted from sales and use tax is if the diaper is purchased during the state's three-day clothing and school supply "sales tax holiday."<sup>19</sup>

## **Public Office Compensation Advisory Commission**

The bill abolishes the Public Office Compensation Advisory Commission, which is required to submit proposed compensation plans and reports annually by October 15, detailing the Commission's recommendations for the compensation of the officers whose salaries are

---

<sup>12</sup> R.C. 5739.01(TT) and 5739.02(B)(57).

<sup>13</sup> R.C. 5739.03.

<sup>14</sup> Section 6(C) of the bill.

<sup>15</sup> R.C. 5739.02(B)(56).

<sup>16</sup> Section 6(C) of the bill.

<sup>17</sup> R.C. 5739.02(B)(19).

<sup>18</sup> See Appendix L ("Health Care Item List") to Information Release ST 2010, "Sales and Use Tax: Drugs, Durable Medical Equipment, Mobility Enhancing Equipment, and Prosthetic Devices," Ohio Department of Taxation (2010, rev. 2019), available at [https://www.tax.ohio.gov/Portals/0/sales\\_and\\_use/information\\_releases/ST%202010-03%20appendix-l-health-care-list-2018-5-2.pdf](https://www.tax.ohio.gov/Portals/0/sales_and_use/information_releases/ST%202010-03%20appendix-l-health-care-list-2018-5-2.pdf).

<sup>19</sup> R.C. 5739.02(B)(55).

fixed by the General Assembly. The Commission was created by S.B. 296 of the 132<sup>nd</sup> General Assembly, which took effect December 27, 2018, meaning that the Commission's first report is due on October 15, 2019. It appears that the Commission's members have not yet been appointed.

Existing law specifies that the Commission consists of nine members appointed to serve two-year terms as follows: two by the Governor, two by the Senate President, two by the Speaker of the House, one by the Senate Minority Leader, one by the House Minority Leader, and one by the Chief Justice of the Supreme Court. The Commission must select its chairperson by vote of at least five of its members. Members do not receive compensation, but must be reimbursed for actual and necessary expenses incurred in the performance of their duties.<sup>20</sup>

---



---

## HISTORY

| Action                    | Date     |
|---------------------------|----------|
| Introduced                | 02-12-19 |
| Reported, S. Ways & Means | 05-08-19 |
| Passed Senate (32-0)      | 05-08-19 |
| Reported, H. Ways & Means | 10-01-19 |
| Reported, H. Finance      | ---      |

---

S0026-RH-133/ec

---

<sup>20</sup> R.C. 101.61, repealed.

# Ohio's Tax Policy About Results, Not Philosophies

*Doing what actually works, not what is assumed to work*

Matt Waldo, senior manager of research and analysis, JobsOhio

Posted on June 19, 2019

Ohio's [economic and business climate](#) continues to receive national attention. For example, Ohio has been ranked top 10 in Chief Executive's Annual CEO Survey of Best States for Business in each of the past two years. Yet, depending on the source, the growth and success of the state is up for debate. On Sept. 28, 2018, the Tax Foundation's 2019 State Business Tax Climate Index ranked Ohio 42<sup>nd</sup> for the structure and complexity of its tax system. While this would appear to put Ohio in a negative light, it's time to set the record straight and tell the story of Ohio's true tax reality.

The Tax Foundation, which bills itself as "the nation's leading independent tax policy nonprofit," approaches tax policy by looking at the complexity of state tax systems, not how those systems actually affect business performance.

The Tax Foundation's mission is to "simplify" tax policy, which it expresses as a preference for single rate systems. When a state's tax policy doesn't align with this philosophy, the Tax Foundation gives it a negative ranking in its reports. For example, states with more than two tax tiers are given lower scores, regardless of how businesses in that state are actually performing.

Additionally, the weight that the Tax Foundation places on specific tax categories does not reflect the actual proportion of taxes paid. Individual income tax is the heaviest-weighted factor in the report at 30.1 percent of the overall score, while property taxes, a corporation's largest local tax in the U.S. according to Ernst & Young, carry the second lowest weight in the report at 15.4 percent.

In Ohio, small business is the driver of job creation. That is why in recent years there has been continuous work to lower the tax burden on these businesses, especially for those who register as an LLC or S-corporation. For the taxable year 2016 and forward, the business income deduction enables a business owner who files single or married jointly to deduct 100 percent of business income up to \$250,000 from the adjusted gross income reported on

their Ohio personal income tax return. Married couples filing separately can deduct 100 percent of business income up to \$125,000. Any remaining business income above these thresholds is taxed at a flat 3 percent rate.

Further, the Tax Foundation prefers corporate income taxes over a gross receipts tax, despite the fact that Ohio's Commercial Activity Tax (CAT) achieves the foundation's goals for low, single-rate and broad-based taxation. Ohio's CAT is a gross receipts tax at a single low rate of .26 percent on in-state sales; out-of-state-sales are exempt.

