



# Tax Committee November 12, 2013

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## 2013 Tax Committee Calendar

Meetings will begin at 10:00 a.m.

Thursday, February 20, 2014

Tuesday, May 20, 2014

Wednesday, November 19, 2014

## OMA Tax Committee Meeting Sponsor:





**OMA Tax Policy Committee**  
November 12, 2013

**AGENDA**

**Welcome & Self-Introductions:**

Allan Thompson, Chairman  
A K Steel Corporation

**OMA Counsel's Report**

Mark Engel, Bricker & Eckler LLP  
OMA Tax Counsel

**Public Policy Report**

Rob Brundrett  
OMA Staff

**Discussion**

Tax Reform Continues  
House Bill 5  
Controlling Board

**Guest Speakers**

Senator Bob Peterson

Tim Keen, Director, Office of Budget  
and Management

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

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

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



## Senator Bob Peterson

17<sup>th</sup> Senate District

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As a farmer, business owner and former county official, Bob Peterson has devoted much of his time and attention to solving the challenges facing our communities. He now brings that same attitude and drive to the Ohio Senate as he works to improve all of Ohio. Bob represents the 17<sup>th</sup> Ohio Senate District, which encompasses Clinton, Fayette, Gallia, Highland, Jackson, Pike and Ross counties as well as portions of Lawrence, Pickaway and Vinton counties.

A farmer by trade - Peterson and his family are the eighth generation of Petersons to farm in the U.S - Bob raises corn, soybeans, wheat and livestock on his family's farm. Peterson has been active in Farm Bureau in a variety of leadership positions, culminating in his service as Ohio Farm Bureau President for nearly five years.

In addition to his farming duties, Peterson served as a Fayette County Commissioner for 14 years before being elected to the Ohio House of Representatives in 2011. He joined the Ohio Senate in 2012, where his knowledge and leadership have earned him a seat at the table on the issues that matter most to the families and communities of the 17<sup>th</sup> Senate District.

Peterson currently serves as the Chairman of the Finance Subcommittee on General Government, which will play a key role in examining issues related to all aspects of government during the state budget process. He also serves as Vice-Chair of the Ways & Means Committee, which examines legislation dealing with tax policy, as well as a member of the budget-writing Finance Committee, the Agriculture Committee, the Energy & Natural Resources Committee and the Insurance & Financial Institutions Committee.

Peterson received his bachelor's degree from The Ohio State University, and is also a graduate of its LEAD Program - an intense two-year agriculture leadership program that features extensive experience in economics, environmental issues and state and national political processes.

Bob and his wife Lisa are the proud parents of Sarah, Hannah and Todd. The family lives on their farm in Fayette County. They are active in church, 4-H, FFA and other community activities.



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[Home](#) | [Bonds & Investors](#) | [Budget](#) | [Controlling Board](#) | [Internal Audit](#) | [Shared Services](#) | [State Accounting](#)[OBM Home](#) » [Director](#)**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.

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**TO: OMA Tax Committee**  
**FROM: Rob Brundrett**  
**DATE: November 12, 2013**  
**SUBJECT: Tax Policy Highlights**

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### **Overview**

The General Assembly took an extended summer recess following the passage of HB 59, the state budget. Aside from a couple of hearings on Medicaid expansion, and a summer tour on tax reform the legislature remained relatively quiet until the end of September. They began working a full slate in October and their agenda has been fairly full for the last two months. There have been several tax bills introduced and the Senate convened a tax reform committee.

### **State Financial Condition**

Real GDP expanded at an annual rate of 2.5% in the second quarters, following gains of 1.1% in the first quarter and only 0.1% in last year's fourth quarter. Year-over-year growth was a subdued 1.6%.

Ohio employment decreased by 8,200 jobs in August and the July change was revised downward. Ohio employment is up 25,600 jobs year-to-date., reversing much of the 26,500 jobs gained during the previous three months. The Ohio unemployment rate was 7.3% in August, and has been slowing trending upward over the last couple of reports.

Leading economic indicators remain consistent with uninterrupted growth at a modest pace across the country and especially in Ohio.

### **Tax Reform Hearings**

The House of Representatives created a Tax Reform Study Committee which held tax reform hearings across the state during the summer recess. The OMA and several OMA members provided testimony for the committee. Representative Gary Scherer (R-Circleville) who chaired the committee announced he would release his findings at the end of the year. However he has spoken publicly about the need to totally review the CAT to see if there are changes that need to be made to address what other industries consider "deficiencies" in its taxing method.

Not to be outdone by the House, the Ohio Senate began to have tax reform hearings in Columbus this fall. The OMA provided testimony for the Senators. Several industries have pushed the Senators to move away from the CAT and look at other forms of business taxation. This includes the warehouse distribution industry who already receives one of the most favorable taxing schemes in Ohio tax laws. Manufacturers continue to fight an uphill battle against term limited legislators who have no recollection of Ohio business tax history.

The Governor's office continues to review Ohio's taxes and is looking for an opportunity to lower the overall income tax burden in the state. Any major changes would probably take a three pronged approach reviewing the state sales tax, local taxes and a third

prong consisting of all over taxes. There is a chance a proposal to lower income taxes might be included in any new MBR legislation in the spring.

## **Tax Legislation**

### **House Bill 5**

After almost a year of hurry up and wait it appears that HB 5 is on the verge of a floor vote in the House. In October a substitute version of the bill was accepted by the committee that was the product on intense negotiations among lawmakers and interested parties, including the business community and local governments. The bill still is considered unfavorable to cities with a 5 year NOL provision that would be uniform across the state. The OMA submitted a letter in support of the bill.

### **House Bill 135**

Representative Pelanda (R-Marysville) introduced a bill to rehab vacant industrial buildings. This is modeled on a bill from Indiana. The bill originally included a CAT credit which the OMA was able to successfully remove from the bill. It is currently pending in Senate committee and is expected to pass in committee prior to the holiday break.

### **Senate Bill 149/House Bill 219**

Representative Butler (R-Oakwood) and Senator Beagle (R-Tipp City) have introduced companion bills that would authorize nonrefundable tax credits against the CAT for businesses that contribute to economic development projects undertaken by local governments and nonprofit businesses. The credit is equal to 60% of a business' contribution to a project primarily benefiting a rural area, and 50% of a contribution to a project benefiting an urban area. There is concern with these bills that they will erode the CAT base creating more pressure to increase the CAT rate on businesses.

### **Senate Bill 210**

Senator Widener (R-Springfield) quickly moved to introduce legislation following the Medicaid expansion controlling board vote that would take the expected savings from expansion and provide a permanent income tax rate reduction of 4% for all tax brackets beginning in 2014. That would put the highest bracket at 5.176%. The House is contemplating a bill that would apply the savings to the unemployment compensation trust fund which is operating in the red.

### **Senate Bill 228**

Senator Widener (R-Springfield) introduced legislation in the wake of the controlling board Medicaid expansion vote that would limit the controlling board's authority to approve the expenditure of certain federal and nonfederal funds that are received in excess of the amount appropriated or are not anticipated in the current biennial appropriations act. The bill would also require information about selected non Ohio companies and require agencies to contact Ohio entities who did not respond to an RFP.

### **House Bill 230**

Representative Grossman (R-Grove City) has recently introduced and provided sponsor testimony on HB 230. This bill creates a refundable CAT credit for a business that donates food inventory to charitable organizations, equal to a percentage of a federal income tax deduction taken by the business for the same donation. This bill also puts pressure on the CAT rate. The OMA has expressed its concerns with Rep. Grossman and has offered language that could create a transparent grant program.

### House Bill 246

Representatives Blair (R-Washington Twp.) and Rogers (D-Mentor on the Lake) introduced HB 246 that allows an employer who hires a recent post-secondary graduate to deduct over five years, all or a percentage of the employer's costs of employing that graduate from the employer's gross receipts subject to the commercial activities tax. This is another concern for manufacturers. While not as bad as a credit is still creates a hidden deduction that could eventually impact the CAT rate. OMA met with Rep. Blair and Chairman Beck on this bill to stress our concerns.

### House Bill 328

Representatives Young (R-Leroy) and C. Hagan (R-Alliance) introduced legislation from the House that would modify the authority of the controlling board to approve certain expenditures. This was reaction to the controlling board vote to expand Medicaid in the state of Ohio.

### Pipeline Tax

Energy companies who are building pipelines in Ohio are looking at ways to reduce the effective tax rate on these pipelines. Ohio taxes pipeline infrastructure at an 88% assessment plus local millage rates. Because Ohio has high millage rates at the local level the Ohio tax is much larger than most other states.

### **Tax news**

#### Tax Foundation Rankings

The Tax Foundation, a nonprofit organization dedicated to tax analysis, recently released its 2014 State Business Tax Climate Index. The index purports to evaluate the business tax climate of the 50 states based on a series of factors. It values taxes on consumption over taxes on income; it generally favors broad tax bases with low rates; and exclusions, exemptions, and credits are generally disfavored.

Ohio came in at number 39 once again. Mark Engel, OMA's tax counsel of Bricker & Eckler, explains: The primary criticisms of Ohio's tax structure are its graduated income tax rates; its convoluted municipal income tax code; and its sales tax that is riddled with exemptions and exclusions.

#### Site Selection

Site Selection magazine named Georgia as the state with the Top Business Climate for 2013, replacing North Carolina, which held the top slot last year. North Carolina placed second this year, followed by Texas, Ohio and Tennessee.

The magazine describes its methodology as: "The annual business climate rankings are determined 50 percent by an index of tax burden criteria according to the Tax Foundation and KPMG's Location Matters analysis and the states' performance in Conway Data's New Plant Database, which tracks new and expanded business facility activity; and 50 percent by a survey of corporate site selectors."

Ohio ranked second last year, and ninth the year before.



October 10, 2013

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

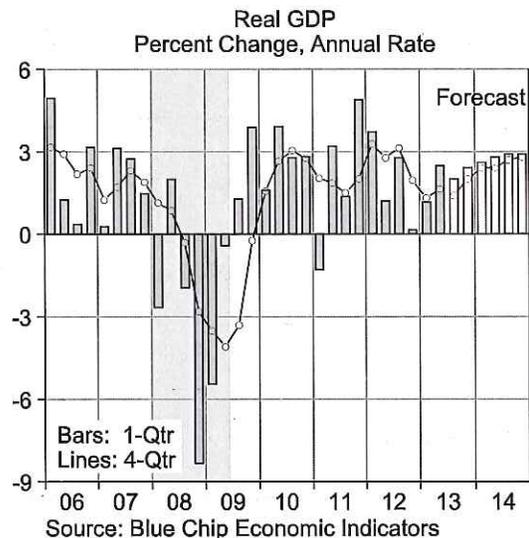
### Economic Performance Overview

- Real GDP expanded at an annual rate of 2.5% in the second quarter, following gains of 1.1% in the first quarter and only 0.1% in last year's fourth quarter. Year-over-year growth was a subdued 1.6%. Forecasters project a gradual increase in the rate of growth from approximately 2.0% in the third quarter to near 3.0% by the end of 2014.
- U.S. employment growth appears to have continued on the recent moderate growth track, judging by indicators of labor market activity.
- Ohio employment decreased by 8,200 jobs in August and the July change was revised downward. Ohio employment is up 25,600 jobs year-to-date. The Ohio unemployment rate increased to 7.3% in August, up from 7.2% in July.
- Leading economic indicators remain consistent with uninterrupted growth at a modest pace across the country and especially in Ohio.

*Editor's Note: Data and commentary for some employment and housing related sections are not updated due to the unavailability of some government websites to which access has temporarily been suspended.*

### Economic Growth

**Real GDP** expanded 2.5% in the second quarter, according to the final estimate, following gains of 1.1% in the first quarter and only 0.1% in last year's fourth quarter. Year-over-year growth was a subdued 1.6%. Since the expansion officially began in the second quarter of 2009, real GDP has advanced at an annual rate of 2.2% – the slowest pace during the first sixteen quarters of any expansion that has lasted at least that long during the post-war period. In contrast, real GDP grew at a compound annual rate of 3.4% on average during the first sixteen quarters of the expansions following the 1990-91 and 2001 recessions.



