Tax Committee

November 15, 2012

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2013 Tax Committee Calendar

Meetings will begin at 10:00 a.m.

Tues., Feb. 12, 2013
Tues., June 4, 2013
Tues., Nov. 12, 2013

OMA Tax Committee Meeting Sponsor:

Taft

OMA Tax Policy Committee

November 15, 2012

AGENDA

Welcome & Self-Introductions:	Tony Long, Honda of America Manufacturing
Committee Chair Investiture	Allan Thompson A K Steel Corp.
Legislative Report	Rob Brundrett OMA Staff
OMA Counsel's Report	Mark Engel of Bricker & Eckler LLP, OMA Tax Counsel
Discussion	House Bill 601 Board of Tax Appeals Severance Tax Proposal Tax Reform
Guest Speakers	Merle Madrid Director of the Office of Public Liaison for Governor John Kasich Director Tim Keen Office of Budget and Management

Committee Meetings begin at 10:00 a.m. and conclude by 1:00 p.m. Lunch will be served.

Register for committee meetings online at www.ohiomfg.com, click on Events.

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

Director Timothy S. Keen

To download a high res photo of Director Keen, suitable for print, please click here.

Director Timothy S. Keen

Ohio Office of Budget and Management

Timothy S. Keen became Director of the Office of Budget and Management (OBM) on January 10, 2011, bringing more than 25 years of fiscal management and public policy expertise to his responsibilities as Governor John Kasich's chief financial officer. This is the second time he has held this position, leading the cabinet-level agency that provides financial management and policy analysis to help ensure the responsible use of state resources.

From 2007 through 2010, Director Keen was Senior Policy Advisor to Auditor of State Mary Taylor, following his previous service with OBM as Assistant Director and then as Director with the administration of Governor Bob Taft from 1999 through 2006. Earlier he was Deputy Director of Policy Development at OBM, including service as President of the State Controlling Board (1992-1993). His career in public service, beginning in 1986 as a Budget Analyst with the Ohio Legislative Budget Office, also includes senior budget policy positions with both houses of the Ohio General Assembly.

Director Keen received an undergraduate degree in communications from the University of Massachusetts at Amherst and holds a master's degree in public policy from the Eagleton Institute of Politics at Rutgers University.

Bio – Merle Madrid, Office of the Governor of Ohio, John Kasich

Merle Madrid serves as Director of the Office of Public Liaison for Governor John Kasich. In that role he oversees the Governor's six regional offices, the constituent affairs department, minority affairs, special projects and office outreach.

Prior to joining Governor Kasich's staff, Madrid served as political affairs director at the Ohio Chamber of Commerce, and in the administrations of former Lt. Governor Bruce Johnson and Treasurer of State Joseph Deters.

He is a native of Youngstown, Ohio, and graduate of The Ohio State University.

TO: OMA Tax Committee
FROM: Rob Brundrett
DATE: November 15, 2012
SUBJECT: Tax Policy Highlights

Overview
The General Assembly is back in full force this week. They have scheduled a full slate of committee hearings and session. Now that the drama of the elections are over it appears that the General Assembly is anticipating on an active lame duck session. The Governor has been insistent that his severance tax proposal be passed, while legislative leaders continue to question its merits.

State Budget and Financial Condition
Real GDP expanded at an annual rate of 1.3% in the second quarter of 2012. This was down from 2.0% in the first quarters and 3.0% in the fourth quarter of last year. Forecasters expect growth to improve slightly be remain below 3.0% each quarter well into 2013.

Leading economic indicators have weakened recently, but remain consistent with uninterrupted growth at a modest pace across the country and especially in Ohio. Tax receipts came in under estimate by 2.4% in September but remain in the black for the year by 1.4%.

Lame Duck Legislation to Watch
Severance Tax/Income Tax Reduction
The Governor is still pushing for his plan to tie income tax reductions to increase severance tax collections. He has publicly stated he would like to see the General Assembly pass the plan during lame duck. The administration is confident that this will get in the next two years.

House Bill 601
State Representatives Cheryl Grossman and Mike Henne recently introduced the long awaited municipal uniformity income tax collection bill. For much of 2011 a concept to consolidate local income tax collections was rumored. After receiving major backlash from municipalities the project refocused on uniformity. The OMA partnered with other business and professional groups to support the effort. It looks like the bill will begin having hearings during lame duck. However it has vocal opponents lead by the Ohio Municipal League. Look for the bill to be worked on and reintroduced in the next General Assembly.

House Bill 510
The Governor has indicated he would like to see House Bill 510 passed in the lame duck. House Bill 510 would replace corporate franchise tax revenue with CAT revenue paid by financial services businesses. As drafted the bill picks winners and losers among the financial services sector and got bogged down. Manufacturers with financial service business units oppose the proposal as written for subjecting them to the corporate franchise tax. Originally this proposal was included in the main MBR bill.

However House leaders removed it from that bill and gave the proposal its own hearings. The consensus seems that the bill will likely pass.

House Bill 511

HB 511 revamps some business tax credit programs. The bill will sunset the Industrial Technology and Enterprise Advisory Council and transfer functions to the Third Frontier Commission and Development Department. The ceiling for available Technology Investment Tax Credits is boosted in the bill from $45 million to $51 million. Other provisions of the bill would alter the Ohio Venture Capital Authority and the New Markets Tax Credit. The bill stalled out prior to the campaign season but is expected to pass.

Board of Tax Appeals

A new proposal is being discussed amongst interested parties and the administration. No bill has been formally introduced, but there is optimism that real reform at the Board of Tax Appeals might be included in next year's state budget bill.

Site Selection

Site Selection Magazine recently released its latest business climate ratings. Ohio won the coveted Governor's Cup which is given to the state that has the most new projects in the last year. Ohio finished number two overall this year, up from ninth place last year. Ohio was ranked number five for its tax climate in existing businesses and number three in tax climate for new businesses. However business executives rank Ohio only at number nine. There appears to be a different perception in certain circles to what is reality on the ground regarding Ohio taxes.

Estate Tax Repeal

It should be noted that estate tax repeal begins next year. The Estate Tax was repealed as a rider to the state budget with a 2013 effective date so it will not shortchange revenue collection in the FY12, FY13 biennium. The OMA advocated in support of repeal. This was a significant policy gain during the current General Assembly.

Pending Litigation

The OMA and the Ohio Society of CPAs filed an amicus brief in defense of the state commercial activity tax. Road construction interests are seeking CAT invalidation arguing the CAT is an excise tax. A decision is expected by the end of the year. See counsel's report and the amicus brief.

TAX

Bill Provides Much Needed Municipal Income Tax Uniformity

Recently introduced, House Bill 601 would provide consistency and uniformity among communities that impose an income tax. The culmination of several months of discussions between business and municipal stakeholders, the bill proposes some significant changes in existing law. Many of these changes are modeled on existing state law relating to the state personal income tax.

Read an analysis of the bill by OMA tax counsel at Bricker & Eckler, LpC. Contact your state legislators to urge support of the measure.

11/09/2012

Director Keen to Visit OMA Next Week

Please join us next Thursday, November 15 for the OMA Tax Committee, where we will be joined by special guest speaker, Director Tim Keen. Director Keen is the head of Ohio's Office and Budget Management Agency. He will be providing insight on Governor Kasich's budget proposal for next year.

Don't miss any Ohio tax developments in 2013; subscribe to the committee here. You'll receive all the committee's content and be invited to participate in its meetings which you can do by phone or in person. And you can always contact OMA's Rob Brundrett, who staffs the committee.

11/09/2012

House Introduces Municipal Income Tax Uniformity Bill

This week Republicans in the Ohio House of Representatives introduced the long talked about Municipal Income Tax Uniformity Bill. Representatives Cheryl Grossman and Mike Henne, the primary sponsors of House Bill 601, indicated that the intent of the bill is to provide more uniformity and simplicity to Ohio's varying municipal income tax laws. OMA Tax Counsel Mark Engel is preparing an analysis of the bill that will be presented at the November 15 OMA Tax Committee. Register here.

11/02/2012

Make Refund Claims for FICA Tax Paid on Certain Severance Payments

OMA Connections Partner, Plante Moran, advises affected employers: If you paid FICA tax on severance payments, you should consider filing a protective claim for refund to preserve your claim. A timely filing of a claim will protect your rights in the event the court's decision that certain severance payments are not subject to FICA taxes is upheld and becomes final.

11/02/2012

Sixth Circuit Rules Severance Is Not "Wages" Subject to FICA

On September 12, 2012, the U.S. Court of Appeals for the Sixth Circuit, which has appellate jurisdiction over Kentucky, Michigan, Ohio and Tennessee, upheld a lower court's decision that certain severance payments are not subject to the Federal Insurance Contribution Act (FICA) tax.

09/20/2012

Shale We Tax It?

Opinions and analyses are emerging about the severance tax policy decisions Ohio will make in the coming months, namely, what is the appropriate tax structure of the Ohio gas and oil products extraction industry, and what should be done with any resulting tax revenues that are over and above current severance tax levels?

Governor Kasich has proposed a new tax on horizontal (hydraulic fracturing) well production (as well as modifications to the existing vertical well tax structure) that he intends to use to lower personal income taxes in order to create a more job-friendly climate in Ohio. According to the governor, Ohio's state and local tax burden is among the highest in the nation. The administration's analysis indicates that gas and

oil tax revenues would eventually build to a five percent income tax cut at peak production.

The Ohio Business Roundtable commissioned Ernst & Young to prepare an analysis that answers this question: what impact would the governor's proposed severance tax changes have on Ohio's competitiveness for new investment in the "fracking" industry? The consultants' May 2012 analysis showed that Ohio would still be among the lowest of the eight studied states (MI, TX, ND, AK, PA, WV, OK) in terms of the overall Ohio tax burden on well operations, particularly because of the substantial tax reductions provided to all Ohio business taxpayers from the substitution of the commercial activity tax (CAT) for the corporate income and the tangible personal property taxes (Senate Bill 5, 2005).

On record as opposed to the governor's plan is the Ohio Oil & Gas Association which argues that an increase in taxes on the fracking industry will have a chilling effect on oil company investment in Ohio wells.

OMA tax counsel, Mark A. Engel, of Bricker & Eckler LLP, prepared an analysis of the governor's proposal in April, shortly after it was announced.

The issue will continued to be followed by the OMA tax committee. Member comment invited by OMA's Ryan Augsburger.

08/03/2012

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on November 9, 2012

HB1 **JOBSOHIO** (DUFFEY M) To authorize the Governor to create JobsOhio, a nonprofit economic development corporation.

Current Status: 2/18/2011 - **SIGNED BY GOVERNOR**; Eff. 2/18/2011
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_1

HB3 **REPEAL ESTATE TAX** (GROSSMAN C, HOTTINGER J) To repeal the estate tax for the estates of individuals dying on or after January 1, 2011.

Current Status: 2/16/2011 - **REPORTED OUT**, House Ways and Means, (Fourth Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_3

HB8 **TAX PROMPT REMITTANCE DISCOUNT** (BLAIR T) To increase the sales and use tax prompt remittance discount and to authorize a discount for prompt remittance of income tax withholding.

Current Status: 1/11/2011 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_8

HB10 **REMEDIATION OF CONTAMINATED SITE** (SEARS B) To authorize refundable tax credits for the completion of a voluntary action to remediate a contaminated site and for the return of such sites to productive use, and to exempt persons through 2017 who have issued covenants not to sue under the Voluntary Action Program from certain fees and penalties for one year after the issuance of such a covenant.

Current Status: 3/2/2011 - House Ways and Means, (Fifth Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_10

HB17 **TAX CREDIT FOR HIRING UNEMPLOYED** (BAKER N) To authorize a $2,400 income tax withholding credit for an employer that hires and employs a previously unemployed individual.

Current Status: 1/11/2011 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_17

HB18 **TAX CREDIT - EXPANDING BUSINESSES** (BAKER N) To authorize a nonrefundable tax credit for a business that increases payroll and expands into a vacant facility.

Current Status: 5/4/2012 - **SIGNED BY GOVERNOR**; Eff. 8/6/2012 Section 2 Eff. 5/4/2012
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_18

HB43 **OHIO VENTURE CAPITAL AUTHORITY** (GOYAL J, WILLIAMS S) To increase the annual and aggregate limit on the amount of tax credits the Ohio Venture Capital Authority may authorize.

Current Status: 1/26/2011 - Referred to Committee House Economic and Small Business Development
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_43

HB44 **SMALL BUSINESS WORKING CAPITAL LOAN PROGRAM** (GOYAL J, GARLAND N) To create the Small Business Working Capitol Loan Program.

Current Status: 1/26/2011 - Referred to Committee House Economic and Small

Business Development

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_44

HB58 **INTERNAL REVENUE CODE** (BECK P) To expressly incorporate changes in the Internal Revenue Code since December 15, 2010, into Ohio law.

Current Status: 3/7/2011 - **SIGNED BY GOVERNOR**; eff. 3/7/2011

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_58

HB81 **PERFORMANCE BUDGETING** (SNITCHLER T) To require performance budgeting by most state agencies.

Current Status: 2/22/2011 - House State Government and Elections, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_81

HB98 **INCOME TAX RATE FOR 70 1/2 YEARS OR OLDER** (HOLLINGTON R) To reduce the maximum effective income tax rate applicable to unearned income of persons age 70 1/2 years or older to 1% beginning in 2013.

Current Status: 3/30/2011 - House Ways and Means, (Fourth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_98

HB101 **JOB CREATION/RETENTION CREDITS** (WILLIAMS S) To provide for a six-year trial period in which taxpayers may include a limited number of the taxpayer's employees who work from home and whose rate of pay is at least three times the federal minimum wage as employees employed in the project for purposes of the job creation and retention credits if the recipient of the credit provides a specified level of capital investment, and to require the Director of Development to issue a report at the end if the six-year period.

Current Status: 6/1/2011 - House Ways and Means, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_101

HB111 **TAX DEDUCTION-SMALL BUSINESS** (WILLIAMS S) To authorize an income tax deduction for small business owners' reinvestment of undistributed profits in business property, employee training, or research and development.

Current Status: 5/11/2011 - House Ways and Means, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_111

HB114 **TRANSPORTATION BUDGET** (MCGREGOR R) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of those programs.

Current Status: 7/13/2011 - HB114 had a provision amended by SB187

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_114

HB134 **CAPITAL GAINS INVESTMENTS** (SCHURING K) To reduce the income tax rate on capital gains reinvested in Ohio-based investments.

Current Status: 6/1/2011 - House Ways and Means, (Fourth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_134

HB153 **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of state programs.

Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Effective 6/30/2011; some sections different dates, 7 line item vetos

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_153

HB198 **PROPERTY TAX COMPLAINTS** (COLEY II W) To permit property tax complaints to be initiated only by the property owner.

Current Status: 5/12/2011 - House Financial Institutions, Housing and Urban Development, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_198

HB220 **CAT TAX CREDIT INVESTMENT LOSSES** (BECK P, BAKER N) To allow a refundable commercial activity tax credit for investment losses recognized by foreign entrepreneur investors who invest in certain projects in Ohio.

Current Status: 6/23/2011 - House Economic and Small Business Development, (Sixth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_220

HB258 **APPRENTICESHIP PROGRAMS** (GROSSMAN C, DOVILLA M) To exempt from taxation for five years the earned income of an individual who obtains journeyperson status or a baccalaureate degree and works in Ohio; and to prohibit the Apprenticeship Council from adopting standards for apprenticeship ratios that are stricter than those requirements specified in the federal regulations governing apprenticeship programs and from discriminating against open or merit shops.

Current Status: 2/8/2012 - **BILL AMENDED**, House Ways and Means, (Third Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_258

HB261 **ALTERNATIVE FUEL FACILITY** (MCGREGOR R) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.

Current Status: 9/21/2011 - House Ways and Means, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_261

HB310 **ELECTRIC VEHICLE SALES TAX REDUCTION** (GOODWIN B) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to $2,000.

Current Status: 11/16/2011 - House Ways and Means, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_310

HB327 **JOB CREATION-RETENTION TAX CREDIT** (GONZALES A) To provide for a six-year trial period in which taxpayers may receive a job creation or job retention tax credit for the employment of home-based employees and to require the Director of Development to issue a report at the end of the
six-year period.

Current Status: 6/6/2012 - **SIGNED BY GOVERNOR**; Eff. 9/6/2012

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_327

HB365 **ENHANCED FEDERAL INCOME TAX DEPRECIATION DEDUCTION** (BECK P) To allow taxpayers who claim an enhanced federal income tax depreciation deduction to reduce the amount of the
deduction the taxpayer must add-back for Ohio income tax purposes if the taxpayer increases payroll in the year the enhanced federal deduction is taken.

Current Status: 5/10/2012 - **REPORTED OUT**, Senate Ways & Means & Economic Development, (Fourth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_365

HB446 **TAX EXPENDITURES EFFECTIVENESS** (DRIEHAUS D, FOLEY M) To provide for an appraisal of the effectiveness of tax expenditures.

Current Status: 2/14/2012 - Referred to Committee House Finance and Appropriations

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_446

HB487 **MBR-MID-BIENNIUM REVIEW BUDGET** (AMSTUTZ R) To make operating and other appropriations, to levy taxes and provide for implementation of those levies, and to provide authorization and conditions for the operation of state programs.

Current Status: 6/11/2012 - **SIGNED BY GOVERNOR**; Eff. 6/11/2012 Others 9/10/2012

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_487

HB508 **MBR-TAX LAW CHANGES** (BECK P) To make changes to the laws governing the assessment, levy, and collection of taxes in the state.

Current Status: 6/6/2012 - **SIGNED BY GOVERNOR**; Eff. 9/6/2012 Other Sections 6/6/12 & 1/1/13

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_508

HB510 **MBR-FINANCIAL INSTITUTIONS TAX** (AMSTUTZ R) To impose a new tax on financial institutions, effective January 1, 2014, and to provide that such institutions are no longer subject to the corporation franchise tax or dealers in intangibles tax after 2013.

Current Status: 11/15/2012 - Senate Ways & Means & Economic Development, (Fifth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_510

HB511 **MBR-TAX CREDIT ADMINISTRATION CHANGES** (BECK P, GONZALES A) To make various changes to the administration of the investment tax credit, the venture capital loan loss tax credit, and the New Markets tax credit, including the increase of the maximum amount of the investment tax credit and the venture capital loan loss tax credit, the elimination of the Industrial Technology and Enterprise Advisory Councils, and the acceleration of the receipt of New Markets tax credit installments.

Current Status: 6/12/2012 - Referred to Committee Senate Ways & Means & Economic Development

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_511

HB534 **THIRD FRONTIER COMMISSION GRANTS** (SCHURING K) To authorize the Third Frontier Commission to award grants related to the establishment and operation of data centers and the development of a high speed fiber optic network in the state, and to authorize a kilowatt-hour excise tax reduction for electric distribution companies supplying such centers at a discounted rate.

Current Status: 5/16/2012 - House Public Utilities, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_534

HB536 **BUSINESS PROPERTY TAX EXEMPTION** (GERBERRY R) To allow a board of township trustees to reduce the percentage or term of a property tax exemption granted to a business under a tax increment financing agreement if the business fails to create the number of new jobs the business agreed to create in the agreement.

Current Status: 11/14/2012 - House Ways and Means, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_534

HB558 **NEW MARKETS TAX CREDIT** (BECK P) To make various changes to the administration of

the New Markets tax credit, including the acceleration of the receipt of New Markets tax credit installments, allowing community development entities to make credit-eligible investments in a low-income community business that derives 15% or more of its annual revenue from renting or selling real estate, eliminating the requirement to calculate adjusted purchase price of investments in calculating the amount of the credit, permitting entities to identify qualifying equity investments from any community development entity, and clarifying that the maximum allowable credit for each investor is $1 million.

Current Status: 11/14/2012 - House Ways and Means, (First Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_558

HB559 **DISCLOSURE-STEEL PRODUCTS ORIGIN COUNTRY** (LANDIS A, HAGAN C) To require operators and pipeline companies to disclose the country in which oil country tubular goods steel products were manufactured.

Current Status: 6/6/2012 - House Agriculture and Natural Resources, (Second Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_559

HB571 **NONREFUNDABLE COMMERCIAL ACTIVITY TAX CREDIT** (CERA J) To establish a nonrefundable commercial activity tax credit for companies involved in horizontal well drilling or related oil and gas production services that hire Ohio residents who have completed a federally registered apprenticeship program.

Current Status: 9/12/2012 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_571

HB573 **STATE-WIDE DATA CENTERS** (SCHURING K) To require the development and operation of state-wide data centers, to authorize the issuance of securities to fund the data centers, and to make an appropriation.

Current Status: 9/12/2012 - Referred to Committee House Finance and Appropriations
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_573

HB579 **BUY OHIO LAW** (WINBURN R) To specify new criteria for the Buy Ohio Law.

Current Status: 9/12/2012 - Referred to Committee House State Government and Elections
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_579

HB590 **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of reviewing existing and proposed tax expenditures.

Current Status: 9/12/2012 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_590

HB601 **MUNICIPAL CORPORATION INCOME TAXES** (GROSSMAN C, HENNE M) To revise the laws governing income taxes imposed by municipal corporations.

Current Status: 10/30/2012 - Introduced
More Information: No link available

HCR52 **FEDERAL EXCISE TAX-MEDICAL DEVICES** (ROSENBERGER C) To urge the Congress of the United States and the President of the United States to enact H.R. 1310, to exempt certain emergency medical devices from the impending federal excise tax on medical devices.

Current Status: 6/12/2012 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HCR_52

SB1 **JOBSOHIO** (WAGONER M) To authorize the creation of JobsOhio, the non-profit economic development corporation.

Current Status: 2/2/2011 - Referred to Committee Senate Finance

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_1

SB4 **PERFORMANCE AUDITS OF STATE AGENCIES** (SCHAFFER T) To require the Auditor of State to conduct performance audits of certain state agencies.

Current Status: 4/5/2011 - **SIGNED BY GOVERNOR**; Eff. 4/5/2011

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_4

SB5 **COLLECTIVE BARGAINING REFORM** (JONES S) To make changes to Ohio's Collective Bargaining Law, which was first enacted in 1983.

Current Status: 11/8/2011 - Repealed by Voter Referendum

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_5

SB6 **JOB RETENTION TAX CREDIT** (PATTON T) To authorize a refundable job retention tax credit.

Current Status: 2/22/2011 - SB6 became part of HB58

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_6

SB7 **IRS TAX CHANGES** (OBHOF L) To expressly incorporate changes in the Internal Revenue Code since December 15, 2010, into Ohio law, and to declare an emergency.

Current Status: 2/17/2011 - Senate Ways & Means & Economic Development, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_7

SB12 **SMALL BUSINESS SET ASIDE** (KEARNEY E) To generally require that state agencies set aside a certain amount of purchases for which only small business enterprises may compete.

Current Status: 2/2/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_12

SB13 **UNEMPLOYMENT MODERNIZATION TASK FORCE** (SCHIAVONI J) To allow an individual to receive unemployment compensation benefits for unemployment related to domestic abuse or compelling family circumstances, to allow an individual to receive unemployment training extension benefits under specified conditions, and to create the Unemployment Modernization Review Task Force.

Current Status: 3/22/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_13

SB47 **CAT TAX CREDIT GROCERY STORES** (KEARNEY E) To authorize a commercial activity tax credit for underserved community grocery stores.

Current Status: 2/17/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_47

SB58 **TAX CREDIT EMPLOYMENT CONVICTED FELONS** (TAVARES C) To create a tax credit for the employment of individuals who have been convicted of felonies.

Current Status: 2/10/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_58

SB90 **ESTATE TAX** (JORDAN K) To repeal the estate tax for the estates of individuals dying on or after January 1, 2011.

Current Status: 4/14/2011 - **REPORTED OUT AS AMENDED**, Senate Ways & Means & Economic Development, (Fifth Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_90

SB115 **PROPERTY SALE GAINS** (KEARNEY E) To exempt from income taxation any gains from the sale of Ohio property used in a trade or business and held for at least two years.

Current Status: 3/24/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_115

SB188 **ALTERNATIVE FUEL FACILITY** (PATTON T) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.

Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_188

SB200 **EDISON JOBS DEVELOPMENT PROGRAM** (HUGHES J) To create the Edison Jobs Development Program within the Department of Development and to make an appropriation.

Current Status: 12/6/2011 - Senate Finance, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_200

SB206 **TAX CREDIT-TEMP EMPLOYMENT AGENCY HIRES** (SCHAFFER T) To allow taxpayers to count employees employed through a temporary or professional employment agency toward the payroll and income tax withholding requirements of the job creation and job retention tax credits.

Current Status: 9/20/2011 - Referred to Committee Senate Ways & Means & Economic Development

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_206

SB209 **ELECTRIC VEHICLE SALES TAX REDUCTION** (HITE C, TURNER N) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to $2,000.

Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_209

SB256 **RIGHT TO CURE AGREEMENT** (COLEY W) To allow suppliers and consumers to enter into a Right to Cure agreement.

Current Status: 12/13/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_256

SB265 **BUDGET STABILIZATION FUND BALANCE** (BACON K) To increase the balance that must exist in the Budget Stabilization Fund, from 5% to 10% of the General Revenue Fund revenue, before revenue surpluses are applied to income tax reductions.

Current Status: 3/20/2012 - Senate Finance, (Second Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_265

SB278 **ECONOMIC DEVELOPMENT** (KEARNEY E, TURNER N) To authorize programs and tax credits to encourage the hiring of unemployed individuals, to make changes to the Unemployment Compensation Law, to authorize grants and tax credits for the rehabilitation of distressed areas and the expansion of broadband connections to rural areas, to create a revolving loan fund and a bonding program for small businesses, to make changes to the Minority Business Bonding Program, and to make an appropriation.
Current Status: 1/18/2012 - Referred to Committee Senate Finance
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_278

SB327 **NEW MARKETS TAX CREDIT** (BEAGLE B, TAVARES C) To prohibit the New Markets Tax Credit from increasing a claimant's retaliatory tax on foreign insurance companies, to increase the total annual and individual amount of credits that may be awarded, to give a noncompliant entity six months to cure its noncompliance before claimed credits are recaptured, to allow community development entities to make credit-eligible investments in a business that derives 15% or more of its annual revenue from renting or selling real estate, and to prescribe an application process
for the credits in which approval is based on the date an application is submitted.
Current Status: 5/24/2012 - Senate Ways & Means & Economic Development, (Fourth Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_327

SB331 **OHIO MOTION PICTURE TAX CREDIT** (PATTON T) To increase the maximum total amount of tax credits allowed per year for completion of motion pictures certified as tax credit-eligible productions.
Current Status: 5/8/2012 - Referred to Committee House Ways and Means
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_331

SB356 **LOCAL GOVERNMENT-SCHOOL DISTRICT COMPARATIVE DATA** (BURKE D) To require the Auditor of State to adopt rules to solicit comparative data from local governments and school districts and to make that information available to the public.
Current Status: 6/13/2012 - Referred to Committee Senate State & Local Government & Veterans Affairs
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_356

SB386 **SALES-USE TAX EXEMPTION** (JORDAN K) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.
Current Status: 10/30/2012 - Introduced
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_386

SCR4 **URANIUM ENRICHMENT** (DANIELS D) To urge the President of the United States to direct the United States Department of Energy to ensure the continuation of the uranium enrichment work being developed by USEC, Inc. at its Piketon, Ohio plant by granting USEC's application for a federal loan guarantee and to direct the Secretary of Energy to strongly consider providing federal funding assistance for the Clean Energy Park Demonstration Project.
Current Status: 6/15/2011 - **ADOPTED BY HOUSE**; Vote 87-6
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SCR_4

OBM

October 10, 2012

MEMORANDUM TO: The Honorable John R. Kasich, Governor
The Honorable Mary Taylor, Lt. Governor

FROM: Timothy S. Keen, Director TK

SUBJECT: Monthly Financial Report

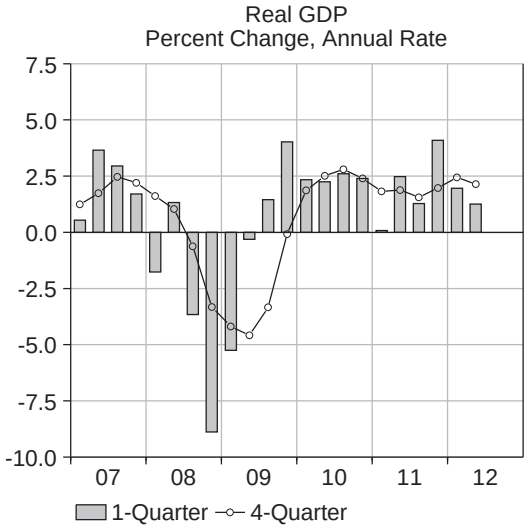
ECONOMIC SUMMARY

Economic Performance Overview

- Real GDP expanded at an annual rate of 1.3% in the second quarter of 2012, down from 2.0% in the first quarter and 3.0% in the fourth quarter of last year. Forecasters expect growth to improve modestly but remain below 3.0% each quarter well into 2013.
- According to the establishment survey of employment, labor markets remained soft in September, as growth in nonfarm payroll employment slowed to 114,000 jobs. However, according to the household survey of employment, the unemployment rate decline by 0.3 percentage points to 7.8%.
- Ohio employment decreased by 2,000 jobs in August, following three strong monthly gains, but is up by 93,300 jobs year-to-date. The Ohio unemployment rate remained at 7.2% for the third straight month, down from 8.8% a year ago.
- Leading economic indicators have weakened recently, but remain consistent with uninterrupted growth at a modest pace across the country and especially in Ohio.

Economic Growth

Real GDP growth was revised lower to 1.3% in the final estimate for the second quarter of 2012. The original estimate of 2.0% was revised down to 1.7% last month. Compared with a year ago, real GDP was up by 2.1%. Since the business cycle trough in the second quarter of 2009, real GDP has increased at a compound annual rate of 2.2% – the slowest pace during the first three years of any expansion during the post-war period.

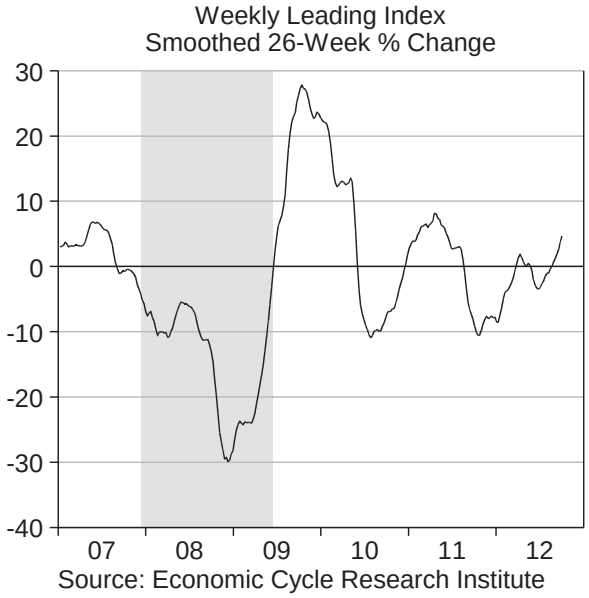


Growth in the second quarter still resulted mainly from increases in personal consumption expenditures, exports, business investment in plant

and equipment, and housing investment. Inventory investment and state and local government spending subtracted from overall growth. Federal government spending both for defense and nondefense was little changed from the previous quarter. Imports, which are automatically counted in spending by category and are therefore subtracted from the total, increased at about the same pace as in the first quarter.