In contrast, JobsOhio relies on analysis from organizations with decades of experience in tax practice, including Ernst & Young, PricewaterhouseCoopers, KPMG, Deloitte and others. These respected tax organizations, as well as the results we see across the state, indicate that Ohio is one of the best states in the nation in which to do business.

The choices of companies to locate, stay and grow in Ohio are no coincidence, and run counter to the Tax Foundation's analysis. In 2019, Site Selection magazine's [Governor's Cup rankings](#) awarded Ohio the No. 2 spot overall for total projects for the fifth consecutive year. Ohio has the fifth largest number of Fortune 500 and Fortune 1000 company headquarters. Ohio also led the Midwest by attracting the eighth-highest amount of [venture capital](#) in the U.S. in 2018.

In fact, Ohio's business-friendly tax climate, which has been in place since 2005 and has enjoyed bipartisan support, continues to stimulate company growth, job creation and profitability. With the lowest tax burden in the Midwest, Ohio's tax structure means no tax on:

- Corporate profits
- Inventory
- Tangible personal property
- R&D investments
- Products sold to customers outside Ohio

Ohio's tax policy is about results, not philosophies, and we've made great strides in creating a pro-business climate and tax structure. The [success](#) of businesses in Ohio is evidence that our system is working.

## Ohio Manufacturers' Association

Tax Counsel Report  
November of 2019  
By Justin D. Cook  
Bricker & Eckler LLP

### Legislation:

H.B. 166 was signed into law by Governor Mike DeWine on July 18, 2019. The new law includes a number of changes to Ohio's tax code. The most substantial changes are summarized below.

- H.B. 166 established an economic presence standard for “substantial nexus” with an amendment to R.C. 5741.01(I). Under Ohio's new test for “substantial nexus,” a remote seller must register and collect Ohio sales tax on its Ohio transactions if the seller: (1) has \$100,000 in sales of goods or services into the state of Ohio during the current or preceding year; or (2) engages in 200 or more separate transactions selling goods or taxable services into the state of Ohio during the current or preceding year. This language closely parallels the statute at issue in *South Dakota v. Wayfair, Inc.*

- H.B. 166 established “marketplace facilitator” rules for sales and use tax administration. These provisions treat a “marketplace facilitator” as a seller for purposes of Ohio sales and use taxes, requiring registration and collection of tax by the marketplace facilitator if substantial nexus exists. A marketplace facilitator is defined as “a person that owns, operates, or controls a physical or electronic marketplace through which retail sales are facilitated on behalf of one or more marketplace sellers.”

- H.B. 166 expanded the exemption for equipment and supplies used to clean food processing equipment. Previously, the exemption only applied to the cleaning of equipment used to manufacture dairy products. The exemption now applies to the cleaning of all processing equipment used to manufacture food.

- H.B. 166 reduced the number of tax brackets from seven to five with rates that now range between 2.850% to 4.797%.

- H.B. 166 amended the definition of “Business Income” in R.C. 5747.01(B) to incorporate the concept of “*Eligible Business Income*” which, going forward, will be the type of income subject to the \$250,000 deduction and 3% flat tax rate. Eligible Business Income means Business Income excluding income from “a trade or business that performs” legal services provided by an active Ohio licensed attorney or in-house corporate counsel, or

from businesses that perform lobbying activities. *But see* S.B. 26, discussed below.

### **Proposed Legislation:**

- H.B. 175, introduced in March, was recently subject to its first hearing. The bill would exempt sales of tangible personal property from sales tax when used by “qualifying businesses” to transport manufactured goods to retail locations or move merchandise in a distribution center. Qualifying businesses include those in or with an affiliated group member in the trucking and warehousing sectors.
- The House and Senate passed S.B. 26 to restore the income tax deduction for lawyers and lobbyists. As of this writing, the bill is pending before the Governor.

### **Judicial Actions:**

#### Ohio Court of Appeals

***Karvo Paving Co. v. Testa, 9th Dist. Summit No. 28930, 2019-Ohio-3974.*** *Karvo* stems from a BTA decision issued in 2018. This case involved a paving company that contracted with the Ohio Department of Transportation (“ODT”) to repave roads and involves three discreet claims for exemption. The first relates to traffic control equipment. Taxpayer had to provide traffic control equipment as part of each project. ODT’s engineer directed the placement of the traffic control equipment at the various jobsites. The BTA held that taxpayer could claim the “purchase for resale” exemption from sales tax with respect to the traffic control equipment, as taxpayer’s primary purpose for acquiring the traffic control equipment was to transfer control of it to ODT. On this issue, the Court of Appeals agreed with taxpayer and upheld the BTA’s decision.

The second issue relates to employment services provided by one of Taxpayer’s affiliates. While the majority owner of Taxpayer only owned 45% of Taxpayer’s affiliate, his wife owned the remaining interests. Testimony also established that Taxpayer’s majority owner, in practice, actually controlled both entities. The BTA concluded this satisfied the affiliate entity exception, thus the employment services were not taxable. Again, the Court of Appeals upheld the BTA’s decision on this issue.