Growth in the second quarter was driven by personal consumption expenditures, exports, private inventory investment, investment in plant and equipment and nonresidential structures, and investment in residential structures. Federal government spending subtracted from overall GDP growth. Stronger growth in imports indicated that a greater share of domestic demand was satisfied by goods and services that were produced overseas.

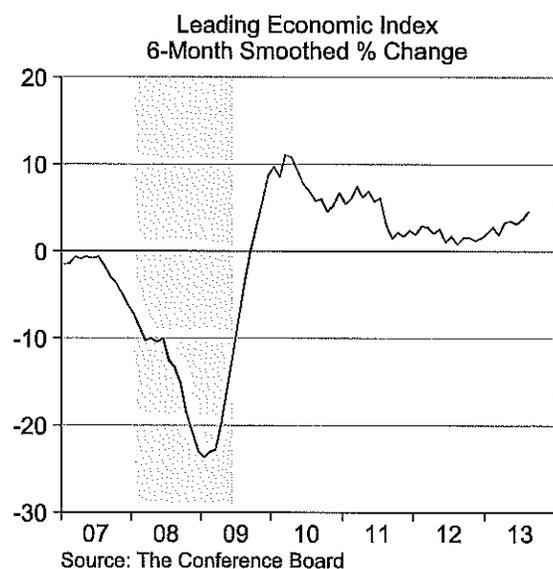
The acceleration in second quarter real GDP resulted from the shift from falling to rising nonresidential fixed investment and exports, a smaller decrease in federal government spending than in the first quarter, and an upturn in state and local government spending. Faster growth in imports and slowdowns in private inventory investment and personal consumption expenditures subtracted from the change in real GDP.

Real GDP is estimated to have expanded at an annual pace of 2.0% in the third quarter and is projected to expand 2.4% in the fourth quarter, according to the October *Blue Chip Financial Forecasts* consensus. However, this near-term forecast is now subject to considerably more uncertainty given concerns over the impacts of the federal government shutdown and the debt ceiling.

Third quarter economic growth is estimated to have been restrained by growth in consumer spending of less than 2%. Consumption of services was especially soft while consumption of goods appears to have remained healthy, supported by continuing strength in sales of light motor vehicles. Judging from shipments of capital goods, business investment also appears to have been soft in the third quarter. Housing construction probably remained strong over the summer, but grew somewhat more slowly than in the spring. Business inventories are expected to have subtracted from GDP growth in the third quarter, but net exports are likely to have added to growth during the quarter after subtracting in the second quarter.

Leading indicators remain consistent with slow but uninterrupted growth into 2014. The 4-week moving average of the Economic Cycle Research Institute (ECRI) **Weekly Leading Index** increased in each of the five weeks ending in late September and eleven of the twelve most recent weeks. The 6-month smoothed rate of change increased to 4.8%, but remained below the recent peak of 7.4% in early May. The index continues to point to continued growth immediately ahead.

The composite **Leading Economic Index** from the Conference Board increased 0.7% in August after a 0.5% increase in July. Eight of the ten components made positive contributions in August, led by interest rate spreads and the ISM New Orders Index. The leading index is up 4.2% from a year earlier and 4.6% on a smoothed 6-month rate of change basis.



The ratio of the coincident index to lagging index – itself a leading indicator – decreased 0.1% in August, and the July increase was revised down 0.1 point to 0.2%. The index has been flat or has declined in five of the past twelve months and remains down 0.2% from a year earlier. The recent pattern is the most worrisome of the leading indicators, but remains an outlier among leading indicators.

The Ohio economy continued to make progress through August, according to the **Ohio Coincident Economic Index** compiled by the Federal Reserve Bank of Philadelphia. The index increased 0.3% in August. Compared with a year earlier, the index was higher by 2.5%, down from a recent high of 5.5% last May. The state coincident 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.

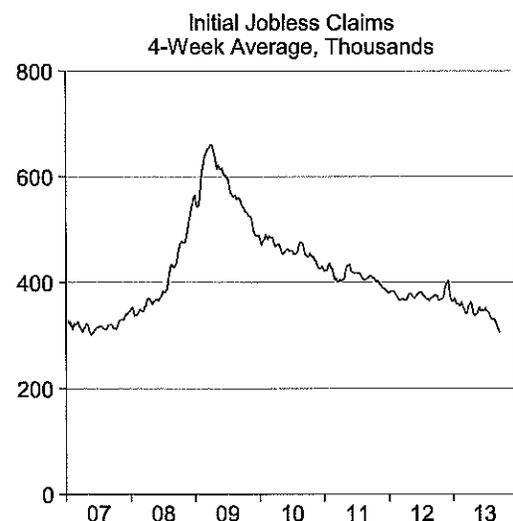
Across the 50 states, the Coincident Economic Index was higher in August than one month earlier in 40 states, up from 38 states in July. The index was higher than three months earlier in 42 states – the same as in July. The diffusion of increases and decreases across states in the past has been a reliable and timely indicator of turning points in the business cycle, and continues to suggest uninterrupted growth in the Ohio and national economies.

The companion **Ohio Leading Economic Index** decreased to 1.0% in August, and remained below 3% for the nineteenth straight month. The index, which is 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. Index values have been revised significantly on occasion, but as it stands the recent pattern is consistent with ongoing expansion of the Ohio economy through the fall but at a slower pace than early in 2012.

The diffusion of positive readings had been fairly broad until May and June, when the number of states for which the index was negative increased to double-digits. The number of states with negative readings returned to a low level of four in August.

### Employment

The release of the Employment Situation Report for September has been temporarily delayed due to the federal government shutdown. However, other measures suggest that labor markets remained on the slow path of improvement. Weekly **initial jobless claims** – a good measure of layoff activity – decreased to an average of 305,000 per week during the four weeks ending in late September from an average of 328,750 per week during the previous four-week period. The most recent reading was the lowest since spring 2007. The **Challenger Job-Cut Report** for September is consistent with the message of the drop in initial jobless claims.



According to the **ISM survey** of purchasing managers, the breadth of hiring in manufacturing increased in September to the highest level since June 2012. Hiring among non-manufacturing firms was less widespread than in August, but remained above neutral.

The **ADP Employment Report** indicated that private payrolls increased by 166,000 jobs during September, up from 159,000 in August and generally in line with recent readings. During the previous six months, private sector payrolls increased by an average of 167,000 per month, according to the government report, so that the ADP report points toward a continuation of recent labor market trends during September.

**Ohio employment** decreased by 8,200 jobs in August, and the June decline was revised lower from -12,500 to -8,400. The August decline reduces the year-to-date increase to 25,600 jobs and the year-over-year change to +32,500 jobs. Private-sector employment gains for the year to date are slightly higher at +26,900 jobs, with a year-over-year change of +39,800 jobs. The Ohio unemployment rate increased 0.1 point to 7.3% in August after no change in July. The rate is up from the low for the cycle of 6.7% that was reached last December, and was at the same level as the national rate in August.

During the twelve months ending in August, increases in Ohio employment were led by educational and health services (+13,100), professional and business services (+9,900), and leisure and hospitality (+7,400). Weakness was concentrated in the government sector, where employment decreased 7,300 jobs year-over-year, and construction, where employment was down 6,100 jobs year-over-year. Employment also was lower in information (-2,300). Manufacturing employment was higher by 3,100 jobs from a year earlier.

Among the **contiguous states**, year-over-year employment growth was strongest in Indiana and Michigan (+1.7%), compared with increases in Kentucky (+1.2%), West Virginia (+1.0%), Pennsylvania (+0.7%) and Ohio (+0.6%). Year-over-year growth in manufacturing was 0.5% in Ohio. Among the contiguous states, manufacturing employment increased 3.3% in Michigan, 1.0% in West Virginia, 0.8% in Indiana, declined 0.7% in Kentucky, and was unchanged in Pennsylvania.

### **Consumer Income and Consumption**

**Personal income and consumption** strengthened in August after a weak July. **Wage and salary disbursements** increased 0.4%, more than reversing the 0.3% decline in July. Personal income also increased 0.4%, fueling a 0.3% rise in personal consumption spending. Disposable personal income increased 0.5%, and the saving rate inched up to 4.6%. After adjusting for inflation, real disposable income increased 0.3% in August and real personal consumption expenditures rose 0.2%.

Compared with a year earlier, personal income is higher by 3.3%, wage and salary disbursements are higher by 3.5%, and disposable income is higher by 2.8%. After adjusting for inflation of 1.2% year-over-year, as measured with the personal consumption chain-type price index, personal income is up 2.5%, wage and salary disbursements are up 2.3%, and disposable personal income is up 1.6%.

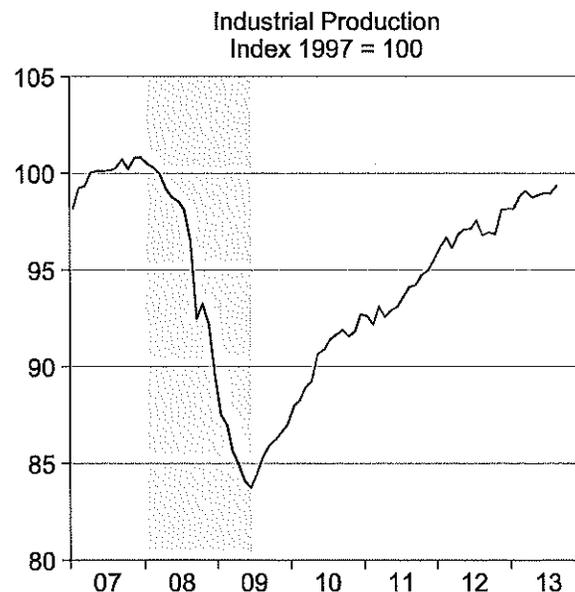
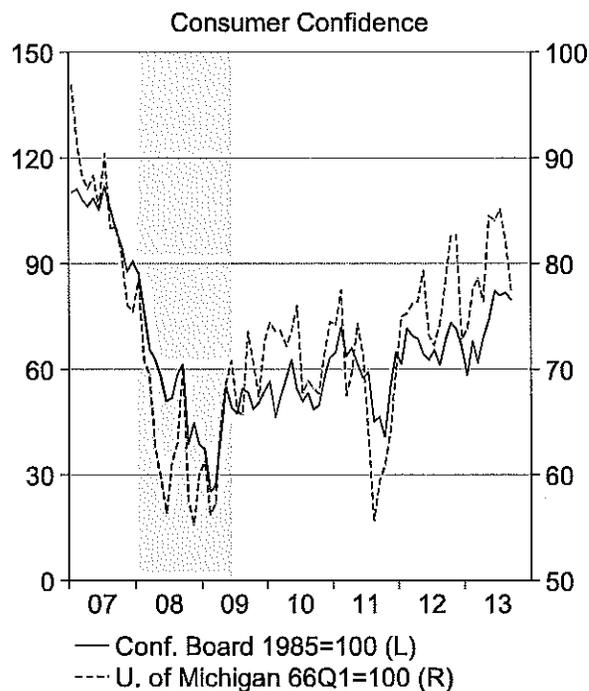
**Consumer spending** presumably has benefited from the improvements in labor markets, which include a notable decline in the pace of layoffs, and wage gains that exceed inflation. In addition, gains in net worth arising from increases in prices of houses and financial assets, such as stocks and bonds, may have supported spending out of current income to some degree. Still-high gasoline prices – although lower than earlier in the year – have limited improvement in real consumer spending.

Despite some modest deterioration again in September, **consumer confidence** essentially held onto the impressive gains made last winter and spring both in terms of views regarding current conditions and expectations. The Conference Board index edged down in September, as deterioration in expectations offset improvement in the assessment of current conditions. The Reuters/University of Michigan index posted a larger decrease, as assessments of the both the future and current conditions retreated for a second straight month. In general, these key measures of consumer attitudes remain consistent with uninterrupted economic growth near the recent pace.

**Manufacturing**

**Industrial production** rebounded 0.4% in August after no change in July. Manufacturing production jumped by 0.7% after a downwardly revised change of -0.4% the month before. Year-over-year comparisons remain moderate, with industrial production up just 2.7% and manufacturing higher by only 2.6%. A number of related indicators continue to suggest that activity will continue to improve.