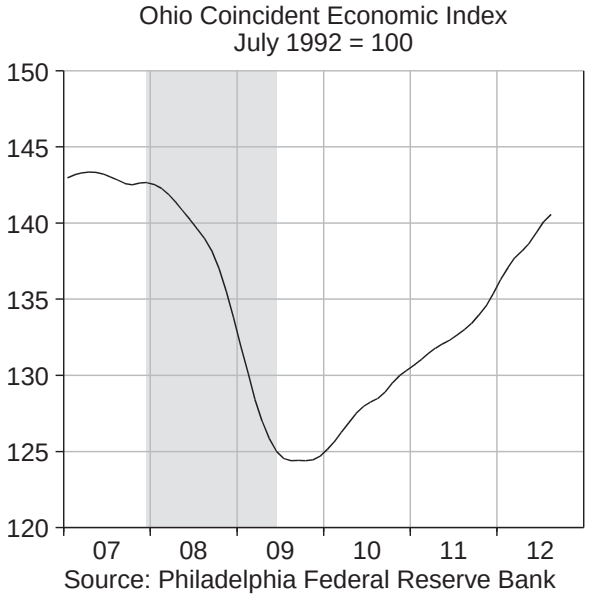
Real final sales growth was revised down to 1.7% from the previous estimate of 2.0% and compared with 2.4% in the first quarter and the 1.5% pace of the fourth quarter last year. During the last twelve quarters, real final sales has increased at an annual rate of only 1.5% – the slowest pace by a notable margin among expansions in the post-war period that have lasted for at least twelve quarters.

The slowdown in the second quarter from an already-slow pace in the first quarter reflects several factors. The much milder than normal weather during the winter probably boosted activity in sectors ranging from consumer spending to housing construction in the first quarter at the expense of activity in those sectors in the sector quarter. More importantly for the outlook, the slowdown appears also to reflect weaker overseas demand for U.S. products, due to slower growth abroad and to the appreciation of the dollar from mid-2011 to mid-2012, which makes U.S. goods and services more expensive in foreign currencies.



The consensus is that real GDP is expanding at a rate below 2.0% in the third quarter and will continue to grow at a modest pace thereafter, picking up but remaining below 3.0% through 2013, according to *Blue Chip Financial Forecasts*.

Leading indicators remain consistent with slow but uninterrupted growth. After declining in ten of the eleven weeks ending in mid-June, the 4-week moving average of the **Weekly Leading Index** has increased in twelve of the thirteen weeks ending in late September. The 6-month smoothed rate of change improved to +3.8%, up from a low of -3.5% in mid-June and the highest since June 2011.



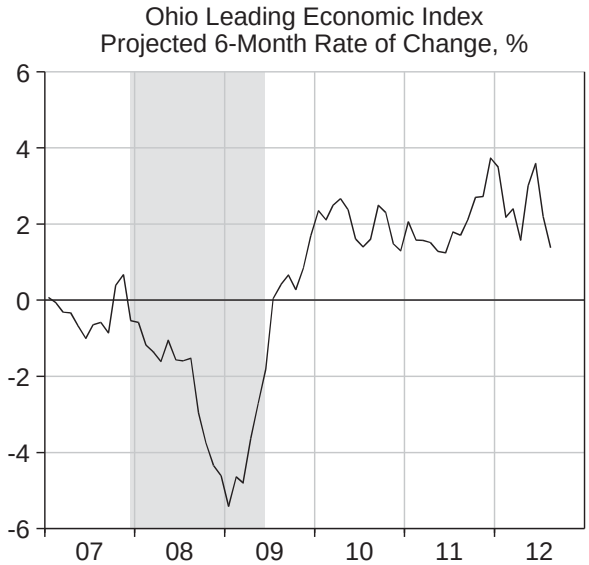
The composite **Leading Economic Index** from the Conference Board has traced out a see-saw

pattern during the six months ending in August to stand only marginally higher than in February. The year-over-year rate of change has declined from 3.3% as of last December to 2.1% in August.

The **ratio of the coincident index to lagging index** – itself a leading indicator – has been weaker recently. The ratio was unchanged in August after falling in each of the two prior months and four of the previous five months. Compared with a year ago, the ratio was down by 1.5%. The rate of change has typically fallen to -5.0% near the onset of recession in the past.

Despite the slowdown at the national level over the summer, the Ohio economy continued to make progress through August. The **Ohio Coincident Economic Index**, compiled by the Federal Reserve Bank of Philadelphia, increased 0.3% in August while the July increase was revised slightly lower. The August increase was the 36th consecutive monthly increase. The 12-month rate of change was 5.7% in August – up from a recent low of 3.4% last October and the highest since February 1995. The index combines four state-level indicators to summarize current economic conditions. The four components are nonfarm payroll employment, average hours worked in manufacturing, the unemployment rate, and real wage and salary disbursements.

The companion **Ohio Leading Economic Index** decreased to 1.4% and the previous month was revised downward to 2.2%. The index, which is also compiled by the Federal Reserve Bank of Philadelphia, is designed to predict the rate of increase in the coincident index during the next six months. The leading index has a strong track record of predicting recent recessions: since 1982 it has been below zero in all but one month when the economy was in recession. Although growth in the index has declined from its pace in May and June, when growth exceeded 3.0%, the index is currently still far above zero. The index has been revised significantly in the past, so it is possible that July or August figures could be revised downward to reflect zero or negative growth, but as it stands the recent history of the index is consistent with ongoing expansion of the Ohio economy through the fall.

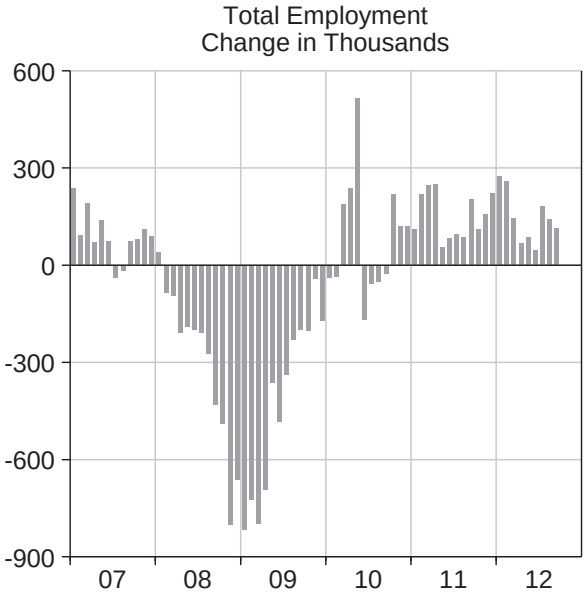


Source: Philadelphia Federal Reserve Bank

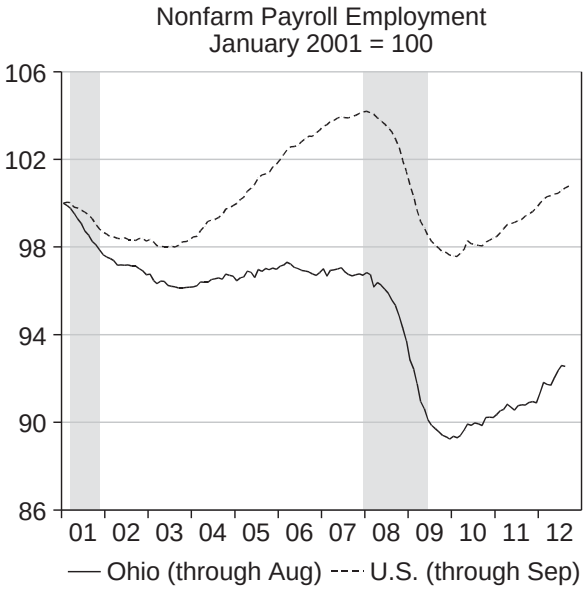
Employment

Job growth remained disappointing in September with **nonfarm payrolls** rising only 114,000 jobs. The July and August tallies were revised up by a total of 86,000 jobs, reflecting a 91,000 job upward revision to the change in government employment during the two months. Nonfarm payroll growth has averaged 106,000 per month during the last six months, and the unemployment rate has averaged 8.1%. The 114,000 gain in payrolls was just above the trailing

6-month average of 106,000 jobs, but below the middle of the range during the past year of 160,000 jobs. While the September employment report is consistent with a slow growing economy, it is not consistent with an economy that is in the early stage of a recession.



The unemployment rate decreased by 0.3 percentage points to 7.8%, reflecting an extraordinarily large increase of 873,000 workers in total employment and a 456,000 decline in unemployed people, as measured by the survey of households. The broadest official measure of unemployment, which includes unemployed people who have given up searching for a job because they have been unable to find one and people who are working part-time because they cannot find a full-time job, remained at 14.7% in September. This puzzle may be explained in part by the fact that workers who have part-time jobs for economic reasons (involuntary part-time workers) rose by 582,000 in September, from 8.0 million to 8.6 million. This was the largest monthly increase since the first quarter of 2009. The median duration of unemployment increased from 18.0 weeks in August to 18.5 weeks in September. It peaked at a record 25.0 weeks in June 2010, but had fallen to 16.7 weeks in July.



The outsized increase in total employment (household survey) was the seventh largest among the 776 months since February 1948. In percentage terms, the increase was the 49th largest. The increase over the most recent three months, however, ranked just outside the top third of 3-month gains in terms of jobs and was in the middle of the pack in percentage terms.

The length of the workweek was unchanged overall and in manufacturing during September, so that the 0.1% increase in total hours worked resulted entirely from the gain in employment. Average hourly earnings rose by 0.3% to 1.4% above the year earlier level, compared with inflation of 1.7% during the twelve months ending in August.

Most major sectors posted gains in employment, led by education and health services (+49,000), trade, transportation and utilities (+25,000), finance, insurance and real estate (+13,000), and professional and business services (+13,000). Temporary help employment, which is included in professional and business services, decreased 2,000 jobs after no change in August. Temporary help employment is viewed as somewhat of a leading indicator of total employment. The only major sectors posting losses were manufacturing (-16,000) and information (-6,000).

Ohio employment decreased by 2,000 jobs in August, following three strong monthly gains. Employment increased by a total of 50,300 jobs (1.0%) during May-July and is up 93,300 jobs, or 1.8%, year-to-date. The Ohio unemployment rate was 7.2% for the third straight month in August and is down from 7.9% last December and 8.8% in August 2011.

Month-to-month changes in employment across sectors were mixed during August. Increases were led by leisure and hospitality (+3,500), construction (+2,600), professional and business services (+2,200), and financial activities (+1,200). Declines were concentrated in trade, transportation and utilities (-7,300) and educational and health services (-4,800). Manufacturing employment was little changed after three monthly gains totaling 12,100 jobs. Private sector employment decreased by 2,900 jobs, while government employment increased by 900 jobs.

During the twelve months ending in August, employment gains were concentrated in educational and health services (+26,100), trade, transportation and utilities (+20,200), manufacturing (+20,200), and professional and business services (+14,200). Employment declined by 4,200 jobs in government. Private sector employment increased by 102,500 jobs (2.4%) during the last twelve months.

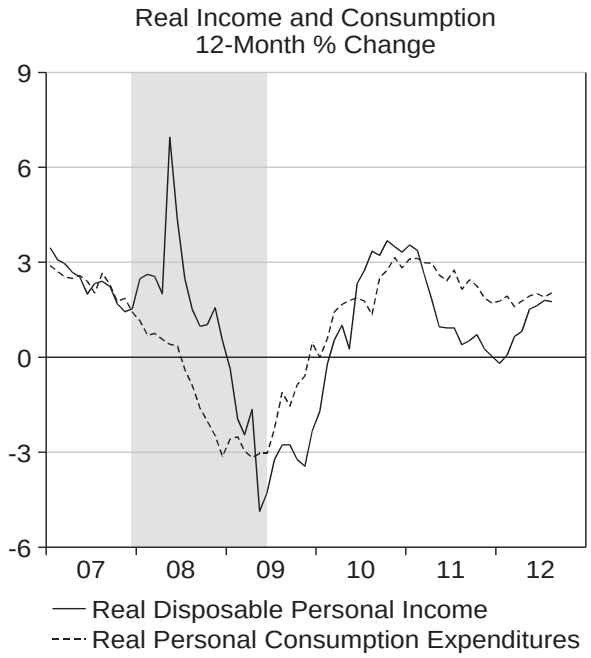
Among the **contiguous states**, year-over-year employment growth was strongest in Indiana (+2.3%), Kentucky (+2.1%) and Ohio (+1.9%), followed by Michigan (+1.2%). Employment increased 0.3% in Pennsylvania and decreased 0.7% in West Virginia. Year-over-year growth in manufacturing employment was a strong 3.1% in Ohio. Among the contiguous states, manufacturing employment increased 5.0% in Indiana, 3.6% in Kentucky, 3.2% in Michigan and 1.0% in Pennsylvania and decreased 4.4% in West Virginia. Also contributing to the decline in total employment in West Virginia was a 13.9% decline in mining and logging employment.

For the Ohio and contiguous state region, employment increased 1.3% during the year ending in August, compared with a 1.4% increase outside the region. Growth in regional employment has outpaced growth outside the region since the trough in employment in February 2010 by 3.5% for Ohio and contiguous states to 3.1% for all other states.

Consumer Income and Consumption

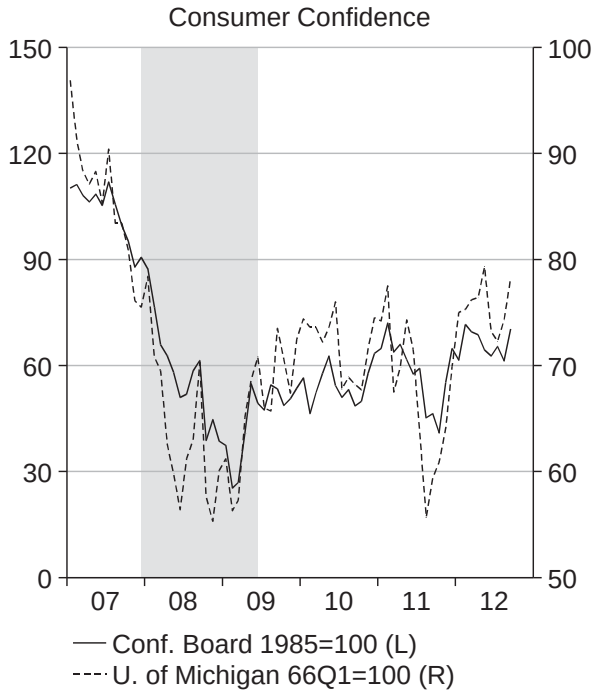
Personal income increased 0.1% in August while the July increase was revised down from 0.3% to 0.1%. **Personal consumption expenditures** increased 0.5% on top of the 0.4% increase in July. The **savings rate** pulled back for a second straight month to 3.7%, down from 4.1% in July and 4.4% in June.

On balance since January, income growth has increased in absolute terms and relative to spending growth. For example, year-over-year growth in real disposable personal income increased from -0.2% in January to 1.8% in August while growth in real personal consumption expenditures increased only modestly during the period from 1.8% to 2.0%.



The back-to-back increases in consumption in July and August mark a shift from the flat pattern during April-June. Rising auto sales contributed to the July and August spending increases. Unit auto sales increased from 14.0 million units in June to 14.5 million units in July and to 14.9 million units in August – the highest annualized sales rate since March 2008.

Consumer spending appears to have softened in September. Chain store sales fell by 0.7% in September, according to the International Council of Shopping Centers. Compared with a year earlier, sales were up only 0.9%. On a year-over-year basis, sales across key categories registered the weakest year-over-year comparisons of the third quarter.



Measures of **consumer confidence** were positive in September, especially those relating to future assessments. The Conference Board index rebounded from its lowest level since last November, reflecting better views of both current and future conditions. The University of Michigan index increased by four points, reflecting a large improvement in the assessment of future conditions that more than offset a modest decline in perceptions of current conditions.

Although consumer confidence remains low by historical standards, the expectations components of the surveys were 20.8% and 17.3% above the respective recession averages for the Conference Board and Michigan indexes. Even so, the August levels were 11.8% and 9.9% below their respective expansion averages.

Manufacturing

Industrial production decreased 1.2% in August, reflecting a 0.7% decline in manufacturing production, a 3.6% drop in utility output and a 1.8% decrease in mining output. Temporary factors played significant roles in all of the declines. Several regional surveys of industrial activity confirmed the weakness in industrial activity in August, while the national survey of purchasing managers at manufacturing firms pointed to somewhat better conditions in September.

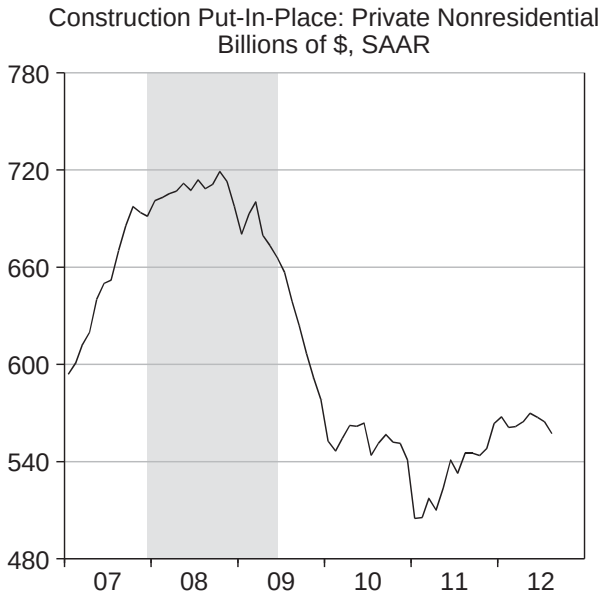
Manufacturing production was pulled down in part by a calendar-related drop in motor vehicle production. Assemblies of light vehicle production declined from 10.8 million units in July to 10.0 million units in August due to the return to a normal production schedule in August from an unusually high production level in July. Utility output dropped as weather returned to normal after a blistering July. And mining output fell due to shutdowns of offshore rigs because of Hurricane Isaac.

Factory shipments and orders also showed some weakness during August. Shipments fell 0.3% after a large July increase, and the decline was the third in the last five months. Shipments of computers fell for the second straight month, while a large decline in shipments of transportation equipment (-7.9%) almost exactly offset the large increase in July. New orders were weaker, with total orders falling 5.2% – the fourth decline in the last six months. Durable goods orders fell 13.2%, computer orders fell 3.4%, and transportation orders dropped by 34.9% (more than reversing strong gains in preceding months).

Slower activity continued elsewhere in the country in August. Surveys of manufacturers by the Federal Reserve Banks of New York and Philadelphia were both weak. The New York index moved back into negative territory, reflecting weakness in both shipments and orders. The Philadelphia survey also remained in negative territory, reflecting stable but weak orders and weaker shipments.

On a positive note, the August **ISM survey** of purchasing managers at manufacturing firms improved. After spending three months below the neutral level of 50.0, the new orders index increased to 52.3. The production component improved from 47.2 to 49.5. The composite index moved back into expansion territory at 51.5, suggesting that manufacturing activity picked up some steam in September.

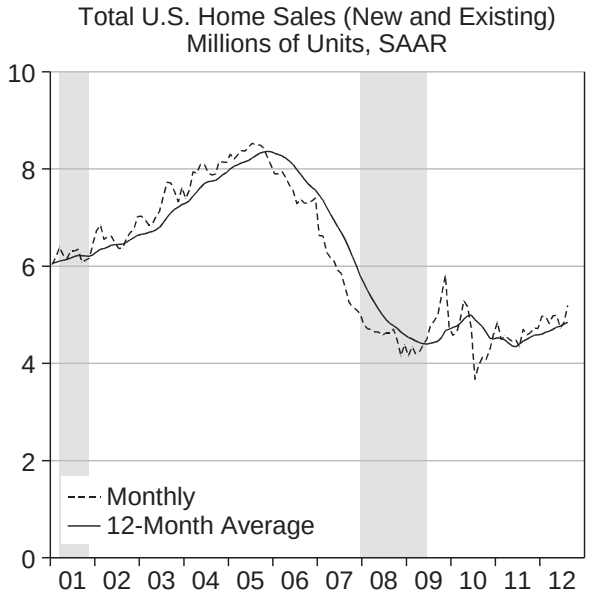
Construction



Total **construction put-in-place** decreased 0.6% in August, but the July decline was revised up somewhat from a decline of 0.9% to a decline of 0.6%. The back-to-back declines came after three straight increases during April-June. Excluding improvements to residential properties, construction fell by 0.4%.

Total construction in August was 6.5% above the year earlier level and up 9.3% year-over-year and 12.2% from what looks increasingly with each passing month like the cycle low in March 2011, but remains 31.0% below its pre-recession peak.

Private construction decreased 0.5%, but the July decline was revised up from -1.2% to -0.3%. Private residential construction increased 0.9% after a 0.1% decline in July. Private non-residential construction fell by 1.7% after a 0.5% decline in July, reflecting a broad-based decline led by communication (-3.7%), power (-3.7%), and commercial (-1.3%). Only amusement and recreation (+1.2%) and transportation (+0.2%) made positive contributions.



The **Architecture Billings Index** from the American Institute of Architects improved again in August to the neutral level of 50.0 after four straight months below neutral. The **Inquiries for New Work Index** increased yet again to 57.2, while the **Billings Index for the Midwest** dipped to 45.3 for the fifth-straight reading below neutral.

The 3-month moving average of **housing starts** increased 2.0% in August to the highest level since November 2008. Midwest housing starts increased 8.2% on a 3-month moving average basis in August, partially reversing declines of 5.2% in June and 4.2% in July. Despite the recent improvement, U.S. housing starts proceeded during the three months ending in August at an annual rate about 36.0% of the pace set in the record year of 2005. Homebuilders continue to face high debt levels, large inventories of unoccupied houses in many markets, still-challenging labor market conditions, and expectations of little or no price appreciation.

Sales of existing homes increased 1.5% in August on a 3-month moving average basis after declines in three of the four previous months. Midwest sales increased 2.6% on a 3-month

moving average basis, extending a long, unbroken string without a decrease. **Sales of newly built homes** increased 0.4% in August on a 3-month moving average basis, also extending a string of increases. Sales of newly built homes in the Midwest increased 5.3% in August after gains of 5.0% in June and 2.7% in July.

The inventory of both new and existing homes was little changed in August. The **inventory-to-sales ratio** for existing homes edged down to 6.1 months, still well below the extreme levels of recent years and close to the normal level of 4 months to 5 months. The inventory of newly built homes remained flat at 4.5 months – well below extremes reached in recent years and close to the historical norm.

Home prices posted a sixth straight increase in July, according to the S&P/Case-Shiller 20-city composite home price index. The index increased 0.4% in July, lifting the total increase since January to 4.0%. The index was still down 31.2% from the all-time peak reached in April 2006.

REVENUES

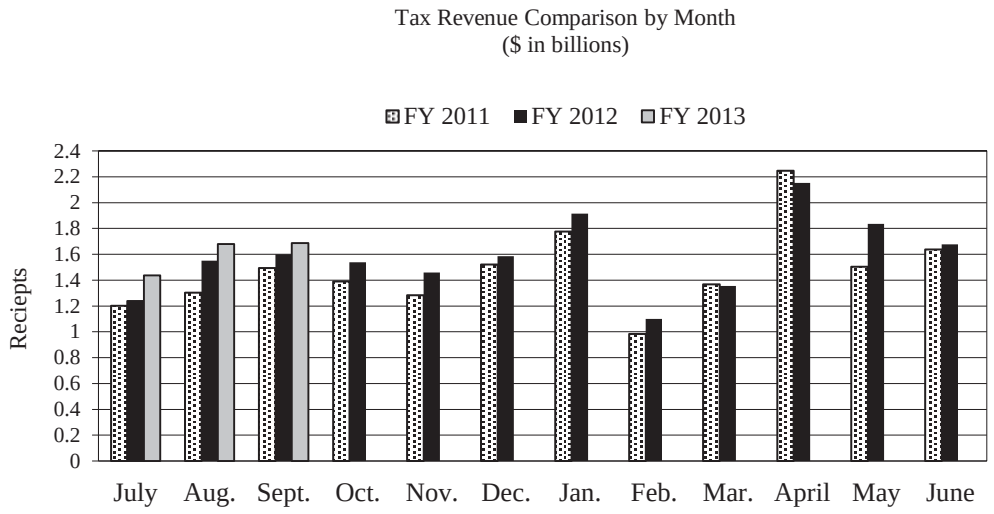
September**, GRF receipts totaled $2,356.9 million** and were $57.7 million (2.4%) below the estimate**.** Monthly tax receipts totaled $1,687.8 million and were $39.0 million (2.4%) above the estimate, while non-tax receipts totaled $659.1 million and were $96.8 million (12.8%) below the estimate. Transfers totaled $10.0 million and met the estimate. Year-to-date variances by category are provided in the following table ($ in millions).

Category	Includes:	YTD Variance	% Variance
Tax receipts	Sales & use, personal income, corporate franchise, public utility, kilowatt hour, foreign & domestic insurance, other business & property taxes, cigarette, soft drink, alcoholic beverage, liquor gallonage, estate & horse racing	$65.0 million	1.4%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	($104.3 million)	(4.5%)
Transfers	Budget stabilization, liquor transfers, capital reserve, other	$3.7 million	8.6%
TOTAL REVENUE VARIANCE:		($35.6 million)	(0.5%)

September tax receipts totaled $1,687.8 million and exceeded the estimate by $39.0 million (2.4%). On a year-over-year basis, monthly receipts were $88.6 million (5.5%) higher than in September 2011, with the largest contributions to this year-over-year growth attributable to the non-auto sales tax, personal income tax, and corporate franchise tax.

GRF Revenue Sources Relative to Monthly Estimates- September 2012
($ in millions)

Individual Sources Above Estimate		Individual Sources Below Estimate	
Auto Sales Tax	$1.3	Non-Auto Sales Tax	($10.0)
Personal Income Tax	$29.7	Kilowatt Hour Tax	($6.0)
Corporate Franchise Tax	$30.3	Foreign Insurance Tax	($3.8)
Commercial Activity Tax	$1.2	Cigarette Tax	($5.3)
Domestic Insurance Tax	$4.7	Alcoholic Beverage Tax	($1.3)
Other Business & Property	$1.3	Estate Tax	($3.1)
Other Sources Above Estimate	$0.2	Federal Grants	($87.7)
		License & Fees	($4.3)
		Other Income	($4.8)
		Other Sources Below Estimate	($0.1)
Total above	**$68.7**	**Total below**	**($126.4)**



Non-Auto Sales and Use Tax

Following a weaker-than-expected August performance, the non-auto sales tax fell short of the estimate again in September as receipts totaled $561.3 million and were $10.0 million (1.8%) below the estimate. It is thought that the August and September shortfalls could be the result of weaker-than-expected retail sales, and OBM will be closely monitoring the performance of this tax in the coming months to see if a trend is emerging and if so, what is driving it. As a result of the September variance, this tax source is now $15.5 million (0.8%) below the year-to-date estimate. On a year-over-year basis, September 2012 receipts were $50.2 million (9.8%) above those of September 2011, while fiscal year 2013 year-to-date receipts are $93.2 million (5.4%) higher than those at the same point in fiscal year 2012.

Auto Sales Tax

Reflecting stronger than expected sales, September auto sales tax receipts beat the estimate for the first time this fiscal year, totaling $88.3 million which is $1.3 million (1.5%) above the estimate. The September overage brought the year-to-date total to $0.7 million (0.3%) below the estimate. On a year-over-year basis, September 2012 receipts were $3.0 million (3.3%) lower than those of September 2011, and fiscal year 2013 year-to-date receipts are $7.6 million (2.8%) higher than the same point in the previous fiscal year.

Personal Income Tax

September personal income tax receipts totaled $885.6 million and were $29.7 million (3.5%) above the estimate, more than making the up shortfall experienced in August. The withholding component totaled $613.4 million and was $21.1 million (3.6%) above the estimate. The second major contributor to the overall monthly overage was the estimated payments component which totaled $279.8 million and was $12.3 million (4.6%) above estimate.

On a year-over-year basis, personal income tax receipts for the month of September were $27.6 million (3.2%) above the September 2011 level. Estimated payments contributed towards this year-over-year growth as receipts were $12.3 million (4.6%) higher than the same month a year ago. Further contributing were reductions in distributions to the local government fund that were $17.2 million (40.2%) lower than those of September 2011 as a result of changes contained in H.B. 153.

Year-to-date, personal income tax receipts for the first quarter of fiscal year 2013 exceeded the estimate by $43.9 million (2.1%) and were higher by $178.1 million (9.1%) than the level in the corresponding quarter of fiscal year 2012.

FY2013 PERSONAL INCOME TAX RECEIPTS BY COMPONENT ($ in millions)						
	ESTIMATE SEP	ACTUAL SEP	$ VAR SEP	ESTIMATE Y-T-D	ACTUAL Y-T-D	$ VAR Y-T-D
Withholding	$592.3	$613.4	$21.1	$1,874.2	$1,900.5	$26.3
Quarterly Est.	$267.5	$279.8	$12.3	$295.8	$311.9	$16.1
Trust Payments	$6.4	$11.7	$5.3	$7.6	$12.7	$5.1
Annual Returns & 40 P	$26.5	$21.0	($5.5)	$46.9	$46.2	($0.7)
Other	$7.3	$4.3	($3.0)	$20.7	$22.5	$1.8
Less: Refunds	($18.8)	($19.1)	($0.3)	($73.1)	($75.9)	($2.8)
Local Distr.	($25.2)	($25.5)	($0.3)	($80.7)	($82.6)	($1.9)
Net to GRF	**$856.0**	**$885.6**	**$29.7**	**$2,091.4**	**$2,135.3**	**$43.9**

Corporate Franchise Tax

Corporate franchise tax receipts for the month of September totaled $28.3 million, and were $30.3 million above the estimate. One-time audit settlements pertaining to prior year payments accounted for a major portion of this month's receipts. Year-to-date, corporate franchise tax receipts for the first quarter of fiscal year 2013 were $51.7 million over the estimate and were $51.0 million higher than the level in the corresponding quarter of fiscal year 2012.

Commercial Activity Tax

September Commercial Activity Tax (CAT) receipts to the GRF totaled $6.7 million and were $1.2 million (21.7%) above the monthly estimate. On a year-over-year basis, GRF CAT receipts were $4.3 million (180.6%) higher than for those of September 2011, largely due to provisions contained in H.B. 153 that modified the distribution of CAT receipts, with the portion of total receipts being allocated to the GRF increasing from 25.0 percent in fiscal year 2012 to 50.0 percent in fiscal year 2013. All-funds CAT receipts for September totaled $2.0 million and were $9.1 million (72.0%) below the $11.1 million estimate. On a year-over-year basis, total CAT receipts are $409.3 million and are $0.4 million above estimate.

It is worth nothing that the situation in which GRF CAT receipts ($6.7 million) far exceeded all-funds CAT receipts ($2.0 million) is the result of the accounting process of distributing CAT

proceeds between the GRF and replacement funds. This situation occurs at the end of each month when, due to timing, there are moneys remaining in the CAT master fund. If a large payment is received the last day or two of a month, these moneys will be reflected in the CAT all-funds number for that month, but usually will not show up in the GRF until the following month. Thus the situation arises where the GRF portion of relatively large payments received late in August (which were reflected in the all-funds CAT amounts contained in the September 10, 2012 Monthly Report) are not attributed to the GRF until the next month. If that next month is a month of relatively light payment activity, the GRF portion of the CAT for that month can exceed the all-funds collections.