The third issue relates to intercompany leases and the casual sale exemption. Taxpayer’s affiliate acquired excavation equipment and used it to provide excavation services in years prior to the audit period. However, during the audit period, leasing this equipment was the company’s only business activity. While the BTA denied the casual sale exemption, the Court of Appeals remanded this case to the BTA. The Court noted that “the Board incorrectly found that...the casual sale exemption cannot apply unless the seller used the item within the audit period.”

#### **Ohio Board of Tax Appeals**

***Nissan North America, Inc. v. McLain, BTA No. 2016-1076 (October 9, 2019).*** *Nissan North America* involved a claim for retroactive consolidated elected status for purposes of Ohio commercial activity tax (“CAT”). During periods under audit, Taxpayer engaged in many transactions with its related companies. Because Taxpayer did not have a consolidated status

election in place, Tax Commissioner assessed CAT on Nissan's intercompany transactions. Taxpayer subsequently filed a request with Tax Commissioner for retroactive consolidated status. Tax Commissioner denied Taxpayer's request for retroactive relief, and Taxpayer appealed. In its analysis, the BTA noted that administrative regulations indicate Tax Commissioner may grant retroactive relief, but the regulations do not provide any specific requirements or guidelines for doing so. *See* Ohio Adm. Code 5703-29-02. Ultimately, the BTA agreed with Taxpayer and found Tax Commissioner's denial of retroactive relief was appealable. Applying an abuse of discretion standard, the BTA reversed Tax Commissioner's decision, finding his denial of retroactive relief unreasonable.

***Mia Shoes v. McClain*, BTA No. 2016-282, 2019 WL 4013504 (August 8, 2019).** *Mia Shoes* is very similar to a recent and highly-publicized Court of Appeals case, *Greenscapes Home & Garden Prods., Inc. v. Testa*, 2019-Ohio-384, *appeal not allowed sub nom. Greenscapes Home & Garden Prods., Inc. v. Testa*, 2019-Ohio-2261, 156 Ohio St. 3d 1406, 123 N.E.3d 1042. In this case, Taxpayer was a wholesale distributor of footwear headquartered in Miami, Florida. The company designed and manufactured shoes and distributed them to customers (department stores, specialty stores, and independent customers) around the country. Part of the goods sold by Taxpayer were shipped (typically via common carrier) to Ohio customers like DSW, Macy's, GAP, Kohl's, and Justice. An audit covering 2006 through 2013 resulted in a total CAT assessment of \$127,812.20. Tax Commissioner found that Taxpayer had nexus in Ohio because it had taxable gross receipts in excess of \$500,000 in the state for the tax years at issue. R.C. 5751.01(I)(3). Similarly to the *Greenscapes* case, the BTA found that Taxpayer shipped goods to Ohio, knew it was shipping goods to Ohio, and lost visibility of the goods once they were delivered to customers in Ohio. The Board noted that pursuant to R.C. 5751.033(E), gross receipts are situated to the place where the property is ultimately received. Here, that was Ohio. Therefore, the Board upheld Tax Commissioner's assessment.

***Environmental Quality Management v. McClain*, BTA No. 2018-1194, 2019 WL 3889382 (August 8, 2019).** *Environmental Quality Management* involved a sales tax refund claim for tax paid on the use of internet-based software. Taxpayer was headquartered in Cincinnati and sought a refund of 58% of the sales tax paid because 58% of its employees using the software were located outside of Ohio. Tax Commissioner denied the request noting that the invoices reflected a "ship to" address of Cincinnati, Ohio. Ohio sourcing rules under R.C. 5739.033 source sales to the location where consumer receives the property at issue or the address of the consumer. Business consumers may report and pay appropriate tax to each jurisdiction where concurrent use occurs. However, here, taxpayer merely alleged concurrent use and failed to prove sufficient evidence.

## Tax

### **Nov. 12 Webinar to Focus on Year-End Tax Planning** **November 1, 2019**

The end of the year is approaching — it's time to take stock of the current tax year and begin planning for the future. On Nov. 12 at 12 p.m. (EST), OMA Connections Partner Clark Schaefer Hackett will offer a **one-hour webinar** to discuss year-end tax planning for businesses, as well as strategies for 2020 and beyond. *10/31/2019*

### **Sales Tax Exemption for All Food Manufacturers Now in Effect** **October 25, 2019**

Good news for all food manufacturers! During last summer's debate on the state budget (**House Bill 166**), the OMA led **tax changes for food manufacturers** as lawmakers approved an expanded sales-and-use tax exemption for equipment that produces or processes food for human consumption. (Previously, the exemption applied only to dairy food processors. Now it applies to all Ohio food manufacturers.) The expanded exemption went into effect Oct. 1, 2019. Make sure you are tracking the necessary information. *10/23/2019*