Of particular importance to the Ohio economy, production of **motor vehicles** and parts increased 5.2% in August, more than reversing the 4.5% decline in July. Motor vehicle assemblies increased 11.1% to a seasonally adjusted annual rate of 10.9 million units in August – the second highest monthly pace (after June) since the recession.



Also important to Ohio, production of **primary metal** decreased by 0.3 in August after a strong July, production of **fabricated metal** increased 0.4%, and production of **machinery** increased 0.8%. Together with the motor vehicle industry, these three industries account for almost one-half of manufacturing jobs in Ohio and approximately one out of every thirteen private sector jobs in the state, before seasonal adjustment.

Telegraphing further improvements in industrial activity, the **purchasing managers index** increased for the third straight month and remained comfortably above the neutral level again in September. The index had dropped to a full point below the neutral level of 50 in May, generating some concerns about the sector. In addition, the **Philadelphia Federal Reserve survey** of business activity improved notably in September and the **New York Fed survey** remained positive, pointing to an improving trend in industrial activity.

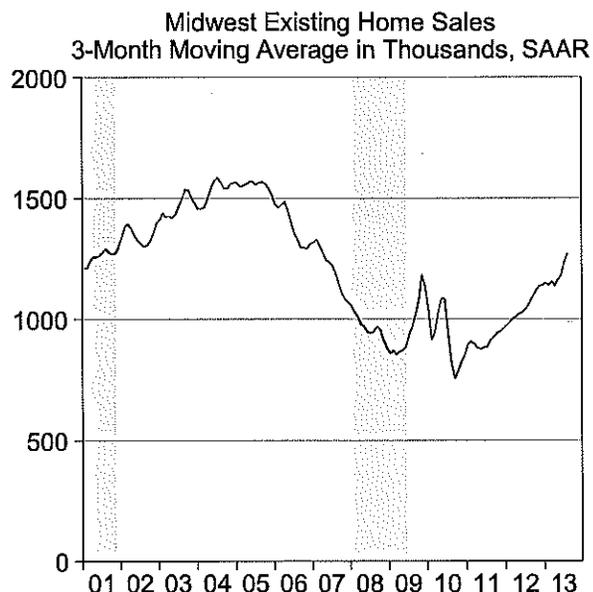
### **Construction**

The picture of the construction sector is limited by the temporary delay of regularly scheduled data releases from the federal government, but the available data suggest that recent trends continued in August.

**Existing home sales** increased 2.2% across the country in August and 3.0% in the Midwest on a three-month moving average basis – a bit below the increases in the previous month but still large enough to lift the year-over-year comparisons to 15.0% and 19.1%, respectively.

The **inventory of existing homes for sale** increased very slightly again in August to 2.28 million. At the August pace of sales, 4.9 months would be required for the current inventory to be sold, in line with the pre-crisis historical average.

**Home prices** increased for the eighteenth straight month in July, according to the S&P/Case-Shiller Index of prices in 20 major markets. The 0.6% increase was the tenth in a row at least that large and lifted the index to 12.3% above the year earlier level. Even so, the index was 23.0% below the peak reached seven years ago. Home prices in Cleveland decreased 0.2% in July after similar declines in May and June. Cleveland home prices are 3.9% higher than a year earlier, but remain 16.3% below the peaked reached in January 2006.



## **REVENUES**

September **GRF receipts totaled \$2,496.8 million** and were \$129.0 million (4.9%) below the estimate. Monthly tax receipts totaled \$1,727.8 million and were \$11.6 million (0.7%) above the estimate, while non-tax receipts totaled \$769.0 million and were \$140.4 million (15.4%) below estimate. Variances for the entire fiscal year by category are provided in the following table (\$ in millions).

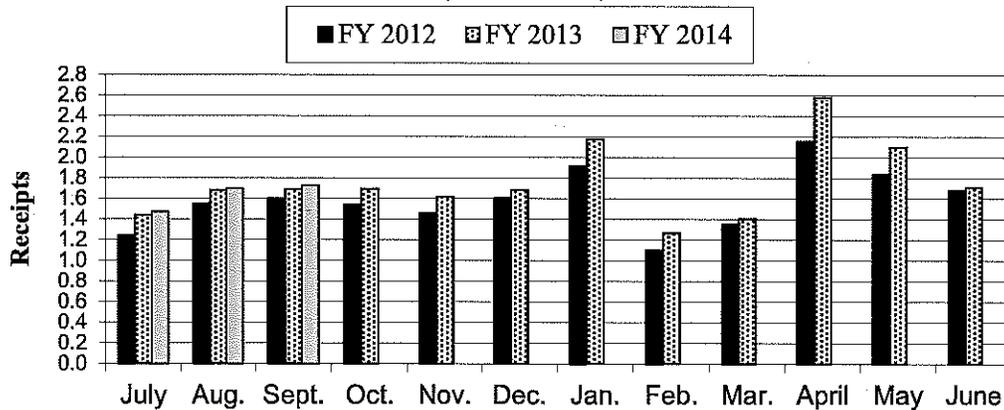
<b>Category</b>	<b>Includes:</b>	<b>YTD Variance</b>	<b>% Variance</b>
Tax receipts	Sales & use, personal income, corporate franchise, commercial activity, MCF, public utility, kilowatt hour, foreign & domestic insurance, other business & property taxes, cigarette, alcoholic beverage, liquor gallonage, & estate	(\$43.6 million)	-0.9%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	(\$102.1 million)	-4.3%
Transfers	Budget stabilization, liquor transfers, capital reserve, other	\$2.1 million	37.8%
<b>TOTAL REVENUE VARIANCE:</b>		<b>(\$143.7 million)</b>	<b>-2.0%</b>

On a year-over-year basis, monthly receipts were \$140.0 million (5.9%) higher than they were in September 2012, primarily as a result of a \$110.7 million (16.9%) year-over-year increase in federal grants. Total September tax receipts were \$40.0 million (2.4%) higher than a year ago. The positive variance is attributable to growth in the non-auto sales and use tax, as well as in the personal income tax. Growth in auto sales and use tax and estate tax receipts also contributed to the year-over-year increase. Year-over-year declines occurred for the commercial activity, kilowatt hour, and domestic insurance taxes. The corporate franchise tax also experienced a decline; however this was due to its recent elimination.

GRF Revenue Sources Relative to Monthly Estimates - September 2013  
(\$ in millions)

<b>Individual Sources Above Estimate</b>		<b>Individual Sources Below Estimate</b>	
Auto Sales Tax	\$3.7	Non-Auto Sales Tax	(\$2.7)
Personal Income Tax	\$12.2	Kilowatt Hour Tax	(\$6.6)
Estate Tax	\$10.0	Foreign Insurance Tax	(\$2.6)
		Domestic Insurance Tax	(\$1.0)
		Cigarette Tax	(\$2.0)
		Federal Grants	(\$132.7)
		License and Fees	(\$4.6)
		Other Income	(\$1.9)
		ISTV's	(\$1.3)
Other Sources Above Estimate	\$0.8	Other Sources Below Estimate	(\$0.6)
<b>Total above</b>	<b>\$26.7</b>	<b>Total below</b>	<b>(\$156.0)</b>

**Tax Revenue Comparison by Month**  
(\$ in billions)



**Non-Auto Sales and Use Tax**

September non-auto sales and use tax receipts totaled \$588.3 million and were \$2.7 million (0.5%) below estimate. On a year-over-year basis, September 2013 receipts were \$27.0 million (4.8%) above those of September 2012. Faltering consumer confidence at the national level could help explain September's tax revenue performance relative to the estimate. However, the September shortfall in the non-auto sales tax was smaller than the July or August shortfalls. OBM will continue to closely monitor the performance of this tax in the months ahead.

**Auto Sales Tax**

Auto sales tax receipts exceeded the estimate in September as receipts totaled \$102.1 million and were \$3.7 million (3.7%) above estimate for the month. On a year-over-year basis, monthly receipts were \$13.8 million (15.6%) higher than receipts for the same month in the previous year reflecting continued strength in auto sales. Tax receipts in this category continue a strong trend,

despite a slight slowdown compared to August, which is mostly due to the effect of Labor Day weekend sales which were allotted to August.

### **Personal Income Tax**

Driven by the withholding component and lower than estimated refunds, the personal income tax exceeded the estimate in September as receipts totaled \$912.3 million and were \$12.2 million (1.4%) above the estimate.

Unlike the first two months in fiscal year 2014, the withholding component in September exceeded the estimate by \$20.6 million (3.4%) with receipts of \$625.6 million compared to an estimate of \$605.0 million. Withholding grew by 2.0% from the prior September, despite the fact that a 9% withholding rate cut went into effect in September, as part of the HB 59 tax reduction package (the withholding rate cut is slightly higher than the 8.5% reduction in statutory tax rates for taxable year 2013). Because employers had some discretion about when they began withholding at lower rates, it is not clear exactly how close to a full 9% impact the September cut actually was.

Also adding to the positive performance during the month were refunds, which totaled \$20.2 million and were \$10.2 million (33.7%) less than the estimate of \$30.4 million. The positive performance of withholding and refund components were offset in part by a shortfall in quarterly estimated payments, which totaled \$294.1 million and were \$19.3 million (6.2%) below estimate. One possible explanation for the performance of the quarterly estimated payments component could be earlier-than-anticipated adjustments in reaction to the small business exemption changes contained in the most recent budget bill, H.B. 59. While the estimates constructed for the monthly report assumed that almost all of the impact of that change would be felt later in the year, it is possible that some taxpayers adjusted their September payments rather than waiting.

On a year-over-year basis, September personal income tax collections were \$26.7 million (3.0%) above the September 2012 level. Despite the fact that estimated payments were below estimate, they actually showed the largest year-over-year growth, with receipts that were \$14.3 million (5.1%) above the same month a year ago. Year-to-date, personal income tax receipts for the first quarter of fiscal year 2014 exceeded the estimate by \$1.8 million (0.1%) and were higher by 65.4 million (3.1%) than the level in the corresponding quarter of fiscal year 2013.

<b>FY2014 PERSONAL INCOME TAX RECEIPTS BY COMPONENT (\$ in millions)</b>						
	<b>ESTIMATE</b>	<b>ACTUAL</b>	<b>\$ VAR</b>	<b>ESTIMATE</b>	<b>ACTUAL</b>	<b>\$ VAR</b>
	<b>SEPT</b>	<b>SEPT</b>	<b>SEPT</b>	<b>Y-T-D</b>	<b>Y-T-D</b>	<b>Y-T-D</b>
Withholding	\$605.0	\$625.6	\$20.6	\$1,945.1	\$1,949.1	\$4.0
Quarterly Est.	\$313.4	\$294.1	(\$19.3)	\$349.2	\$327.5	(\$21.7)
Trust Payments	\$7.8	\$8.9	\$1.1	\$9.2	\$9.6	\$0.4
Annual Returns & 40 P	\$26.2	\$26.1	(\$0.1)	\$50.5	\$53.5	\$3.0
Other	\$7.6	\$7.0	(\$0.6)	\$25.7	\$21.9	(\$3.8)
Less: Refunds	(\$30.4)	(\$20.2)	\$10.2	(\$95.3)	(\$75.9)	\$19.4
Local Distr.	(\$29.5)	(\$29.2)	\$0.3	(\$85.5)	(\$85.0)	\$0.5
<b>Net to GRF</b>	<b>\$900.1</b>	<b>\$912.3</b>	<b>\$12.2</b>	<b>\$2,198.9</b>	<b>\$2,200.7</b>	<b>\$1.8</b>

### **Corporate Franchise Tax**

As noted in the August report, although the corporate franchise tax has been eliminated, prior year settlement activity continues, and has resulted in refunds of \$0.1 million in September, while the estimate for the tax is zero. Small amounts of refund and other settlement activity are likely to occur in the months ahead. On a year-over-year basis, September 2013 receipts for this tax source were \$28.4 million (100.4%) below those of September 2012.