Kilowatt-Hour Tax

September receipts for the kilowatt hour tax totaled $33.5 million and were $6.0 million (15.2%) below the estimate. Earlier in the calendar year, the shortfall in this tax source was largely the result of a milder-than-expected winter, though the shortfall following increased demand due to a warmer-than-usual summer is unexpected. On a year-over-year basis, this tax source was $3.2 million (8.6%) lower in September 2012 than in the same month in the previous fiscal year, though year-to-date fiscal year 2013 receipts are $2.2 million (2.4%) higher than those at the same point in the previous fiscal year.

Foreign Insurance Tax

September receipts for the foreign insurance tax totaled $3.0 million and were $3.8 million (56.5%) below the estimate. Year-to-date, this tax source is $2.0 million (31.5%) below the estimate. On a year-over-year basis, September 2012 receipts were $4.4 million (59.8%) below those of September 2011, while year-to-date fiscal year 2013 receipts are $2.2 million (33.3%) lower than the same point in the previous fiscal year. While the tax is running well below estimate on a percentage basis, the vast majority of the foreign insurance tax receipts are paid later in the fiscal year and OBM expects most, if not all of the current shortfall to be made up in the months ahead.

Domestic Insurance Tax

Domestic insurance tax receipts totaled $4.5 million during the month of September, which was $4.7 million above the estimate, with year-to-date receipts now $4.9 million above the estimate. Both the monthly and year-to-date variances are the result of a late payment received during the month of September but that was originally billed last May. On a year-over-year basis, September 2012 receipts were $4.5 million above those of September 2011, while year-to-date fiscal year 2013 receipts are $4.7 million higher than the same point in the previous fiscal year.

Cigarette Tax

Cigarette tax receipts totaled $68.9 million during the month of September, and were $5.3 million (7.1%) below the estimate. Year-to-date, this tax source is $3.7 million (2.2%) below the estimate. On a year-over-year basis, September 2012 cigarette tax receipts were $15.7 million (18.6%) lower than those of September 2011, while year-to-date fiscal year 2013 receipts are

$12.9 million (7.4%) lower than at the same point in the previous fiscal year, a decline that is well above the 3.0 percent decline we have seen with this tax source in recent years. Since the tax had been running above estimate for the year-to-date prior to September, OBM will monitor October's performance to try and determine if September's performance is simply the result of the timing of the end of the month or something more.

GRF non-tax receipts totaled $659.1 million in September and were $96.8 million (12.8%) below the estimate. This is largely the result of lower-than-anticipated federal grants, license & fee income, and other income. Federal grants for September were $87.7 million below estimate as a result of both lower-than-estimated Medicaid spending, as well as an OAKS revenue processing issue whereby federal revenue received on the last business day of September did not actually post to the GRF until early October. **GRF transfers** during the month of September were $10.0 million and met the estimate.

The Ohio Manufacturers' Association

Public Policy Priorities

2012-2013

Manufacturing is the engine that drives Ohio's economy, and the mission of the Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. In a fiercely competitive global economy—where the need for continuous quality improvement, enhanced efficiency and productivity, and constant innovation is relentless—every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness.

Ohio manufacturers need public policies that help create global competitive advantage, attract investment and promote growth. These policies span a broad spectrum of conditions that shape the business environment within which manufacturers operate. Major policy goals include the following:

- An Effective, Competitive Ohio Tax System
- An Efficient, Effective Workers' Compensation System
- Access to Reliable, Economical Energy
- A Fair, Stable, Predictable Civil Justice System
- Clear, Consistent, Predictable Environmental Regulations
- A Modernized Transportation Infrastructure
- An Educated, Highly Skilled Workforce

Contact OMA Public Policy Services at (800) 662-4463 or oma@ohiomfg.com

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

An Effective, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax structure must encourage investment and growth and be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important considerations.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating tax revenues should be discouraged.

Good tax policy also generates necessary revenues to support the essential functions of government. To ensure transparency regarding the true cost of government and the rate of its growth, however, funding government programs with fee revenue instead of general fund revenue should be discouraged. Good budgeting and spending restraint at all levels of government are vital to ensure a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 have led to significant improvements to a tax system that was for many years widely regarded as outdated. Reforms included reducing overall tax rates, eliminating tax on investment, broadening the tax base, providing more stable and predictable revenues, and simplifying compliance. While progress has been made, additional policy reforms are needed to support manufacturing competiveness, economic growth and prosperity in Ohio.

Tax policy priorities include the following:

- **Preserve the integrity of Ohio's 2005 tax reforms,** including a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or credits to (a) avoid paying the Commercial Activities Tax (CAT) or (b) earmark any portion of CAT revenues for specific government services.

- **Improve Ohio's tax appeals process,** which due to bad economic conditions and subsequent state budget cuts, staffing cutbacks and increased caseloads, has contributed to such a backlog of cases at the Ohio Board of Tax Appeals that it routinely takes two years to advance from the date of filing an appeal to the date of the first hearing.

- **Preserve the repeal of Ohio's estate tax,** which for so long served as a disincentive for business owners to invest in existing businesses and as an impediment to the capital formation that is so vital to Ohio's economy.

- **Streamline and simplify the sales tax,** which over time has become riddled with exemptions, carve-outs and credits that result in some taxpayers subsidizing exempted taxpayers. Exemptions, carve-outs and credits should be reviewed periodically for economic justification.

- **Promote taxpayer uniformity.** Consolidate and streamline the collection of municipal income tax by creating a uniform statewide municipal tax code, with uniform definitions of taxable income, consistent rules and regulations and a generic municipal income tax form.

- **Lower the effective tax rate in Ohio by reducing the number of government entities that are taxing jurisdictions.** This will help address the problem of pancaking state and local state taxes, which puts Ohio at a competitive disadvantage with many other states.

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

An Efficient, Effective Workers' Compensation System

The Ohio Manufacturers' Association works with its member companies, the Ohio Bureau of Workers' Compensation (BWC or Bureau), and the Ohio General Assembly to continually improve processes for injured workers and employers and to drive system costs down. An efficient and effective workers' compensation system is built on the following principles:

- Injured workers will receive fair and timely benefits they need for getting back to work quickly and safely.
- All businesses will pay fair workers' compensation rates commensurate with the risk they bring to the system.
- Workers' compensation rates will be driven by actuarial data, and the state's workers' compensation insurance system will remain stable, solvent and actuarially sound.
- Workers' compensation rates will not be structured in a way that punishes one class of employers to benefit another (such as the historical subsidization of group-rated employers by non-group-rated employers).
- The Ohio Bureau of Workers' Compensation will deploy best-in-class disability management practices to drive down costs for employers and improve service for injured parties.

These outcomes would be good for manufacturers and good for Ohio's overall economy.

Workers' compensation policy priorities include the following:

- **Design and deploy a competitive process that requires Managed Care Organizations (MCOs) to (a) meet rigorous performance standards established by the BWC and (b) compete on price for contracts with the BWC.**
- **Eliminate the "reasonable suspicion" standard from Ohio's rebuttable presumption drug statute.**
- **Incorporate the Louisiana Pacific standards of "voluntary abandonment" for benefits.**
- **Improve claims management processes, transparency and accountability associated with Ohio's Self-Insured Employers' Guaranty Fund.**
- **Require credentialing/certification of all claims management personnel based on accepted private insurance industry standards.**
- **Establish retirement benefit offsets and/or age or number-of-weeks caps** for permanent total disability (PTD) awards.

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- **Require claimants to show new and/or changed circumstances when filing for permanent total disability (PTD) or permanent partial disability (PPD) benefits more than once.**

- **Require Industrial Commission hearings to be recorded** to improve consistency in outcomes.

- **Allow telephonic hearings for permanent partial disability (PPD) claims to lower transaction costs.**

- **Establish an impairment standard (no consideration of non-medical factors) for permanent partial disability (PPD) cases.**

- **Terminate the compensation paid for temporary total disability (TTD) effective the date determined by the medical evidence establishing maximum medical improvement.**

- **Specify that if a temporary total disability (TTD) claim is suspended due to a claimant's refusal to provide a signed medical release or attend the employer's medical examination, the claimant forfeits his or her right to benefits during the period of the suspension.**

- **Allow employers to pay compensation and medical bills without losing the right to contest a claim (payment without prejudice).**

- **Require permanent partial disability (PPD) claims to be resolved by choosing either the claimant's medical exam determination or the defendant's medical exam determination—explicitly prohibiting an averaging of, or compromise between, the two.**

- **Require MCOs to demonstrate their medical arrangements and agreements with a substantial number of medical, professional and pharmacy providers participating in the BWC's Health Partnership Program.** These providers should be selected on the basis of access, quality of care and cost, rather than solely claimant preference. The focus should be on getting injured workers back to work quickly and safely, benefitting both the employee and the employer.

- **Allow the BWC to require claimants to pay out-of-plan co-payments for selecting medical providers outside the approved MCO panel of providers,** beginning the 46th day after the date of injury or the 46th day after starting treatment. However, employees should be allowed to use a provider outside the approved panel if they are located in certain parts of the state or outside the state where approved MCO providers cannot reasonably be accessed.

- **Allow the BWC to modify existing rules for the Bureau's Health Partnership Program to include administrative and financial incentives that reward high-performing MCOs and other providers.** Possible incentives include bonus payments to providers who greatly exceed quality benchmarks established by the BWC to help reduce costs without sacrificing quality of services or outcomes.

- **Collect and include in the BWC's healthcare data program annual data measuring the outcomes and savings of MCOs and other providers participating in the Health Partnership Program.** This data should be made available to employers and the public. The more performance data that are collected, the more efficient and effective the system will become.

- **Allow the BWC to recoup treatment costs from claims that ultimately are denied under BWC law.** The Bureau should be able to request that an employee's personal insurance or third-party payer reimburse the BWC for treatment amounts the Bureau paid on behalf of the employee. These payments should be deposited in the Surplus Fund Account. This will ensure injured workers will receive the treatments they need in a timely manner, while providing the Bureau a path to recoup payments that ultimately should not have been paid out by the system.

- **Allow the BWC to develop new rules permitting the BWC to pay for certain medical services within the first 45 days of an injury.** This would ensure that injured employees receive treatment regardless of whether their claims are eventually denied in the process. Also allow the Bureau to create rules allowing for immediate payment of prescriptions in certain circumstances. If a claim is ultimately disallowed, the services paid must be charged to the Surplus Fund Account as long as the employer pays its assessments into the Surplus Fund Account in the State Insurance Fund.

- **Require injured workers to participate in the treatment process in a timely manner.** Employees who refuse or unreasonably delay required treatment such as rehabilitation services, counseling, medical exams or vocational evaluations without a valid reason should forfeit their right to have the claim considered or to receive any compensation or benefits during the period of non-cooperation.

The Ohio Manufacturers' Association

POLICY GOAL:

Access to Reliable, Economical Energy

Energy policy can enhance—or hinder—Ohio's ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must strike an effective balance between (a) ensuring access to reliable, economical sources of energy and (b) conserving energy to protect and preserve our natural resources.

The Ohio Manufacturers' Association's energy policy advocacy efforts are guided by these principles:

- Predictable, stable energy pricing achieved though effective energy rate design attracts job-creating capital investments.
- A modernized energy infrastructure will help maximize energy supplies and stabilize energy pricing and reliability.
- Strategic and operational collaboration among utilities, government and manufacturers and their supply chains produces better economic outcomes than do confrontational and adversarial regulatory proceedings.
- Ohio's traditional industrial capabilities enable global leadership in energy technology innovation and manufacturing.
- Sustainability requirements can create profitable new market opportunities but must be economically feasible.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

Energy policy priorities include the following:

- **Design an economic development discount rate for energy-intensive manufacturers that makes Ohio competitive with other states.** This refers to a discount off an electric utility's tariff rate to incentivize capital investment and job creation.
- **Revise PUCO rules to remove barriers to the use of self-help strategies and to enhance reliability.**
- **Revise PUCO rules governing energy efficiency – including cogeneration and demand-side management – to achieve least-cost implementation and to incentivize interested parties to undertake innovative and least-cost efficiency projects.**
- **Ensure that electric distribution utilities comply with Ohio's three percent cost cap for renewable energy in a least-cost manner** so customers are not forced to pay above-market prices for renewable energy.

- **Ensure rigorous PUCO monitoring and regulation of dealings between electric distribution utilities and their affiliates.**

- **Remove/mitigate barriers electric distribution utilities have created to inhibit/prevent shopping and ensure consumers have the information and tools they need to understand and take full advantage of market opportunities.** For example, utilities should (a) be required to explain how customers' peak load contribution, which is used by suppliers to price competitive generation contracts, is calculated; (b) provide the calculated peak load contribution not just to suppliers but also to customers; and (c) be held accountable for errors that affect the value to customers of competitive supply contracts. The PUCO also should require utilities to develop interactive tools that help demonstrate the "price to compare" and make apples-to-apples comparisons between competitive supply offers.

- **Ensure close coordination among the PUCO, PJM Interconnection, Ohio EPA, the Ohio Power Siting Board and Ohio manufacturers to ensure least-cost and most efficient use of generation and transmission resources.**

- **Adopt a state-level consumer advocacy role with PJM Interconnection regarding critical transmission issues and needs.**

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

A Fair, Stable, Predictable Civil Justice System

A state's legal climate can be a major inducement or a major deterrent to business investment, growth and job creation. For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The OMA supports policy reforms that strike a reasonable balance between protecting consumers without overly burdening businesses that provide needed jobs, while also positioning Ohio advantageously relative to other states. We encourage policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Most importantly, we encourage our public-sector partners to ask themselves: "Will my position on critical tort reform issues enhance—or undermine—Ohio's competitiveness in the global economy?"

Civil justice reform policy priorities include the following:

- **Preserve Ohio's tort reform gains of the last decade,** in areas such as punitive damages, successor liability, collateral sources and statute of repose, which have helped strike a reasonable balance between protecting consumers without unduly burdening businesses that provide needed jobs, while positioning Ohio as an attractive state for business investment.
- **Require asbestos claimants to make certain disclosures pertaining to claims that have been submitted to asbestos bankruptcy trusts** to prevent "double dipping" without limiting or delaying the ability of asbestos claimants to seek recovery for their injuries.
- **Enact TIPAC legislation (Transparency in Private Attorney Contracting) that requires public disclosure of most large contingency-fee contracts between government and personal injury attorneys** to address concerns about the propriety of contingency-fee arrangements for the prosecution of public claims.
- **Require consistent language when statutes intend to explicitly create a private right of action** (i.e., a right to file suit) to curtail court rulings that result in unexpected liability for companies.

- **Amend Rule 68 of the Ohio Rules of Civil Procedure to mirror Rule 68 of the Federal Rules of Civil Procedure,** which makes a plaintiff who rejects a defendant's settlement offer liable for the defendant's post-offer costs if the plaintiff does not improve on the offer at trial.

- **Reject any efforts to codify in Ohio statute the *cy pres* doctrine**—an existing tool that permits, but does not require, a judge and the parties to a class action lawsuit to donate all undistributed class action proceeds to a charity or other non-profit organization.

- **Reject legislation to enact a state false claims act.** A bill was introduced in the 129th Ohio General Assembly (SB 143) that would allow individuals with knowledge of possible fraudulent activity to (a) file suit in state courts against companies doing business with public entities and (b) recover a portion of the money recovered by the State. Under this bill, false claims suits could be filed against any business selling services or goods to state government. While fraud against the government is not to be condoned, there are preferable alternatives to creating a whole new category of state-level lawsuit.

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

Clear, Consistent, Predictable Environmental Regulations

Where environmental standards and regulations are concerned, manufacturers have a critical need for the following:

- Clarity, predictability and consistency
- Policies that reflect scientific consensus
- Commonsense enforcement
- Careful cost-benefit analysis as part of the policymaking process

Manufacturers also urge policymakers to exercise restraint in establishing state environmental standards and regulations that exceed federal standards and regulations, and to avoid doing so altogether without clear and convincing evidence that more stringent standards or regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

Industry leads the way in solid waste reduction and recycling. Reduction and recycling include source reduction activities, reuse, recycling, composting and incineration. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; manufacturers thus are strong advocates for improving recycling systems in Ohio and the nation.

Environmental policy priorities include the following:

- **Expand the focus of Ohio's state implementation plan for attaining National Ambient Air Quality Standards (NAAQS) and for reducing releases of substances regulated by EPA to the environment (air, water and land) beyond industrial sources to also include controls for non-industrial and mobile sources of releases.**
- **Revise existing statute to allow companies to appeal Ohio EPA Notices of Violation (NOVs) to Ohio's Environmental Review and Appeal Commission.**
- **Require Ohio EPA to evaluate and use best practices for implementation of federal environmental regulations** to avoid putting Ohio manufacturers at a competitive disadvantage because they face greater regulatory burdens than competitors from other states do based on Ohio EPA's stricter interpretation of federal regulations.
- **Give companies whose environmental permits are appealed by third parties the option, for a fee, of a "fast track" process and expedited resolution of the appeal,** which otherwise can discourage investors because Ohio's appeals process can go on for years.

- **Expand opportunities for industry to reuse non-harmful waste streams.** Beneficial reuse policies can result in less waste and more recycling of industrial byproducts.

- **Review Ohio's solid waste regulations, including procedures for disposing universal waste streams, to ensure safe and uniform disposal practices that are consistent with best practices used in other states.**

- **Reject state-level efforts to implement product composition mandates.** Such standards and requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.

- **Reject extended producer responsibility policies that would shift responsibility for recycling certain consumer products from consumers to manufacturers.**

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

A Modernized Transportation Infrastructure

To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the State must continue to invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources will be critical to providing Ohio businesses with flexible, efficient, cost-effective shipping options.

Transportation infrastructure policy priorities include the following:

- **Modify Ohio's rules and regulations** to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.

- **Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act.** This bill would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

The Ohio Manufacturers' ASSOCIATION

POLICY GOAL:

An Educated, Highly Skilled Workforce

A robust economy requires an adequate, reliable supply of skilled workers who have the technical knowledge and skills required to meet global standards for quality and productivity, and who are able to think critically, work collaboratively and drive innovation. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers interested in the variety of roles within manufacturing careers but also incumbent workers willing to embrace lifelong learning so they can continuously upgrade their competencies to keep pace with technological advancements and global competition.

Workforce development policy priorities include the following:

- **Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System."** This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.

- **Expand the use of cooperative education, internships and apprenticeships.** These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

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MEMORANDUM

To: Ohio Manufacturers Association

From: Mark A. Engel, Bricker & Eckler LLP

Date: November 1, 2012

Re: HB 601 Municipal Income Tax Reform

HB 601 proposes several changes to existing R.C. Chapter 718, which governs the imposition of income taxes by municipalities. The bill is an effort to reach additional consistency and uniformity among communities that impose an income tax. The bill, the culmination of several months of discussions between business and municipal stakeholders, proposes some significant changes in existing law. Many of these changes are modeled on existing state law relating to the state personal income tax. This memorandum addresses a number of those changes as reflected in the bill as introduced.

Net Operating Loss: Under current law, each municipality decides whether to recognize net operating losses (NOLs), and how long to permit them to carry forward. Under the bill, beginning with taxable years ending in 2014 or thereafter, R.C. 718.01(E)(8) and (9) authorize unused net operating losses to be carried forward up to 5 years. The provision is phased in over 5 years in 20 percent increments, beginning with taxable years ending in 2015. NOLs under existing laws must be used prior to NOLs incurred beginning in 2014 and NOLs may not be used to offset qualifying wages.

Income apportionment: Current law provides for the apportionment of business income according to a three-factor formula that considers property, payroll, and sales, and provides rules for determining when those items are within or without the municipality in question. Language does permit variation from this formula, but it is vague and its application varies from city to city. Under the bill, R.C. 718.02 is amended to provide more specific guidance regarding when and how a taxpayer, or the tax administrator, may request or require deviation from the standard three-factor apportionment formula. An election by a taxpayer to use separate accounting must be allowed if the taxpayer uses separate accounting in all municipalities in which it is subject to tax. The bill also changes the measure of the sales factor to mirror state income tax law, basing the location of receipts on the location where the customer receives the goods or services in question.

Pass-Through Entities: Under current law, municipalities may elect to tax pass-through entities and their owners either at the entity level, or at the individual level. Under the bill, R.C. 718.01(L)(1) provides that except as

provided in R.C. 718.43, the term "taxpayer" excludes pass-through entities, resulting in taxation at the individual owner level. Trusts, estates, and grantor trusts are not included in the definition of a pass-through entity. Under R.C. 718.43, the law imposes a withholding tax upon pass-through entities with respect to owners who are not residents of the municipality that imposes the tax. Any tax that is paid by the entity on behalf of its owners is treated as tax paid by the owners for purposes of any credit that the owner may claim with respect to any other municipality in which the owner has a tax liability. R.C. 718.01(L)(2) provides that a single-member LLC that is a disregarded entity may be taxed as an entity separate from its single member under certain limited circumstances.

Consolidated Returns: Under current law, each municipality may determine whether to permit taxpayers to file consolidated returns and the terms under which such election may be made. Under the bill, R.C. 718.06 provides that beginning with taxable years beginning on or after January 1, 2014, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated return if at least one member of the affiliated group is subject to municipal taxation and the group filed a consolidated return for federal income tax purposes for that taxable year. All members of the consolidated group must be included in the return, and all members are jointly and severally liable for any tax that is owed. Furthermore, once consolidated status is elected, the taxpayer must continue to file in that manner until written permission to file individually is obtained from the municipality.

Residency: Under current law, each municipality is free to determine whether a taxpayer is domiciled within the city, regardless of whether the individual is domiciled in Ohio for Ohio personal income tax purposes. Under the bill, R.C. 718.01(J) provides that "resident" means an individual who is both domiciled in Ohio for purposes of the personal income tax, and within the municipality.

Transient Taxpayers: Under existing law, other than a professional athlete or entertainer, an individual may perform services within a municipality for up to 12 days before the individual's employer is required to withhold tax for that municipality. There is no guidance as to what constitutes a day for these purposes. R.C. 718.011 is amended to extend that threshold to 20 days. Moreover, an employee is considered to have spent a day providing services within a municipality only if a majority of the employee's time performing services for the employer was spent in that municipality; there are special rules relating to how travel time during the day is considered. There is a safe harbor if the employer withholds tax for the municipality in which the employee's principle place of work is located.

Audit and Assessment Provisions: Under current law, there is no consistent period for assessment or refund purposes. Under the bill, R.C. 718.12(B) provides for a 3-year statute of limitations for assessments, and R.C. 718.19 provides for a similar statute for refund claims. R.C. 718.12 also provides an absolute limitation of 10 years for any assessment not covered by the 3-year statute, and provides for various safeguards and procedures to protest the assessment, similar to those found in state law. Uniform penalty and interest provisions are set forth in R.C. 718.27.

Under current law, assessment appeal procedures are largely undefined. Under the bill, R.C. 718.11 provides for the issuance of written assessments; appeals to the local board of review

within 60 days of receipt of an assessment; a hearing before the local board of review within 45 days and representation by an attorney or other representative; and a written decision that must be issued within 90 days of the hearing and can be appealed to the state board of tax appeals.

Modeled on existing state law, the bill contains provisions regarding a taxpayer bill of rights (R.C. 718.12(D), 718.36); for a problem resolution officer for larger cities (R.C. 718.37); for formal tax opinions (R.C. 718.38); and for taxpayer suits for violation of various provisions (R.C. 718.39). There is also a provision for adjustments associated with federal or state income tax audits that result in changes to items of income or expense, with the requirement of an amended return to reflect the changes, in R.C. 718.41. In a novel twist, R.C. 718.44 provides that the prevailing party in any assessment and appeal may recover attorney fees and litigation expenses from the other party. In the case of a case where neither side is completely victorious, fees and expenses are to be equitably divided.

Powers & Duties: Under current law, the authority and duties of tax administrators are virtually undefined. Under the bill, R.C. 718.30 provides express authority to promulgate rules of procedure; R.C. 718. 31 provides authority to inspect records; R.C. 718.23 provides for authority to issue subpoenas; R.C. 718.24 provides a laundry list of powers and duties similar to those found in existing law for the state tax commissioner; and R.C. 718.20 authorizes the issuance of jeopardy assessments in specified cases.

Municipal Tax Policy Board: Under the bill, R.C. 718.42 calls for the formation of a municipal tax policy board. The membership of the board consists of seven representatives of municipalities of varying sizes, each appointed by the governor for a term of three years. The board may adopt rules regarding the administration of municipal income tax laws that are binding upon all municipalities imposing a tax; may designate working committees; promulgate common forms, reports, schedules and attachments; forms for signature and declarations by taxpayers; and provide instruction booklets. The board is required to meet at least quarterly.

Implementation: Under the bill, R.C. 718.04 provides that in the case of a tax that is first imposed after January 1, 2014, the ordinance or resolution levying the tax must include certain language, including that the tax is being levied in accordance with the limitations specified, and incorporates by reference the provisions of, R.C. Chapter 718. In the case of municipality that currently imposes a tax, before January 1, 2014, the municipality must either repeal the tax; or amend the existing law to include the provisions required of a new tax, including the references to R.C. Chapter 718. If a municipality that currently levies a tax fails to take either action by January 1, 2014, its tax is repealed by operation of law. Other provisions relating to the imposition of a tax, including the rate, any credit provision, and voter approval for rates in excess of one percent, remain the same as under existing law.

November 14, 2012

The Honorable
Ohio House of Representatives
Riffe Center
Columbus, OH 43215

Dear Representative:

On behalf of the XX members of the Ohio Municipal Income Tax Uniformity Coalition (Coalition), we are writing to express our strong support for definitional uniformity of Ohio's municipal income tax structure and to commend Reps. Cheryl Grossman and Mike Henne for the introduction of House Bill 601.

The Coalition is a broad-based group of professional associations, trade organizations and Chambers of Commerce representing XXXXX business and individual taxpayers in every county and virtually all sectors of Ohio's employers. The breadth of that collaboration underscores the overwhelming support for simplifying Ohio's burdensome municipal income tax code.

The basis for good tax policy should include simplicity and predictability. Neither is currently found in Ohio's municipal income tax code. Cities may change their tax code, including defining income and rules and regulations, on an annual basis, making it difficult and expensive for taxpayers to comply. The compliance burden is particularly acute for small businesses who cannot afford to hire dedicated staff or outside professionals to research the potentially almost 600 different definitions, rules and regulations that are not only imposed on their business but their employees as well. Either option adds an expense that is not necessary in other states. Further, for taxpayers who prepare and file their taxes in multiple cities, it is not uncommon for the cost of complying with the law to exceed the tax liability.

The current structure is an economic development barrier to retaining and attracting jobs and a costly regulatory burden experienced only by Ohio business and individual taxpayers. International site selectors have even identified our state's complex local tax structure as one of the top barriers to economic development in Ohio.

The Coalition stands ready to work with you as hearings begin on House Bill 601 as we collectively look for ways to make Ohio more economically competitive. We appreciate the opportunity to share our thoughts on this important issue and look forward to talking with you as it moves through the legislative process.

Sincerely,

Ohio | Department of Taxation

The Report

Of The

Tax Commissioner

Board of Tax Appeals

Recommendations

November 15, 2011

Joseph W. Testa, Tax Commissioner
Ohio Department of Taxation

Presented to

John R. Kasich, Governor, State of Ohio

William G. Batchelder, Speaker Ohio House of Representatives

Thomas E. Niehaus, President of the Ohio Senate

Am. Sub. H.B. 153
129th General Assembly

SECTION 757.30. The Tax Commissioner shall conduct a review of the operations of the Board of Tax Appeals, and, not later than November 15, 2011, shall submit a written report to the Governor, Speaker of the House of Representatives, and President of the Senate providing an assessment of the Board's operations and recommendations for improvement. The Tax Commissioner's review shall include consultation with persons who have participated in or have had matters before the Board and are familiar with the Board's operations and procedures. The report shall include recommendations for improving the appeals process, internal operations, and other operational matters the Commissioner deems advisable. The Commissioner may designate an employee of the Department of Taxation to conduct the review.

Executive Summary

The Board of Tax Appeals ("BTA") has experienced challenging times in recent years. As budget cuts forced staff reductions to their lowest levels in recent history, the economic downturn has flooded the board with record numbers of appeals from county boards of revision ("BOR"). Since FY 2009 appeals from the Department of Taxation have more than doubled. Despite these challenges, the BTA has made few structural or operational changes to address the situation, which has contributed to an increasing backlog of unresolved cases.

The BTA hears appeals from determinations of the Ohio Tax Commissioner, the 88 county boards of revision, municipal boards of review, budget commissions, and other tax-related matters. Appeals from BOR decisions make up the majority of the BTA's docket. Annually, all 88 BORs receive tens of thousands of complaints against the valuation of real property set by county auditors for calculation of local property taxes. A survey of all Ohio BORs found that 68,292 complaints were filed for tax year 2010, which affected taxes paid in 2011. Of these complaints, up to 9% were appealed to the BTA on a county-by-county basis.

Given recent economic trends, the number of BOR complaints filed state-wide has increased dramatically since 2009 and will continue to do so in the future. With a current BTA case backlog of over 7,200 real property cases alone, the committee anticipates that the number of BOR appeals pending before the BTA will exceed 10,000 by the end of FY 2012. Although the number of cases decided by the BTA increased to 3,061 in FY 2011 and has grown by another 816 since July 1, 2011, it is apparent that the BTA has not been able to address the backlog of appeals or maintain its pace against incoming filings.

Background

In 2008, the BTA's operating budget was significantly reduced, which required it to lay off a majority of its staff (6 of 9 attorney examiners and additional support staff). In 2011, the BTA received additional funding ($450,000) which has enabled it to hire three new attorney examiners and an additional support staff member. While it's clear the reduced staff was a factor in the creation of the current backlog, it is also clear that simply adding more employees will not correct the problem.

The process of handling cases has not changed at the BTA in many years – not even in response to a mounting number of cases and reduced staffing levels. All cases, large and small, proceed through a discovery phase, motion practice, hearing procedure, drafting phase, and culminate in the issuance of a decision. The BTA has followed its historical process where an attorney examiner manages, hears, and drafts

a detailed written decision, and the chief attorney examiner reviews the decision and circulates it to the three BTA board members. Currently, the chief attorney examiner

conducts a thorough review of each case generated by multiple attorney examiners. The board members' involvement in reviewing cases varies by member. While some may base their decisions on the hearing examiner's written opinion, others opt to review the entire file which often extends from listening to audio recordings of the initial hearing before the local BOR to reviewing the transcript and evidence presented at the hearing before the BTA. Whether the case involves the valuation of a complex multi-million dollar commercial property or a small valuation dispute for a residential property, this review and decision process is the same.