### **Tax Foundation: Ohio is a Top 10 State for Business Property Taxes, Unemployment Insurance** **October 25, 2019**

The Washington, D.C.-based Tax Foundation has released its **2020 State Business Tax Climate Index**, with the Buckeye State in the study's top 10 for business property taxes (No. 9) and unemployment insurance taxes (No. 7). Overall, the index ranked Ohio 38<sup>th</sup> out of 50 — due in large part to the foundation's philosophical opposition to the state's Commercial Activity Tax (CAT). **As reported earlier**, the foundation has criticized the CAT even as **analysis** from other organizations indicates that Ohio is one of the top states in which to do business. Ohio's broad-based 0.26% flat CAT on business gross receipts in excess of \$1 million was created by a 2005 law with strong support from the OMA. Prior to its enactment, Ohio was at a

major disadvantage in attracting new manufacturing due to the machinery and inventory tax. *10/22/2019*

### **State Government Ends Q1 with \$71M Surplus** **October 18, 2019**

In its **September report**, the Ohio Office of Budget and Management said state revenue for the first quarter of the fiscal year mostly tracked agency estimates, ending Q1 with a \$71 million surplus. However, September spending from the general revenue fund (GRF) exceeded estimates by about 1% due in large part to property tax reimbursements. Personal income tax receipts for September totaled \$930.9 million, which was \$33.1 million (3.7%) above estimates. September non-auto sales and use tax collections were \$729.0 million, which was \$6.9 million (0.9%) below the forecast. Year-to-date, non-auto sales tax revenue has exceeded estimates by \$12.1 million (0.5%). *10/11/2019*

### **Oct. 23 Webinar Will Explore State, Local Tax Changes** **October 18, 2019**

On Wednesday, Oct. 23, OMA Connections Partner RSM will host a **complimentary webinar** to highlight the major state and local tax changes stemming from this year's legislative sessions held across the U.S. Several issues impacting manufacturers will be covered, including the continued implications from the U.S. Supreme Court's Wayfair decision. RSM's state and local tax professionals will help you assess the key issues and the impact on your business. *10/15/2019*

### **Four Ways to Reduce the Unemployment Tax Burden** **October 11, 2019**

The Federal Unemployment Tax (FUTA) is not only a financial burden for employers, it can also be difficult to understand. OMA Connections Partner Clark Schaefer Hackett has published **this handy guide** to better understand the FUTA tax, as well as help control your unemployment tax costs. *10/10/2019*

**Bill Advanced to Restore Business Income Tax Deduction for Legal Professionals**  
**October 11, 2019**

In a surprise reversal, the Ohio House this week amended and approved an unrelated tax bill (**Senate Bill 26**) to undo an inequity in Ohio's tax code by restoring the business income tax deduction for lawyers and lobbyists. The amended bill passed on a **91-0 vote**. Last spring, the House-passed budget bill **included a provision** that would have raised business taxes by reducing the deduction for all pass-through entities from \$250,000 to \$100,000. The OMA lobbied successfully to maintain the current deduction for manufacturers. However, the final budget completely excluded lawyers and lobbyists from the deduction. The Ohio Senate must approve SB 26 before it can take effect. *10/10/2019*

**Time to Think About 2019 Tax Planning**  
**October 4, 2019**

Just like that, Q4 is here. OMA Connections Partner Clark Schaefer Hackett reports that now is the time to think about 2019 tax planning — before you find yourself in a year-end scramble. Key areas of focus include: Section 199A business income deduction for pass-through businesses; Section 163(j) limits on interest deductions; and Section 179 depreciation incentives for qualifying property. **Learn more here.** *10/1/2019*

**A Visual Guide to Cost Segregation**  
**September 20, 2019**

If your manufacturing company is planning to build, purchase, or renovate a building — or has done so in the past several years — a cost segregation study is a powerful tool that may help boost your cash flow, reduce your tax burden, and save your company significant money. A **new infographic** by OMA Connections Partner Clark Schaefer Hackett sheds light on cost segregation and whether it can benefit your manufacturing business. *9/18/2019*



**Ohio Tax Revenues Beat Estimates for First Two Months of Fiscal Year**  
**September 13, 2019**

The Office of Budget and Management **reports** that Ohio's state government in August collected 3% more tax revenue than officials had predicted, with the month's total receipts \$62.5 million above the estimate. For the first two months of Ohio's fiscal year — July and August — state tax receipts were up roughly \$92 million compared to the same time in 2018. August's non-auto sales taxes exceeded the forecast by \$28.1 million; auto sales taxes were \$9.8 million higher. Collections from the Commercial Activity Tax exceeded estimates by \$18.2 million, while personal income taxes were \$15 million over projections. *9/9/2019*