### **Commercial Activity Tax**

September commercial activity tax (CAT) receipts to the GRF totaled \$1.8 million and were \$0.7 million (60.3%) above estimate. All-funds CAT receipts for September totaled \$2.0 million and were \$0.1 million (4.8%) below the \$2.1 million estimate. On a year-over-year basis, GRF CAT receipts were \$4.9 million (73.7%) below the September 2012 level, while all-funds CAT receipts were essentially even with September 2012 collections. As mentioned in last month's report, OBM is concerned about the performance of the tax and will closely monitor it in the months ahead.

### **Kilowatt-Hour Tax**

September kilowatt hour receipts totaled \$26.8 million and were \$6.6 million (19.8%) below the \$33.4 million estimate. On a year-over-year basis, this tax source was \$6.7 million (20.0%) below the September 2012 level of \$33.5 million. OBM believes that both the monthly shortfall and the year-over-year decline in this tax source reflect lower-than-expected residential electricity-use as a result of mild weather.

### **Foreign Insurance Tax**

September foreign insurance tax receipts totaled \$3.1 million and were \$2.6 million (45.8%) below estimate. While a tax payment equal to half of the previous year tax liability is due October 15, a small portion of that payment is usually received in late September. The estimate for October is \$135.9 million and it is expected that October's receipts will meet or exceed that

amount and that the combined payments for September and October should be close to the combined estimate of \$141.6 million.

### **Cigarette Tax**

Cigarette tax receipts for the month of September totaled \$74.2 million and were \$2.0 million (2.7%) below the estimate of \$76.2 million. Year-to-date, the net variance for the first quarter of FY 2014 is negative \$1.0 million (0.6%). On a year-over-year basis, September 2013 cigarette tax receipts were \$5.3 million (7.6%) above the level for the same month of the previous fiscal year.

**GRF non-tax receipts** totaled \$769.0 million in September and were \$140.4 million (15.4%) below estimate primarily due to lower than estimated federal grants. This shortfall in federal grants was the result of a combination of lower than estimated Medicaid spending from the GRF and the receipt of federal funds in early October that were anticipated for September. On a year-over-year basis, September's receipts were \$110.0 million (16.7%) higher than September 2012. There were no September **GRF transfers**, though only \$0.2 million was scheduled for the month. Year-over-year, the transfers were \$10.0 million below September 2012 receipts due to the transfer of liquor profits that occurred in fiscal year 2013 that are no longer received due to the lease of the state's liquor enterprise to JobsOhio.

Table 1

**GENERAL REVENUE FUND RECEIPTS**  
**ACTUAL FY 2014 VS ESTIMATE FY 2014**  
(\$ in thousands)

REVENUE SOURCE	MONTH			YEAR-TO-DATE				
	ACTUAL	ESTIMATE	% VAR	ACTUAL	ESTIMATE	% VAR		
	SEPTEMBER	SEPTEMBER	\$ VAR	Y-T-D	Y-T-D	\$ VAR		
<b>TAX RECEIPTS</b>								
Non-Auto Sales & Use	588,308	591,000	(2,692)	-0.5%	1,861,292	1,894,100	(32,808)	-1.7%
Auto Sales & Use	102,054	98,400	3,654	3.7%	315,388	299,700	15,688	5.2%
Subtotal Sales & Use	690,362	689,400	962	0.1%	2,176,679	2,193,800	(17,121)	-0.8%
Personal Income	912,340	900,100	12,240	1.4%	2,200,703	2,198,900	1,803	0.1%
Corporate Franchise	(99)	0	(99)	N/A	2,046	0	2,046	N/A
Financial Institutions Tax	0	0	0	N/A	0	0	0	N/A
Commercial Activity Tax	1,763	1,100	663	60.3%	192,105	219,939	(27,834)	-12.7%
Public Utility	(6)	0	(6)	N/A	25,853	26,500	(647)	-2.4%
Kilowatt Hour	26,789	33,400	(6,611)	-19.8%	80,339	91,050	(10,711)	-11.8%
MCF Tax	12	0	12	N/A	13,553	11,900	1,653	13.9%
Foreign Insurance	3,088	5,700	(2,612)	-45.8%	4,489	5,900	(1,411)	-23.9%
Domestic Insurance	3	1,000	(997)	-99.7%	57	1,000	(943)	-94.3%
Other Business & Property	8	0	8	N/A	37	0	37	N/A
Cigarette	74,179	76,200	(2,021)	-2.7%	164,024	165,000	(976)	-0.6%
Alcoholic Beverage	4,347	4,600	(253)	-5.5%	14,205	15,000	(795)	-5.3%
Liquor Gallonage	3,699	3,400	299	8.8%	10,722	10,300	422	4.1%
Estate	11,332	1,300	10,032	771.7%	12,134	1,300	10,834	833.4%
Total Tax Receipts	1,727,818	1,716,200	11,618	0.7%	4,896,946	4,940,589	(43,643)	-0.9%
<b>NON-TAX RECEIPTS</b>								
Federal Grants	767,066	899,798	(132,732)	-14.8%	2,270,778	2,355,189	(84,411)	-3.6%
Earnings on Investments	0	0	0	N/A	0	0	0	N/A
License & Fees	1,444	6,000	(4,556)	-75.9%	9,364	18,000	(8,636)	-48.0%
Other Income	503	2,375	(1,872)	-78.8%	4,233	7,125	(2,892)	-40.6%
ISTV'S	0	1,250	(1,250)	N/A	(2,443)	3,750	(6,193)	-165.1%
Total Non-Tax Receipts	769,013	909,423	(140,410)	-15.4%	2,281,932	2,384,064	(102,132)	-4.3%
<b>TOTAL REVENUES</b>	<b>2,496,831</b>	<b>2,625,623</b>	<b>(128,792)</b>	<b>-4.9%</b>	<b>7,178,878</b>	<b>7,324,653</b>	<b>(145,775)</b>	<b>-2.0%</b>
<b>TRANSFERS</b>								
Budget Stabilization	0	0	0	N/A	0	0	0	N/A
Liquor Transfers	0	0	0	N/A	0	0	0	N/A
Transfers In - Other	0	200	(200)	N/A	7,719	5,600	2,119	37.8%
Temporary Transfers In	0	0	0	N/A	0	0	0	N/A
Total Transfers	0	200	(200)	N/A	7,719	5,600	2,119	37.8%
<b>TOTAL SOURCES</b>	<b>2,496,831</b>	<b>2,625,823</b>	<b>(128,992)</b>	<b>-4.9%</b>	<b>7,186,597</b>	<b>7,330,253</b>	<b>(143,656)</b>	<b>-2.0%</b>

**Table 2**  
**GENERAL REVENUE FUND RECEIPTS**  
**ACTUAL FY 2014 VS ACTUAL FY 2013**  
**(\$ in thousands)**

REVENUE SOURCE	MONTH			YEAR-TO-DATE		
	SEPTEMBER	SEPTEMBER	%	ACTUAL	ACTUAL	%
	FY 2014	FY 2013	VAR	FY 2014	FY 2013	VAR
<b>TAX RECEIPTS</b>						
Non-Auto Sales & Use	588,308	561,265	27,043	1,861,292	1,811,450	49,841
Auto Sales & Use	102,054	88,285	13,769	315,388	282,786	32,601
Subtotal Sales & Use	690,362	649,550	40,812	2,176,679	2,094,237	82,443
Personal Income	912,340	885,644	26,696	2,200,703	2,135,331	65,372
Corporate Franchise	(99)	28,299	(28,398)	2,046	46,701	(44,655)
Financial Institutions Tax	0	0	0	0	0	0
Commercial Activity Tax	1,763	6,692	(4,929)	192,105	202,605	(10,499)
Public Utility	(6)	0	(6)	25,853	25,060	793
Kilowatt Hour	26,789	33,484	(6,695)	80,339	90,714	(10,375)
MCF Tax	12	0	11	13,553	10,216	3,337
Foreign Insurance	3,088	2,958	130	4,489	4,318	171
Domestic Insurance	3	4,533	(4,530)	57	4,753	(4,696)
Other Business & Property	8	1	7	37	216	(179)
Cigarette	74,179	68,908	5,271	164,024	162,075	1,948
Alcoholic Beverage	4,347	4,019	328	14,205	15,197	(992)
Liquor Gallonage	3,699	3,514	186	10,722	10,341	382
Estate	11,332	204	11,128	12,134	1,827	10,307
Total Tax Receipts	1,727,818	1,687,806	40,012	4,896,946	4,803,591	93,355
<b>NON-TAX RECEIPTS</b>						
Federal Grants	767,066	656,370	110,697	2,270,778	2,196,100	74,678
Earnings on Investments	0	0	0	0	0	0
License & Fee	1,444	2,106	(662)	9,364	9,812	(448)
Other Income	503	579	(76)	4,233	2,437	1,796
ISTV'S	0	0	0	(2,443)	22	(2,465)
Total Non-Tax Receipts	769,013	659,054	109,959	2,281,932	2,208,370	73,562
<b>TOTAL REVENUES</b>	<b>2,496,831</b>	<b>2,346,861</b>	<b>149,971</b>	<b>7,178,878</b>	<b>7,011,961</b>	<b>166,917</b>
<b>TRANSFERS</b>						
Budget Stabilization	0	0	0	0	0	0
Liquor Transfers	0	10,000	(10,000)	0	38,000	(38,000)
Transfers In - Other	0	0	0	7,719	8,872	(1,153)
Temporary Transfers In	0	0	0	0	0	0
Total Transfers	0	10,000	(10,000)	7,719	46,872	(39,153)
<b>TOTAL SOURCES</b>	<b>2,496,831</b>	<b>2,356,861</b>	<b>139,971</b>	<b>7,186,597</b>	<b>7,058,833</b>	<b>127,764</b>
			<b>5.9%</b>			<b>1.8%</b>

## **DISBURSEMENTS**

September 2013 GRF disbursements, across all fund uses, totaled \$2,820.4 million and were \$137.5 million (4.7%) below estimate. This was primarily attributable to lower disbursements in the Medicaid and Property Tax Reimbursements categories. On a year-over-year basis, September disbursements were \$77.0 million (2.8%) higher than those of the same month in the previous fiscal year. Year-to-date variances by category are provided in the table below.

<b>Category</b>	<b>Description</b>	<b>YTD Variance</b>	<b>% Variance</b>
Expenditures and transfers between agencies (ISTVs)	State agency operations, subsidies, tax relief, debt service payments, and pending payroll (if applicable)	(\$187.0 million)	-2.3%
Transfers	Temporary or permanent transfers out of the GRF that are not agency expenditures	(\$5.0 million)	-0.4%
<b>TOTAL DISBURSEMENTS VARIANCE:</b>		<b>(\$192.0 million)</b>	<b>-2.0%</b>

GRF disbursements are reported according to functional categories. This section contains information describing spending and variances within each of these categories.

### **Primary and Secondary Education**

This category now contains only GRF spending for the Ohio Department of Education, minus property tax reimbursements. September disbursements for this category totaled \$570.9 million and were \$43.2 million (8.2%) above the estimate. Expenditures for the school foundation program totaled \$552.6 million and were \$44.1 million (8.7%) above the estimate.

The variance in the foundation funding line item is due to normal fluctuations between the actual Average Daily Membership (ADM) and estimated ADM for the month. The Department of Education will continue to use estimates until the finalization of the October ADM count for fiscal year 2014 and the implementation of the new school funding system in October.

### **Higher Education**

September disbursements for Higher Education totaled \$167.0 million and were \$34.1 million (16.9%) below the estimate for the month. Year-to-date disbursements are \$480.5 million, which is \$36.8 million (7.1%) below the estimate. The monthly and yearly variances are due to a decision by the Board of Regents to implement a more robust subsidy distribution and monitoring process beginning in fiscal year 2014, resulting in a temporary delay in the distribution of a portion of their subsidy line items.

On a year-over-year basis, disbursements in this category were \$10.0 million (5.7%) lower than in the same month in the previous fiscal year while year-to-date expenditures are \$25.1 million (5.0%) lower than at the same point in the previous fiscal year.