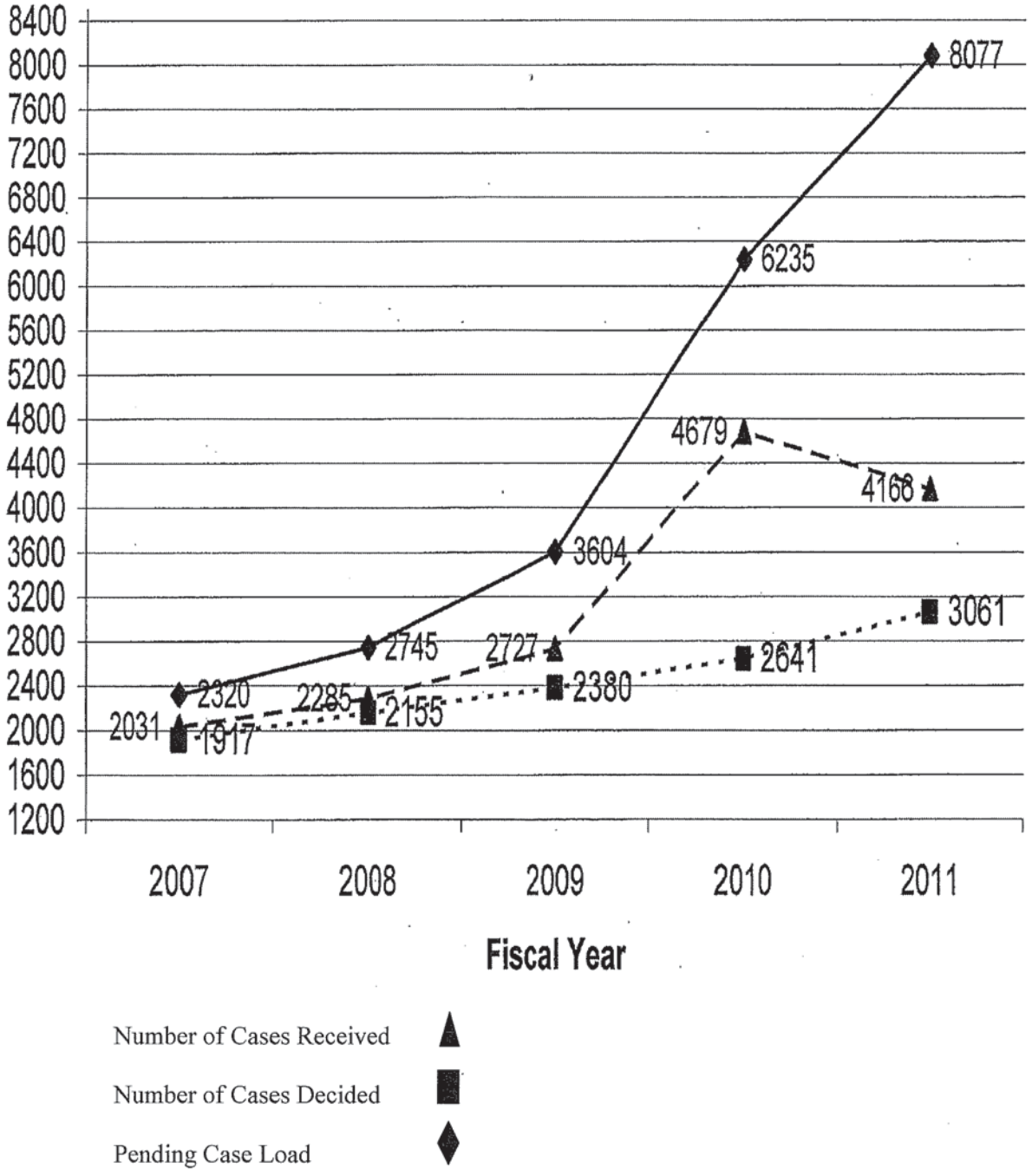
The process of scheduling cases also has not changed at the BTA. Historically, the BTA schedules all cases in the order in which they were received. The cases can be divided into two large groups: complex cases where the parties are represented by counsel (typically involving commercial property), and simpler cases where the property owner represents himself (typically limited to residential property). The BTA's discovery phase generally closes 120 days after the filing of the appeal. Cases are scheduled for hearing 30 to 60 days in advance, and parties are required to disclose exhibits and witnesses 14 days prior to hearing.

The hearing process is another procedure that has not evolved at the BTA. Generally speaking, the group of regular practitioners who appear before the BTA is relatively small, and they are well-familiar with the current hearing procedures and, naturally, use them to their clients' best advantage. For instance, although the statutes require a complainant before the BOR to bring all evidence in its possession to that hearing, the BTA hearing is a *trial de novo*, which means it can be tried as if the matter had not been heard before and as if no decision had been reached. Therefore, nothing precludes any party from presenting new evidence to the BTA. Practitioners typically do not wish to disclose their evidence, e.g., a new appraisal report, to opposing counsel until the last possible moment. This significant evidence is often exchanged only 14 days before trial. In large cases it is not unusual for practitioners to negotiate to avoid disclosing their appraisal evidence or to avoid the costs of obtaining an appraisal altogether. These practices cause an unnecessary number of continuance requests which result in an individual case being set for hearing multiple times, even though the case has been pending for many months if not years.

Given the instability of the current real estate market, the number of BTA appeals is projected to increase in coming years which will only serve to add to the current backlog of cases. Utilizing the historical processes to schedule, hear, and decide cases, the BTA will be unable to manage this docket in a timely and effective manner. The committee's proposed reforms for the BTA are focused on dealing with the current crisis and preventing future backlogs. The solution is two-fold: 1) establish a temporary, intermediate review process for residential valuation cases within the Tax Commissioner's Office to assist the BTA with its current backlog, and 2) remodel the historical processes at the BTA going forward.

Numbers

To discuss the number of cases mounting at the BTA is one thing; to see the number displayed as a graph certainly drives home the seriousness of the situation. A graph of the growing numbers of cases from the BTA's own annual report tells the story.



6,972 cases were pending at the beginning of fiscal year ("FY") 2011. From the BTA annual report, 8,077 cases were pending at the end of the FY 2011. The BTA estimates that over 91% of these cases are real property valuation appeals from BOR complaints. In order to get a sense of upcoming cases, the Tax Commissioner conducted an informal survey in several heavily populated counties to determine how many BOR decisions were appealed for each tax year since the real estate market began to stagnate in 2008. For informational purposes, each county's current or upcoming reappraisal ("RE") or triennial update ("TR") is also listed.

Sample of Counties with Largest Number of BTA Appeals

County	Update		2008	2009	2010	2011 to Date	Total Unresolved
Cuyahoga	2012	RE	925	988	745	1372	2666
Montgomery	2011	TR	103	568	594	106	976
Summit	2011	TR	78	721	210	87	807
Franklin	2011	RE	288	313	213	311	691
Lake	2012	RE	75	196	321	100	488
Hamilton	2011	RE	65	200	189		251
Lucas	2012	RE	196	282		137	247
Butler	2011	TR		127	133	36	154
Ashtabula	2011	TR	64	130			107
Medina	2013	RE		118	60		161
Stark	2012	RE			82	45	136
Clark	2013	RE	64				106
Portage	2012	RE	95				54
Lorain	2012	RE				59	182
Licking	2011	RE				43	117
Delaware	2011	RE			78		118
Totals			1953	3643	2625	2296	7261

(Note: Due to system limitations some county data was unavailable)

The chart demonstrates the seriousness of the BTA's situation. In four months from July 1, 2011, the BTA has decided just over 200 cases per month. October 2011 set a new all-time record with 700 appeals filed at the BTA. If this pace continues the BTA will need to more than triple its monthly case production just to maintain the current backlog of over 9,000 pending cases. The questions posed are: can the BTA triple its output with its current operation, and whether more than 9,000 cases is an acceptable backlog for any administrative agency?

Kaizen Experience
Ohio Department of Taxation

Recently the Department of Taxation experienced a backlog of a significant number of cases. With the assistance of the Department of Administrative Services, staff members responsible for the petition process as well as staff from unrelated divisions came together to review and reform the petition procedures by participating in a Kaizen Event.[1] The goal of the Event was to reduce the backlog of un-worked petitions and improve the flow of those documents through the Department. All of the adopted changes realized through this examination are expected to lead to better tracking of petitions, faster results for taxpayers, and lower average handling costs per case.

The goal was to significantly reduce the backlog of 17,500 cases. As of November 10th, 2011, the pending docket stands at 4,600 cases and continues to decline resulting in cost savings and a more responsive government.

The lessons learned through the process review were that cases needed to be considered at the earliest entry point possible in order to be triaged into similar categories. Additionally, the group explored how technology can assist in the process and make the process smoother. In short, the Kaizen experience allowed the Department to employ staff with the appropriate level of skill sets, the right equipment, and at the right time in the petition process, to better serve Ohio citizens protesting tax assessments.

Keeping in mind the lessons learned from the Kaizen experience, the Department has drawn upon staff members of the Ohio Department of Taxation and stakeholders in the BTA process to address the issue of the BTA's backlog. The goal was to establish a procedure that will allow the BTA to efficiently and effectively respond to those who bring their appeals to that board, and the following pages outline the recommendations of that committee.

[1] *Kaizen* is Japanese meaning "break for the better" The Kaizen Event is a popular process improvement tool.

Recommendations

The method the Tax Commissioner's committee used to explore the practice and procedure of the BTA was to examine topics from previous studies and reports, research the practices in surrounding states, and to invite those from the community familiar with BTA's current practices to comment and make recommendations. Several themes developed from the responses. Most of the recommendations are addressed using these broad categories:

- small claims process
- BTA practice and procedures
  - technology updates
  - case management
- uniform rules of practice and procedure affecting county boards of revision.

Small Claims Process

The BTA has one procedure for handling every case that is appealed. As demonstrated by the numbers, this one process cannot handle the number of cases efficiently. Applying the "right-person-with-the-right-equipment-at-the-right-time" principle, the recommendation of the committee is that a small claims process be established by statute for all residential valuation cases.

Currently, pro se appeals (representing oneself) make up 34% of the BTA valuation cases. Given the state of the housing market, the Department anticipates that the percentage of home owners appealing property valuations will increase dramatically. The Franklin County BOR estimates 20,000 complaints will be filed in 2012. The Cuyahoga County BOR estimates 24,000 complaints to be filed in 2013. At the recently completed Franklin County informal property reviews, 75% were residential. By adopting a new statute that changes the way residential appeals are processed, taxpayers can be better served as decisions on less complex cases can be made more efficiently. This treatment is similar to state tax disputes, in that cases disputing $50,000 or less in controversy will qualify for the small claims process. A BTA case assigned to the small claims process would be administered with

- no discovery
- no additional evidence provided prior to hearing
- a decision with no precedential value
- no right of appeal
- summary decision rendered by hearing examiner.

The points listed above have long been advocated by practitioners that work with valuation cases. Due to the nature of the changes being proposed, any impact brought on by this newer process will take some time to realize. In an effort to aid the BTA in reducing its number of cases in the immediate future, the Tax Commissioner volunteers his employees to assist the BTA as explained in the next section.

Tax Commissioner Backlog Assistance Program

The Tax Commissioner Backlog Assistance Program is a temporary solution to this very real problem. With its current backlog of more than 9,000 cases, the BTA needs to focus on getting all cases decided as quickly as possible. The committee recommends passing a temporary law that would authorize the Tax Commissioner, who has expertise in valuing property, to process the current residential appeals using the proposed small claims process when the parties to the appeal agree to the alternative venue and: 1) voluntarily opt in to the program with a waiver of the right to appeal and, 2) agree that the evidence of value is limited to what was presented at the local BOR.

The Department's structure can readily adapt to the small claims process. Tax agents routinely address petitions for reassessment in other taxes and utilize financial and other data to reach decisions. Allowing the Department to finalize many of the current appeals will permit the BTA to focus its resources on those cases with more complex factual and legal issues.

The Backlog Assistance Program would apply to all docketed residential appeals pending on the effective date of authorizing legislation. The program would expire not later than two years after the effective date of the authorizing legislation.

BTA Practice and Procedure

Technology Updates

The BTA does not have electronic filing opportunities for appeals, motions, briefs or any other filings with the BTA. There are also no electronic notifications by the BTA to any of the parties involved in cases. In short, the BTA is woefully behind many state agencies in its use of technology.

The committee recommends that changes be made to Chapter 5717 to permit the electronic filing of notices of appeal. Beyond statutory changes the committee recommends the BTA should implement the following including but not limited to:

- electronic filings
- electronic management of cases
- electronic notifications to parties
- electronic exchange of discovery
- remote hearing capability e.g., telephonic and video conferencing.

BTA Practice and Procedure

Case Management

In examining the BTA's current procedures for processing appeals, the Tax Commissioner's committee chose to concentrate on those processes that would increase efficiency and decrease the existing backlog while preventing a new backlog in the future. As a result, the committee's recommendations focus on the following areas of case management:

- case management schedule and continuances
- notice of appeal
- discovery
- mediation/arbitration
- BTA authority to remand
- BTA authority to issue summary judgment entries.

Case Management Schedule and Continuances: Historically continuances have been granted freely by the BTA resulting in delays. Unlike the BTA, most courts establish an upfront outline of how a case will proceed. The advantage of a case management schedule is that all parties are put on notice regarding the anticipated timeline of a case. The parties to a case can anticipate the need for personnel involvement at specified periods of time, and the attorneys are able to adjust their schedules for client meetings and hearings. Because no schedule can anticipate all events, the schedule should be adaptable; however continuances should be limited to one per party. Another benefit of using a case management schedule is that all interested parties are immediately aware if there is a need to adjust the schedule. Placing the case management schedule online would further benefit all parties. The Case Management system would be made possible by statutory amendments to R.C. 5717.01 and R.C. 5717.02.

Notice of Appeal: (Tax Commissioner cases only) Expanding the ability to amend the notice of appeal may seem counterintuitive to efficiency, but considering overall tax administration, this will improve efficiency. The goal is to concentrate on the substantive tax issues by allowing the notice of appeal to be amended after the transcript is filed by the Tax Department. Allowing appellants to amend notices of appeal will allow for the resolution of the tax dispute without procedural interference.

Discovery: Use of the case management schedule will have an impact on discovery as issues will be defined earlier and the scope of discovery can be established sooner. Defining the scope of the issues earlier in the process should reduce the requests for continuances that delay the appeal process.

Mediation/Arbitration: The BTA stopped using mediation when its budget was reduced. The majority of the respondents to our questionnaire encourage the BTA to resume the mediation program. Mediation is a beneficial tool for all case types, and resolution of a case without litigation will have a positive effect on reducing the number of pending cases. BTA mediation procedures currently exist in Ohio Administrative Code Section 5717-1-21 and should be utilized.

Authority to Remand: RC 5717.03(G) allows the BTA to remand any issue that has not been previously raised back to the lower hearing body. In order to instruct the lower tribunals, the BTA should have the additional ability to remand cases based on the state of the law. The committee suggests that RC 5717.03(G) be amended to grant the BTA broader authority to remand cases where the lower tribunal has not correctly applied the law.

BTA Authority to Issue Summary Judgment Entries: The Supreme Court has repeatedly held that the BTA does not have the statutory authority to summarily dismiss cases. There are times, however, when the appellant fails to prosecute its appeal or fails to present evidence to support its position. The ability to issue summary judgment entries would allow the BTA to move quickly on appeals that are not well taken and reserve its resources for more substantive cases. The Ohio Revised Code should be amended to provide the BTA with summary judgment authority.

Rules and Uniformity Affecting the County Boards of Revision

The local boards of revision play a significant role in appeals to the BTA. Consistent rules applied uniformly by all BORs would reduce the number of appeals to the BTA. The committee recommends a statutory change that requires the Tax Commissioner to prescribe uniform BOR rules including, but not limited to, the following areas:

- standardization of hearing procedures
- development of uniform documentation
- encourage resolution of cases through settlement or mediation.

Summary

In summary, the Tax Commissioner's committee recommends the following to reduce the current case backlog and maintain future efficiencies at the Ohio Board of Tax Appeals including:

- creation of a small claims process
- acceptance of the Tax Commissioner's Backlog Assistance Program
- improvement of the BTA's current technology and the incorporation of new technology, e.g., electronic filing
- development of a formal Case Management Program
- adoption of uniform rules and procedures for county boards of revision.

Tax Commissioner Committee and Participants

I selected a committee within the Department to aid in the development of these recommendations to improvements of BTA policies and procedures. Input was also requested from twenty-seven (27) groups and associations throughout the state. Those invited to respond included those who practice before the BTA and parties affected by the outcome of its decisions.

Eleven of the invited participants responded and represent the various interest groups. Most commented on the recommendations presented in this report. The committee reviewed all the responses carefully while developing the recommendations found in this report.

- Ohio Board of Tax Appeals
- Ohio Attorney General
- County Auditors' Association of Ohio (CAAO)
- Rich & Gillis Law Group, LLC
- Jim Williamson CPA
- Ohio Township Association
- Ohio Association of School Business Professionals (OASBO)
- Seigel Seigel Johnson & Jennings Co., LPA
- Ohio State Bar Association Taxation Committee
- Ohio Chamber of Commerce
- Brindza McIntyre & Seed LLP

I wish to thank all those who submitted recommendations as well as the tax department staff who reviewed the information and contributed to this report.

Linda Allbright
Margaret Brewer
Matt Chafin, Chief Legal
Stan Dixon, Chair
Gloria Gardner
Michael Heller

Respectfully submitted:

Joseph W. Testa, Tax Commissioner
Ohio Department of Taxation
November 15, 2011

Reviewed As To Form By
Legislative Service Commission

LSC 129 2774

129th General Assembly
Regular Session
2011-2012

. B. No.

A BILL

To amend sections 5703.02, 5715.29, 5717.01, 5717.011, and 5717.02 and to enact sections 5703.021 and 5717.031 of the Revised Code to make changes to the law governing the Board of Tax Appeals, including authorizing a small claims division within the Board, requiring the Board to institute measures to manage certain appeals, requiring the Board to receive notices of appeal and statutory transcripts electronically, providing pleading standards for appeals to the Board, granting the Board authority to grant summary judgments and consider motions, vesting hearing examiners with the authority to determine credibility of witnesses and issue statements of fact and conclusions of law separately, and authorizing the Board to require parties to engage in mediation, and to require the Tax Commissioner to adopt uniform rules to govern the operations of county boards of revision.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5703.02, 5715.29, 5717.01, 5717.011, and 5717.02 be amended and sections 5703.021 and 5717.031 of the Revised Code be enacted to read as follows:

Sec. 5703.02. There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

(1) Actions of county budget commissions;

(2) Decisions of county boards of revision;

(3) Actions of any assessing officer or other public official under the tax laws of this state;

(4) Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by ~~him~~ the tax commissioner;

(5) Adoption and promulgation of rules of the tax commissioner.

(B) Appoint a secretary of the board of tax appeals, who shall serve in the unclassified civil service at the pleasure of the board, and any other employees as are necessary in the exercise of the powers and the performance of the duties and functions that the board is by law authorized and required to exercise, and prescribe the duties of all employees, and to fix their compensation as provided by law;

(C) Maintain a journal, which shall be open to public inspection and in which the secretary shall keep a record of all of the proceedings and the vote of each of its members upon every action taken by it;

(D) Adopt and promulgate, in the manner provided by section 5703.14 of the Revised Code, and enforce all rules relating to the procedure of the board in hearing appeals it has the authority or duty to hear, and to the procedure of officers or employees whom the board may appoint; provided that section 5703.13 of the Revised Code shall apply to and govern the procedure of the board. Such rules shall include but not be limited to the following:

(1) Rules to create and implement a mediation program including procedures for requesting mediation, for objecting to mediation, for requiring participation in mediation, and for conduct of the mediation.

(2) Rules requiring the tax commissioner, county boards of revision, and municipal boards of appeal created under section 718.11 of the Revised Code to file transcripts required to be filed with the board electronically and to provide instructions and procedures for filing transcripts electronically.

Sec. 5703.021. (A) There is hereby established a small claims division of the board of tax appeals.

(B) The small claims division shall have jurisdiction over any proceeding that is either of the following:

(1) Commenced under section 5717.01 of the Revised Code in which the property at issue qualifies for the partial tax exemption described in section 319.302 of the Revised Code; or

(2) Commenced under section 5717.011 or 5717.02 of the Revised Code when the amount in controversy claimed by the taxpayer does not exceed ten thousand dollars exclusive of any interest or penalty. The board by rule may modify the jurisdictional dollar threshold for cases qualifying for the small claims division.

(C) Notwithstanding division (B) of this section, the board

shall reassign an appeal initially assigned to the small claims division to the regular docket upon request of a party or when the appeal presents an issue of public or great general interest or presents a constitutional issue, or when the board determines that the appeal does not meet the requirements of division (B) of this section.

(D) The board may reassign to the small claims docket any appeal originally assigned to the regular docket. The board shall reassign to the small claims docket any appeal originally assigned to the regular docket with the written consent of all the parties.

(E) The board shall adopt rules to implement procedures to provide informal review of taxpayers' appeals in the small claims division, which may include telephonic hearings.

(F) A decision or order of the small claims division shall be conclusive as to all parties and may not be appealed. A decision or order of the small claims division shall be recorded in the journal required by division (C) of section 5703.02 of the Revised Code, but such a decision or order shall not be considered as precedent in any other case, hearing, or proceeding.

(G) The appearance of an attorney at law licensed to practice law in this state on behalf of any party to an appeal assigned to the small claims docket is permitted but not required. A person other than a natural person, which is a real party in interest as taxpayer or claimant, or an entity that may participate by statute, may commence such an appeal or appear through an attorney at law licensed to practice law in this state. Such an organization may, through any bona fide officer, partner, member, trustee, or salaried employee, file and present its claim or defense in any appeal in the small claims division, but the organization may not, in the absence of representation by an attorney at law licensed to practice law in this state, engage in cross-examination, argument, or other acts of advocacy. The board

~~may provide by rule for additional guidelines applicable to~~ 115
practice before the board. 116

Sec. 5715.29. The tax commissioner shall prescribe such 117
general and uniform rules and issue such orders and instructions, 118
not inconsistent with law, ~~as he deems necessary,~~ as to the 119
exercise of the powers and the discharge of the duties of all 120
officers which relate to the assessment of property and the levy 121
and collection of taxes. Such rules shall include uniform rules 122
governing the operation of county boards of revision. The 123
commissioner shall cause the rules prescribed ~~by him~~ under this 124
section to be observed, the orders and instructions issued ~~by him~~ 125
~~under this section to be obeyed, and the forms prescribed by him~~ 126
under this section to be observed and used. 127

Sec. 5717.01. An appeal from a decision of a county board of 128
revision may be taken to the board of tax appeals within thirty 129
days after notice of the decision of the county board of revision 130
is mailed as provided in division (A) of section 5715.20 of the 131
Revised Code. Such an appeal may be taken by the county auditor, 132
the tax commissioner, or any board, legislative authority, public 133
official, or taxpayer authorized by section 5715.19 of the Revised 134
Code to file complaints against valuations or assessments with the 135
auditor. Such appeal shall be taken by the filing of a notice of 136
appeal, in person or by certified mail, express mail, or 137
authorized delivery service, with the board of tax appeals and 138
with the county board of revision. If notice of appeal is filed by 139
certified mail, express mail, or authorized delivery service as 140
provided in section 5703.056 of the Revised Code, the date of the 141
United States postmark placed on the sender's receipt by the 142
postal service or the date of receipt recorded by the authorized 143
delivery service shall be treated as the date of filing. Upon 144
receipt of such notice of appeal such county board of revision 145

~~shall by certified mail notify all persons thereof who were~~ 146
parties to the proceeding before such county board of revision, 147
and shall file proof of such notice with the board of tax appeals. 148
The county board of revision shall thereupon certify to the board 149
of tax appeals a transcript of the record of the proceedings of 150
the county board of revision pertaining to the original complaint, 151
and all evidence offered in connection therewith. Such appeal may 152
be heard by the board of tax appeals at its offices in Columbus or 153
in the county where the property is listed for taxation, or the 154
board of tax appeals may cause its examiners to conduct such 155
hearing and to report to it their findings for affirmation or 156
rejection. An appeal may proceed pursuant to section 5703.021 of 157
~~the Revised Code in the small claims division if the appeal~~ 158
qualifies under that section. 159

The board of tax appeals may order the appeal to be heard on 160
the record and the evidence certified to it by the county board of 161
revision, or it may order the hearing of additional evidence, and 162
it may make such investigation concerning the appeal as it deems 163
proper. 164

Sec. 5717.011. (A) As used in this chapter, "tax 165
administrator" has the same meaning as in section 718.01 of the 166
Revised Code and "Ohio business gateway" has the same meaning as 167
in section 718.051 of the Revised Code. 168

(B) Appeals from a municipal board of appeal created under 169
section 718.11 of the Revised Code may be taken by the taxpayer or 170
the tax administrator to the board of tax appeals or may be taken 171
by the taxpayer or the tax administrator to a court of common 172
pleas as otherwise provided by law. If the taxpayer or the tax 173
administrator elects to make an appeal to the board of tax appeals 174
or court of common pleas, the appeal shall be taken by the filing 175
of a notice of appeal with the board of tax appeals or court of 176

common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code or, in the case of an appeal filed with the board of tax appeals, electronically through the Ohio business gateway. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code ~~and shall specify the errors therein complained of~~, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) A notice of appeal for an appeal filed with the board of tax appeals shall contain a short and plain statement of the claimed error showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty days after the appellant receives notice of the certification of the transcript. Otherwise, an appellant may amend the notice of appeal only after receiving leave of the board or the written consent of each adverse party. Leave of the board shall be freely given when justice so requires.

(D) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings

before it, together with all evidence considered by it in 209
connection therewith. The secretary of the board of tax appeals 210
shall, by certified mail or electronic mail, notify all parties of 211
record of the filing of the transcript. Such appeals may be heard 212
by the board at its office in Columbus or in the county where the 213
appellant resides, or it may cause its examiners to conduct such 214
hearings and to report to it their findings for affirmation or 215
rejection. The board may order the appeal to be heard upon the 216
record and the evidence certified to it by the administrator, but 217
upon the application of any interested party the board shall order 218
the hearing of additional evidence, and the board may make such 219
investigation concerning the appeal as it considers proper. The 220
findings of a municipal board of appeal shall be affirmed by the 221
board absent a demonstration of error by a preponderance of the 222
evidence. 223

An appeal may proceed pursuant to section 5703.021 of the 224
Revised Code in the small claims division if the appeal qualifies 225
under that section. 226

~~(D)~~(E) If an issue being appealed under this section is 227
addressed in a municipal corporation's ordinance or regulation, 228
the tax administrator, upon the request of the board of tax 229
appeals, shall provide a copy of the ordinance or regulation to 230
the board of tax appeals. 231

Sec. 5717.02. (A) Except as otherwise provided by law, 232
appeals from final determinations by the tax commissioner of any 233
preliminary, amended, or final tax assessments, reassessments, 234
valuations, determinations, findings, computations, or orders made 235
by the commissioner may be taken to the board of tax appeals by 236
the taxpayer, by the person to whom notice of the tax assessment, 237
reassessment, valuation, determination, finding, computation, or 238
order by the commissioner is required by law to be given, by the 239

director of budget and management if the revenues affected by that decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by that decision would primarily accrue. Appeals from the redetermination by the director of development services under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner or county auditor concerning an application for a property tax exemption may be taken to the board of tax appeals by the applicant or by a school district that filed a statement concerning that application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

(B) The appeals shall be taken by the filing of a notice of appeal with the board~~, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the county auditor if the county auditor's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal~~. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner, property tax exemption determination by the commissioner or the county auditor, or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of appeal may

be filed in person ~~or~~, by certified mail, express mail, or 272
authorized delivery service, or electronically through the Ohio 273
business gateway. If the notice of appeal is filed by certified 274
mail, express mail, or authorized delivery service as provided in 275
section 5703.056 of the Revised Code, the date of the United 276
States postmark placed on the sender's receipt by the postal 277
service or the date of receipt recorded by the authorized delivery 278
service shall be treated as the date of filing. The notice of 279
appeal shall have attached to it and incorporated in it by 280
reference a true copy of the notice sent by the commissioner, 281
county auditor, or director to the taxpayer, enterprise, or other 282
person of the final determination or redetermination complained 283
of. ~~and shall also specify the errors therein complained of,~~ but 284
failure to attach a copy of that notice and to incorporate it by 285
reference in the notice of appeal does not invalidate the appeal. 286

(C) A notice of appeal shall contain a short and plain 287
statement of the claimed error showing that the appellant is 288
entitled to relief and a demand for the relief to which the 289
appellant claims to be entitled. An appellant may amend the notice 290
of appeal once as a matter of course within sixty days after the 291
appellant receives notice of the certification of the transcript. 292
Otherwise, an appellant may amend the notice of appeal only after 293
receiving leave of the board or the written consent of each 294
adverse party. Leave of the board shall be freely given when 295
justice so requires. 296

(D) Upon the filing of a notice of appeal, the secretary of 297
the board of tax appeals shall, by certified mail or electronic 298
mail, provide notice of the filing of the appeal to the tax 299
commissioner, the director of development services, or the 300
director of job and family services if the commissioner's or 301
director's action is the subject of the appeal. The tax 302
commissioner, county auditor, or the director, as appropriate, 303

shall certify to the board a transcript of the record of the 304
proceedings before the commissioner, auditor, or director, 305
together with all evidence considered by the commissioner, 306
auditor, or director in connection with the proceedings. The 307
secretary of the board of tax appeals shall, by certified mail or 308
electronic mail, notify all parties of record of the filing of the 309
transcript. Those appeals or applications may be heard by the 310
board at its office in Columbus or in the county where the 311
appellant resides, or it may cause its examiners to conduct the 312
hearings and to report to it their findings for affirmation or 313
rejection. The findings of the commissioner or director shall be 314
affirmed by the board absent a demonstration of error by a 315
preponderance of the evidence. 316

An appeal may proceed pursuant to section 5703.021 of the 317
Revised Code in the small claims division if the appeal qualifies 318
under that section. 319

~~(D)~~(E) The board may order the appeal to be heard upon the 320
record and the evidence certified to it by the commissioner, 321
county auditor, or director, but upon the application of any 322
interested party the board shall order the hearing of additional 323
evidence, and it may make an investigation concerning the appeal 324
that it considers proper. The board shall institute procedures, 325
including the conduct of discovery, to control and manage appeals 326
governed by this section. The procedures shall include a 327
requirement that, upon the filing of the transcript of the record 328
in an appeal, the board, through its attorney examiners, shall 329
establish a case management schedule in consultation with the 330
parties and their counsel subject to section 5703.021 of the 331
Revised Code. 332

Sec. 5717.031. (A) Upon the motion of any party to an appeal 333
commenced under section 5717.01, 5717.011, or 5717.02 of the 334

Revised Code, or upon motion by the board of tax appeals, the board may grant summary judgment if the moving party shows or the board finds that there exists no genuine issue of material fact and the moving party or the party designated by the board is entitled to judgment as a matter of law. The board may adopt rules governing the use of motions for summary judgment.

(B)(1) The board of tax appeals may consider and decide motions, including motions in limine, before the board makes a decision on any matter.

(2) At the close of a hearing or within ten days thereafter, a party may make a motion to require the board, if the board conducted the hearing, or the examiner who conducted the hearing to make findings of fact and conclusions of law before the board decides an appeal or before the appeal is submitted to the board of tax appeals for decision, respectively. The board or examiner shall send a copy of the board's or examiner's findings of fact and conclusions of law to the parties.

(3) The board, if the board conducts the hearing, or the examiner who conducts a hearing shall determine the credibility of each witness. If an examiner determines the credibility of a witness, the board shall not change the examiner's determination absent clear and convincing evidence that the examiner's determination of the credibility of the witness is incorrect.

Section 2. That existing sections 5703.02, 5715.29, 5717.01, 5717.011, and 5717.02 of the Revised Code are hereby repealed.

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Ohio Manufacturers' Association

Tax Policy Committee Tax Counsel Report
November 15, 2012

By Mark A. Engel
Bricker & Eckler LLP

Administrative Actions:

H.B. 508, effective September 6, 2012, amended Ohio Revised Code 5739.17 to reduce the types of vendor's licenses to two: regular county and transient. Consequently, the Department of Taxation no longer issues service or delivery vendor's licenses. Please note that some Information Releases still refer to service and delivery vendor's licenses. The Department is in the process of updating these releases to reflect this change. Most vendors will now obtain a regular county license if they have a fixed business location.