**JobsOhio Highlights Economic Development, Tax Advantages**  
**August 30, 2019**

JobsOhio has published an **infographic** that illustrates the Buckeye State's unique and appealing pro-business assets, which continue to attract new economic development projects. It highlights business-friendly tax provisions, such as the 0% rate for the commercial activity tax on products sold outside of Ohio; no state tax on corporate profits; and no state tax on personal property. The infographic also emphasizes Ohio's strong economic development network, as well as its geographical, infrastructure, and R&D advantages. *8/29/2019*



\$5,000. In several rural Ohio counties, the figure was less than \$1,000. 8/7/2019

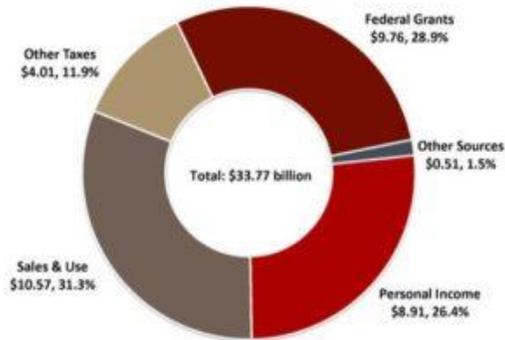
**State Budget’s Tax Provisions Summarized**  
**August 2, 2019**

Following the enactment of Ohio’s new state budget last month, the OMA published summaries of key **tax-related provisions** impacting manufacturers. Now, OMA Connections Partner and accounting firm Clark Schaefer Hackett has compiled a comprehensive but easy-to-digest summary of the other notable tax provisions in the budget — including an opportunity zone credit and the 4% individual income tax rate reduction. See the **tax summary here**. 7/31/2019

**At a Glance: Ohio’s State Spending & Tax Collection**  
**August 2, 2019**

**Ohio Tax Receipts Up Early in New Fiscal Year**  
**August 16, 2019**

With the new fiscal year underway, Ohio’s state government tax receipts were up nearly \$30 million in July compared to July 2018. The **Management’s Monthly Financial Report**, published by the Office of Budget and Management, shows that year-over-year total receipts in the General Revenue Fund were \$2.96 billion — up \$249.9 million (9.2%). Revenue from the commercial activity tax was up \$14.5 million, or 28.3%, versus the previous July. The report also noted that Ohio’s employment was higher by 28,800 jobs in June compared to a year earlier, with manufacturing employment growing by a net 5,200 jobs. 8/13/2019



Ohio’s General Revenue Fund collected \$33.77 billion during FY2019, which ended June 30, 2019. (Source: Ohio Legislative Service Commission)

**At A Glance: Property Taxes in Every U.S. County**  
**August 9, 2019**

Across the United States, property taxes are a significant source of local government revenue — and manufacturers represent a significant portion of property taxpayers. This week, the Tax Foundation published an **interactive map** that allows users to see the median property tax bill paid in every U.S. county during FY 2016, the most recent year available. In Ohio, the highest property tax burden was in Delaware County, with the median bill exceeding

With the new state budget in place, the Ohio Legislative Service Commission has updated its **infographics** on budget-related topics. One particular graphic provides an **overview** of the General Revenue Fund (GRF), illustrating the state’s funding sources and the primary recipients of state tax dollars. In FY 2019, Ohio’s Medicaid program consumed 45% of GRF dollars (more than \$15 billion), making the health care program for low-income residents the state’s largest spending item. The next largest recipient was K-12 schools, which received about 24% of GRF dollars (more than \$8.1 billion). 7/29/2019

**Manufacturing-Related Tax Provisions in State Budget**  
**July 19, 2019**



The Ohio House and Senate this week settled **their differences on tax issues** in the two-year operating budget, **House Bill 166**. Included in the final language were two priorities of the OMA Tax Committee, as well as a provision that was a priority for Ohio's general business community. Thank you to the members who worked on these efforts.

Key tax provisions affecting manufacturers include:

- **EXEMPTION FOR FOOD MANUFACTURERS:** Expands the sales-and-use tax exemption for cleaning equipment and supplies used to clean equipment that produces or processes food. The exemption, which had applied only to dairy food processors, will now be afforded to the makers of any food for human consumption.
- **CREDITS FOR CAPITAL INVESTMENT:** Expands eligibility for the state's Job Retention Tax Credit. Aimed at manufacturers, the provision expands eligibility based on new capital investment, as opposed to payroll or employee count.
- **BUSINESS INCOME TAX DEDUCTION:** Retains the business income tax deduction at the current level of \$250,000 for pass-through entities, as well as the 3% special

flat tax rate for income above that threshold. Provides an across-the-board state income tax cut of 4%. The OMA worked with business allies to save the existing deduction, which at times seemed doomed during the process.