## Other Education

This category includes non-debt service expenditures made by the Broadcast Education Media Commission, Ohio Facilities Construction Commission, Ohio State School for the Blind, Ohio School for the Deaf, as well as disbursements made to libraries, cultural, and arts organizations. September disbursements in this category totaled \$8.0 million and were \$3.8 million (92.8%) above estimated spending. The variance in this category is primarily attributable to the disbursement of the Ohio Historical Society's subsidy appropriation in late September rather than early October as estimated.

## Medicaid

As discussed in previous Monthly Financial Reports, this category includes all Medicaid disbursements from the H.B. 59-created "650 series" Medicaid line items. As such, the category includes all Medicaid spending on services and program support by the following six agencies: the new Department of Medicaid (651 prefix), the Department of Mental Health and Addiction Services (652), the Department of Developmental Disabilities (653), the Department of Health (654), the Department of Job and Family Services (655), and the Department of Aging (656).

While this line item restructuring was done to greatly improve the transparency of Medicaid spending across state agencies, it does create a one-time challenge for year-over-year comparisons by month. That is because a number of line items that contained Medicaid spending in fiscal year 2013 (and prior) also included non-Medicaid spending. While we can determine the annual Medicaid spending within these "mixed use" lines for fiscal year 2013, it is very difficult to determine the Medicaid/non-Medicaid breakdown by month. Therefore, fiscal year 2013 monthly expenditures were established to enable year-over-year comparisons by applying the respective line item's annual percentage of Medicaid spending to the monthly actual spending.

## Expenditures

Year-to-date GRF disbursements for the Medicaid Program were \$3,922.0 million, which is \$87.6 million (2.2%) below the estimate and \$ 236.1 million (6.4%) above the same point in the previous fiscal year. GRF disbursements in September totaled \$1,246.5 million which is \$47.8 million (3.7%) below estimate and \$72.4 million (6.2%) above disbursements in 2012.

September all funds disbursements totaled \$1,638.0 million and were \$78.2 million (4.6%) below the estimate and \$186.5 million (12.8%) above this point in the previous fiscal year.

*The chart below shows the current month's disbursement variance by funding source:*

	September Projection	September Actual	Variance	Variance %
GRF \$	1,294.3	\$ 1,246.5	\$ (47.8)	-3.7%
Non-GRF \$	421.9	\$ 391.5	\$ (30.4)	-7.2%
All Funds \$	1,716.2	\$ 1,638.0	\$ (78.2)	-4.6%

### Categorical Variances

*All Other* – September spending in this category was \$22.5 million below estimate mainly due to certain waiver claims not being realized as quickly as expected.

*ACA Physician Fee Increase* – Expenditures grouped into this category were \$13.4 million below estimate in September as the programmatic pathways for this ACA-mandated increase are still being established within the care community.

*Aging Waivers* – September spending on Medicaid waiver programs administered by the Department of Aging was \$8.2 million below estimate. This can mainly be attributed to lower per member costs than anticipated.

### Caseload

Total September enrollment across all categories was 2.4 million. The most significant components are the Covered Families and Children (CFC) category, which decreased by 9,827 persons to a September total of 1.67 million persons, and the Aged, Blind and Disabled (ABD) category, which decreased by 2,143 people to a September total of 433,420 covered lives.

Total enrollment across all categories for the same period last year was 2.5 million covered persons, including 1.8 million persons in the CFC category and 409,270 people in the ABD category. Please note that these data are subject to revision.

### **Health and Human Services**

This category includes non-debt service GRF expenditures for the following state agencies: Job and Family Services, Health, Aging, Developmental Disabilities, Mental Health and Addiction Services, and others. Examples of expenditures in this category include: child care, TANF, administration of the state's psychiatric hospitals, operating subsidies to county boards of developmental disabilities, various immunization programs, and Ohio's long term care ombudsman program. To the extent that these agencies spend GRF to support Medicaid services, that spending is reflected in the previous category.

September disbursements in this category totaled \$65.1 million and were \$5.3 million (7.5%) below projected spending for the month.

### Department of Job and Family Services

The Ohio Department of Job and Family Services (ODJFS) GRF disbursements totaled \$32.4 million for the month of September and were \$2.5 million (7.0%) below estimate. This is compared to August disbursements of \$53.4 million which were \$19.6 million (26.9%) below estimate. Selected major variances in the month of September were attributable to the following:

- Child Care State/Maintenance of Effort disbursements were above estimate by \$5.2 million (297.2%) due to an MOE adjustment that was processed in September instead of May 2013 as anticipated.
- Child Support—Local disbursements were below estimate by \$1.4 million (28.3%) due to county draws being lower than expected.

- Information Technology Project disbursements were below estimate by \$3.9 million (51.6%) as a result of not having received anticipated invoices in the month of September.

#### Department of Health

September 2013 disbursements for the Department of Health totaled \$7.4 million, which was \$1.0 million below estimated expenditures for the month. This is primarily attributable to the following major variances:

- The Infant Vitality disbursements have not been spent thus far and were \$172,000 below reported estimates. This line item was created in House Bill 59 and the associated programs are still in their early stages and are not yet operating. However, spending is predicted to begin in future months.
- The Mothers and Children Safety Net Services program disbursements were \$153,000 below projections, as the department distributed subsidies earlier than predicted. This variance is expected to be offset in future months.

#### Department of Developmental Disabilities

September disbursements for the Department of Developmental Disabilities totaled roughly \$163,000 and were \$106,000 (186%) above estimated expenditures. This variance is largely in the Screening and Early Intervention line, where encumbrances anticipated to be paid in August were paid in September.

#### Department of Mental Health and Addiction Services

September disbursements for the Department of Mental Health and Addiction Services totaled \$19.4 million and were \$0.1 million (0.7%) below estimate.

### **Justice and Public Protection**

This category includes non-debt service GRF expenditures by the Department of Rehabilitation & Correction, the Department of Youth Services, the Attorney General, judicial agencies, and other justice-related entities. September disbursements in this category totaled \$120.0 million and were \$15.3 million (11.3%) lower than the projected totals.

#### Department of Rehabilitation and Correction

Department of Rehabilitation and Correction disbursements totaled \$94.1 million in September, and were \$8.6 million (8.4%) below the estimate. This variance is attributable to lower than anticipated payroll expenses in the Institutional Operations appropriation line. Department disbursements year-to-date are \$369.9 million, which is 4.9 percent greater than the year-to-date estimate. This variance is within the normal range of agency disbursements during the fiscal year.

### Department of Youth Services

Department of Youth Services disbursements totaled \$9.2 million in September, and were \$3.9 million (29.9%) below the estimate. This variance is attributable to lower than anticipated expenses in the RECLAIM Ohio appropriation line. Department disbursements year-to-date are \$70.3 million, which is 1.9 percent less than the year-to-date estimate. This variance shows the department's commitment to sound financial management.

### **General Government**

This category includes non-debt service GRF expenditures by the Department of Natural Resources, Development Services Agency, Department of Agriculture, Department of Taxation, Office of Budget and Management, the remaining statewide elected officials, legislative agencies, and others. September disbursements in this category totaled \$26.0 million and were \$6.5 million (20.1%) below the estimate.

### Department of Natural Resources

September disbursements for the Department of Natural Resources totaled \$4.4 million and were \$1.1 million below estimate (20.7%). Year-to-date disbursements are \$21.5 million which is \$0.4 million (1.9%) above the estimate. Major monthly variances were attributable to the following:

- The Healthy Lake Erie Program line was below estimate by \$0.7 million due to payments being made in October which were originally planned for September.
- The Soil and Water Resources line was below estimate by \$0.3 million due to payments being made in August which were planned for September.

### Ohio Expositions Commission

The Ohio Expositions Commission disbursements totaled \$0.1 million and were \$0.2 million (62.4%) below estimate due mostly to the Junior Fair Subsidy being disbursed one month earlier than anticipated.

### Department of Administrative Services

The Department of Administrative Services September disbursements totaled \$0.4 million and were \$3.3 million (88.6%) below the estimate. This occurred chiefly because \$2.8 million in rent bills for GRF-supported state agencies and vacant space in state buildings managed by DAS did not post in September as anticipated. DAS is awaiting federal approval of method changes for calculating building rental rates. As a result, the fiscal year 2014 rates for these buildings are not yet finalized, thereby delaying this expense.

### **Property Tax Reimbursements**

Payments from the property tax reimbursements category are made to local governments and school districts to reimburse these entities for revenues foregone as a result of the 10.0 percent and 2.5 percent rollback, as well as the homestead exemption. September disbursements of property tax subsidies were \$246.1 million and were \$69.6 million (22.0%) below the monthly estimate of \$315.7 million. For the year-to-date, property tax subsidy payments total \$304.5 million and are \$62.4 million (17.0%) below estimate. Both the monthly and year-to-date variances are the result of fewer counties than anticipated submitting requests for reimbursement at this point in time. This variance should decrease over the next three months and end the first half of the fiscal year close to the estimate.

### **Debt Service**

This category contains all debt service expenditures made from the GRF. September disbursements in this category totaled \$370.7 million and were \$1.0 million (0.3%) below the \$371.6 million in estimate.

### **Transfers Out**

No transfers out of the GRF were performed in September, which was \$5.0 million (100%) less than expected.

**Table 3**  
**GENERAL REVENUE FUND DISBURSEMENTS**  
**ACTUAL FY 2014 VS ESTIMATE FY 2014**  
(\$ in thousands)

Functional Reporting Categories Description	MONTH				YEAR-TO-DATE			
	ACTUAL	ESTIMATED	\$	%	YTD	YTD	\$	%
	SEPTEMBER	SEPTEMBER	VAR	VAR	ACTUAL	ESTIMATE	VAR	VAR
Primary and Secondary Education	570,944	527,794	43,150	8.2%	1,701,425	1,690,607	10,818	0.6%
Higher Education	166,992	201,050	(34,058)	-16.9%	480,498	517,259	(36,761)	-7.1%
Other Education	7,960	4,128	3,832	92.8%	17,967	15,286	2,681	17.5%
Medicaid	1,246,534	1,294,317	(47,783)	-3.7%	3,922,047	4,009,622	(87,576)	-2.2%
Health and Human Services	65,142	70,417	(5,274)	-7.5%	323,424	345,940	(22,516)	-6.5%
Justice and Public Protection	120,008	135,355	(15,346)	-11.3%	495,800	479,744	16,056	3.3%
General Government	25,986	32,528	(6,541)	-20.1%	94,982	99,134	(4,152)	-4.2%
Property Tax Reimbursements	246,139	315,703	(69,564)	-22.0%	304,477	366,846	(62,369)	-17.0%
Capital Outlay	0	0	0	N/A	0	0	0	N/A
Debt Service	370,688	371,642	(953)	-0.3%	683,831	687,006	(3,175)	-0.5%
<b>Total Expenditures &amp; ISTV's</b>	<b>2,820,394</b>	<b>2,952,931</b>	<b>(132,538)</b>	<b>-4.5%</b>	<b>8,024,450</b>	<b>8,211,443</b>	<b>(186,994)</b>	<b>-2.3%</b>
<b>Transfers Out:</b>								
BSF Transfer Out	0	0	0	N/A	995,930	995,930	0	0.0%
Operating Transfer Out	0	5,011	(5,011)	N/A	196,995	202,006	(5,011)	-2.5%
Temporary Transfer Out	0	0	0	N/A	0	0	0	N/A
<b>Total Transfers Out</b>	<b>0</b>	<b>5,011</b>	<b>(5,011)</b>	<b>-100.0%</b>	<b>1,192,925</b>	<b>1,197,936</b>	<b>(5,011)</b>	<b>-0.4%</b>
<b>Total Fund Uses</b>	<b>2,820,394</b>	<b>2,957,942</b>	<b>(137,548)</b>	<b>-4.7%</b>	<b>9,217,375</b>	<b>9,409,379</b>	<b>(192,005)</b>	<b>-2.0%</b>