Legislative Actions:

H.B. 601 was introduced in the House. The bill calls for increased municipal income tax uniformity. Please see the summary of the major provisions of the bill provided as part of Mr. Augsburger's report.

For additional bills that are pending, see Mr. Augsburger's report.

Judicial Actions:

Ohio Supreme Court

In *1495 Jaeger LLC v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St. 3d 222, 2012-Ohio-2680, the Supreme Court provided further guidance with respect to the carry-forward and continuing complaint provisions of R.C. 5715.19(D). In the case, a complaint was filed for tax year 2008 that was not resolved until tax year 2011. Tax year 2008 was an update year for Cuyahoga County and the County applied the stipulated result, contained in a decision of the BTA dated in January 2011, to tax year 2008 only. In June 2011, the property owner asked the BTA to order the county to carry forward the value to tax years 2009-2011 and the BTA declined on the basis that it had no jurisdiction to do so, its entry becoming final 30 days after it was issued. The Supreme Court agreed that the BTA was without jurisdiction to consider the matter further; however, it noted that under the continuing complaint provisions of R.C. 5715.19(D), the BOR retained jurisdiction over the value of the property for tax years 2009-2011. It was hinted that the correct remedy would be to ask the BOR to exercise its continuing jurisdiction over the complaints for the subsequent years.

In *Bay Mechanical & Elec. Corp. v. Testa*, __ Ohio St. 3d __, Slip Op. No. 2012-Ohio-4312, the Court affirmed the imposition of sales tax on temporary employee services. The taxpayer attempted to rely solely on the language in its contracts and refused to submit any information regarding the actual nature of the transactions with its customers. The Supreme Court disagreed, noting that under its holding in *H.R. Options, Inc. v. Zaino*, 100 Ohio St. 3d 373, 800 N.E. 2d 740 (2004), not only must the contract indicate that the employees in question are provided for an indefinite basis, but in fact the taxpayer must produce evidence that demonstrated in fact such a situation.

In *Progressive Plastics, Inc. v. Testa*, __ Ohio St. 3d __, Slip Opinion No. 2012-Ohio-4759, the Court ruled that absent a rule on the subject, the Tax Commissioner must present evidence indicating that the statutory method of determining the value of personal property does not reflect the true value of the property in question. The Tax Commissioner may not merely rely upon the holding of an earlier case without demonstrating a factual basis for doing so.

In *Gaston v. Medina Cty. Bd. of Revision*, 133 Ohio St. 3d 18, 2012-Ohio-3872, the Supreme Court rejected a taxpayer's claim that it had not received adequate notice of a hearing by the BOR. The notice of the hearing had been sent certified mail and the receipt was signed by an individual who resided at the address with the taxpayer. The taxpayer did not show that the individual was not authorized or competent to sign the receipt, therefore the presumption that receipt was proper was not overcome.

Ohio Court of Appeals

In *Panther II Transportation, Inc. v. Village of Seville Bd. of Income Tax Review* (9th Dist.), 2012-Ohio-3525, App. Nos. 11CA0092-M, 11CA0093-M, the Court of Appeals affirmed a decision of the Board of Tax Appeals that state law, R.C. 4921.25, pre-empted the ability of a municipal corporation to impose a tax on the net profits of a business engaged in motor vehicle transportation. The statute provides that the fees and charges imposed under R.C. 4921.18, and provided that "all taxes and other exactions except the general property tax" imposed by municipal corporations are illegal.

Ohio Board of Tax Appeals

In *University Hospitals Health System, Inc. v. Cuyahoga Cty. Bd. of Revision*, BTA No 2012-A-116 (July 11, 2012), the BTA held that a valuation complaint that did not reflect the full legal name of the owner failed to set for the name of the owner as required by R.C. 5715.19(A), therefore the complaint was properly dismissed for lack of jurisdiction.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2010-K-1655 (Nov. 6, 2012), the BTA held that a sale occurring 20 months prior to tax lien date was sufficiently recent to represent the value of the property on January 1, 2008. The BTA noted that a party claiming a sale was not arm's-length or was too remote has the burden of providing evidence to support the claim. Here no such evidence was introduced.

Tax Commissioner Opinion

No opinions to report.

Other

CAT Litigation:

Earlier this summer, the Supreme Court heard oral argument in *Beaver Excavating Co. v. Levin*, No. 2011-1536. In that case, the taxpayers claim that in so far as the commercial activity tax applies to receipts from the sale of motor fuel, the tax is unconstitutional because the proceeds of the tax, being devoted to purposes other than highway maintenance and safety, violate Art. XII, Section 5a of the Ohio Constitution. Art. XII Section 5a provides that any tax "relating to" motor fuel must be devoted to specified purposes. The taxpayers claim that the CAT is a tax that "relates to" motor fuel and its proceeds must, therefore, be devoted to the requisite purposes. They seek to have the tax invalidated as it applies to their receipts.

The Department of Taxation contends that as a general tax imposed upon the privilege of doing business in Ohio, the CAT does not run afoul of the provision because it is not sufficiently related to motor fuel; rather, it applies to the privilege of doing business generally, regardless of the nature of the business.

A decision has not yet been issued, but is expected before the end of the year.

Other cases involving the validity under the commerce clause of various provisions of the CAT remain upon administrative review before the Tax Commissioner, or on appeal to the BTA:

- *L.L. Bean Co. v. Testa*, BTA No. 2012-A-158 (App. Filed 1/18/12)
- *A.H. Schreiber, Inc. v. Testa*, BTA Nos. 2011-A-4401 (App. Filed 12/6/12), k2012-A-2814 (App. Filed 8/23/12)
- *B&H Photo Video Pro Audio, Inc. v. Testa*, BTA No. 2011-K-3844 (App. Filed 11/7/11).

BTA Reform:

The grid-lock existing at the Ohio Board of Tax Appeals is widely-known and acknowledged. Discussions among the bar association tax committee, the board of tax appeals, and the tax commissioner have occurred over the past several years aimed at improving process at the board. Last year, the Tax Commissioner, upon input from a number of stakeholders, issued a report that made a number of recommendations regarding practice before the board.

The tax committee of the Ohio State Bar Association, with the approval of the Association's board of governors, has drafted possible legislation that would address improvement in nine key areas:

1. Require the Board to establish a small claims division

2. Require the implementation of a case management system

3. Require the Board to reimplement a formal mediation process

4. Require the Board to implement electronic filing, possibly through the Ohio Business Gateway

5. Require the Tax Commissioner and boards of revision to file the statutory transcript of their proceedings electronically

6. Revise pleading standards to bring them more in line with Ohio rules of civil procedure

7. Provide authority to decide matters on summary judgement

8. Authorize use of procedures, such as motions in limine or stipulations of facts, to streamline and narrow issues

9. Require the tax commissioner to promulgate uniform rules of procedure for the county boards of revision

The OSBA is attempting to form a coalition of interested parties to support its bill, with the goal of having the provisions included in next year's budget bill.

SLIP OPINION NO. 2012-OHIO-4425

THE STATE EX REL. JOBSOHIO *v.* GOODMAN, DIR.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. JobsOhio v. Goodman,* Slip Opinion No. 2012-Ohio-4425.]

Cause dismissed—Relator essentially seeks a declaratory judgment or an advisory opinion on the constitutionality of 2011 Am.Sub.H.B. No. 1 and 2011 Am.Sub.H.B. No. 153.

(No. 2012-1356—Submitted September 11, 2012—Decided September 28, 2012.)

IN MANDAMUS.

Per Curiam.

{¶ 1} This is an original action in mandamus by relator, JobsOhio, asking this court to (1) find that legislation authorizing the creation of JobsOhio to promote economic development in the state and to assume responsibility for the merchandising and sale of alcohol in the state is constitutional and (2) compel respondent, Ohio Department of Commerce Director David Goodman, to execute an agreement to transfer the state's liquor business to JobsOhio. We dismiss the

cause because it does not raise a justiciable controversy, essentially seeking either a declaratory judgment or an advisory opinion on the constitutionality of the statute.

Facts

{¶ 2} The General Assembly enacted and Governor John Kasich signed 2011 Am.Sub.H.B. No. 1 ("H.B. 1"), effective February 18, 2011. Under H.B. 1, the governor is "authorized to form a nonprofit corporation, to be named 'JobsOhio,' with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state." R.C. 187.01. R.C. 187.01(B) through (D) provide that the governor is the chair of the board of directors of JobsOhio and that he appoints the remaining eight directors.

{¶ 3} In accordance with R.C. 187.01, the governor filed articles of incorporation for JobsOhio with the secretary of state's office on July 5, 2011. According to its articles of incorporation, JobsOhio was organized and is to be operated "for the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to the State of Ohio." The governor thereafter appointed people to serve on the board of directors for JobsOhio. R.C. 187.01(B) and 187.02. Pursuant to Section 5 of H.B. 1, the Ohio Department of Development ("ODOD") set aside $1,000,000 "to establish and operate the JobsOhio corporation established in Chapter 187. of the Revised Code." JobsOhio and ODOD negotiated and executed an "agreement for services" pursuant to R.C. 187.04(A), and that agreement was approved by the Controlling Board of the state.

{¶ 4} In June 2011, the General Assembly enacted and the governor signed 2011 Am.Sub.H.B. No. 153 ("H.B. 153"), which, inter alia, authorized the state to transfer to JobsOhio all or a portion of its alcohol-distribution system for a transfer price payable by JobsOhio to the state. *See* R.C. 4313.02(A) and 4313.01(A).

{¶ 5} Pursuant to R.C. 4313.02(E), as enacted in H.B. 153, JobsOhio, the Ohio Office of Budget and Management ("OBM"), and the Ohio Department of Commerce ("ODC"), negotiated a contract to provide for the continuing operation of the state's alcohol business by the state's division of liquor control. The terms of the "operations services agreement" were finalized, and it was approved by the Controlling Board.

{¶ 6} In September 2011, in accordance with R.C. 4313.02(C)(2), JobsOhio and OBM began negotiating the terms of a "franchise-and-transfer agreement" in which the state would grant to JobsOhio or its nonprofit corporate affiliate, in exchange for a payment from JobsOhio to the state, a franchise on the state's liquor business for up to 25 years. As required by the statute, respondent, ODC Director David Goodman, was consulted regarding the terms of the agreement. R.C. 4313.02(C)(2).

{¶ 7} After negotiations were concluded, JobsOhio and its wholly owned subsidiary, JobsOhio Beverage System, signed the franchise-and-transfer agreement on August 7, 2012. OBM Director Timothy Keen also signed the agreement on August 7. *See* R.C. 4313.02(C)(2).

{¶ 8} By letter dated August 8, 2012, Mark Kvamme, the JobsOhio interim president and chief investment officer, forwarded a copy of the signed franchise-and-transfer agreement to ODC Director Goodman for his signature and advised Goodman that his "signature is the only step remaining before we may proceed with the proposed transfer."

{¶ 9} By letter dated and delivered August 9, 2012, Goodman refused to execute the franchise-and-transfer agreement. His letter explains that although he supports JobsOhio and its mission, acknowledges that the agreement and the negotiating process complied with R.C. Chapter 4313, and questions the validity of constitutional challenges raised against H.B. 1 and H.B. 153, he believes that his oath of office to uphold the Ohio Constitution precludes him from executing

the agreement until the Ohio Supreme Court addresses the merits of the constitutional claims.

{¶ 10} On the day following ODC Director Goodman's refusal to sign the franchise-and-transfer agreement, August 10, 2012, JobsOhio filed this action for a writ of mandamus to "be issued to Respondent Goodman finding that the Legislation [H.B. 1 and 153] is constitutional and ordering Respondent to execute the Franchise and Transfer Agreement on behalf of the State, in accordance with R.C. § 4313.02(C)(2)." Goodman filed an answer and a motion for judgment on the pleadings. In his answer, Goodman admits all the pertinent facts and concurs with JobsOhio's allegation that "[e]xercise of the Court's jurisdiction is necessary to allow [JobsOhio] the opportunity to timely adjudicate its claim against [Goodman], and to provide a swift and conclusive resolution to any and all questions regarding the constitutionality of the Legislation." JobsOhio filed a memorandum in opposition to Goodman's motion for judgment on the pleadings.

{¶ 11} This cause is now before the court for S.Ct.Prac.R. 10.5 determination.

Analysis

{¶ 12} We must now determine whether dismissal, an alternative writ, or a peremptory writ is appropriate. S.Ct.Prac.R. 10.5(C). Dismissal is required if it appears beyond doubt, after presuming the truth of all material factual allegations of JobsOhio's complaint and making all reasonable inferences in its favor, that JobsOhio is not entitled to the requested extraordinary relief in mandamus. *See State ex rel. Johnson v. Richardson*, 131 Ohio St.3d 120, 2012-Ohio-57, 961 N.E.2d 187, ¶ 12.

{¶ 13} For the reasons that follow, sua sponte dismissal of this case without reaching the merits of the constitutional claims is warranted.

{¶ 14} First, a review of the complaint—as well as Goodman's motion for judgment on the pleadings—indicates that the real object sought is a declaratory

judgment, which this court lacks original jurisdiction to grant. *ProgressOhio.org, Inc. v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101, 953 N.E.2d 329, ¶ 2, citing *State ex rel. Ministerial Day Care Assn. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21, ¶ 22 ("neither this court nor the court of appeals has original jurisdiction over claims for declaratory judgment"). If the allegations of a mandamus complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a viable claim in mandamus and must be dismissed for lack of jurisdiction. *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 21. In assessing the true nature of a mandamus claim, we examine the complaint. *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 13. Although JobsOhio's complaint is couched in terms of compelling ODC Director Goodman to comply with his affirmative duty under R.C. 4313.02(C)(2) to execute the franchise-and-transfer agreement, it actually seeks an expedited ruling from this court declaring H.B. 1 and 153 constitutional, so as to preclude any further challenges.

{¶ 15} Second, mandamus is not available if the relator has an adequate remedy in the ordinary course of law. *State ex rel. Nickleson v. Mayberry*, 131 Ohio St.3d 416, 2012-Ohio-1300, 965 N.E.2d 1000, ¶ 2; R.C. 2731.05. JobsOhio has an adequate remedy by way of a declaratory-judgment action in common pleas court to raise its claim that H.B. 1 and 153 are constitutional. The cases that JobsOhio and Director Goodman cite in which the court decided the constitutionality of legislation in the context of mandamus cases, *see, e.g., State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, 872 N.E.2d 912; *State ex rel. Duerk v. Donahey*, 67 Ohio St.2d 216, 423 N.E.2d 429 (1981); and *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424, 513 N.E.2d 1332 (1987), are distinguishable because in those cases, there was no evidence or inference of any agreement on the part of the parties to obtain an advisory opinion

on the constitutionality of legislation. Instead, all the cited cases involved actual controversies between genuinely adverse parties.

Conclusion

{¶ 16} Based on the foregoing, it appears beyond doubt that JobsOhio's mandamus claim does not properly invoke the original jurisdiction of the court. We will not decide constitutional claims raised by parties who seek an advisory declaratory judgment for which they have adequate remedies in the ordinary course of law. Thus, we sua sponte dismiss the cause. This result renders moot all pending motions, including the motion to intervene and the motions of amici curiae for leave to submit briefs on the merits of the constitutional claims.

Cause dismissed.

O'CONNOR, C.J., and LUNDBERG STRATTON, LANZINGER, and MCGEE BROWN, JJ., concur.

PFEIFER, J., dissents.

CUPP, J., dissents and would (1) grant the motions of the Ohio Manufacturers' Association, the Columbus Partnership, Ohio Bankers League, the Ohio Chamber of Commerce, and the Ohio Council of Retail Merchants for leave to file briefs in support of relator; (2) grant the motion to intervene as respondents filed by Progress Ohio.org, Senator Michael Skindell, and Representative Dennis Murray Jr.; (3) expressly reserve ruling on the motion to dismiss filed by the prospective intervenors at this time; and (4) grant an alternative writ and issue a schedule for the presentation of evidence and briefs.

O'DONNELL, J., not participating.

PFEIFER, J., dissenting.

{¶ 17} I dissent. I would grant an alternative writ. This court's consideration of original actions that address the constitutionality of statutes is "limited to exceptional circumstances that demand early resolution." *State ex rel.*

Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451, 515, 715 N.E.2d 1062 (1999) (Pfeifer, J., concurring). *See also State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 631 N.E.2d 582 (1994); *State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717, 780 N.E.2d 981. This is one of those extraordinary cases.

Squire Sanders, L.L.P., Aneca E. Lasley, and Gregory W. Stype; Organ Cole & Stock, L.L.P., and Douglas R. Cole, for relator.

Michael DeWine, Attorney General; Porter, Wright, Morris & Arthur, L.L.P., James A. King, and L. Bradfield Hughes, for respondent.

The Columbus Dispatch

Kasich aims for sales-tax ‘reform’ to pay for income-tax cut

The Daily Briefing

By Joe Vardon

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Enlarge Image

Dispatch File Photo

“You’ve got to remember a 5.9 percent income tax is ridiculously high for our state,” Gov. John Kasich said.

Gov. John Kasich is going to take a big whack at the state’s income tax in 2013.

His club of choice: The more than $7 billion in tax credits, deductions and exemptions the state grants each year.

Kasich has not been one to hide his intention to further lower the income tax next year, potentially far beyond his proposed $500 million cut funded by a “frack tax” boost that’s still languishing in the legislature.

But sources with knowledge of the governor’s thinking said he’s eyeing a “huge” state income-tax cut paid for, in part, by limiting what his staff refers to as tax “loopholes” — which primarily are exemptions from the state sales tax.

Of the $7.8 billion the state would forgo in tax expenditures next year, about $5 billion would come from sales-tax exemptions.

Limiting these exemptions is not the only way Kasich could justify or fund an income-tax cut. Kasich proposed $113 million in savings through the recent mid-biennial review process; last year's budget saved more than $1 billion through Medicaid reforms; the state is due $500 million once it leases its liquor profits to JobsOhio; and its rainy-day fund climbed above $480 million last month.

But limiting or stopping items such as a sales-tax exemption for prescription drugs, income-tax deductions for spouses and children, and a $50 credit for contributions to political campaigns could prove daunting politically, if history is any indication.

Kasich seemed to tip his hand yesterday when he said, "We're always working to figure out how to lower the income tax, and it will involve tax reform."

Commenting after a Columbus news conference to announce jobs, Kasich added, "I can tell you that when we engage in tax reform there will be a lot of squeals and a lot of howls from people that want to be for the status quo."

Gubernatorial spokesman Rob Nichols said, "Closing loopholes has always been a priority for him, and going back to his days in Congress he's been unafraid of taking them on and shutting them down. If it helps fuel further badly needed tax cuts that can help create jobs, then it's a twofer for Ohioans, but it's premature to begin guessing games about what any future comprehensive tax-cut package would look like."

Kasich's current proposal to boost taxes on shale drillers and cut the income tax would amount to a 5 percent cut after a few years. In 2005, Ohio phased in a five-year, 21 percent cut in income-tax rates at the rate of 4.2 percent a year.

In past debates over tax cuts and spending, including over Kasich's frack tax/income-tax-cut plan, Democrats and even some Republicans have expressed their desire to funnel money to schools and local governments.

"You've got to remember a 5.9 percent income tax is ridiculously high for our state," Kasich said.

Two recent efforts in the legislature to approach the notion of limiting tax deductions stalled, first when House Republicans balked at including a tax-expenditure study in the budget passed last year, and again this year when the Senate Ways and Means Committee failed to craft a report on whether all the expenditures make sense.

Even though limiting deductions and exemptions could add billions to state revenue, there has been a historical reluctance at the Statehouse to broach doing away with loopholes because many consumers, businesses and nonprofits enjoy them. Ohio churches, for example, pay no sales tax on money they spend, costing the state more than $430 million.

There is no sales tax charged for the installation of cable TV or satellites dishes, costing the state $95 million a year, but no doubt pleasing Ohioans who want to watch the Indians and Reds, or order the NFL Ticket next year.

The state will forgo about $1.6 billion from manufacturing equipment and $16.3 million from newspaper sales.

Large or small, the deductions have built-in constituencies, and taking away those deductions could be labeled a tax increase.

"The special-interest groups dominate," Kasich said. "And it's not just big spenders. It's people who say 'No, I like what I get from the government ... and if you change it, it's really not good for me.' So they yell and scream at the decision-makers, the policymakers, and it never happens."

To view the full list of the state of Ohio's tax exemptions, go to http://tax.ohio.gov/divisions/communications/publications/FY%202012-2013%20TER%20-%20final.pdf.

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Manufacturing Exemption From the Ohio Sales Tax

Under Ohio law, sales of machinery, equipment and implements used in a manufacturing operation to produce tangible personal property for sale are excluded from the Ohio sales tax.

Background

A manufacturing exemption has been part of the Ohio sales tax since the date it was first imposed in 1934. Originally exempting sales of items used in manufacturing a product, the exemption language was refined in 1935 to apply to sales of items used directly in the manufacturing of tangible personal property – language that often lead to litigation. In 1990, the exemption provision was changed so that it applied to items used primarily in a continuous manufacturing operation to produce tangible personal property for sale. With minor changes, this is the current form of the exemption.

Similar exclusions exist for items used in other segments of the economy, such as farming, mining and rendering a public utility service, where the final product may be subject to the tax.

The Nature of the Manufacturing Exemption

In its study on taxation and economic development in Ohio,[1] the Commission to Study Ohio's Economy and Tax Structure noted that Ohio's sales tax is generally evaluated as a tax on consumption, although the Commission recognized there were gaps in its application. For example, as a general rule all sales of tangible personal property, but only some sales of services, are subject to the tax.

In addition, the Commission noted two main categories of exclusions:

1. Exclusions (such as the manufacturing exemption) intended to prevent "pyramiding" of the tax and to make it more consistent with a tax on ultimate consumption
2. Exclusions applying to purchasers and transactions the legislature has determined should not be subject to tax for some other reason, such as [need an example].

The manufacturing exemption applies to sales of machinery, equipment and implements used in a manufacturing operation. The exemption also applies to sales of items that will be a part or component of something being manufactured for sale. For example, sales of a washing machine to a consumer is subject to the Ohio sales tax; however, sales by a supplier of a motor, or a timer, or an agitator to the washing machine manufacturer are exempt from the sales tax because those items will be used as parts in tangible personal property being manufactured for sale to a consumer.

[1] *Taxation and Economic Development: A Blueprint for Tax Reform in Ohio* (Roy Bahl, Ed., Battelle Press, 1996).

The Policy Rationale

The sales tax is, and always has been, intended as a tax imposed upon final consumption. As such, as a matter of tax policy, it should not apply to transactions that do not represent final consumption. If it were to apply to intermediate transactions – such as the sale of a motor to a washing machine manufacturer – the tax for each transaction would be based in part on the tax paid on all prior transactions, thereby "pyramiding" the tax.

The Competitiveness Issue

Eliminating the manufacturing exemption and expanding the sales tax to purchases of manufacturing machinery, equipment and implements, which have never been taxed in Ohio, would increase the cost of goods manufactured in Ohio, thereby increasing the prices consumers would have to pay for those goods. This would render Ohio-manufactured goods more costly and less competitive than goods produced elsewhere.

Virtually all of the 45 states that impose a sales tax also have some sort of exclusion for machinery, equipment and other implements used to produce a product for sale by manufacturing or processing. All other factors being equal, if the manufacturing exclusion from the state sales tax were removed from Ohio law, the cost of investing in Ohio manufacturing would be 5.5 percent to 7.5 percent higher than the cost of investing in manufacturing in other states, depending on the county in which the investment were to be made.

The Manufacturing Exemption Should Be Retained

Manufacturing remains the largest segment of Ohio's economy. It is responsible for employing more than 600,000 Ohioans in well-paying jobs. As Ohio begins to pull out of the economic malaise of the past decade and restore and grow its manufacturing capabilities, the last thing the State should do is increase the cost of manufacturing investment in Ohio.

For these reasons, the manufacturing exclusion from the Ohio sales tax should be retained without change.

# # #

State of Ohio
The Executive Budget
Fiscal Years 2012 and 2013

The Jobs Budget
Transforming Ohio for Growth

Governor John R. Kasich

Book Two:

The Tax Expenditure Report

Prepared by the Ohio Department of Taxation

Joe Testa, Tax Commissioner

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March 11, 2011

It is my pleasure to present the *Tax Expenditure Report*, a responsibility assigned to the Tax Commissioner by the Ohio Revised Code (Sections 107.03 and 5703.48). This report makes possible an ongoing review of state tax expenditures. It is a companion piece to the Governor's Executive Budget.

This report includes 128 tax expenditures allowed in current law, entailing various exclusions, exemptions, deductions and credits. It provides the amount of state General Revenue Fund tax revenue estimated to be foregone from each expenditure during the current biennium (fiscal years 2010 and 2011) and upcoming biennium (fiscal years 2012 and 2013). The report does not address the merits of those exemptions. Nonetheless, it fosters a better understanding of the current tax system and stands as an important resource for those making decisions about Ohio's tax policy.

If you have questions or comments about the report, please direct them to:

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Sincerely,

Joseph W. Testa
Tax Commissioner

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State of Ohio Tax Expenditure Report

Sections 107.03(F) and 5703.48 of the Ohio Revised Code, enacted in 1987, require the tax commissioner to produce a tax expenditure report that is to be submitted as a supplement to the Governor's biennial budget. The report is required to provide estimates of the impact of tax expenditures on the state General Revenue Fund during the current biennium and the next biennium.

Both tax expenditures and direct budgetary expenditures incur a cost to the state in order to accomplish public policy goals. Unlike direct budgetary expenditures, unless there is a pre-existing termination date, tax expenditures may remain in effect indefinitely with little or no scrutiny by policy makers. In most states, tax expenditures are not analyzed and reviewed as part of the budget appropriation process; Ohio is one of the relatively few states that do produce a tax expenditure report in conjunction with the state budget.[1] It is probably safe to assume that if it were not for this report, the fiscal impact of the various Ohio tax expenditure provisions would not be systematically estimated.

A primary purpose of a tax expenditure report is to help provide a clearer picture of the total range of government spending. This report provides the estimated dollar value of tax expenditures but offers no conclusions about the validity of those expenditures. The responsibility of evaluating the expenditure's merit with regard to public policy belongs jointly to the General Assembly and the Governor.

In this edition of the Ohio tax expenditure report, we provide the estimated revenue foregone by the state General Revenue Fund for the fiscal year 2010-2011 biennial budget period and the fiscal year 2012-2013 biennial budget period. The report includes 128 different tax expenditures.[2] In addition, the report contains the legal citation, year of enactment, and a brief description of the tax expenditure.

The Tax Expenditure Concept

Tax expenditures represent tax dollars that are foregone through deductions, exemptions, credits, and other provisions in tax laws. (This statement is a somewhat abbreviated version of the tax expenditure definition found in Ohio Revised Code Section 5703.48.) Tax expenditures result in a loss of tax revenue to state government, thereby reducing the funds available for other government programs. In essence, a tax expenditure has the same fiscal impact as a direct government expenditure.

Since the tax expenditure concept was first articulated in 1967 by Stanley S. Surrey (assistant secretary for tax policy of the U.S. Treasury), the executive and legislative branches of the U.S. government, most state governments and many foreign governments have issued their own versions of tax expenditure reports. In its broadest outline, the tax expenditure concept is fairly uniform and constant: a tax expenditure represents a legislated variation from – more commonly, a reduction to - a standardized tax base. Beyond that, however, varying ideas about what constitutes a tax expenditure have led to differing approaches for defining or identifying those expenditures. In a sense, tax expenditure reports are evolutionary in nature, changing as members of the tax policy community absorb, synthesize, and contribute new thinking on the subject.

One evolving element is the definition of the standardized ("baseline") tax structure, the variations from which are identified as tax expenditures. An example of how the baseline tax structure can change may be found at the federal government level. In May, 2008, the U.S. Joint Committee on Taxation (JCT) revised its definition of tax expenditures.[3] This revision was at least partially motivated by a long-standing criticism that the incumbent definition of tax expenditures was based on a "normalized" conception of an income tax, even though there was no explicit evidence to suggest the U.S. income tax was inherently structured as, or was intended to be structured as, a pure income tax. According to critics, certain long-standing features of the U.S. income tax were more consistent

[1] John L. Mikesell, "Tax Expenditure Budgets, Budget Policy, and Tax Policy: Confusion in the States," *Public Budgeting and Finance*, (Winter 2002): 43.
[2] Some of the 128 tax expenditures have an annual revenue impact below $1 million; revenue estimates are not provided for those items.
[3] Joint Committee on Taxation, *A Reconsideration of Tax Expenditure Analysis* (JCX-37-08), May 12, 2008. Accessed at: www.jct.gov/publications.

with a consumption tax than an income tax, so it was not appropriate to use a baseline wedded to a normalized income tax. In the May, 2008 revision, JCT shed the "normalized" income tax baseline for a more nuanced definition that is somewhat more restricted in scope. The new approach will presumably improve the JCT's representation and measurement of tax expenditures.

Some of the same inherent conceptual difficulties surrounding tax expenditures exist at the state level as at the federal level. There is considerable variation among the states with respect to what they consider tax expenditures (and, by extension, their implied baseline tax structures). For example, just under one-half of state tax expenditure reports include services not subject to sales tax, while the remainder do not.[4] The variation among states ultimately stems from a fundamental difficulty with the tax expenditure concept: the lack of a universally applicable definition of "tax expenditure" that is sufficiently robust in meaning for it be used by all jurisdictions and taxes. As a result, each reporting agency has to render an operating definition of tax expenditure that has analytical utility for that agency and its administration, as well as legislative policy makers and the wider tax policy audience within that jurisdiction.[5]

Tax Expenditures as Defined in this Report

Ohio uses what may be considered a mostly "reference law" concept for defining tax expenditures. However, it is also laden with elements driven by the "ideal base" concept.[6] The primary determinant as to whether a tax provision may be considered a tax expenditure is whether it exists as an exemption, credit, deduction, etc. in the Ohio Revised Code. This conforms with the reference law concept. Of this initial list of *potential* tax expenditures, certain provisions – those considered to be inherent to the tax base – are then excluded; this step reflects elements of the ideal base concept. A primary example of an item excluded from the report is the sales tax "resale" exemption (see discussion in the Sale and Use Tax section of the report). Another example is the commercial activity tax exclusion for non-profit entities.

Listed below are the basic criteria used in this report to determine whether a tax provision constitutes an Ohio tax expenditure. All four of these characteristics must exist in order for the item to be considered a tax expenditure.

1. The item reduces, or has the potential to reduce, one of the state's General Revenue Fund taxes.

By law, the tax expenditure report includes only those taxes that contribute to the state General Revenue Fund (GRF). There are some state taxes that do not provide revenue to the state's GRF and thus are excluded from the report. These taxes include the motor vehicle license tax, motor vehicle fuel tax, horse racing tax, natural gas consumption tax, and severance taxes.

The commercial activity tax (CAT) is included in this report. There are two rationales for this. First, under current law, the CAT will resume contributing revenue to the GRF in FY 2012, the first time that it has done so since FY 2006. Second, the GRF is responsible for covering shortfalls to other funds should CAT revenues be insufficient (conversely, the GRF receives any surplus in those funds at the end of each fiscal year).[7] If any CAT tax expenditure were repealed, the GRF would benefit. Therefore, we determined that the CAT should be included in this report.