The budget does eliminate lawyers and lobbyists from taking advantage of the income tax deduction — a provision that could have **unintended consequences** for manufacturers, especially those who employ in-house counsel. The OMA will continue to study the issue to determine the impacts on manufacturers. *7/17/2019*

#### **Potential Extension of Lease Accounting & CECL Implementation** **July 19, 2019**

Up to this point, U.S. Generally Accepted Accounting Principles (GAAP) new lease accounting rules for non-public filers were to be applied for annual periods, beginning after Dec. 15, 2019. But OMA Connections Partner **Clark Schaefer Hackett** reports that the Financial Accounting Standards Board (FASB) voted this week to extend the non-public company implementation date for the new lease accounting rules for one additional year. Read more about this from CSH [here](#). *7/18/2019*

#### **Hurt by Tariffs? FTZ Designation May Provide Relief** **July 2, 2019**

OMA Connections Partner **Clark Schaefer Hackett**, a CPA firm with locations across Ohio, recently **published insight** for manufacturers being negatively affected by tariffs. According to the firm, some companies are considering Foreign Trade Zones (FTZs) to provide some relief. An FTZ is a designated, restricted-access site in the U.S. that is legally considered outside of customs territory for the purpose of duties and taxes, so goods can be imported duty-free and without formal customs entry. While Chinese imports do not qualify for exemption under FTZ rules, companies importing from countries other than China may be able to benefit. Companies can establish a designated FTZ within their warehouse or

facility, and products imported into the zone can then be mixed with U.S. sourced goods. *6/30/2019*

### **Tax Calendar: Key Deadlines for Businesses in Q3**

**July 2, 2019**

OMA Connections Partner GBQ has published a **list of key tax-related deadlines** for businesses during the third quarter of 2019. Keep in mind that this list isn't all-inclusive, so there may be additional deadlines that apply to you. *7/1/2019*

### **JobsOhio Defends Commercial Activity Tax** **June 28, 2019**

In a **post** at JobsOhio.com, Matt Waldo — a research and analysis expert at the nonprofit development agency — defends Ohio's Commercial Activity Tax (CAT). His comments come as the CAT has been criticized by the Washington, D.C.-based Tax Foundation. Waldo points out that analysis from other tax-focused organizations, as well as the results of recent business activity, indicate Ohio is one of the best states in the nation in which to do business. "Ohio's tax policy is about results, not philosophies," Waldo writes.

Ohio's broad, 0.26% flat CAT on business gross receipts above \$1 million was created by a 2005 law with **strong support from the OMA**. The same law phased out the tangible personal property tax — which taxed machinery, equipment and inventory — as well as the corporate franchise tax. It also lowered the state's personal income tax. Prior to the enactment of this tax reform, Ohio was at a major disadvantage in attracting new manufacturing due to the machinery and inventory tax. *6/26/2019*

### **Finding Opportunities Amid Complex UNICAP Rules** **June 28, 2019**

Last November, amid the aftermath of federal tax reform, the U.S. Treasury and IRS issued new rules addressing uniform capitalization (UNICAP). This provided companies an updated method for capitalizing inventory costs — and another tool that companies can consider to ensure simplicity, compliance, and tax efficiency. OMA Connections Partner **RSM** says

manufacturers must evaluate the impact of these new rules, and has published a short paper to explore the **common myths around UNICAP**. *6/27/2019*

### **Senate Moves Budget Bill with Tax Provisions** **June 21, 2019**

The Senate on Thursday passed **House Bill 166**, the main operating budget bill for Ohio's state government. Included in the approved bill were **several tax changes**.

The Senate retained the House language providing a sales-and-use tax credit for equipment and supplies used to clean equipment that produces or processes food for human consumption. The Senate also expanded the eligibility for manufacturers wanting to take advantage of the Job Retention Tax Credit (JRTC) by removing certain thresholds and requiring a new capital investment.

The Senate version of the budget bill also moves Ohio's business income tax exemption back to the first \$250,000 of income for pass-through entities. However, the Senate did not reinsert language to allow a 3% flat tax rate for pass-through income exceeding \$250,000, as is the case under current law.

The bill now moves to a conference committee between the House and Senate to reconcile differences. *6/20/2019*

### **Senate Panel Makes Mostly Positive Tax Changes in Latest Version of State Budget** **June 14, 2019**

The Senate Finance Committee this week accepted a substitute version of **House Bill 166**, the state's two-year main operating budget. The substitute bill made a **variety of tax changes** to the House-passed version — including restoring the business income tax deduction. (As previously **reported**, the House-passed budget bill would reduce the business income tax deduction from the current \$250,000 to \$100,000.)

Under the current version of the Senate's budget bill, pass-through entities — including partnerships, LLCs, and sole proprietors — would continue to be exempt for the first \$250,000 of business income. However, the

current 3% flat tax rate that is imposed on business income in excess of \$250,000 would go away beginning next year — and every dollar beyond the first \$250,000 would be taxed at a new top rate of 4.6%.

In other actions, the Senate removed the House's provision to exempt all manufacturers from sales-and-use tax on any supplies or janitorial services purchased to clean machinery in a manufacturing facility.