**Table 4**  
**GENERAL REVENUE FUND DISBURSEMENTS**  
**ACTUAL FY 2014 VS ACTUAL FY 2013**  
(\$ in thousands)

Functional Reporting Categories Description	MONTH			YEAR-TO-DATE			
	SEPTEMBER		% VAR	ACTUAL		% VAR	
	FY 2014	FY 2013		FY 2014	FY 2013		
			\$	\$			
Primary and Secondary Education	570,944	507,098	63,845	1,701,425	1,832,299	(130,875)	-7.1%
Higher Education	166,992	177,023	(10,031)	480,498	505,571	(25,072)	-5.0%
Other Education	7,960	7,253	707	17,967	15,796	2,170	13.7%
Medicaid	1,246,534	1,174,143	72,391	3,922,047	3,685,900	236,147	6.4%
Health and Human Services	65,142	70,701	(5,559)	323,424	286,641	36,782	12.8%
Justice and Public Protection	120,008	171,677	(51,668)	495,800	526,465	(30,665)	-5.8%
General Government	25,986	35,431	(9,445)	94,982	96,924	(1,942)	-2.0%
Property Tax Reimbursements	246,139	273,298	(27,159)	304,477	385,509	(81,032)	-21.0%
Capital Outlay	0	69	(69)	0	137	(137)	N/A
Debt Service	370,688	295,622	75,066	683,831	585,034	98,797	16.9%
<b>Total Expenditures &amp; ISTV's</b>	<b>2,820,394</b>	<b>2,712,314</b>	<b>108,079</b>	<b>8,024,450</b>	<b>7,920,276</b>	<b>104,173</b>	<b>1.3%</b>
<b>Transfers Out:</b>							
BSF Transfer	0	0	0	995,930	235,096	760,834	323.6%
Operating Transfer Out	0	31,068	(31,068)	196,995	91,278	105,717	115.8%
Temporary Transfer Out	0	0	0	0	0	0	N/A
<b>Total Transfers Out</b>	<b>0</b>	<b>31,068</b>	<b>(31,068)</b>	<b>1,192,925</b>	<b>326,374</b>	<b>866,551</b>	<b>265.5%</b>
<b>Total Fund Uses</b>	<b>2,820,394</b>	<b>2,743,382</b>	<b>77,012</b>	<b>9,217,375</b>	<b>8,246,651</b>	<b>970,724</b>	<b>11.8%</b>

## ***FUND BALANCE***

Table 5 describes the estimated General Revenue Fund (GRF) ending fund balance for FY 2014. Based on the estimated revenue sources for FY 2014 and the estimated FY 2014 disbursements, transfers, and encumbrances, the GRF ending fund balance for FY 2014 is an estimated \$287.1 million.

The GRF ending fund balance should not be considered as a balance available for expenditure in FY 2014 nor should it be considered as equivalent to the FY 2014 surplus calculation as defined in Section 131.44 of the Ohio Revised Code.

It is important to note that the GRF ending fund balance will be impacted by any GRF expenditures or transfers that may be authorized by the General Assembly or by the Controlling Board during the course of the fiscal year.

FUND BALANCE  
GENERAL REVENUE FUND  
FISCAL YEAR 2014  
(\$ in thousands)

<b>July 1, 2013 Beginning Cash Balance</b>	<b>\$ 2,639,250</b>
Plus FY 2014 Actual Revenues	20,091,089
Plus FY 2014 Actual Federal Revenues	8,863,000
Plus FY 2014 Actual Transfers to GRF	373,613
<b>Total Sources Available for Expenditure &amp; Transfer</b>	<b>31,966,951</b>
Less FY 2014 Actual Disbursements	29,983,436
Less FY 2014 Actual Total Encumbrances as of June 30, 2014	439,068
Less FY 2014 Actual Transfers Out	1,257,369
<b>Total Actual Uses</b>	<b>31,679,873</b>
<b>FY 2014 UNENCUMBERED ENDING FUND BALANCE</b>	<b>287,078</b>

OBM staff that contributed to the development of this report were:

Jason Akbar, Astrid Arca, Jim Bennett, Benjamin Boettcher, Frederick Church, Jim Coons, Paul DiNapoli, Catherine Hookway, Joshua Hope, Kurt Kauffman, Sári Klepacz, Isabel Louis, Matthew Martin, Jeff Newman, Katherine Nickey, Lawrence Parson, Steven Peishel, Leslie Piatt, Penny Rader, Aaron Rausch, Katja Ryabtseva, Daniel Schreiber, Lillian Stockell, Chris Whistler, and Andrew White.



August 30, 2013

**To:** Wayne Struble, Policy Director, Office of Ohio Governor  
**From:** The Ohio Manufacturers' Association  
**Re.:** **OMA Tax Principles and Policy Recommendations**

## **Introduction**

Thank you for the opportunity to submit our positions with respect to tax policy considerations and recommendations. This document reflects tax policy guiding principles and recommendations to increase the competitiveness of Ohio's manufacturing economy, and therefore, the Ohio economy. The concepts in this document were developed by OMA members in conjunction with staff and OMA tax counsel.

## **Guiding Principles**

For Ohio to be successful in a global economy, the state's tax structure must encourage economic investment and growth and be competitive both 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, significantly reducing 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 competitiveness, economic growth and prosperity in Ohio.

Based on these guiding principles, the OMA's members have developed the following additional principles to guide the organization in evaluating tax policy proposals:

### **Guiding Taxation Principles**

1. Tax policy changes should only be made after a thorough collection and consideration of all the facts and competing interests.
2. Ohio should continue to reevaluate its tax structures to ensure a modern tax system for a modern economy. This includes modernizing tax provisions to ensure fair and responsible tax models.
3. It is generally poor tax policy to single out any one segment of the economy or group of taxpayers to bear the cost of tax relief for the general population. Any departure from standard policy needs a clear and convincing reason.
4. Except to resolve existing inequality, or in cases of other policy imperatives, Ohio tax policy should not create a windfall for any group of taxpayers at the expense of other groups of taxpayers.
5. Compliance and administration of any tax should be as simple and inexpensive as possible for taxpayers and tax administrators alike.

### **Recommendations**

#### Commercial Activity Tax (CAT)

Prior to 2005, Ohio's tax structure was essentially unchanged since the 1930s. Although the state's economy had changed and services made up a larger share of the economy, Ohio was still levying taxes based on an agricultural and manufacturing economy. Many service businesses operate without a significant investment in capital, hence, their tangible personal property and net worth franchise tax liabilities were minimal. Because of Ohio's antiquated tax system some sectors were able to avoid paying a comparable share of tax as manufacturers.

As the demand for state services grew, a heavier burden fell on manufacturing taxpayers. At the same time the state continued to add exemptions from, and exceptions to, the various taxes at this time. Ohio was saddled with high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with existing taxes became more complicated.

The 2005 tax reforms achieved the goals of significantly reducing tax on investment and shifting to taxation of commercial consumption, broadening the business tax base, reducing business taxes, providing a more stable and predictable flow of revenue and simplifying compliance.

- Preserve the integrity of Ohio's 2005 tax reforms. This includes a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or

credits to (a) avoid paying the CAT on receipts from commercial activity, or (b) earmark any portion of CAT revenues for specific government purposes. *See addendum for CAT carve outs.*

## Sales Tax

It has been suggested that in order to spur economic growth, consumption, rather than income, should be taxed. That is one of the reasons the CAT, which taxes commercial consumption, was enacted. Similarly, a sales tax acts to tax personal consumption. It is not intended to tax business inputs such as raw materials, machinery and equipment that are used to produce other outputs that are ultimately taxed. Since commercial consumption is already subject to taxation under the CAT, expansion of the sales tax base should be directed at personal consumption.

- Imposing the sales tax on commercial consumption essentially subjects such transactions to two levels of taxation. The sales tax should not be expanded to consumption in the form of business inputs, and such inputs as are already taxed should be excluded.
- Ohio would benefit from a more streamlined and simplified 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 sound tax policy or economic justification.
- Just as wages are not subject to the CAT; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales tax, so too should amounts paid for temporary employees engaged in activities that are otherwise exempt from the sales tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.
- Ohio also taxes industrial janitorial services. Manufacturers' production facilities and the equipment components of their production processes require continuous repair and maintenance. Without the required cleaning, repairs and maintenance the machinery breaks down and fails to produce acceptable products for sale to customers. Cleaning industrial assets is absolutely critical to the manufacturing process. It is a necessary business input and sales tax should not apply.
- Prior to any extension of the sales tax to services, state officials should be mindful of the often complex and costly consequences of extending a tax on personal consumption to businesses and manufacturers. Though not exclusively, many concerns fall into four main but often inter-related categories: (1) extending the tax to transactions between members of an affiliated group of entities; (2) extending the tax to intangibles; (3) the uncertainty surrounding situs rules; and (4) the failure to afford to services and intangibles the benefit of existing exemptions for tangible property for purposes of resale or for business inputs. *See addendum for additional details.*

## Severance Tax

The OMA recognizes that Ohio's current severance tax structure makes Ohio very competitive, one of the most competitive and drilling-friendly states according to provided data. We note the

severance tax provisions in Ohio law, having first been enacted in 1971, are 40 years old and have not been materially updated. Generally, manufacturers support the modernization of Ohio's severance tax including a reasonable rate increase. Any changes to the severance tax should keep Ohio's rate below our competitor states' rates.

### Income Tax

Ohio's manufacturers understand the importance of lowering the state's personal income tax rates and broadening its base. Lowering the tax rate and broadening its base increase Ohio's overall competitiveness with other competing states when attempting to attract new or expanding businesses.

- Uniform and consistent income tax rules across jurisdictions are a competitive necessity. Ohio needs to 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 generic municipal income tax forms.
- Lower the effective 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 taxes, which puts Ohio at a competitive disadvantage compared to other states, few of which have any let alone hundreds of income tax jurisdictions. The tax itself notwithstanding, employers who operate in multiple Ohio communities have a significant tax administration and compliance cost under the current system.

### **Summary**

Since the enactment of tax reform, OMA has maintained a simple, consistent approach to tax policy in Ohio. That approach insists on certainty, equity, simplicity, and transparency. The erosion of the tax reform legislation, in the form of carve outs, exclusions, and ear-marks, reduces certainty, creates disparity by selecting winners and losers, renders the tax code more complicated, and reduces transparency as it becomes more difficult to determine who is entitled to which exclusions.

Everybody has a story; everybody has a reason why one tax or another is not fair to them. However, one cannot have an efficient and fair tax system that is different for every taxpayer. Nor is it fair to tax some segments of the economy at levels that are multiple times higher than those imposed on other segments. The 2005 tax reform legislation was directed at trying to reduce that inequity. Every time an exclusion or exemption from the CAT is created, that increases the tax burden on everybody else. The solution isn't a tax system made of Swiss cheese; we tried that already, and it didn't work. Hold fast to a broad-based, low-rate tax that is simple to enforce and simple to follow, and that treats all taxpayers the same.

The CAT subjects commercial consumption to taxation; the sales tax subjects personal consumption to taxation. Imposing the sales tax on commercial consumption essentially subjects such transactions to two levels of taxation. The sales tax should not be expanded to consumption in the form of business inputs of any kind, and such inputs as are already taxed should be excluded.



**BEFORE THE TAX REFORM LEGISLATIVE STUDY COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES  
REPRESENTATIVE GARY SCHERER, CHAIRMAN**

**TESTIMONY  
OF  
MARK ENGEL  
BRICKER & ECKLER  
OMA TAX COUNSEL**

**AUGUST 14, 2013**

Mr. Chairman and members of the Committee, my name is Mark Engel. I'm an attorney with the law firm of Bricker & Eckler LLP and I concentrate my practice in the areas of state and local taxation and economic development. I'm testifying here today on behalf of the Ohio Manufacturers' Association to provide you with some background regarding the Commercial Activity Tax (CAT) and to emphasize the importance on preserving the integrity of the CAT against erosion caused by exemptions and credits.

### **Ohio's Previous Tax Structure**

Prior to 2005, Ohio's tax structure was essentially unchanged since the 1930s. At that time, Ohio's economy was driven by agriculture and manufacturing. Its tax structure reflected that economy. The major taxes were the real property tax, the sales and use taxes, the tax on tangible personal property used in business, and the corporation franchise tax measured on net worth. Both agriculture and manufacturing enjoyed generous exemptions from the sales tax. However, the franchise tax and the tangible personal property tax, especially, both hit capital-intensive industries harder than others and had to be paid whether the entity made, or lost, money. Thus, the manufacturing sector paid an inordinately high level of state tax when compared with other segments of the economy.