[4] Of 34 jurisdictions that include the sales tax in their tax expenditure reports, 16 of them provide an entry for services exempt from sales tax. Jason Levitis, Nicholas Johnson & Jeremy Koulish, "State Budget Accountability Through Tax Expenditure Reports," *State Tax Notes*, May 25, 2009: 655.

[5] Some agencies must work with a statutorily prescribed definition of "tax expenditure." Even though the reporting agency must comply with the statutory definition in good faith and to the maximum extent possible, there is probably no statutory definition with sufficient nuance and logic to guide all situations. In other words, the agency will need develop a useful operating definition of a tax expenditure and then need to apply its judgment in determining which items fit that definition. For example, each state is bound to a constitutional prohibition against taxing nonresidents on income not earned in that state; Ohio accomplishes that result via a nonresident tax credit. Although Ohio law indicates that "credits" fall under the definition of tax expenditure, it is wholly inappropriate to include the nonresident credit in the Ohio tax expenditure report when the credit is simply a mechanism used to ensure a constitutionally compliant tax.

[6] Mikesell, *supra* at 46.

[7] This was the case even in FY 2010-2011, when the CAT made no direct contribution to the GRF.

2. The item would have been part of the defined tax base.

In order for a provision to be a tax expenditure it must specifically exempt from taxation an item that otherwise would have been part of the tax base. Without the provision, the item would have been taxable. There are some items specifically exempted by the Ohio Revised Code that do not happen to be part of the tax base. These items are not included as tax expenditures in this report.

3. The item is not subject to an alternative tax.

Items that are subject to alternative taxes are not considered tax expenditures. For instance, insurance companies are excluded from the commercial activity tax by the Ohio Revised Code but this exclusion is not considered a tax expenditure because such companies are taxed under the domestic or foreign insurance premiums tax.

4. The item is subject to change by state legislative action.

The item must take the form of an exemption, deduction, credit, etc. existing in the Ohio Revised Code. Those items that can only be changed by a state constitutional amendment, a federal law change, or a federal constitutional amendment are not considered tax expenditures.

Interpretation of Tax Expenditures

Although we have discussed definitional issues related to tax expenditures, we should also discuss how one might interpret the information conveyed about a tax expenditure. Tax policy experts have identified several different ways to consider tax expenditures.[8] On one hand, because tax expenditures provide an explicit accounting of deviations from a conceptual tax structure baseline, users of a tax expenditure report are able to identify the nature of those deviations and their relative fiscal magnitude. The report may serve as a foundation for further analysis as to whether, and to what degree, the expenditures violate the principles of good tax policy (fairness, simplicity, efficiency).[9] To one degree or another, many tax expenditures reduce economic efficiency, heighten tax code complexity, and treat people with the same ability to pay in a disparate (inequitable) manner. This may be considered the "tax reform" perspective on tax expenditures.

In contrast, tax expenditures might be viewed as an appropriate mechanism for spending government resources. Under this interpretation, the tax system may serve as an appropriate instrument for reallocating resources or otherwise addressing market inefficiencies. Thus, the tax expenditure report identifies the specific circumstances under which policy makers have chosen to allocate state resources, so as to fully or partially address a perceived societal need. According to this orientation, then, the question is whether the "spending" is efficient and appropriate: the concern is not so much directed toward whether the tax expenditure may violate certain tax policy principles.

Projected Revenue Foregone From Tax Expenditures

The 2012-2013 biennium tax expenditure report identifies the estimated revenue that is foregone, or "spent," by the state General Revenue Fund as a result of the existence of a tax expenditure provided under current law. More precisely, the revenue foregone estimates in this report reflect the amount of financial benefit provided to those persons or business entities using the tax expenditure, adjusted to reflect the state General Revenue Fund's share of the tax expenditure. No further adjustments are made to the estimates except in cases where another tax expenditure is also available to the taxpayer for the same item or activity: the report reduces one (but not both) of the overlapping tax expenditures by the estimated amount of tax revenue associated with the "overlap."

[8] See, for example, Eric J. Toder, *Tax Expenditures and Tax Reform: Issues and Analysis*, Presented at National Tax Association Annual Conference, Miami, Florida, November 19, 2005.

[9] Although tax expenditures usually move a tax structure farther away from positive tax policy, we recognize that some of the expenditures in this report may be highly, if not entirely, consistent with positive tax policy. The sales tax exemption for property used to manufacture tangible personal property is a notable example of an expenditure with tax policy merit, because it mitigates the economic distortions that would otherwise occur through tax "pyramiding."

The estimates in this report do not represent the amount of revenue that would be gained if any particular tax expenditure were to be repealed. Estimates produced under a "revenue gain from repeal" concept would need to encompass an extensive array of (primarily downward) adjustments. For one thing, "revenue gain from repeal" estimates require particular assumptions about the tax expenditure repeal date. There may be important cash flow lag consequences associated with the chosen repeal date. Another potentially significant adjustment involves taxpayer behavioral responses to the repealed tax expenditure. Economic activity would likely be impacted to some degree as tax is newly applied to the previously tax-exempt item or activity. Furthermore, one may expect at least some short-term taxpayer non-compliance with the newly-taxed taxed activity.

To summarize, **the figures in this report do not represent the potential revenue gain from repeal of the tax expenditure**. Instead, the figures reflect our best estimates of the tax benefits realized by recipients of the tax expenditures – what we refer to as the "revenue foregone."

Data Sources for Tax Expenditure Estimates

The accuracy of the estimates varies with the source of data and applicability of the data to the tax expenditure provision. In some instances, the Department of Taxation relies on external sources of data that may not be as reliable as those offered within the agency. A data reference code has been devised to identify the source for individual tax expenditures, as follows:

Data Source Code (A):	Data emanating from tax returns filed with the Department of Taxation, as well as other information generated by the Department of Taxation.
Data Source Code (B):	Data produced by government agencies other than the Department of Taxation, such as other State of Ohio agencies, the Federal government (e.g., the IRS and U.S. Census Bureau), other state governments, and Ohio's local governments.
Data Source Code (C):	All other data, including (but not limited to) information from business information service providers, academic research, and non-profit research organizations.

FY 2010 – 2013
Tax Expenditure
Summary of Revenue Foregone
(in millions)

Note: "Minimal" indicates that the amount of foregone revenue is under $1 million

		General Revenue Fund Revenue Foregone			
		FY 2010	FY 2011	FY 2012	FY 2013
Sales & Use Tax					
Exempt entities					
1.01	Sales to churches and certain other non-profits organizations	$373.6	$384.8	$395.3	$407.2
1.02	Sales to the state, any of its political subdivisions, and to certain other states	179.3	189.2	199.1	210.0
1.03	Sales by churches and certain types of non-profit organizations	26.7	27.5	28.3	29.1
Exemption for property and services used or consumed to produce a product					
1.04	Tangible personal property used primarily in manufacturing tangible personal property	1,490.1	1,536.9	1,568.9	1,621.0
1.05	Packaging and packaging equipment	237.4	251.7	258.6	266.2
1.06	Sales of tangible personal property and services to electricity providers	387.7	436.2	463.0	491.5
1.07	Tangible personal property used or consumed in agriculture and mining	261.2	268.7	276.5	289.6
1.08	Tangible personal property used to produce printed materials	31.6	31.8	32.1	32.4
1.09	Tangible personal property used in storing, preparing and serving food	20.2	21.0	21.8	22.9
1.10	Tangible personal property used in preparing eggs for sale	2.7	2.8	2.4	2.4
Exemption based on specified use of property or service					
1.11	Building and construction materials and services used in certain structures	174.3	177.8	180.9	184.5
1.12	Tangible personal property used directly in providing public utility services	103.9	107.0	110.0	113.4
1.13	Property used to fulfill a warranty or service contract	48.6	48.4	48.0	47.8
1.14	Motor vehicles sold in Ohio for use outside the state	33.5	36.9	39.2	41.6
1.15	Tangible personal property used in research and development	20.5	21.0	21.5	22.1
1.16	Tangible personal property and services used in providing telecommunications and satellite broadcasting services	92.2	93.3	94.0	95.1
1.17	Qualified tangible personal property used in making retail sales	35.3	36.5	37.6	38.9
1.18	Property used in transportation for hire	33.9	35.4	37.3	39.4
1.19	Qualified call center exemption	23.5	24.0	24.6	25.3
1.20	Copyrighted motion pictures and films	7.5	7.6	7.8	7.9
1.21	Equipment used in private warehouses and distribution centers with inventory primarily shipped out of state	2.4	2.5	2.4	2.4
1.22	Drugs distributed to physicians as free samples	13.2	13.7	14.1	14.6
1.23	Property used in air, noise, or water pollution control	17.3	17.3	17.3	17.3
1.24	Emergency and fire protection vehicles and equipment	1.3	1.3	1.3	1.3
1.25	Tangible personal property used in electronic publishing	5.2	5.3	5.4	5.6
1.26	Property & services used in constructing a qualifying convention center	0.0	1.0	2.0	2.0

FY 2010 – 2013
Tax Expenditure
Summary of Revenue Foregone
(in millions)

		General Revenue Fund Revenue Foregone			
		FY 2010	FY 2011	FY 2012	FY 2013
Sales & Use Tax—continued					
Exempt products and services					
1.27	Prescription drugs and selected medical items	$460.2	$513.5	$571.4	$637.6
1.28	Transportation of persons and property	118.5	122.4	127.1	132.3
1.29	Newspapers	17.8	17.1	16.3	16.3
1.30	Magazine subscriptions	12.0	11.7	11.3	11.0
1.31	Artificial limbs, prostheses, wheelchairs and other durable medical equipment	16.5	16.9	17.3	17.5
1.32	Sales of used manufactured and mobile homes	2.7	2.7	2.7	2.8
1.33	$800 tax cap on qualified fractionally-owned aircraft	1.0	1.0	1.0	1.0
1.34	Sales of materials and services for maintenance and repair of aircraft	3.8	3.9	3.9	4.0
1.35	Flight simulators	1.6	1.6	1.6	1.6
Miscellaneous					
1.36	Value of motor vehicle trade-ins	107.1	118.2	130.2	143.9
1.37	Discount for vendors	46.6	47.8	49.4	51.6
1.38	Food sold to students on school premises	15.4	15.9	16.6	17.3
1.39	Value of watercraft trade-ins	1.2	1.3	1.5	1.6
Tax expenditures with revenue impact below $1 million					
1.40	Sales to non-commercial, educational broadcast stations	minimal	minimal	minimal	minimal
1.41	Sales to veterans' headquarters	minimal	minimal	minimal	minimal
1.42	Sales to facilities financed with public hospital bonds	minimal	minimal	minimal	minimal
1.43	Sales of animals by non-profit animal shelters	minimal	minimal	minimal	minimal
1.44	Agricultural property (use on use)	minimal	minimal	minimal	minimal
1.45	Agricultural land tile and portable grain bins	minimal	minimal	minimal	minimal
1.46	Tangible personal property used or consumed in commercial fishing	minimal	minimal	minimal	minimal
1.47	Ships and rail rolling stock used in interstate or foreign commerce	minimal	minimal	minimal	minimal
1.48	Sales of property for use in non-profit presentations of music, dramatics, the arts, and related fields	minimal	minimal	minimal	minimal
1.49	Property for use in a retail business outside Ohio	minimal	minimal	minimal	minimal
1.50	Property used in energy or waste conversion facilities	minimal	minimal	minimal	minimal
1.51	Sales of computers and computer equipment to certified teachers	minimal	minimal	minimal	minimal
1.52	Sales of qualified tangible personal property to qualified motor racing teams	minimal	minimal	minimal	minimal
1.53	Sales of tangible personal property and services for maintenance and repair of qualified fractionally-owned aircraft	minimal	minimal	minimal	minimal
1.54	Bulk water for residential use	minimal	minimal	minimal	minimal
1.55	Refundable deposits on beverage containers	minimal	minimal	minimal	minimal
1.56	25 percent refund for tangible personal property used by electronic information service providers	minimal	minimal	minimal	minimal
Total Sales & Use Tax		**$4,415.6**	**$4,640.3**	**$4,824.8**	**$5,053.3**

FY 2010 – 2013
Tax Expenditure
Summary of Revenue Foregone
(in millions)

		General Revenue Fund Revenue Foregone			
		FY 2010	FY 2011	FY 2012	FY 2013
Individual Income Tax					
Exemptions, exclusions and deductions					
2.01	Personal, spousal, and dependent exemption	$547.9	$556.1	$560.2	$581.9
2.02	Social security and railroad retirement benefits	237.8	239.5	266.8	280.1
2.03	Deduction for taxpayers not eligible for employer sponsored medical plan	19.5	20.9	21.1	22.7
2.04	Exemption for disability income	32.7	33.2	33.0	34.1
2.05	Exemption for active-duty military income	18.0	19.0	20.0	21.2
2.06	Deduction for excess medical expenses	68.6	71.6	76.1	79.3
2.07	Exemption for pre-1972 trusts	9.3	9.6	9.9	10.3
2.08	Deduction for long-term care insurance premiums	7.1	7.5	7.5	7.9
2.09	Deduction for contributions to college savings programs	10.6	10.8	11.5	12.2
2.10	Deduction for contributions to medical savings accounts	1.1	1.1	1.2	1.3
2.11	Exemption for military retirement income	25.3	26.8	27.0	28.6
2.12	Deduction for health insurance coverage of qualifying adult children and other dependents	0.4	3.4	3.5	3.7
Non-business tax credits					
2.13	Joint filer credit	228.8	236.5	228.8	232.8
2.14	$20 personal exemption credit	163.4	164.8	165.3	166.7
2.15	Retirement income credit	129.9	133.5	135.7	139.5
2.16	Resident credit for income taxed by another state	127.4	131.9	141.3	151.9
2.17	$50 credit for taxpayers aged 65 years or older	32.3	33.0	33.5	34.2
2.18	Credit for taxpayers with income below $10,000	15.5	15.2	13.2	12.7
2.19	Dependent care credit	7.8	6.3	6.3	6.3
2.20	Campaign contribution credit	4.5	4.9	4.7	5.1
2.21	Lump sum retirement income credit	1.3	1.3	1.4	1.5
2.22	Displaced worker job training credit	0.8	0.9	1.0	1.0
2.23	Credit for adoption related expenses	2.4	2.4	2.5	2.5
Business Tax Credits					
2.24	Historic structure rehabilitation credit	24.7	40.6	41.9	59.9
2.25	Technology investment tax credit	3.4	4.0	3.9	3.8
2.26	Motion picture tax credit	0.0	8.5	19.8	9.4
2.27	Credit for alternative fuel sold at retail	0.8	1.0	1.0	0.0
Tax expenditures with revenue impact below $1 million					
2.28	Lump sum distribution credit	minimal	minimal	minimal	minimal
2.29	Deduction for organ donation expenses	minimal	minimal	minimal	minimal
2.30	Enterprise zone day care/training credit	minimal	minimal	minimal	minimal
2.31	Enterprise zone employee credit	minimal	minimal	minimal	minimal
2.32	Grape production credit	minimal	minimal	minimal	minimal
2.33	Ethanol plant investment credit	minimal	minimal	minimal	minimal
Total Individual Income Tax		**$1,721.3**	**$1,784.3**	**$1,838.1**	**$1,910.6**

FY 2010 – 2013
Tax Expenditure
Summary of Revenue Foregone
(in millions)

		General Revenue Fund Revenue Foregone			
		FY 2010	FY 2011	FY 2012	FY 2013
Corporate Franchise Tax					
3.01	Goodwill, appreciation, and abandoned property of financial institutions	$111.9	$115.2	$119.6	$123.0
3.02	Credit for financial institution investment in a dealer in intangibles	1.5	1.5	1.5	1.5
3.03	State chartered savings and loan credit	1.4	1.4	1.4	1.4
3.04	New markets tax credit	0.0	0.0	0.0	1.7
Total Corporate Franchise Tax		**$114.8**	**$118.1**	**$122.5**	**$127.6**
Commercial Activity Tax					
Exclusions and deductions					
4.01	Exclusion of first $1 million of taxable gross receipts	$197.0	$207.0	$211.0	$215.0
4.02	State and federal fuel excise tax exclusion	32.1	32.1	32.0	32.0
4.03	Qualifying distribution center receipts exclusion	56.0	56.0	56.0	56.0
4.04	State and federal cigarette excise tax exclusion	5.8	5.7	5.5	5.3
4.05	Exclusion of real estate brokerage gross receipts that are not retained	1.2	1.2	1.2	1.2
4.06	State and federal alcoholic beverage tax exclusion	1.9	1.9	1.9	1.9
4.07	Professional employer organization exclusion	2.4	2.4	2.4	2.4
4.08	Motor vehicle transfer exclusion	1.7	1.7	1.7	1.7
4.09	Exclusion of certain services to financial institutions	1.0	1.0	1.0	1.0
Tax Credits					
4.10	Credit for increased qualified research and development expenses	13.9	14.2	14.6	15.0
4.11	Job creation credit	53.5	54.6	55.7	56.8
4.12	Job retention tax credit	4.5	11.5	16.5	21.5
4.13	Credit for net operating loss carryforwards and other deferred tax assets	2.3	8.0	8.0	8.0
Tax expenditures with revenue impact below $1 million					
4.14	Research and development loan program credit	minimal	minimal	minimal	minimal
4.15	Exemption for pre-1972 trusts	minimal	minimal	minimal	minimal
4.16	Anti-neoplastic drug exclusion	minimal	minimal	minimal	minimal
4.17	Horse racing taxes and purse exclusion	minimal	minimal	minimal	minimal
Total Commercial Activity Tax		**$373.3**	**$397.3**	**$407.5**	**$417.8**
Public Utility Excise Tax					
5.01	Exemption for municipal utilities and non-profit waterworks	$68.1	$69.5	$71.1	$72.6
5.02	Credit for certain natural gas companies	8.1	8.1	8.1	8.1
5.03	$25,000 exemption from gross receipts for each public utility company	minimal	minimal	minimal	minimal
5.04	Sales to other public utilities for resale	minimal	minimal	minimal	minimal
Total Public Utility Excise Tax		**$76.2**	**$77.6**	**$79.2**	**$80.7**

FY 2010 – 2013
Tax Expenditure
Summary of Revenue Foregone
(in millions)

		General Revenue Fund Revenue Foregone			
		FY 2010	FY 2011	FY 2012	FY 2013
Kilowatt Hour Tax					
6.01	Exemption for qualified end-users	$2.7	$3.6	$4.7	$4.8
Total Kilowatt Hour Tax		**$2.7**	**$3.6**	**$4.7**	**$4.8**
Insurance Premium Taxes					
7.01	Deduction for premiums received from qualified small business alliances	$15.5	$18.3	$21.7	$26.0
7.02	Credit for small insurers	2.5	2.4	2.3	2.2
7.03	Ohio Life and Health Guaranty Association contribution credit	1.2	1.3	1.3	1.3
Total Insurance Premium Taxes		**$19.2**	**$22.0**	**$25.3**	**$29.5**
Cigarette and Other Tobacco Products Taxes					
8.01	Discount for cigarette tax stamps	$14.5	$13.9	$13.3	$12.7
8.02	Discount for timely payment of other tobacco products' excise tax	minimal	minimal	minimal	minimal
Total Cigarette and Other Tobacco Products Taxes		**$14.5**	**$13.9**	**$13.3**	**$12.7**
Alcoholic Beverage Tax					
9.01	Advanced payment credit/discount	$1.4	$1.4	$1.4	$1.4
9.02	Sacramental wine exemption	minimal	minimal	minimal	minimal
9.03	Small brewer's credit	minimal	minimal	minimal	minimal
9.04	Small wine producer's exemption	minimal	minimal	minimal	minimal
Total Alcoholic Beverage Tax		**$1.4**	**$1.4**	**$1.4**	**$1.4**
Estate Tax					
Deductions					
10.01	Marital deduction	$46.3	$44.9	$46.7	$48.6
10.02	Funeral and administration expenses and debts against estate	9.2	9.2	9.2	9.2
10.03	Deduction for qualified charitable contributions	10.3	10.3	10.3	10.3
Tax Credit					
10.04	Credit for each estate	34.3	34.3	34.3	34.3
Total Estate Tax		**$100.1**	**$98.7**	**$100.5**	**$102.4**
GRAND TOTAL		**$6,851.0**	**$7,170.5**	**$7,432.2**	**$7,757.5**

Sales and Use Tax

The sales and use tax was enacted in 1934 at a rate of 3.0 percent and went into effect on January 27, 1935. In 1967 the rate was increased to 4.0 percent. After a temporary 5.0 percent sales tax rate was imposed during the period of January through June 1981, a permanent 5.0 percent rate was adopted in November 1981. Until 1981 the sales and use tax was restricted to the sale or rental of tangible personal property. In November 1981 the tax base was extended to selected services. Since then, additional services have been made subject to sales and use tax. Authority to levy a permissive sales tax was given to counties in 1967 and to transit authorities in 1974.

In 2003, legislation was enacted to impose a temporary increase in the state sales tax rate, from 5.0 percent to 6.0 percent. This increase was in effect for the July 1, 2003 through June 30, 2005 period. Rather than allowing the rate to revert back to 5.0 percent once the temporary increase expired, Am. Sub. House Bill 66 (the FY 2006-2007 operating budget) set the rate at 5.5 percent, effective July 1, 2005.

Tax Base

The sale and rental of tangible personal property and selected services in Ohio (or of property and selected services purchased out-of-state but used in Ohio) constitute the Ohio sales and use tax base. The tax base reflects a complex amalgam of statutory and constitutional provisions, as well as the accumulation of administrative and case law interpretations.

Since its 1935 inception the Ohio sales and use tax structure has reflected a variety of exceptions, exemptions and credits. This report omits some of these exceptions, exemptions and credits because they are considered to be inherent features of Ohio's sales and use tax. For instance, we have left out certain sales and use tax exceptions designed to conform the sales and use tax more closely to the concept of a tax on final consumption. One feature that helps limit the sales and use tax to final consumption - thereby mitigating the economic distortions otherwise created by "pyramiding" (a phenomenon that occurs when the same activity or final product is taxed more than once as it moves through the economic production chain) - is the resale exception. Ohio law provides a sales tax exception for purchased items that are subsequently resold by the purchaser in the same form (typically to a final consumer). This exception is so elemental to a sales and use tax that it should not be considered a tax preference and therefore does not appear in this report.

The report does not include a credit for sales tax paid to other states. When an item is purchased in another state and sales tax is paid to such state, Ohio law typically allows a credit for the tax paid to that state (although if the tax paid to the other state is lower than what the tax would be under Ohio law, the purchaser must pay the difference to this state). Such a credit is a fundamental structural feature of the sales and use tax, and therefore should not be considered a tax expenditure.

Another item excluded from the report is the exemption for "casual sales." The report reflects the assumption that the sales tax was inherently designed not to tax the kinds of transactions subject to the casual sales exemption. Transactions covered by the casual sales exemption are those involving the sale of an item by a person that had originally acquired the item for his or her own use, as long as the item had already been subject to a state sales or use tax. (Note, however, that sales of motor vehicles and other specified types of vehicles are not subject to the casual sales exemption.)

Other exceptions considered inherent to the Ohio sales and use tax – and therefore not appearing as tax expenditures in this report – are those sanctioned by the Ohio Constitution. One such exception pertains to food sold for human consumption. The Ohio Constitution precludes the imposition of a sales tax on food (including prepared food) consumed off the premises where sold. Another such exception is for sales of motor fuel. Sales of fuel used by motor vehicles operated on public highways are not subject to sales tax because the Ohio Constitution requires any revenue generated from an excise tax on this product to be used for highway-related purposes and not be deposited in the General Revenue Fund.[10]

[10] The State of Ohio does impose a motor vehicle fuel excise tax of 28 cents per gallon whose revenue is earmarked for highway-related purposes (construction, repair and maintenance of roads, bridges, etc.).

An even broader segment of the Ohio economy is largely excluded from the sales and use tax: the service sector. The sales and use tax is primarily structured as a tax on sales of tangible personal property, with only sales of certain services specifically enumerated in Ohio law being subject to the tax. Because the tax in its current form is primarily a tax on tangible personal property by virtue of legal structure and fiscal substance (i.e., the large majority of sales tax revenue emanates from the sale of taxable tangible personal property instead of the sale of taxable services), this report does not consider untaxed services to be subject to a specific tax preference. Therefore, for purposes of this report, the fact that the sales tax is not applied to a particular service does not mean that a tax expenditure exists for such service.

Tax Rate

The tax is imposed by the State of Ohio at a 5.5 percent rate. In addition, a local permissive sales tax may be imposed by a county or transit authority at a rate between 0.25 percent and 1.5 percent, with a maximum allowable combined permissive sales tax rate of 3.0 percent (the highest total permissive sales tax rate currently in effect is 2.25 percent, in Cuyahoga County). Local permissive sales taxes are *not* reflected in the figures provided in this report.

Significant Changes Enacted by the 128th General Assembly

There was only one sales tax law change enacted during the last two years that affects this report. The new sales tax exemption applies to building and construction materials sold to a construction contractor for incorporation into real property comprising a qualifying convention center (i.e., a center that qualifies for property tax exemption under Ohio Revised Code section 5709.084).

Sales and Use Tax Expenditure Estimates

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. We have also attempted to reflect the impact of a possible “overlapping” provision (i.e., another credit, exclusion or exemption available to the taxpayer) that effectively reduces the revenue consequences associated with the tax expenditure.

These tax expenditure estimates rely mostly on secondary data sources rather than internal, Department of Taxation-originated data sources (such as tax returns). Economic Census data - generated by the U.S. Department of Commerce, Bureau of the Census - is the most extensively used source of data for the estimates. However, various other types of data and information are used in the estimates, including those generated by other (non-Census Bureau) federal agencies, by industry trade groups, and by academic, public, and not-for-profit research organizations.

NOTE: See page 4 for description of data source codes.

A. Exempt Entities

1.01 Sales to churches and certain other non-profit organizations
Ohio Revised Code 5739.02(B)(12); originally enacted 1935

Sales to churches, non-profit entities organized under Internal Revenue Code section 501(c)(3), and certain other types of non-profit organizations are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 373.6	$ 384.8	$ 395.3	$ 407.2

Data Source Code: (B)

1.02 Sales to the state, any of its political subdivisions, and to certain other states[11]
Ohio Revised Code 5739.02(B)(1); originally enacted 1935, revised 1994

Sales of supplies, equipment, or any other normally taxable item to the State of Ohio and any of its political subdivisions are exempt from the sales and use tax. Also exempt from Ohio sales and use tax are sales to any other state (and its subdivisions) as long as such state provides an exemption for sales made to the State of Ohio (and its subdivisions).

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 179.3	$ 189.2	$ 199.1	$ 210.0

Data Source Code: (B)

1.03 Sales by churches and certain types of non-profit organizations
Ohio Revised Code 5739.02(B)(9); originally enacted 1961

Sales by churches, non-profit organizations organized under Internal Revenue Code section 501(c)(3), and certain other non-profit organizations are exempt from the sales and use tax, if the number of days on which sales are made does not exceed six in any calendar year.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 26.7	$ 27.5	$ 28.3	$ 29.1

Data Source Code: (B)

[11] The estimate excludes estimated purchases by the state of Ohio because they do not entail an appreciable state fiscal cost. This is because currently-foregone sales tax revenue is offset by decreased costs on its acquisitions. Viewed from another perspective, if the exemption were repealed the state of Ohio would experience an increase in expenditures nearly commensurate with the sales tax revenue gain.

B. Exemptions for property used or consumed to produce a product

1.04 Tangible personal property used primarily in manufacturing tangible personal property
Ohio Revised Code 5739.02(B)(42)(g); originally enacted 1935, revised 1990

Sales of tangible personal property where the purpose of the purchaser is to use the property primarily in a manufacturing operation to produce tangible personal property for sale are exempt from sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$1,490.1	$1,536.9	$1,568.9	$1,621.0

Data Source Code: (B)

1.05 Packaging and packaging equipment
Ohio Revised Code 5739.02(B)(15); originally enacted 1961

Packaging materials and packaging equipment, including labeling materials and equipment, sold to manufacturers and other qualified business are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 237.4	$ 251.7	$ 258.6	$ 266.2

Data Source Code: (B)

1.06 Sales of tangible personal property and services to electricity providers
Ohio Revised Code 5739.02(B)(40); originally enacted 2000

Tangible personal property and services used or consumed by a provider of electricity in generating, transmitting, or distributing electricity for use by others is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 387.7	$ 436.2	$ 463.0	$ 491.5

Data Source Code: (A),(B)

1.07 Tangible personal property used or consumed in agriculture and mining
Ohio Revised Code 5739.01(B)(42)(a); originally enacted 1935

Purchases of tangible personal property used or consumed directly in producing a product sold by mining, farming, agricultural, horticultural, or floricultural operations or in the production of crude oil, mining, or natural gas are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 261.2	$ 268.7	$ 276.5	$ 289.6

Data Source Code: (B),(C)

1.08 Tangible personal property used to produce printed materials[12]
Ohio Revised Code 5739.02(B)(42)(f); originally enacted 1973

Machinery, equipment, and material used in the production for sale of printed, lithographic, photostatic, or other graphic productions or re-productions are exempt from sales and use tax. The exemption also applies to property used to produce magazines distributed as controlled circulation publications.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 31.6	$ 31.8	$ 32.1	$ 32.4

Data Source Code: (B),(C)

1.09 Tangible personal property used in storing, preparing and serving food[13]
Ohio Revised Code 5739.02(B)(27); originally enacted 1981

Tangible personal property used in preparing, storing, or serving food in a commercial food establishment is exempt from the sales and use tax. Also exempt from the tax are items used to clean or maintain the property described above.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 20.2	$ 21.0	$ 21.8	$ 22.9

Data Source Code: (B)

1.10 Tangible personal property used in preparing eggs for sale
Ohio Revised Code 5739.02(B)(24); originally enacted 1974

Equipment and supplies used for the cleaning, sorting, preserving, handling, and packaging of eggs for sale are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.7	$ 2.8	$ 2.4	$ 2.4

Data Source Code: (B)

[12] This estimate was reduced by an assumed 75 percent under the expectation that most of this property is also subject to the sales tax exemption for property used primarily in manufacturing (tax expenditure item 1.04). The estimate for tax expenditure 1.04 was not adjusted for tangible personal property also subject to tax expenditure 1.08.
[13] A considerable portion of the property exempt under this provision is also subject to other sales and use tax exemptions. The revenue impact has been reduced by an assumed 50 percent to take these other exemptions into account. In contrast, the estimates for these other exemptions have not been reduced.

C. Exemptions based on specified use of property or service

1.11 Building and construction materials and services used in certain structures[14]

Ohio Revised Code 5739.02(B)(13); originally enacted 1959, revised 1994

A sales and use tax exemption is provided for building and construction materials and services sold to construction contractors for incorporation into certain types of structures. The exemption applies to structures built under a construction contract with the following entities: federal government; state of Ohio and its political subdivisions; religious institutions and other organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; businesses engaged in horticultural and livestock purposes; and certain other types of entities specified in state law.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 174.3	$ 177.8	$ 180.9	$ 184.5

Data Source Code: (B)

1.12 Tangible personal property used directly in providing public utility services

Ohio Revised Code 5739.02(B)(42)(a); originally enacted 1935

Property (including fuel) used in production, transportation, or distribution of a public utility service, or used in the repair and maintenance of machinery and equipment used directly in providing a public utility service, is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 103.9	$ 107.0	$ 110.0	$ 113.4

Data Source Code: (A),(B)

1.13 Property used to fulfill a warranty or service contract

Ohio Revised Code 5739.02(B)(42)(k); originally enacted 1986

Parts and labor used to fulfill a warranty that is provided as part of the price of tangible personal property sold are exempt from sales and use tax. In addition, parts and labor used to fulfill a warranty, maintenance, or service contract in which the vendor of such warranty or contract agrees to repair or maintain the consumer's tangible personal property, are exempt from the tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 48.6	$ 48.4	$ 48.0	$ 47.8

Data Source Code: (A)

[14] The estimate excludes estimated purchases attributable to building contracts with the state of Ohio. This reflects the assumption that currently-foregone revenue from the exemption is offset by decreased project costs for state projects. Because the tax exemption creates no appreciable fiscal cost to the state on its projects, those projects have been excluded from the estimate.