The Senate did, however, preserve the House-approved sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. The Senate also expanded the eligibility for manufacturers wanting to take advantage of the Job Retention Tax Credit (JRTC) by removing certain thresholds and requiring a new capital investment.

Please contact your state senator and thank him/her for restoring the \$250,000 business income tax deduction; including eligibility expansion of the JRTC; and keeping the cleaning equipment-and-supplies tax exemption for food manufacturers in the budget bill. At the same time, urge senators to include the House-passed sales tax exemption for any supplies or janitorial services to clean manufacturing machinery — and to restore the 3% flat tax rate on business income over \$250,000.

The Senate will be making more changes to the budget bill early next week. The bill must be signed no later than June 30 for the appropriations to take effect on July 1, the first day of the new state fiscal year. 6/13/2019

### **OMA Tax Committee Briefed on Opportunity Zones** **June 14, 2019**

This week, the OMA Tax Committee held its second meeting of 2019. Guest speaker was Paul Nadin, a senior manager with Connections Partner **RSM** and its real estate group. Nadin **briefed members** on the federal Opportunity Zone program, enacted as part of the 2017 tax overhaul to encourage new investment in lower-income census tracts. To take advantage of the incentives in the Opportunity Zone program, investors must invest through a qualified Opportunity Fund. **Ohio** has 320 opportunity zones

statewide. (So far, the incentives have been easier to apply to investments in real estate than in businesses, according to **The Pew Charitable Trusts.**)

Other highlights from the meeting included an update on federal and state tax-related policy issues, as well as a report from OMA Tax Counsel **Justin Cook** of Bricker & Eckler LLP. Chaired by Shay Music of The J.M. Smucker Co., the OMA Tax Committee will meet again **November 6. 6/11/2019**



*Paul Nadin with RSM briefs the OMA's Tax Committee on the financial benefits of investing in designated Opportunity Zones.*

## Taxation Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on November 5, 2019

- HB17**      **SURVIVING SPOUSES-HOMESTEAD EXEMPTION** (GINTER T) To allow an enhanced homestead exemption for surviving spouses of public safety personnel killed in the line of duty.  
*Current Status:* 10/22/2019 - House Ways and Means, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-17>
- HB19**      **PINK TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.  
*Current Status:* 5/7/2019 - House Ways and Means, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-19>
- HB46**      **STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.  
*Current Status:* 11/6/2019 - Senate General Government and Agency Review , (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB47**      **TAX COMPLAINTS-LEGAL ASSISTANCE FOUNDATION** (GREENSPAN D) To increase the time within which property tax complaints must be decided.  
*Current Status:* 10/22/2019 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-47>
- HB54**      **LGF TAX REVENUE INCREASE** (CERA J, ROGERS J) To increase the proportion of state tax revenue allocated to the Local Government Fund from 1.66% to 3.53% beginning July 1, 2019.  
*Current Status:* 2/12/2019 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-54>
- HB56**      **MINE SAFETY EXCISE TAX** (CERA J) To allocate 3.75% of kilowatt-hour excise tax revenue for mine reclamation, mine drainage abatement, and mine safety.  
*Current Status:* 2/26/2019 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-56>
- HB57**      **HEATING SOURCES TAX EXEMPTION** (PATTERSON J, CERA J) To exempt certain heating sources from sales taxation and to hold local governments and libraries harmless from the revenue effect.  
*Current Status:* 2/12/2019 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-57>
- HB60**      **DIAPER SALES TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales and use tax the sale of child and adult diapers.

**Current Status:** 3/19/2019 - House Ways and Means, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-60>

- HB62**      **TRANSPORTATION BUDGET (OELSLAGER S)** To increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs.  
**Current Status:** 4/3/2019 - **SIGNED BY GOVERNOR**; eff. 90 days, Taxes eff. 7/1/19  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-62>
- HB75**      **PROPERTY VALUE CONTESTS (MERRIN D)** To require local governments that contest property values to formally pass an authorizing resolution for each contest and to notify property owners.  
**Current Status:** 4/9/2019 - **REPORTED OUT**, House Ways and Means, (Fourth Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-75>
- HB92**      **VOTE ON COUNTY SALES TAX (ANTANI N, SMITH J)** To require voter approval of any increase in the rate of a county sales tax.  
**Current Status:** 3/13/2019 - House State and Local Government, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-92>
- HB109**      **SAP EXTRACTION TAX BREAK (PATTERSON J, LATOURETTE S)** To authorize a property tax exemption for land used for commercial maple sap extraction.  
**Current Status:** 3/5/2019 - Referred to Committee House Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-109>
- HB112**      **TAX REMITTANCE-BAD DEBTS (SCHAFFER T)** To allow vendors to receive a refund of sales tax remitted for certain bad debts charged off as uncollectible by credit account lenders.  
**Current Status:** 5/14/2019 - House Financial Institutions, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-112>
- HB121**      **TAX CREDIT-CLASSROOM MATERIALS (SCHAFFER T)** To allow a credit against the personal income tax for amounts spent by teachers for instructional materials.  
**Current Status:** 3/19/2019 - House Primary and Secondary Education, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-121>
- HB134**      **MARCH SALES TAX HOLIDAY (ANTANI N, WEINSTEIN C)** To provide a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes.  
**Current Status:** 10/29/2019 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-134>

**HB135 SALES TAX HOLIDAY EXPANSION** (ANTANI N) To expand the class of products exempt from sales tax if bought during a sales tax holiday.