As services made up a larger share of Ohio's economy over the years, the inequality in the state tax burden between manufacturing and other segments of the economy was exacerbated. Many service sector concerns operate without a significant investment in capital; hence, their tangible personal property and net worth franchise tax liabilities were minimal. Many of these services operate on more slender margins or can manipulate their finances to minimize income; as a result, little income tax was generated. In addition, many of these new service entities were organized as pass-through entities that were not subject to the franchise tax. As the demand for state services grew, the only recourse was to raise existing tax rates on existing taxpayers. In many cases, that meant an increasing tax burden for Ohio manufacturers.

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had

high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

### **Calls for Reform**

During the 1960s, calls for reform in Ohio's tax structure began. Over the years, various band-aids were applied to Ohio's tax structure in order to attempt to reduce its inequalities. Differences in the assessment rate applied to various types of business tangible personal property were reduced or eliminated, and the over-all assessment percentage was reduced. In the early 1970s the net income tax base for the franchise tax and the personal income tax were enacted on the basis that they were perceived as "more fair" because they were based on ability to pay. Ohio's intangibles tax on investments was repealed during the early 1980s. A cap of \$150,000 was placed on the franchise tax liability of a taxpayer as measured by net worth in the early 1990s.

At the same time, Ohio continued to enact exemptions from, or exceptions to, the various taxes, thereby creating increasing disparity and complexity.

With the dawn of a new millennium, calls for tax reform increased. They were reinforced by the movement of manufacturing jobs to the sunny south and outside the borders of the United States. Ohio lost over 200,000 high-paying manufacturing jobs in the early years after the turn of the century. In addition, Dr. Ned Hill of Cleveland State University independently conducted a study that examined the impact of state tax policy on Ohio's economy and called for the elimination of the tangible personal property tax and existing dual-based franchise tax, to be replaced with a broad-based, low-rate tax based on payroll. The study also showed how capital-intensive segments of the economy, such as manufacturing, construction, and mining, paid anywhere from 3 to 11 times more state taxes than did members of many service industries.

### **Tax Reform Enacted**

Finally, in early 2005, true tax reform was proposed. The goals of tax reform were:

- Eliminate tax on investment and shift to the taxation of consumption;
- Broaden the over-all business tax base;
- Reduce over-all business tax rates;
- Provide a more stable and predictable flow of revenue; and
- Simplify compliance.

The result was a comprehensive overhaul of Ohio's tax system by H.B. 66. As enacted, the bill:

- Eliminated the tangible personal property tax on new investment in manufacturing and phased out the tax on all general business property over 4 years;
- Phased out the corporation franchise tax for most corporations over 5 years;
- Phased in a 21% reduction in personal income tax rates ratably over 5 years (the last reduction was delayed 2 years in 2009 in an effort to balance the state budget, but was implemented in 2011); and
- Enactment of the commercial activity tax ("CAT"), a broad-based, low-rate tax measured by gross receipts from virtually all business activities and entities.

H.B. 66 became law in June 2005. Although generally opposed to gross receipts taxes because of their compounding nature, most manufacturers soon found that the savings from replacing the onerous taxes on tangible personal property and corporation franchise with the extremely broad-based, low-rate CAT more than made up for the policy misgivings regarding a gross receipts tax. Other taxpayers that initially withheld support, such as retailers and those in construction, also warmed to the tax as the savings became clear. In addition, compliance costs were slashed as taxpayers no longer had to undertake the arduous process of preparing personal property tax returns or corporation franchise tax reports.

## **CAT Facts**

According to the Ohio Department of Taxation in a report dated March 12, 2013, in fiscal year 2012 (the latest year for which figures are available) manufacturers made up the third largest group of CAT taxpayers, at 10.1% and trailing only retail (12.8%) and unclassified (10.2%). At the same time, in terms of CAT liability manufacturers made up the largest share, at 27.3% of the total (retail was second at 20.1%).

In addition, CAT filers with taxable gross receipts of \$1 million or less accounted for 68.8% of all filers during 2011, but only 0.9% of the total liability for that period. Clearly, small business benefits from the CAT, as well as the 21% reduction in personal income tax rates that was also part of the 2005 tax reform and the additional reductions enacted as part of Am. Sub. H.B. 59 earlier this year.

## **Results of Tax Reform**

Due to the phased implementation of the provisions of H.B. 66 and the general economic slowdown that has gripped the country over the past few years, questions have been raised regarding the effectiveness of the tax reform efforts. OMA has been at the forefront in demonstrating that, indeed, the effort was worthwhile.

- In 2009, Ohio won Site Selection magazine's "Governor's Cup" for an unprecedented fourth consecutive year. The Governor's Cup is awarded annually to the state having the most major business expansions in the nation.
- A January 2009 Ernst & Young study indicated that Ohio's business tax burden rated between 18<sup>th</sup> and 23<sup>rd</sup> best on 3 different scales of comparison. Another Ernst & Young study conducted for the Ohio Business Development Coalition showed that Ohio had the lowest effective tax rates on new capital investment in the Midwest.
- The Small Business & Entrepreneurship Council's Business Tax Index in 2008 rated Ohio's state tax system as 14<sup>th</sup> best nationally.

- In March 2010 the Federation of Tax Administrations released an analysis of new data from the U.S. Census Bureau showing that for FY 2009, Ohio's per capita state tax burden was the 16<sup>th</sup> lowest; as a percentage of personal income, the burden was the 18<sup>th</sup> lowest.
- In April 2011, Ernst & Young and the Council on State Taxation issued a report entitled "Competitiveness of State and Local Business Taxes on New Investment" in which they concluded that Ohio had the third lowest rate of state and local taxation on new business investment. The report laid this result directly at the feet of the 2005 tax reform law.
- In early 2013, Site Selection Magazine honored Ohio as having the 5<sup>th</sup> most favorable tax climate for mature firms and the 3<sup>rd</sup> most favorable tax climate for new firms for fiscal year 2012.
- Finally, according to the Ohio Department of Taxation, Ohio is one of only 6 states that do not tax corporate profits, and one of 10 that do not tax business personal property.

### **Proposed tax reform and CAT changes**

As noted above, some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions. The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands that they all remain subject to the tax.

It has also been suggested that the rate at which the CAT is imposed might be raised in order to "pay" for various other tax "reforms." As a gross receipts tax, the CAT applies to every transaction in the chain of commerce. Thus, the tax is paid multiple times and is included in the price that the final consumer pays for a good or service. The distortive effect of taxing intermediate transactions is minimized when the tax rate is kept low. By raising the rate, this distortive effect is magnified. It renders Ohio tax structure less

transparent and its business less competitive. The success stories related earlier in this testimony could not have happened with a higher rate. The rate must remain low for the CAT to work.

### **Proposed tax reform and sales tax changes**

It has been suggested that in order to spur economic growth, consumption, rather than income, should be taxed. That is one of the reasons the CAT, which taxes commercial consumption, was enacted. Similarly, the sales tax taxes personal consumption. It is not intended to tax business inputs such raw materials, or machinery and equipment that are used in a manner that produces other outputs that are ultimately taxed. As commercial consumption is already subjected to taxation under the commercial activity tax, expansion of the sales tax base should be directed to personal consumption.

Moreover, just as wages are not subject to the CAT; and ingredients, machinery and equipment constituting business inputs are exempted from the sales tax, so, too, should amounts paid for temporary employees engaged in activities that are otherwise exempt from the sales tax, be excluded from that tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.

### **Summary:**

Since the enactment of tax reform, OMA has maintained a simple, consistent approach to tax policy in Ohio. That approach insists on certainty, equity, simplicity, and transparency. The erosion of the tax reform legislation, in the form of carve-outs, exclusions, and ear-marks, reduces certainty, creates disparity by selecting winners and losers, renders the tax code more complicated, and reduces transparency as it becomes more difficult to determine who is entitled to which exclusions.

Everybody has a story; everybody has a reason why one tax or another is not fair to them. However, one cannot have an efficient and fair tax system that is different for every taxpayer. Nor is it fair to tax some segments of the economy at levels that are 10 times higher than those imposed on other segments. The 2005 tax reform legislation was directed at trying to reduce that inequity. Every time an exclusion or exemption

from the CAT is created, that increases the tax burden on everybody else. The solution isn't a tax system made of Swiss cheese; we tried that already, and it didn't work. Hold fast to a broad-based, low-rate tax that is simple to enforce and simple to follow, and that treats all taxpayers the same.

The CAT subjects commercial consumption to taxation; the sales tax subjects personal consumption to taxation. Imposing the sales tax on commercial consumption essentially subjects such transactions to two levels of taxation. The sales tax should not be expanded to consumption in the form of business inputs, and such inputs as are already taxed should be excluded.

Thank you. I'll be pleased to answer any questions you may have.



**BEFORE THE SENATE TAX REFORM WAYS & MEANS SUBCOMMITTEE  
SENATOR BOB PETERSON, CHAIRMAN  
John Konfala  
Director of Tax  
Emerson Network Power  
October 17, 2013**

Mr. Chairman and members of the Committee, my name is John Konfala. I am Director of Tax with Emerson Network Power a business of Emerson Electric Co. Emerson is a global manufacturer headquartered in Ferguson, Missouri, a suburb of St. Louis. We have 12 sites in Ohio that employ approximately 5,500 people in the state. I'm testifying here today on behalf of both Emerson and the Ohio Manufacturers' Association (OMA). The OMA is made up of approximately 1,500 manufacturers of all sizes who operate in the state of Ohio.

**Commercial Activities Tax**

Prior to the 2005 tax reforms, Ohio was stuck using an outdated tax system. As Ohio's economy changed and services began to make up a larger share of Ohio businesses, the inequality in the state tax burden between manufacturing and other segments of the economy was exacerbated.

After years of debate the legislature proposed and enacted true reform in 2005 to help solve these inequalities. Back then the goals of tax reform were to eliminate tax on investment, broaden the over-all business tax base, reduce business tax rates, provide a stable and predictable revenue source, and simplify compliance.

As proud members of the OMA, Emerson supports preserving the 2005 tax reforms and opposes both carve outs and exemptions for individual industries. By having all industries share the costs of the CAT, the lower rate can continue to be preserved. Keeping the broad-base and low-rate is especially critical to manufacturers. According

to the Ohio Department of Taxation in a report dated March 12, 2013, in fiscal year 2012 (the latest year for which figures are available) manufacturers made up the third largest group of CAT taxpayers, at 10.1% and trailing only retail (12.8%) and unclassified (10.2%). At the same time, in terms of CAT liability manufacturers made up the largest share, at 27.3% of the total (retail was second at 20.1%).

There have been questions asked regarding gross receipts taxes. Generally businesses are opposed to these taxes because of their compounding nature, however in Ohio most manufacturers found that the saving from replacing the onerous taxes on tangible personal property and corporation franchise with the broad-base and low-rate CAT more than made up for the policy misgivings regarding the gross receipts tax.

### **Proposed tax reform and CAT changes**

As noted above, some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions. The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands that they all remain subject to the tax. Alternatives to carve-outs and exemptions might be grant programs for research and development, which entice businesses to invest in Ohio.

It has also been suggested that the rate at which the CAT is imposed might be raised in order to “pay” for various other tax “reforms.” As a gross receipts tax, the CAT applies to every transaction in the chain of commerce. Thus, the tax is paid multiple times and is included in the price that the final consumer pays for a good or service. The distortive effect of taxing intermediate transactions is minimized when the tax rate is kept low. By raising the rate, this distortive effect is magnified. It renders Ohio tax structure less transparent and its business less competitive. The rate must remain low for the CAT to work.

## **Proposed tax reform and sales tax changes**

It has been suggested that in order to spur economic growth, consumption, rather than income, should be taxed. That is one of the reasons the CAT, which taxes commercial consumption, was enacted. Similarly, the sales tax taxes personal consumption. It is not intended to tax business inputs such raw materials, or machinery and equipment that are used in a manner that produces other outputs that are ultimately taxed. As commercial consumption is already subjected to taxation under the commercial activity tax, expansion of the sales tax base should be directed to personal consumption.