1.14 Motor vehicles sold in Ohio for use outside the state
Ohio Revised Code 5739.02(B)(23); originally enacted 1971, revised 2007and 2008

Motor vehicles sold in Ohio to non-residents, when the vehicles are immediately removed from Ohio and titled or registered in another state, are exempt from the sales and use tax. However, no exemption is permitted if the vehicle is titled or registered in a foreign nation (other than Canada), or in a U.S. state that applies its sales tax to an Ohioan purchasing a vehicle in that state.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 33.5	$ 36.9	$ 39.2	$ 41.6

Data Source Code: (A),(B)

1.15 Tangible personal property used in research and development
Ohio Revised Code 5739.02(B)(42)(i); originally enacted 1993

Qualified tangible personal property used in research and development is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 20.5	$ 21.0	$ 21.5	$ 22.1

Data Source Code: (C)

1.16 Tangible personal property and services used in providing telecommunications and satellite broadcasting services
Ohio Revised Code 5739.02(B)(34); originally enacted 1987

Tangible personal property and services used primarily in providing a telecommunications, mobile telecommunications, or satellite broadcasting service are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 92.2	$ 93.3	$ 94.0	$ 95.1

Data Source Code: (A)

1.17 Qualified tangible personal property used in making retail sales
Ohio Revised Code 5739.02(B)(35); originally enacted 1935

Sales of advertising material or catalogs used or consumed in making retail sales that price and describe property are exempt from sales and use tax. Also exempt are purchases by direct marketing vendors of items that are used in printing advertising material. In addition, equipment primarily used to accept orders for direct marketing retail sales are exempt.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 35.3	$ 36.5	$ 37.6	$ 38.9

Data Source Code: (B),(C)

1.18 Property used in transportation for hire
Ohio Revised Code 5739.02(B)(32); originally enacted 1985

The sales and use tax exemption is allowed for the sale, lease, repair and maintenance of motor vehicles primarily used in transporting personal property by a person engaged in highway transportation for hire. Parts and other items attached to/incorporated in the motor vehicle also qualify for the exemption.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 33.9	$ 35.4	$ 37.3	$ 39.4

Data Source Code: (B),(C)

1.19 Qualified call center exemption
Ohio Revised Code 5739.02(B)(45); originally enacted 2003

The sales of telecommunication services that are used directly and primarily to perform the functions of a qualified call center are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 23.5	$ 24.0	$ 24.6	$ 25.3

Data Source Code: (B),(C)

1.20 Copyrighted motion pictures and films
Ohio Revised Code 5739.01(B)(8); originally enacted 1945

Rental or sale of copyrighted motion pictures for exhibition purposes, unless solely used for advertising, is exempt from the sales and use tax. Rentals of videotaped motion pictures, DVDs, or similar items for private home use are taxable.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 7.5	$ 7.6	$ 7.8	$ 7.9

Data Source Code: (B)

1.21 Equipment used in private warehouses and distribution centers with inventory primarily shipped out of state
Ohio Revised Code 5739.01(B)(42)(j) and (B)(48); originally enacted 1994, revised 2008

A sales and use tax exemption is allowed for equipment used primarily in handling purchased sales inventory in a distribution facility when the inventory is primarily distributed outside this state to: (1) the retail stores of the person (or an affiliated entity) who owns or controls the distribution facility; or (2) customers if the facility is owned by a mail order business; or (3) independent salespersons operating as direct sellers if the facility is owned by a qualifying direct selling entity.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.4	$ 2.5	$ 2.4	$ 2.4

Data Source Code: (B)

1.22 Drugs distributed to physicians as free samples
Ohio Revised Code 5741.02(C)(7); originally enacted 2001

Drugs that are distributed free of charge to a physician licensed to prescribe, dispense, and administer drugs to a human being in the course of professional practice are exempt from the use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 13.2	$ 13.7	$ 14.1	$ 14.6

Data Source Code: (B),(C)

1.23 Property used in air, noise, or water pollution control
Ohio Revised Code 5709.25; originally enacted 1965

Tangible personal property used in air, noise, or water pollution control by holders of pollution control certificates is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 17.3	$ 17.3	$ 17.3	$ 17.3

Data Source Code: (A)

1.24 Emergency and fire protection vehicles and equipment
Ohio Revised Code 5739.02(B)(20); originally enacted 1965

Purchases by not-for-profit organizations of emergency and fire protection vehicles and equipment, for use solely in providing fire protection and emergency services (including trauma care and emergency medical services) for political subdivisions, are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.3	$ 1.3	$ 1.3	$ 1.3

Data Source Code: (B),(C)

1.25 Tangible personal property used in electronic publishing
Ohio Revised Code 5739.02(B)(42)(n); originally enacted 2007

Tangible personal property used in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing is exempt from sales and use tax. "Electronic publishing" is limited to electronic information and data access provided primarily to business customers.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 5.2	$ 5.3	$ 5.4	$ 5.6

Data Source Code: (A)

1.26 Property and services used in constructing a qualifying convention center
Ohio Revised Code 5739.02(B)(13); originally enacted 2010

Building and construction materials and services sold to a construction contractor for incorporation into real property comprising a qualifying convention center are exempt from sales tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.0	$ 1.0	$ 2.0	$ 2.0

Data Source Code: (B)

D. Exempt products and services

1.27 Prescription drugs and selected medical items
Ohio Revised Code 5739.02(B)(18); originally enacted 1961

Drugs that may only be dispensed pursuant to a prescription; certain products used by diabetics; and other qualified items used by individuals for medical purposes are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 460.2	$ 513.5	$ 571.4	$ 637.6

Data Source Code: (B)

1.28 Transportation of persons and property
Ohio Revised Code 5739.02(B)(11); originally enacted 1935

Transportation of property and most transportation of persons is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 118.5	$ 122.4	$ 127.1	$ 132.3

Data Source Code: (A),(B)

1.29 Newspapers
Ohio Revised Code 5739.02(B)(4); originally enacted 1935

Newspapers purchased at places of business, vending machines, or through subscription and published at least bi-weekly are exempt from sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 17.8	$ 17.1	$ 16.3	$ 16.3

Data Source Code: (B)

1.30 Magazine subscriptions
Ohio Revised Code 5739.02(B)(4); originally enacted 1935, revised 2002

Magazine subscriptions and company newsletters, organizational magazines, or other controlled circulation material are exempt from the sales and use tax. Individual magazine purchases are taxable.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 12.0	$ 11.7	$ 11.3	$ 11.0

Data Source Code: (B)

1.31 Artificial limbs, prostheses, wheelchairs and other durable medical equipment
Ohio Revised Code 5739.02(B)(19); originally enacted 1973, revised 1978, 2001, 2003

Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment are exempt from the sales and use tax. To qualify for the exemption, the property must be purchased pursuant to a prescription.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 16.5	$ 16.9	$ 17.3	$ 17.5

Data Source Code: (B)

1.32 Exemption for used mobile homes and reduced taxable price on new mobile homes
Ohio Revised Code 5739.02(B)(39), 5739.0210; originally enacted 2000

Sales of qualified used manufactured and mobile homes are exempt from the sales and use tax. In addition, for sales tax purposes, the dealers of new manufactured and mobile homes are considered consumers of homes they sell, so sales tax is paid based on dealer's cost rather than on the amount paid by the ultimate consumer.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.7	$ 2.7	$ 2.7	$ 2.8

Data Source Code: (C)

1.33 $800 tax cap on qualified fractionally-owned aircraft
Ohio Revised Code 5739.025(G); originally enacted 2003

The sales tax on the sum of the shares of a qualified fractionally-owned aircraft shall be a maximum of $800 and be allocated to each fractional owner according to percentage of ownership in the aircraft.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.0	$ 1.0	$ 1.0	$ 1.0

Data Source Code: (C)

1.34 Sales of materials and services for maintenance and repair of aircraft
Ohio Revised Code 5739.02(B)(49); originally enacted 2008

Sales of materials, parts, equipment and engines used in the repair or maintenance of aircraft or avionics systems, as well as sales of maintenance and repair services, are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 3.8	$ 3.9	$ 3.9	$ 4.0

Data Source Code: (A),(C)

1.35 Flight simulators
Ohio Revised Code 5739.02(B)(50); originally enacted 2008

The sales of full flight simulators that are used for pilot or flight-crew training are exempt from the sales and use tax. Also exempt are sales of repair or replacement parts or components of such flight simulators, as well as repair or maintenance services.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.6	$ 1.6	$ 1.6	$ 1.6

Data Source Code: (C)

E. Miscellaneous Provisions

1.36 Value of motor vehicle trade-ins
Ohio Revised Code 5739.01(H)(2); originally enacted 1981

The value of vehicles traded-in on the purchase of new motor vehicles is exempt from sales and use tax and may be deducted from the taxable base of the new motor vehicle.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 107.1	$ 118.2	$ 130.2	$ 143.9

Data Source Code: (B),(C)

1.37 Discount for vendors
Ohio Revised Code 5739.12, 5741.12; originally enacted 1981

A 0.75-percent discount on sales tax collected by vendors, and on use tax collected by out-of-state registered sellers, is granted if the tax due is remitted by the due date of tax return.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 46.6	$ 47.8	$ 49.4	$ 51.6

Data Source Code: (A)

1.38 Food sold to students on school premises
Ohio Revised Code 5739.02(B)(3); originally enacted 1937

Sales of food to students in a cafeteria, dormitory, fraternity, or sorority maintained in a public, private, or parochial school, college, or university are exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 15.4	$ 15.9	$ 16.6	$ 17.3

Data Source Code: (B),(C)

1.39 Value of watercraft trade-ins
Ohio Revised Code 5739.01(H)(3); originally enacted 1990

The value of any watercraft, watercraft and trailer, or outboard motor traded-in on a new or used watercraft or outboard motor sold by a licensed watercraft dealer is exempt from the sales and use tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.2	$ 1.3	$ 1.5	$ 1.6

Data Source Code: (B)

F. Tax expenditures with annual revenue impact below $1 million

1.40 Sales to non-commercial, educational broadcast stations
Ohio Revised Code 5739.02(B)(12); originally enacted 1981

1.41 Sales to veterans' headquarters
Ohio Revised Code 5739.02(B)(33); originally enacted 1986

1.42 Sales to facilities financed with public hospital bonds
Ohio Revised Code 140.08; originally enacted 1971

1.43 Sales of animals by non-profit animal shelters
Ohio Revised Code 5739.02(B)(28); originally enacted 1981

1.44 Agricultural "use on use" property
Ohio Revised Code 5739.02(B)(17); originally enacted 1961

1.45 Agricultural land tile and portable grain bins
Ohio Revised Code 5739.02(B)(30) and (31); originally enacted 1985

1.46 Tangible personal property used or consumed in commercial fishing
Ohio Revised Code 5739.02(B)(42)(d); originally enacted 1945

1.47 Ships and rail rolling stock used in interstate or foreign commerce
Ohio Revised Code 5739.02(B)(14); originally enacted 1938

1.48 Sales of property for use in non-profit presentations of music, dramatics, the arts, and related fields
Ohio Revised Code 5739.02(B)(12); originally enacted 1982

1.49 Property for use in a retail business outside Ohio
Ohio Revised Code 5739.02(B)(21); originally enacted 1968

1.50 Property used in energy or waste conversion facilities
Ohio Revised Code 5709.20, 5709.25; originally enacted 1978

1.51 Sales of computers and computer equipment to certified teachers
Ohio Revised Code 5739.02(B)(37); originally enacted 1997

1.52 Purchases of qualified tangible personal property to qualified motor racing team
Ohio Revised Code 5739.02(B)(40); originally enacted 1997

1.53 Sales of tangible personal property and services for maintenance and repair of qualified fractionally-owned aircraft[15]
Ohio Revised Code 5739.02(B)(44); originally enacted 2003

1.54 Bulk water for residential use
Ohio Revised Code 5739.02(B)(25); originally enacted 1978

1.55 Refundable deposits on beverage containers
Ohio Revised Code 5739.01(H)(1); originally enacted 1979

1.56 25 percent refund for qualified tangible personal property used by electronic information service providers
Ohio Revised Code 5739.071; originally enacted 1993

[15] This tax expenditure is shown as having a minimal revenue impact under the expectation that most of this property is also eligible for the sales tax exemption for materials and services used in the maintenance and repair of aircraft (tax expenditure item 1.34). In contrast, the estimate for tax expenditure 1.34 was not reduced to reflect property and services subject to this tax expenditure.

Individual Income Tax

Ohio was first authorized to levy an income tax in 1912 by a constitutional amendment. However, it was 60 years later before the first state individual income tax was enacted in 1972. The income tax was designed to be closely based on federal law to facilitate compliance by the taxpayer and ease of administration by the state.

Tax Base

The amount reported as federal adjusted gross income (FAGI) to the U.S. Internal Revenue Service plus or minus adjustments according to Ohio income tax law.

Tax Rate

Ohio has a graduated income tax with nine rate classes. Changes to both rates and rate classes are scheduled to occur that will affect the upcoming biennium. Am. Sub. House Bill 66 of the 126th General Assembly provided a 21 percent reduction in individual income tax rates to be phased in over a five year period, resulting in a 4.2 percent annual reduction over the 5-year period. The reductions began in tax year 2005, but the last one, originally scheduled for tax year 2009, was delayed for two years (Sub. House Bill 318, 128th General Assembly). The final 4.2 percent reduction is scheduled to take place in tax year 2011, resulting in tax rates ranging from 0.587 percent at the bottom income bracket to 5.925 percent at the top income bracket.

In addition, annual indexing of the income tax brackets took effect in tax year 2010. A provision contained in Am. Sub. Senate Bill 261 (124th General Assembly) requires annual adjustments to the individual income tax brackets based on the growth in the gross domestic product deflator during the preceding calendar year (although the calculated amounts are ultimately required to be rounded the nearest $50).[16] Thus, for tax year 2010 the bottom tax bracket ends at $5,050 of Ohio taxable income, compared to $5,000 during tax year 2009; in 2010 the top income tax bracket begins at $201,800 of Ohio taxable income, compared to $200,000 in 2009. The changes to the brackets are calculated in July of each year and apply to the taxable year during which the changes are calculated.[17]

Significant Changes Enacted by the 128th General Assembly

Am. Sub. House Bill 1, the main operating appropriations bill for the FY10-11 biennium, made changes pertaining to several individual income tax expenditures. The legislation increased the overall amount of credits permitted to be issued by the Ohio Department of Development under the Technology Transfer ("Edison Center") Tax Credit program, from $30 million to $45 million. It also created a motion picture tax credit. The credit is based on eligible motion picture production expenditures in Ohio. In order to receive this credit, motion picture companies must apply to the Department of Development which administers the program. The total amount of available motion picture tax credits is $30 million over the FY 2012-2013 biennium ($20 million per biennium thereafter), and no more than $5 million in credits are allowed per production. The credit is refundable in nature. Finally, House Bill 1 provided an income tax deduction for the cost of health insurance coverage incurred on behalf of adult children and other qualifying relatives who, due to income and support limitations, are not considered dependents under federal tax law.

Sub. Senate Bill 131 extended the alternative fuel retailer tax credit through the 2011 taxable year. An earlier form of this credit was originally enacted by Am. Sub. House Bill 119 of the 127th General Assembly but was not included in the previous tax expenditure report, because it was due to expire after 2009.

Am. Sub. House Bill 48 provided that the bonuses to veterans of the Persian Gulf, Afghanistan, and Iraq conflicts that were authorized by the voters of Ohio in November 2009 would be exempt from Ohio individual income tax. A subsequent decision by the Internal Revenue Service excluded the bonuses from FAGI, and thus from federal income taxation. Because of the IRS decision to exclude such bonuses from FAGI, taxpayers will not use the Ohio-enacted exemption and therefore the exemption is not considered a tax expenditure for this report.

[16] This indexing was originally to begin in tax year 2005 but was postponed by H.B. 66 until tax year 2010.

[17] Reductions in tax rates are not considered tax expenditures for purposes of this report. Similarly, alterations in tax brackets do not meet the operative definition of a tax expenditure, which is why the annual indexation of the individual income tax brackets is not included as an expenditure item in this report.

Am. Sub. House Bill 519 created an income tax deduction for any loss for a wagering transaction that is allowed as an itemized federal income tax wager loss deduction and which was included as an itemized deduction on the taxpayer's federal income tax return. Since this exemption does not take effect until tax year 2013, it will not have an impact in the coming biennium, and thus is not included in this report.

Individual Income Tax Expenditures

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. In addition, we have attempted to reflect the impact of possible "overlapping" provisions (i.e., other credits, exemptions or deductions available to the taxpayer) that would also dampen the potential revenue gain of the repealed tax expenditure.

Various data sources were used to derive the tax expenditure estimates. Most of the tax expenditure estimates were based on information taken from individual income tax returns filed with the Department Of Taxation for tax years 2007 and 2008. However, some of the estimates were derived from secondary data sources, such as the Internal Revenue Service, other state agencies and published public finance research.

NOTE: See page 4 for description of data source codes.

A. Exemptions, exclusions, and deductions

2.01 Personal, spousal, and dependent exemption
Ohio Revised Code 5747.025; originally enacted 2002

An exemption may be claimed for the taxpayer, taxpayer's spouse, and each dependent. The exemption was $1,550 in tax year 2009 and $1,600 in tax year 2010, and is expected to be $1,650 in tax year 2011 and $1,700 in tax year 2012.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 547.9	$ 556.1	$ 560.2	$ 581.9

Data Source Code: (A)

2.02 Social security and railroad retirement benefits
Ohio Revised Code 5747.01(A)(5); originally enacted 1972

All social security and railroad retirement benefits included in federal adjusted gross income may be excluded from the calculation of Ohio adjusted gross income.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 237.8	$ 239.5	$ 266.8	$ 280.1

Data Source Code: (A)

2.03 Deduction for taxpayers not eligible for an employer-sponsored medical plan
Ohio Revised Code 5747.01(A)(11); originally enacted 1999

Qualifying taxpayers who are not able to participate in an employer-sponsored medical plan may deduct any amounts paid for medical care insurance.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 19.5	$ 20.9	$ 21.1	$ 22.7

Data Source Code: (A),(B)

2.04 Exemption for disability income
Ohio Revised Code 5747.01(A)(4); originally enacted 1975

Disability income included in federal adjusted gross income is excluded from the calculation of Ohio adjusted gross income.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 32.7	$ 33.2	$ 33.0	$ 34.1

Data Source Code: (A)

2.05 Exemption for active-duty military income
Ohio Revised Code 5747.01(A)(24); originally enacted 2006

Military income included in federal adjusted gross income may be excluded from the calculation of Ohio adjusted gross income if the pay is received for active duty service in military, military reserve, or national guard outside the state.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 18.0	$ 19.0	$ 20.0	$ 21.2

Data Source Code: (B)

2.06 Deduction for excess medical expenses
Ohio Revised Code 5747.01(A)(11); originally enacted 1999

Qualifying taxpayers may claim a deduction for the amount of medical expenses that exceed 7.5% of their federal adjusted gross income.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 68.6	$ 71.6	$ 76.1	$ 79.3

Data Source Code: (A),(B)

2.07 Exemption for pre-1972 trusts
Ohio Revised Code 5747.01(FF) and 5751.01(E)(11); originally enacted 2006

Qualifying trusts created before 1972 that have elected to be subject to the commercial activity tax are exempt from the individual income tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 9.3	$ 9.6	$ 9.9	$ 10.3

Data Source Code: (A)

2.08 Deduction for long-term care insurance premiums
Ohio Revised Code 5747.01(A)(11); originally enacted 1999

A taxpayer may deduct the full amount of long-term health care premiums.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 7.1	$ 7.5	$ 7.5	$ 7.9

Data Source Code: (C)

2.09 Deduction for contributions to college savings programs
Ohio Revised Code 5747.01(A)(10) and 5747.70; originally enacted 1999

A taxpayer may receive a deduction, limited to $2,000 per beneficiary, for contributions to either the prepaid tuition or variable college savings programs.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 10.6	$ 10.8	$ 11.5	$ 12.2

Data Source Code: (A)

2.10 Deduction for contributions to medical savings accounts
Ohio Revised Code 5747.01(A)(14); originally enacted 1996

A taxpayer may receive a deduction for contributions to and interest earned by a medical savings account.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.1	$ 1.1	$ 1.2	$ 1.3

Data Source Code: (A)

2.11 Deduction for military retirement income
Ohio Revised Code 5747.01(A)(26); originally enacted 2008

Military retirement income included in federal adjusted gross income is excluded from the calculation of Ohio adjusted gross income.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 25.3	$ 26.8	$ 27.0	$ 28.6

Data Source Code: (A),(B)

2.12 Deduction for health insurance coverage for qualifying adult children and other dependents
Ohio Revised Code 5747.01(A)(11); originally enacted 2009

To the extent included in federal adjusted gross income, a deduction is allowed for amounts paid for health care insurance provided to a qualifying adult child or relative who, but for the fact such person does not meet the income and support limitations in Internal Revenue Code section 152(d)(1)(B) and (C), would be considered a dependent under federal tax law.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.4	$ 3.4	$ 3.5	$ 3.7

Data Source Code: (B),(C)

B. Non-business tax credits

2.13 Joint filer credit
Ohio Revised Code 5747.05(G); originally enacted 1973

Taxpayers using married filing joint status may claim a joint filing credit if each spouse has at least $500 in earned income. The maximum credit allowed in any year is $650.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 228.8	$ 231.2	$ 222.0	$ 225.9

Data Source Code: (A)

2.14 $20 personal exemption credit
Ohio Revised Code 5747.022; originally enacted 1983

Taxpayer may claim a $20 credit for each personal exemption claimed.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 163.4	$ 164.8	$ 165.3	$ 166.7

Data Source Code: (A)

2.15 Retirement income credit
Ohio Revised Code 5747.055(B); originally enacted 1983

Taxpayers with qualified retirement income included in Ohio adjusted gross income receive a tax credit up to $200.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 129.9	$ 133.5	$ 135.7	$ 139.5

Data Source Code: (A)

2.16 Resident credit for income taxed by another state
Ohio Revised Code 5747.05(B); originally enacted 1972

Ohio residents may claim a credit for taxes paid to another state. The credit is the lesser of the amount of the tax levied by the other state or the amount of Ohio income tax that would otherwise have been levied on such income.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 127.4	$ 131.9	$ 141.3	$ 151.9

Data Source Code: (A)

2.17 $50 credit for taxpayers aged 65 years or older
Ohio Revised Code 5747.05(C); originally enacted 1972

Taxpayers aged 65 or older receive a $50 tax credit per return.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 32.3	$ 33.0	$ 33.5	$ 34.2

Data Source Code: (A)

2.18 Credit for taxpayers with income below $10,000
Ohio Revised Code 5747.056; originally enacted 2005

Taxpayers having Ohio taxable income of $10,000 or less receive a credit that eliminates their tax liability.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 15.5	$ 15.2	$ 13.2	$ 12.7

Data Source Code: (A)

2.19 Dependent care credit
Ohio Revised Code 5747.054; originally enacted 1988

Taxpayers with qualifying child and dependent care expenses and income below $40,000 can claim a credit based on the federal dependent care credit.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 7.8	$ 6.3	$ 6.3	$ 6.3

Data Source Code: (A)

2.20 Campaign contribution credit
Ohio Revised Code 5747.29; originally enacted 1995

Taxpayers may receive a credit of up to $50 ($100 for a joint return) for campaign contributions to candidates running for statewide office, state representative, or state senator.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 4.5	$ 4.9	$ 4.7	$ 5.1

Data Source Code: (A)

2.21 Lump sum retirement income credit
Ohio Revised Code 5747.055(C) through (E); originally enacted 1972

Lump sum distributions received on account of retirement from a qualified retirement plan may be given special tax treatment. The entire balance in the account must be received during one year.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.3	$ 1.3	$ 1.4	$ 1.5

Data Source Code: (A)

2.22 Displaced worker job training credit
Ohio Revised Code 5747.27; originally enacted 1994

A taxpayer who pays for his or her own job training within 12 months of losing his or her job may claim a tax credit for the cost of the training. The credit is the lesser of $500 or 50 percent of the cost of training.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.8	$ 0.9	$ 1.0	$ 1.0

Data Source Code: (A)

2.23 Credit for adoption related expenses
Ohio Revised Code 5747.37; originally enacted 1999

Taxpayers participating in a legal adoption can receive an income tax credit of $1,500 per child.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.4	$ 2.4	$ 2.5	$ 2.5

Data Source Code: (A),(C)

C. Business tax credits

2.24 Historic structure rehabilitation credit[18]
Ohio Revised Code 149.311(A), 5725.151, 5733.47, 5747.76; originally enacted 2007, amended 2008

A tax credit equal to 25% of qualified rehabilitation expenditures is available to owners of historic structures.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 24.7	$ 40.6	$ 41.9	$ 59.9

Data Source Code: (B)

[18] The credit is also available to qualifying dealer in intangibles taxpayers and corporate franchise taxpayers.

2.25 Technology investment tax credit ("Edison Center" tax credit)[19]
Ohio Revised Code 122.151, 5707.05, 5727.41, 5733.34, 5747.33; originally enacted 1996

A tax credit is available for investors who provide capital for small, Ohio-based research and development and technology transfer companies.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 3.4	$ 4.0	$ 3.9	$ 3.8

Data Source Code: (B)

2.26 Motion picture tax credit[20]
Ohio Revised Code 122.85, 5733.59, 5747.66; originally enacted 2009

A refundable tax credit may be claimed for Ohio production expenditures by eligible motion picture productions. The credit equals 35 percent of the wages of resident cast and crew, and 25 percent of all other eligible expenditures. The credit is based on the lesser of initially-budgeted production expenditures or actual production expenditures. No production may receive more than $5 million in tax credits, and the total amount of issued credits may not exceed $20 million per fiscal biennium (with the exception of the FY10-11 biennium, which was $30 million).

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.0	$ 8.5	$ 19.8	$ 9.4

Data Source Code: (B)

2.27 Credit for alternative fuel sold at retail[21]
Ohio Revised Code 5747.77; originally enacted 2007, amended 2010

Through taxable year 2011, alternative fuel sold and dispensed at a metered pump located at a retail service station is subject to a nonrefundable tax credit. E85 blend fuel and blended diesel fuel containing at least 20 percent biodiesel are subject to a credit of 15 cents per gallon during calendar year 2010 and 13 cents per gallon during calendar year 2011. Blended diesel fuel containing at least 10 percent biodiesel but less than 20 percent biodiesel is subject to a 7.5 cents per gallon credit during calendar years 2010 and 2011, and blends containing at least 6 percent biodiesel but less than 10 percent biodiesel are subject to a 3.75 cents per gallon credit for those years.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.8	$ 1.0	$ 1.0	$ 0.0

Data Source Code: (B), (C)

D. Tax expenditures with revenue impact below $1 million

2.28 Lump sum distribution credit
Ohio Revised Code 5747.05(D); originally enacted 1972

2.29 Deduction for organ donation expenses
Ohio Revised Code 5747.01(A)(25); originally enacted 2007

2.30 Enterprise zone day care/training credit[22]
Ohio Revised Code 5709.65; originally enacted 1982

[19] This credit is also available to qualifying corporate franchise, public utility, and dealer in intangibles taxpayers.
[20] This credit is also available to qualifying corporate franchise taxpayers.
[21] Corporate franchise taxpayers were eligible for the original version of this tax credit enacted in 2007 but have not been eligible for the credit since tax year 2010.
[22] This credit is also available under the dealer in intangibles tax and insurance premiums tax.

2.31 Enterprise zone employee credit
Ohio Revised Code 5709.66; originally enacted 1994

2.32 Grape production credit
Ohio Revised Code 5733.32, 5747.28; originally enacted 1995

2.33 Ethanol plant investment credit
Ohio Revised Code 901.13, 5733.46, 5747.75; originally enacted 2002

Corporate Franchise Tax

The corporate franchise tax was first levied in 1902, on the value of capital stock located in Ohio. An alternative tax base, net income, was added in 1972. In tax year 2005 (the last year before the tax began to be phased down), 72 percent of corporate franchise tax liability was based on net income. However, by tax year 2010 almost the entire tax will again be based on net worth; furthermore, the tax will generate a mere fraction of the revenue that was produced in tax year 2005.

The reason for the nearly complete repeal of the tax is the enactment of a business tax reform package in 2005 (Am. Sub HB 66, 126th General Assembly). Under that 2005 law change, the corporate franchise tax was phased out by 20 percentage-point increments over a five-year period (tax years 2006-2010) for all but financial institutions, affiliates of financial institutions, and affiliates of insurance companies. The phase-out of the corporate franchise tax coincides with the phase-in of the commercial activity tax. Other than for the corporate entities listed above, beginning in 2010 the corporate franchise tax was repealed.

Tax Base and Tax Rate

Regular (non-financial institution) corporate franchise taxpayers pay tax on the highest of three tax computations:
1. Net worth tax: Ohio net worth, multiplied by 4.00 mills; maximum $150,000 liability.
2. Net income tax: Ohio net income, multiplied by 5.1 percent on the first $50,000 and 8.5 percent on any excess above $50,000.
3. Minimum tax: $50 for small taxpayers; $1,000 for larger taxpayers.

Financial institution corporate franchise taxpayers are subject to a 13 mill (1.3 percent) tax on net worth, with a minimum tax of $50 or $1,000.

Significant Changes Enacted by the 128th General Assembly

The only notable change during the previous General Assembly was the enactment of the New Markets Tax Credit (Am. Sub. House Bill 1). The credit is available only to projects for which a federal New Markets Tax Credit has been approved. See below for a brief explanation and the estimated revenue impact of this new credit.

Corporate Franchise Tax Expenditures in this Report

This report has been structured to reflect tax expenditures in effect during fiscal years 2012 and 2013. A limited set of corporations will remain as regular corporate franchise taxpayers even after the full implementation of the tax reform changes enacted by HB 66, so most tax expenditures for regular corporate franchise taxpayers still technically remain in existence. But because there are relatively few remaining regular corporate franchise taxpayers, the revenue impact from tax expenditures used by those entities will be small. For this reason, we have excluded all regular corporate franchise tax expenditures from this report. Only those expenditures available to financial institution taxpayers are in this report.

Excluded from the report is a refundable tax credit to defray the losses of lenders to the venture capital program created under Am. Sub. SB 180 (124th General Assembly). While the credit could have a fiscal impact during the time period reflected in this report, the Department has no data to estimate the possible value of that credit.

Corporate Franchise Tax Expenditure Estimates

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. The tax expenditure estimates were primarily based on information taken from corporate franchise tax returns filed with the Department of Taxation.

NOTE: See page 4 for description of data source codes.