**Current Status:** 11/5/2019 - House Ways and Means, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-135>

**HB162 MOTION PICTURE TAX CREDIT** (PATTON T) To increase the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium.

**Current Status:** 3/26/2019 - Referred to Committee House Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-162>

**HB166 OPERATING BUDGET** (OELSLAGER S) To make operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of state programs.

**Current Status:** 7/18/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-166>

**HB175 TAX EXEMPTION-GOODS MOVEMENT** (ANTANI N) To exempt from sales and use tax things used primarily to move completed manufactured products or general merchandise.

**Current Status:** 10/22/2019 - House Ways and Means, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-175>

**HB183 TAX CREDIT-BEGINNING FARMERS** (MANCHESTER S, PATTERSON J) To allow income tax credits for beginning farmers who participate in a financial management program and for businesses that sell or rent agricultural land, livestock, facilities, or equipment to beginning farmers.

**Current Status:** 10/29/2019 - **SUBSTITUTE BILL ACCEPTED**, House Agriculture and Rural Development, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-183>

**HB187 TAX ISSUES-AUGUST** (MERRIN D, WIGGAM S) To prohibit local tax-related proposals from appearing on an August special election ballot.

**Current Status:** 4/10/2019 - Referred to Committee House State and Local Government

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-187>

**HB197 TAX CODE CORRECTIONS** (POWELL J, MERRIN D) To enact the "Tax Code Streamlining and Correction Act" to make technical and corrective changes to the laws governing taxation.

**Current Status:** 10/30/2019 - **PASSED BY HOUSE**; Vote 92-0

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-197>

- HB222**      **CDL TRAINING TAX CREDIT** (STOLTZFUS R, HOWSE S) To authorize an income tax credit for an employer's expenses to train a commercial vehicle operator.  
*Current Status:* 10/15/2019 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-222>
- HB245**      **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.  
*Current Status:* 5/21/2019 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>
- HB382**      **PROHIBIT INCOME TAX-MUNICIPAL NONRESIDENTS** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.  
*Current Status:* 10/29/2019 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-382>
- SB1**        **REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.  
*Current Status:* 6/12/2019 - House State and Local Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>
- SB8**        **TAX CREDITS-OHIO OPPORTUNITY ZONE** (SCHURING K) To authorize tax credits for investments in an Ohio Opportunity Zone.  
*Current Status:* 5/8/2019 - House Economic and Workforce Development, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-8>
- SB37**      **MOTION PICTURE TAX CREDIT** (SCHURING K) To extend eligibility for and make other changes to the motion picture tax credit.  
*Current Status:* 6/30/2019 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-37>
- SB39**      **MIXED USE DEVELOPMENT PROJECTS-TAX CREDIT** (SCHURING K) To authorize an insurance premiums tax credit for capital contributions to transformational mixed use development projects.  
*Current Status:* 11/6/2019 - House Economic and Workforce Development, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-39>
- SB95**      **STATE AND LOCAL TAX INDUCEMENTS** (KUNZE S, PETERSON B) To enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers.

**Current Status:** 10/22/2019 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-95>

**SB109**      **WORKFORCE SCHOLARSHIP PROGRAM (SCHURING K)** To establish the Workforce Scholarship Program, to terminate the provisions of the Scholarship Program on December 31, 2023, to authorize tax credits for graduates of the Scholarship Program and their employers, and to make an appropriation.

**Current Status:** 10/8/2019 - Senate Finance, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-109>

**SB125**      **TAX DEDUCTION-529 PLANS (HOTTINGER J, BRENNER A)** To expand the income tax deduction allowed for contributions to Ohio's 529 education savings plans to include contributions to 529 plans established by other states.

**Current Status:** 11/5/2019 - Senate Ways and Means, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-125>

**SB132**      **GAS TAX-LOCAL GOVERNMENT ALLOCATION (WILLIAMS S)** To modify the amount of revenue derived from any increase in the motor fuel tax rate that is allocated to local governments and to change the manner in which that revenue is divided between municipal corporations, counties, and townships.

**Current Status:** 5/1/2019 - Referred to Committee Senate Transportation, Commerce and Workforce  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-132>

**SB153**      **JOB RETENTION TAX CREDIT-ALTERNATIVE REQUIREMENTS (DOLAN M)** To permit manufacturers to meet alternative minimum employment and investment requirements to qualify for the Job Retention Tax Credit.

**Current Status:** 6/4/2019 - Senate Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-153>