3.01 Goodwill, appreciation, and abandoned property of financial institutions
Ohio Revised Code 5733.056(B)(4); originally enacted 1933

The values of goodwill, appreciation, abandoned property, and investments in production credit associations are exempted from the net worth tax base of financial institutions.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 111.9	$ 115.2	$ 119.6	$ 123.0

Data Source Code: (A)

3.02 Credit for financial institution investment in a dealer in intangibles
Ohio Revised Code 5733.45; originally enacted 2001

Financial institutions are allowed a nonrefundable credit which is lesser of (a) the amount of tax paid by a qualifying dealer in intangibles under ORC chapter 5707, or (b) the cost of the financial institution's ownership interest in a qualifying dealer in intangibles multiplied by the dealer's Ohio ratio computed under ORC section 5725.15 multiplied by eight mills.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.4	$ 1.4	$ 1.4	$ 1.4

Data Source Code: (A)

3.03 State chartered savings and loan credit
Ohio Revised Code 5733.063; originally enacted 1983

A credit is allowed equal to the difference between the assessment paid by state-chartered savings and loan associations to the Division of Savings and Loans and the amount paid in supervisory fees to the Federal Savings and Loan Insurance Corporation.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.5	$ 1.5	$ 1.5	$ 1.5

Data Source Code: (A)

3.04 New markets tax credit[23]
Ohio Revised Code 5725.33, 5729.16, 5733.58; originally enacted 2009

Taxpayers with an equity investment in a qualified community development entity may claim a nonrefundable tax equal to a designated percentage of the adjusted purchase price of qualified low-income community investments. The credit percentage is zero percent in the first two years of the investment, 7 percent in the third year of the investment, and 8 percent in each of the four following years (for a total credit of 39 percent).

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 0.0	$ 0.0	$ 0.0	$ 1.7

Data Source Code: (C)

[23] This credit is also available under the domestic insurance premiums tax and foreign insurance premiums tax.

Commercial Activity Tax

Established by Am. Sub. House Bill 66 (126th General Assembly) and made effective on July 1, 2005, the commercial activity tax (CAT) is a business privilege tax measured by gross receipts on business activities in this state. The tax was a central element in the tax reform package enacted by HB 66. The CAT now serves as Ohio's primary business tax, replacing both the tangible personal property tax and the corporate franchise tax.

Taxpayers

The CAT applies to business entities with taxable gross receipts of more than $150,000 per calendar year. The tax applies to most businesses above the $150,000 threshold, regardless of organizational form: sole proprietorships, partnerships, LLCs, and corporations are subject to the tax. Although the tax applies to most kinds of business entities, there are some notable exemptions. Non-profit entities are exempt from the tax. A fairly limited number of other businesses, such as certain types of public utilities, insurance companies, financial institutions, and the affiliates of insurance companies and financial institutions, are also exempt from the tax since they are subject to an alternative tax. The CAT applies whether the business is based in this state or is located outside of this state as long as that business has "substantial nexus" with this state.

The tax is paid on an annual or quarterly basis. Each May, taxpayers with annual taxable gross receipts of $1 million or below must file an annual return and pay a $150 annual tax. All other taxpayers report and pay the tax on a quarterly basis, with the return and payment due by the 10th day of the second month following the end of the calendar quarter (for example, taxes for the third quarter of 2010 were required to be paid by November 10, 2010).

Tax Base

The CAT is measured by taxable gross receipts on business activities within the state, defined as the total amount realized, without deduction for the cost of goods sold or other expenses incurred, from activities that contribute to the production of gross income. Certain types of receipts are excluded from the definition of taxable gross receipts, including (but not limited to) cash discounts, certain types of interest, dividend, and capital gains income, income in the form of repayment principal of a loan, and gifts or charitable contributions.

Tax Rate

The CAT is levied at a rate of 0.26% on annual taxable gross receipts in excess of $1 million. Each taxpayer pays $150 on its first $1 million in annual taxable gross receipts.

Definition of Commercial Activity Tax Expenditures

The following characteristics are designated as meeting the definition of a CAT tax expenditure: (1) any exclusion, deduction or credit *not* contained in Ohio Revised Code (ORC) sections 5751.01 or 5751.011; or (2) any gross receipts exclusion or deduction contained in ORC sections 5751.01 or 5751.011 that benefits a specific class of taxpayers. In all cases, the exclusion, deduction, or credit must produce tax savings for taxpayers and an associated loss in state GRF tax revenue in order to be considered a tax expenditure.

Significant Changes Enacted by the 128th General Assembly

Changes were made to several tax credit programs by Am. Sub. House Bill 1. The bill changed the job creation tax credit in various ways. The basis for computing the annual tax credit was altered. Instead of being based on the withholding tax associated with new employees, the credit is now based on the amount by which (1) the Ohio income tax withholding on the wages and salaries of employees located at project site exceeds (2) baseline income tax withholding (i.e., withholding on employees during the 12 months immediately preceding the beginning of the agreement, with an annual pay increase factor determined by the Tax Credit Authority). The legislation also changed the length of time a company must maintain operations at the project site, and the consequences if those operations are terminated early.

The job retention tax credit was also amended by this legislation. The amount of minimum required capital investment at the project site was reduced, and the requirement pertaining to the minimum number of retained employees at the site was altered. Other notable changes to the credit included: setting an annual "cap" on the aggregate amount of credits that may be issued in any year; making domestic and foreign insurance companies eligible for the credit; and allowing the withholding tax on part-time employees to be included in the tax credit computation.

A bill enacted by the 129th General Assembly in March 2011 also affected the job retention tax credit. Sub. House Bill 58 allows a refundable version of the job retention tax credit to be issued to a taxpayer meeting certain conditions. To qualify for the refundable credit, a taxpayer must have at least 1,000 employees located at the project site and must make capital investments at the site totaling at least $25 million over a qualifying three-year period. Furthermore, during 2010 the business taxpayer must have received from another state a written offer of financial incentives sufficiently large to induce it to relocate its operations from Ohio to that state. No more than $8 million in aggregate refundable job retention tax credits may issued in any calendar year.

Commercial Activity Tax Expenditure Estimates

The estimates of these tax expenditures are based on various data sources. Some of the estimates use data reported to the Department of Taxation while other estimates were generated using secondary data sources, such as economic data reported by the U.S. Bureau of the Census. We should note that many of the CAT expenditure estimates in this report are based on estimates that were produced during the HB 66 legislative process.

This report reflects the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. For most of the taxes included in this report, the General Revenue Fund accounts for a specific percentage share of tax receipts, as provided in Ohio law. In such cases, we are able to fairly easily ascertain the portion of the total amount of a tax expenditure that is attributable to the General Revenue Fund (GRF).[24] The most notable exception to this simple "percentage-based" standard involves commercial activity tax expenditures: their impact on the GRF is not as simple to identify because of the unique manner for which revenue from that tax is to be used.

The 2005 tax reform legislation that enacted the commercial activity tax also repealed the local tangible personal property tax and - for most taxpayers - the state corporation franchise tax (Am. Sub. H.B. 66, 126th General Assembly). To ameliorate the local fiscal impact of repealing the tangible personal property tax, a fairly complex revenue replacement mechanism tied to local 2004 base-year personal property tax valuation levels was established for school districts and local governments. These payments will soon begin to phase-out, with full repeal in FY 2019. That said, current law provides 70 percent of commercial activity tax revenue to school districts even after the replacement payments begin to decline.[25] Local governments, on the other hand, are to receive no commercial activity tax revenue beyond the amount needed to make the prescribed replacement payments.

A central feature of the replacement payments is the requirement for the GRF to make up any shortfall between available commercial activity tax revenue and the replacement payments to school districts and local governments. During the FY11 through FY13 period, the payments to both schools and local governments are projected to exceed commercial activity tax revenues, thereby requiring the GRF to make up that difference and essentially subsidize the replacement payments (as occurred during FY10). The size of this subsidy is difficult to project, but is expected to exceed the revenue foregone from any one of the indicated commercial activity tax expenditures.[26] As a result of this expected subsidy and because of the benefit of providing a simple yet reasonable reporting convention, **the report reflects the assumption that the GRF bears the full revenue impact of each commercial activity tax expenditure during the FY10-FY13 period.**

NOTE: See page 4 for description of data source codes.

[24] As indicated above, the estimated "gross" (or "all-funds") revenue impact of each tax expenditure is not reflected in this report; only the estimated impact on the state GRF is included.

[25] The difference between the aggregate 70 percent-of-CAT funding level and the aggregate phased-down replacement payments is to be used for "school purposes," but no formula yet exists that specifically designates how that revenue will be distributed among schools.

[26] There may be one exception: the revenue impact of the $1 million exclusion may exceed the amount of the GRF subsidy.

A. Exclusions and deductions

4.01 Exclusion of first $1 million of taxable gross receipts
Ohio Revised Code 5751.03; originally enacted 2005

The first $1 million of each taxpayer's annual taxable gross receipts are not subject to the commercial activity tax rate. Instead, each taxpayer pays $150 on its first $1 million in annual taxable gross receipts.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 197.0	$ 207.0	$ 211.0	$ 215.0

Data Source Code: (A)

4.02 State and federal fuel excise tax exclusion
Ohio Revised Code 5751.01(F)(2)(r); originally enacted 2005

An amount equal to federal and state motor fuel excise taxes paid is excluded from the taxable gross receipts realized from the sale of motor fuel by a licensed motor fuel dealer, licensed retail dealer, or licensed permissive motor fuel dealer.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 32.1	$ 32.1	$ 32.0	$ 32.0

Data Source Code: (A),(B)

4.03 Qualifying distribution center receipts exclusion
Ohio Revised Code 5751.01(F)(2)(z); originally enacted 2006

Purchases made by a qualifying Ohio distribution center, and destined for a location outside of Ohio, are excluded from the supplier's taxable gross receipts. A qualifying Ohio distribution center is a facility in which the center's total sales exceed $500 million and more than 50% of the center's total sales are shipped to a location outside of Ohio.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 56.0	$ 56.0	$ 56.0	$ 56.0

Data Source Code: (A)

4.04 State and federal cigarette excise tax exclusion
Ohio Revised Code 5751.01(F)(2)(q); originally enacted 2005

An amount equal to federal and state excise taxes paid for cigarette or tobacco products is excluded from the taxable gross receipts from the sale of such cigarette or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer or seller.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 5.8	$ 5.7	$ 5.5	$ 5.3

Data Source Code: (A),(B)

4.05 Exclusion of real estate brokerage gross receipts that are not retained
Ohio Revised Code 5751.01(F)(3); originally enacted 2005

In the case of a taxpayer when acting as a real estate broker, any fees not retained by the broker are not included in the broker's taxable gross receipts.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.2	$ 1.2	$ 1.2	$ 1.2

Data Source Code: (C)

4.06 State and federal alcoholic beverage excise tax exclusion
Ohio Revised Code 5751.01(F)(2)(s); originally enacted 2005

An amount equal to federal and state excise taxes paid for beer or intoxicating liquor is excluded from the taxable gross receipts from the sale of such beer or intoxicating liquor.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.9	$ 1.9	$ 1.9	$ 1.9

Data Source Code: (A),(B)

4.07 Professional employer organization exclusion
Ohio Revised Code 5751.01(F)(2)(x); originally enacted 2005

Property, money, and other amounts received by a professional employer organization from a client employer, in excess of the administrative fee charged by the professional employer organization to the client employer, is excluded from the taxable gross receipts of the professional employer organization.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.4	$ 2.4	$ 2.4	$ 2.4

Data Source Code: (B)

4.08 Motor vehicle transfer exclusion
Ohio Revised Code 5751.01(F)(2)(t); originally enacted 2005

Receipts realized by a new or used motor vehicle dealer from the sale or transfer of a motor vehicle to another dealer when the sole purpose of the sale or transfer is to meet a specific customer's preference for a motor vehicle are excluded from taxable gross receipts of motor vehicle dealers.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.7	$ 1.7	$ 1.7	$ 1.7

Data Source Code: (C)

4.09 Exclusion of certain services to financial institutions
Ohio Revised Code 5751.01(F)(2)(u); originally enacted 2005

Exclusion of receipts received from a financial institution for certain services provided to the financial institution, as long as the financial institution and the entity providing those services share common ownership.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.0	$ 1.0	$ 1.0	$ 1.0

Data Source Code: (C)

B. Tax credits

4.10 Credit for increased qualified research and development expenses[27]
Ohio Revised Code 5733.351 and 5751.51; originally enacted 2002

Taxpayers may take a nonrefundable credit equal to 7 percent of the increased qualified research expenses incurred in Ohio.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 13.9	$ 14.2	$ 14.6	$ 16.0

Data Source Code: (A)

4.11 Job creation credit[28]
Ohio Revised Code 122.17, 5725.32, 5729.032, 5733.0610(A), 5747.058(A), and 5751.50(A); originally enacted 1993

A qualifying business may be granted a refundable tax credit though an agreement with the Ohio Tax Credit Authority. The credit is a designated percentage of the amount of a company's "excess income tax revenue," defined as the amount by which the actual Ohio individual income tax withholding on its employees' wages exceeds baseline income tax withholding.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 53.5	$ 54.6	$ 55.7	$ 56.8

Data Source Code: (B)

4.12 Job retention tax credit[28]
Ohio Revised Code 122.171, 5733.0610(B), 5747.058(B), and 5751.50(B); originally enacted 2003

An eligible business may be granted a nonrefundable tax credit though an agreement with the Ohio Tax Credit Authority. The credit is equal to a designated percentage of the employees' Ohio individual income withholding tax (not to exceed 75 percent) over a period of up to 15 years. An eligible business is defined as one that: (1) employs at least 500 full-time equivalent employees at the site, and (2) either operates at the project site primarily as a manufacturer and makes at least $50 million in capital investments at the site, or is primarily engaged at the site in providing significant corporate administrative functions and makes at least $20 million in capital investments at the site. If the eligible business employs at least 1,000 employees at the site, makes at least $25 million in capital investments at the site, and during 2010 received an offer of financial incentives from another state sufficient to relocate to that state, it may qualify for a refundable credit.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 4.5	$ 11.5	$ 16.5	$ 21.5

Data Source Code: (A),(B)

[27] The credit is also available against the corporate franchise tax. This estimate includes the estimated credit amount attributable to that tax.
[28] This credit is also available against the domestic insurance tax, foreign insurance tax, corporate franchise tax, and individual income tax (as long as the sole proprietor or pass-through entity is not claiming the credit against the commercial activity tax). This estimate includes the estimated credit amount attributable to those taxes.

4.13 Credit for net operating loss carryforwards and other deferred tax assets
Ohio Revised Code 5751.53; originally enacted 2005

Beginning in calendar year 2010, qualifying taxpayers may claim a nonrefundable tax credit equal to 8 percent of the taxpayer's franchise tax net operating loss carryforwards and other deferred tax items. The credit allowed to be claimed in any given year equals 10 percent of the total generated credit and any credit carried forward from a previous year, but may not exceed 50 percent of the taxpayer's commercial activity tax liability for that year.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.3	$ 8.0	$ 8.0	$ 8.0

Data Source Code: (A)

C. Tax expenditures with revenue impact below $1 million

4.14 Research and development loan program credit
Ohio Revised Code 5733.352, 5751.52; originally enacted 2003

4.15 Exemption for pre-1972 trusts
Ohio Revised Code 5751.01(E)(11); originally enacted 2005

4.16 Anti-neoplastic drug exclusion
Ohio Revised Code 5751.01(F)(2)(v); originally enacted 2005

4.17 Horse racing taxes and purse exclusion
Ohio Revised Code 5751.01(F)(2)(y); originally enacted 2005

Public Utility Excise Tax

The public utility excise tax is levied on companies classified by statute as public utilities. Originally enacted in 1894, the present tax structure was established in 1911. Historically, electric, natural gas, and local telephone companies have accounted for the bulk of total public utility excise tax revenue collections. However, in 2001, electric and rural electric companies became subject to the kilowatt hour tax and electric companies also became subject to the corporate franchise tax (Am. Sub. Senate Bill 3, 123rd General Assembly), and these entities were no longer subject to the public utility excise tax. In 2005, telephone companies became subject to the corporate franchise tax, their services became subject to the sales and use tax, and they became exempt from the public utility excise tax (Am. Sub. House Bill 95, 125th General Assembly).

Tax Base

Gross receipts for natural gas, pipeline, heating, water transportation, and water works companies.[29] There is a minimum tax of $50 for each tax year.

Tax Rate

4.75 percent, except pipeline companies pay 6.75 percent.

Public Utility Excise Tax Expenditures

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. We have also attempted to reflect the impact of a possible "overlapping" provision (i.e., another credit, exclusion or exemption available to the taxpayer) that effectively reduces the revenue consequences associated with the tax expenditure.

Data are primarily from public utility tax returns and other sources from the Ohio Department of Taxation. Data from the U.S. Census Bureau was also used.

NOTE: See page 4 for description of data source codes.

[29] In 2001, natural gas companies began to pay their public utility excise tax on a different schedule (Am. Sub. Senate Bill 215, 123rd General Assembly). Additionally, these companies became subject to the natural gas consumption tax to mitigate the impact of a reduction in their tangible personal property tax (Am. Sub. Senate Bill 287, 123rd General Assembly).

5.01 Exemption for municipal utilities and non-profit waterworks
Ohio Revised Code 5727.05; originally enacted 1896

Municipal utilities and non-profit corporations that are engaged exclusively in the treatment, distribution, and sale of water to consumers are exempt from the public utility excise tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 68.1	$ 69.5	$ 71.1	$ 72.6

Data Source Code: (B)

5.02 Credit for certain natural gas companies
Ohio Revised Code 5727.29; originally enacted 2000

Natural gas companies that pay the public utility excise tax on a current-quarter system are granted a tax credit for the transition costs from the previous tax schedule.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 8.1	$ 8.1	$ 8.1	$ 8.1

Data Source Code: (A)

Tax expenditures with revenue impact below $1 million

5.03 $25,000 exemption from gross receipts for each public utility company
Ohio Revised Code 5727.33; originally enacted 1934, revised 2004

5.04 Sales to other public utilities for resale
Ohio Revised Code 5727.33(B)(4); originally enacted 1961, revised 2004

Kilowatt Hour Tax

Am. Sub. Senate Bill 3 (123rd General Assembly) re-structured the electric industry in Ohio. Prior to this bill, electric companies had been subject to the public utility excise tax, and they were subject to higher assessment rates on their tangible personal property than general business taxpayers. Among other things the bill removed electric companies from the public utility excise tax and subjected them to the corporate franchise tax (which has since been repealed for most entities). The legislation also lowered the assessment rate on much of their tangible personal property. To replace the revenue loss caused by shifting from the utility excise tax to the corporate franchise tax and to replace the reduced property tax revenues, SB 3 created the kilowatt hour tax. This tax is levied on the electric distribution company and is based upon the end user's consumption of electricity, measured in kilowatt hours. However, qualifying large consumers of electricity may instead choose to self-assess the tax, which is based on the amount of kilowatt hours of electricity consumed and a tax rate structure specific to self-assessors. The kilowatt hour tax became effective in May 2001.

Tax Base

Kilowatt Hour Tax Base: Amount of kilowatt hours distributed to the end consumer.

Self-Assessor Option Base: Amount of kilowatt hours consumed.

Tax Rate

Kilowatt Hour Tax:

Kilowatt Hours Distributed to the End Users per Month	Rates per Kilowatt Hour
0 – 2,000 Kilowatts	$0.00465
2,001 – 15,000 Kilowatts	$0.00419
Over 15,000 Kilowatts	$0.00363

Self-Assessor Option Tax: The sum of 0.257 cents per kilowatt hour (kWh) on the first 500 million kWh consumed per year, and 0.1832 cents per kWh for each remaining kWh consumed.

Significant Changes Enacted by the 128th General Assembly

Am. Sub. House Bill 1 altered the self-assessor option tax. Effective January 1, 2011, the portion of the self-assessor tax based on the amount spent on electricity purchases was eliminated, replaced by an entirely volumetric-based tax. The new rate structure is provided above and is reflected, as appropriate, in the tax expenditure estimates below.

Kilowatt Hour Tax Expenditure Estimate

The figures provided below reflect the estimated revenue foregone by the state General Revenue Fund. The portion of the tax attributable to the School District Property Tax Replacement Fund, Local Government Property Tax Replacement Fund, Local Government Fund, and Public Library Fund is not included in the estimates.

Data used to estimate the expenditure was primarily from tax return filings and industries affected by the tax expenditure. Information from the Energy Information Agency (U.S. Department of Energy) was also used.

NOTE: See page 4 for description of data source codes.

6.01 Exemption for qualified end-users
Ohio Revised Code 5727.81(D); originally enacted 1999

Exempts from the kilowatt hour tax the distribution of any kilowatt hours of electricity to certain end users: essentially the federal government, an end user at a federal uranium enrichment facility, or a very large-volume (in terms of electricity usage) manufacturing location.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.7	$ 3.6	$ 4.7	$ 4.8

Data Source Code: (A),(B),(C)

Insurance Premium Taxes

The domestic insurance tax was created in 1830 with a 4.0 percent property tax on dividends paid by insurance companies. In 1933, the insurance companies' tax was changed to tax the lesser of 0.2 percent on capital and surplus or 1.67 percent of gross premiums. The franchise tax rate on gross premiums increased to 2.5 percent in 1971. The tax rate on capital and surplus increased to 0.6 percent in 1981.

The foreign insurance tax was created in 1830, with a 4.0 percent property tax on profits from premiums. In 1852, the value of gross premiums (rather than profits from premiums) was subject to the tax. In 1888, a supplemental tax was levied on gross premiums, and when added to the property tax it produced an effective tax rate of 2.5 percent on gross premiums. A direct 2.5 percent gross premiums tax was created in 1902.

Am. Sub. House Bill 215 of the 122nd General Assembly made numerous changes to the domestic and foreign insurance premium taxes, including changes to the rates and bases of the two taxes. These changes were fully phased in by tax year 2003, at which time the two taxes shared the same gross premiums and tax rate (1.4 percent). The bill also established a small insurers' tax credit, along with a minimum tax of $250.

Tax Base

The domestic and foreign insurers' tax base is the gross amount of premiums covering risks in Ohio, less specified deductions.

Tax Rate

Domestic and foreign insurers are taxed at 1.4 percent of gross premiums. Foreign insurers are also subject to retaliatory provisions. Fire insurance is subject to an additional 0.75 percent tax on gross premiums. Instead of the 1.4 percent tax rate, a 1.0 percent tax rate is applied to health insurance corporations.

Insurance Premium Tax Expenditure Estimates

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure.

Data for these tax expenditures are from the Ohio Department of Insurance and the Ohio Life and Health Guaranty Association. Assistance was also provided by these organizations regarding the projected growth of these tax expenditures.

NOTE: See page 4 for description of data source codes.

7.01 Deduction for premiums received from qualified small business alliances
Ohio Revised Code 1731.07; originally enacted 1993

An insurer may deduct amounts received from underwriting a health care plan under the qualified small employer health care alliance program. The deduction is allowed on premiums or other charges received from, or on behalf of, an enrolled small employer and eligible employees and retirees covered by the health benefit plan.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 15.5	$ 18.3	$ 21.7	$ 26.0

Data Source Code: (B)

7.02 Credit for small insurers
Ohio Revised Code 5729.031; originally enacted 1999

A foreign or domestic insurance company or insurance company group, with less than $75 million in premiums sold in all states by the company or group, may take a tax credit of up to a maximum of $200,000 against its foreign or domestic insurance premium tax liability. The credit is based on the ratio derived by dividing the company's or group's premiums sold in all states by $75 million. This ratio is multiplied by $200,000 to yield the tax credit amount.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 2.5	$ 2.4	$ 2.3	$ 2.2

Data Source Code: (B)

7.03 Ohio Life and Health Guaranty Association contribution credit
Ohio Revised Code 3956.20; originally enacted 1989

Members of the Ohio Life and Health and Guaranty Association make contributions to a fund used to pay Ohioans with insurance policies held by bankrupt companies. Members are able to use their contribution as a credit on the state franchise or premium tax return. Each year's credit equals 20 percent of the contributed amount. The contribution credit may be claimed over five years. Therefore, by the end of the five-year period the total cumulative credit received by the taxpayer equals the full amount it had contributed to the fund.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.2	$ 1.3	$ 1.3	$ 1.3

Data Source Code: (B)

Cigarette and Other Tobacco Products Taxes

The excise tax on cigarettes was first levied in 1931. The tax rate ranged from its original 2 cents per pack to 15 cents in 1971. The rate was reduced to 14 cents per pack in 1981 and cigarette sales became subject to the sales tax. The rate was increased to 24 cents per pack in January, 1993. It was increased to 55 cents per pack on July 1, 2002. The current rate of $1.25 per pack became effective July 1, 2005.

The excise tax on other tobacco products was levied beginning February, 1993. The current rate is 17 percent of the wholesale price.

Tax Base

The sale, use, consumption, or storage of cigarettes in Ohio. The receipt or import of other tobacco products for resale.

Tax Rate

6.25 cents per cigarette ($1.25 per pack of 20 cigarettes). 17 percent on the wholesale price of other tobacco products.

Cigarette and Other Tobacco Products Tax Expenditure Estimates

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure.

NOTE: See page 4 for description of data source codes.

8.01 Discount for cigarette tax stamps
Ohio Revised Code 5743.05; originally enacted 1934, revised 2006

Cigarette excise taxpayers are eligible to receive a discount when purchasing cigarette excise tax stamps or meter impressions as a commission for affixing and canceling the stamps or meter impressions. Under Ohio law, the value of this discount shall not be less than 1.8 percent of more than 10 percent of the face value of the tax stamps and meter impressions, with the exact rate to be set by rule. Under the current rule, the rate of this discount is 1.8 percent. Cigarette excise taxpayers shall not receive this tax stamp discount on payments made when filing a monthly or semi-monthly return.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 14.5	$ 13.9	$ 13.3	$ 12.7

Data Source Code: (A)

Tax expenditures with revenue impact below $1 million

8.02 Discount for timely payment of other tobacco products' excise tax
Ohio Revised Code 5743.52; originally enacted 1993

Alcoholic Beverage Tax

In 1933, the year prohibition was repealed, the Department of Liquor Control was created and the General Assembly enacted tax levies on beer, wine, and other non-spirituous beverages. A liquor gallonage tax was added a year later. As of July 1, 1997, the Department of Liquor Control was changed to a division and was transferred to the Department of Commerce. The Division of Liquor Control administers the liquor gallonage tax. The Department of Taxation administers the tax on all other alcoholic beverages.

Tax Base

Sales by volume of the following non-spirituous beverages: beer, cider, malt liquor, wine, mixed beverages and malt.

Tax Rates

Beer	
Barrel (31 gallons)	$5.58
Containers over 12 ounces	0.84 cent per six ounces
Containers 12 ounces or less	0.14 cent per ounce
Wine	
Less than 14% alcohol by volume	32 cents per gallon
14% to 21% alcohol by volume	$1.00 per gallon
Vermouth	$1.10 per gallon
Sparkling Wine, Champagne	$1.50 per gallon
Other	
Mixed Beverages	$1.20 per gallon
Cider	24 cents per gallon

Alcoholic Beverage Tax Expenditures

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure.

Various data sources were used to derive the tax expenditure estimates. Most of the tax expenditure estimates were based on information taken from returns filed with the Department of Taxation.

NOTE: See page 4 for description of data source codes.

9.01 Advanced payment credit/discount
Ohio Revised Code 4303.33; originally enacted 1963

Beer and malt beverage permit holders are eligible to receive a 3.0 percent credit on advance payments made on or before the 18th of the covered month. In addition, they can receive a discount equal to the lesser of 3.0 percent of the payment remaining after deducting the advance payment, or 0.3 percent of the advance payment (as long as the full monthly payment is received by the 10th of the month for the previous month's liability). Wine and mixed beverage permit holders are eligible to receive a 3.0 percent credit on payments made on or before the 18th of the previous month's tax liability.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 1.4	$ 1.4	$ 1.4	$ 1.4

Data Source Code: (A)

Tax expenditures with revenue impact below $1 million

9.02 Sacramental wine exemption
Ohio Revised Code 4301.23; originally enacted 1937

9.03 Small brewer's credit
Ohio Revised Code 4303.332; originally enacted 1982

9.04 Small wine producer's exemption
Ohio Revised Code 4303.333, 4303.23, 4303.071; originally enacted 1982, revised 2008

Estate Tax

The inheritance tax was enacted in 1893 and levied on individual successions to property within the estate. In 1968, this inheritance tax was repealed and an estate tax was levied, shifting the tax base from individual heirs to the decedent's estate.

For estates with dates of death on or after January 1, 2002, 80 percent of the tax liability is distributed to the municipal corporation or township in which the assets of the estate are located and 20 percent is distributed to the state (the local-state revenue split is different for estates with dates of death before January 1, 2002). Although most local jurisdictions receive little or no estate tax revenue in any given year, there is nonetheless a considerable degree of variability in how localities are impacted by the estate tax. According to a 2006 Ohio Department of Taxation study on the Ohio estate tax, nearly 75 percent (1,647) of all townships and municipalities received less than $10 per capita in estate tax revenue in 2004. In contrast, roughly 300 jurisdictions (13 percent of all municipalities and townships) received an amount exceeding $20 per capita in 2004; of these jurisdictions, 32 received over $100 per capita. That said, note that the estimates in this report reflect only the state General Revenue Fund (20 percent of total estate tax revenues), and excludes the impact on local governments (80 percent of total estate tax revenues).

Tax Base

The taxable estate is the market value of the gross estate less deductions.

Tax Rates

All estates receive a tax credit equal to the lesser of the estate's tax liability or $13,900. Estates with taxable value of $338,333 and below are exempt from the estate tax because the tax credit completely offsets their tax liability.

The tax imposed shown in the table below applies to estates with a date of death on or after January 1, 2002, and is *prior* to the tax credit.

Taxable Estate Value Brackets	Tax Imposed (before $13,900 credit)
$338,334 – $500,000	$13,900 + 6% of excess over $300,000
$500,001 and over	$23,600 + 7% of excess over $500,000

Estate Tax Expenditure Estimates

The estimates shown below reflect the estimated revenue foregone by the state General Revenue Fund from each indicated tax expenditure. Therefore, the estimates exclude the impact on local governments, which represents about 80 percent of total estate tax revenue.

Data for these estimates are based upon estate tax returns finalized during fiscal year 2010.

NOTE: See page 4 for description of data source codes.

A. Deductions

10.01 Marital deduction
Ohio Revised Code 5731.161; originally enacted 1983

The portion of the estate passed on to the surviving spouse may be deducted from the gross estate value.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 46.3	$ 44.9	$ 46.7	$ 48.6

Data Source Code: (A)

10.02 Funeral and administration expenses and debts against estate
Ohio Revised Code 5731.16; originally enacted 1968

Funeral and administration expenses and debts claimed against the estate may be deducted from the gross estate value.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 9.2	$ 9.2	$ 9.2	$ 9.2

Data Source Code: (A)

10.03 Deduction of qualified charitable contributions
Ohio Revised Code 5731.17; originally enacted 1968

Qualified charitable contributions may be deducted from the gross estate value.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 10.3	$ 10.3	$ 10.3	$ 10.3

Data Source Code: (A)

B. Tax credit

10.04 Credit for each estate
Ohio Revised Code 5731.02(B); originally enacted 1983, revised 2000

Estates with dates of death on or after January 1, 2002 are allowed a credit equal to the lesser of $13,900 or the amount of the tax.

(Dollar Amounts in Millions)

Estimates:	FY 2010	FY 2011	FY 2012	FY 2013
	$ 34.3	$ 34.3	$ 34.3	$ 34.3

Data Source Code: (A)