## **Municipal Income Tax**

Ohio has one of the most complicated taxing structures in the country. This administrative burden is mostly attributed to Ohio's local income tax system. Ohio is one of a handful of states that tax both individuals and businesses and the only state where each municipal corporation makes its own rules and regulations. The administrative cost in time and money puts Ohio at a disadvantage compared to its peers and diverts Ohio manufacturers' resources from production, the lifeblood of a manufacturer.

It is important that Ohio adopt a consolidated and streamlined municipal income tax code that would create a more uniform statewide standard.

## **Summary:**

Manufacturing is Ohio's largest industry sector. Any decisions about tax reform should consider the real impacts, both good and bad to the manufacturing sector. In my testimony I have outlined three areas of taxation that greatly impact Ohio manufacturers. I'll be pleased to answer any questions you may have.

Thank you.



# Ohio Legislative Service Commission

## Sub. Bill Comparative Synopsis

Sam Benham

### H.B. 5

130th General Assembly  
(House Ways & Means)

This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Topic	Previous Version (As Introduced)	Sub. Version (LSC 130 1581-2)
<b>Municipal income tax ordinances</b>	Requires a municipal corporation to either repeal its existing municipal income tax ordinances or resolutions by January 1, 2015, or amend those ordinances or resolutions to comply with the bill's limitations by that date. Otherwise, the municipal corporation's income tax is repealed on December 31, 2014 ( <i>R.C. 718.04(B)</i> ).	Requires a municipal corporation to amend its income tax ordinance to include, by January 1, 2015, certain statements, including that the tax is subject to the new limitations imposed by the bill, but does not require that a municipal corporation's income tax be automatically repealed if the ordinance is not so amended ( <i>R.C. 718.04</i> ).
<b>Income tax base for certain municipal corporations</b>	Authorizes a municipal corporation that, on or before December 31, 2011, adopted federal adjusted gross income (FAGI) as the income subject to tax for purposes of imposing a tax on income to continue to use FAGI as the tax base for the taxation of individual residents. Requires that the municipal corporation tax the income of nonresident individuals and the net profit of other taxpayers ( <i>R.C. 718.02(B)(1)(b)</i> ).	Authorizes a "qualified municipal corporation" that, on or before December 31, 2011, adopted Ohio adjusted gross income (AGI) – the Ohio's income tax base – plus certain exemptions as the income subject to tax for purposes of imposing a tax on income to continue to use Ohio AGI with the exemptions as the tax base for the taxation of individual residents.

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		Authorizes the qualified municipal corporation to exempt income earned by nonresident individuals and the net profits of persons not wholly located within the qualified municipal corporation from the tax and corresponding withholding obligations ( <i>R.C. 718.01(A)(2) and (RR)</i> ).
<b>Taxation of pass-through entities</b>	<p>Prohibits municipal corporations from taxing the income of pass-through entities (e.g., partnerships, S corporations, limited liability companies) at the entity level (<i>R.C. 718.01(D)(4)</i>).</p> <p>Requires pass-through entities doing business in a municipal corporation levying an income tax to withhold and pay the tax on behalf of all owners of the entity; the owners' individual tax liabilities for their shares of the entity's net profit are credited with the payment (<i>R.C. 718.43</i>).</p>	<p>Prohibits municipal corporations from taxing the income from pass-through entities at the individual owner level except for residents of the municipal corporation, but exempts residents' distributive shares of net profit from an S corporation unless the municipal corporation taxed such shares of residents before 2015 (<i>R.C. 718.01(B)(1) and (2) and (C)(14)</i>).</p> <p>Requires municipal corporations to tax pass-through entities, including S corporations, at the entity level, similar to corporations (<i>R.C. 718.01(B)(3)</i>).</p>
<b>Pass-through entity loss offset of other income</b>	Prohibits an individual from using losses incurred by a pass-through entity attributable to the individual's share to offset other types of income, except pass-through entity income and wages and other compensation ( <i>R.C. 718.01(B)(1)(a)</i> ).	Authorizes a resident individual to use losses incurred by a pass-through entity attributable to the individual's share to offset "any other" net profit (a nonresident individual's pass-through entity distributive share is subject to tax only at the entity level) ( <i>R.C. 718.01(B)(1)</i> ).

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<b>Taxation of qualifying subchapter S subsidiaries</b>	Taxes the net profit of a qualifying subchapter S subsidiary (an S corporation wholly owned by a single owner) as other pass-through entities (see above).	Does not directly tax the net profit of a qualified subchapter S subsidiary, but includes the subsidiary's income in the net profit of its single owner, and additionally taxes all entities that are disregarded entities for federal tax purposes similarly to qualifying subchapter S subsidiaries ( <i>R.C. 718.01(D)(3)</i> ).
<b>Qualifying wages: deduction of exempt income</b>	Prohibits an employer from deducting from an employee's withheld qualifying wages any portion of those wages that is income exempt from taxation ( <i>R.C. 718.01(R)(3)</i> ).	No similar provision.
<b>Grantor trusts</b>	Excludes grantor trusts—trusts in which the grantor retains certain powers over the trust's administration—from the definition of "person," excluding the trusts from any provision of municipal income tax law ( <i>R.C. 718.01(M)</i> ).	Does not exclude grantor trusts from definition of "person," but grantor trusts remain excluded from the definition of "taxpayer."
<b>Gambling loss deduction</b>	Allows a taxpayer with taxable gambling income to subtract from that income the amount of the taxpayer's federal wagering loss deduction ( <i>R.C. 718.01(B)(4)</i> ).	Allows only a taxpayer that is a professional gambler for federal income tax purposes to subtract the amount of the taxpayer's federal wagering loss deduction ( <i>R.C. 718.01(B)(4)</i> ).
<b>Exempt income: retirement income</b>	Exempts from tax any retirement, Social Security, disability, or pension benefits or nonsupplemental unemployment compensation, except any amount included in qualifying wages ( <i>R.C. 718.01(C)(3)</i> ).	Exempts from tax payments from any pension plan or any pension benefit, whether or not included in qualifying wages ( <i>R.C. 718.01(C)(3)</i> ).
<b>Exempt income: income of individuals under age 18</b>	Exempts from taxation all income earned by individuals under age 18, except for qualifying wages ( <i>R.C. 718.01(C)(14)</i> ).	Authorizes municipal corporations to exempt all or a portion of income earned by an individual aged 18 or younger, or a subset of those individuals, to the extent such income was exempted by an ordinance adopted before January 1, 2015 ( <i>R.C. 718.01(C)(15)</i> ).

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<b>Exempt income: nonresident compensation</b>	No similar provision (subjects such compensation to tax).	Exempts from tax any compensation, other than qualifying wages, of a nonresident individual for personal services performed in the municipal corporation, but does not exempt such income of professional athletes or entertainers or public figures ( <i>R.C. 718.01(C)(17)</i> ).
<b>Exempt income: pass-through entities</b>	No similar provision.	Provides that exempt income in the hands of a pass-through entity is also exempt in the hands of owners ( <i>R.C. 718.01(C)</i> ).
<b>Exemption for guaranteed payments to partners</b>	Prohibits entities that are not subchapter C corporations from deducting from the entity's net profit guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member ( <i>R.C. 718.01(E)</i> ).	Same as the As Introduced bill, except allows a partnership to deduct from the partnership's net profits guaranteed payments to partners for the use of capital that are treated as payment of interest under federal law ( <i>R.C. 718.01(E)</i> ).
<b>Net profit reported on form 4797</b>	Requires municipal corporations to tax an individual's net profit reported on I.R.C. Form 4797 ( <i>R.C. 718.01(D)(2)</i> ).	No similar provision (does not authorize municipal corporations to tax net profit reported solely on Form 4797).
<b>Net operating loss carryforward</b>	Requires all municipal corporations to allow a five-year carryforward of net operating losses (NOLs), phasing in the requirement over five years beginning in 2015 ( <i>R.C. 718.01(E)(8)</i> ).	<p>Allows a municipal corporation that levies an income tax before 2015 to use a carryforward period prescribed by the municipal corporation for taxable years beginning in 2015 or 2016, then requires a five-year carryforward thereafter, except that for taxable years beginning after 2016 but before 2022, a business may deduct only 50% of the business's net operating loss.</p> <p>Requires a municipal corporation that does not levy an income tax before 2015 to allow net operating losses to be carried forward for five years. (<i>R.C. 718.01(E)(8)</i>).</p>

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<b>Pre-2015 net operating loss</b>	Allows NOLs incurred before 2015 to be carried forward and deducted from pre-apportioned income according to the ordinances or resolutions in effect before that year, but apportions such loss under the apportionment factors as modified by the bill ( <i>R.C. 718.01(A) and (E)(9)</i> ).	Same as the As Introduced bill, except apportions such loss under the apportionment factors in effect before 2015 and requires the carryforwards to be deducted from post-apportioned income ( <i>R.C. 718.01(A) and (SS)</i> ).
<b>Municipal Income Tax Net Operating Loss Review Committee</b>	No similar provision.	<p>Creates a temporary 11-member committee composed of taxpayer, municipal, and legislative representatives to study and issue a report on the potential fiscal impact of requiring municipal corporations to allow NOL to be carried forward for five years, provided adequate date is received.</p> <p>Requires each municipal corporation levying an income tax to report to the committee the difference between the municipal corporation's projected or actual income tax revenue in calendar years 2011 to 2018 and the income tax revenue that would have resulted in those years if the municipal corporation had allowed taxpayers to carry forward NOL incurred in 2011, 2012, or 2013 for five years, but does not impose any penalty if a municipal corporation does not report this information (<i>Section 6</i>).</p>
<b>Patronage dividends</b>	Disallows a municipal corporation from requiring patronage dividends paid, distributed, or accrued to be added to an entity's net profit to the extent deducted for federal purposes ( <i>R.C. 718.01(E)(10)</i> ).	No similar provision.

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<b>Pass-through entity net profits</b>	No similar provision.	Requires a business to deduct net profit or add losses of a pass-through entity of which the business is an owner, unless the pass-through entity's profits or loss is included as part of an affiliated group ( <i>R.C. 718.01(E)(9) and (10)</i> ). Such profit or loss is included on a consolidated return if one is filed, unless the corporate owner elects otherwise. (See <b>Consolidated returns</b> , below.)
<b>Intangible income exemption</b>	Does not include an exemption for any intangible income reported on I.R.S. Schedule C, E, or F ( <i>R.C. 718.01(S)</i> ).	Exempts from tax all intangible income, including any such income reported on Schedule C, E, or F ( <i>R.C. 718.01(S)</i> ).
<b>Unreimbursed business expense deduction</b>	No similar provision.	Authorizes an individual to deduct from the individual's taxable income unreimbursed employee expenses reported on the individual's I.R.S. Form 2106, to the extent those expenses are deducted for federal tax purposes and situated to the municipal corporation where the individual performed corresponding services ( <i>R.C. 718.01(A)(2)</i> ).
<b>Residency and domicile</b>	<p>Permits municipal corporations to treat an individual as a resident for municipal income tax purposes only if the individual is domiciled in the municipal corporation and is an Ohio resident for the purposes of the state income tax as determined under the state's "bright line" residency test (<i>R.C. 718.01(J)</i>).</p> <p>No similar provision.</p> <p>No similar provision.</p>	<p>Permits municipal corporations to treat an individual as a resident for municipal income tax purposes if the individual is "domiciled" in the municipal corporation (<i>R.C. 718.01(J)</i>).</p> <p>A person's domicile as the principal residence that a person intends to use for an indefinite period of time and to which, whenever absent, the person intends to return.</p> <p>Provides that an individual is presumed to be</p>

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	No similar provision.	<p>domiciled in a municipal corporation if the tax administrator reasonably concludes that the individual is domiciled in the municipality. The taxpayer may rebut this presumption by showing by a preponderance of the evidence that the taxpayer was not domiciled in the municipal corporation.</p> <p>Sets forth 11 factors that may be used in determining, or rebutting the presumption of, an individual's domicile, and allows a tax administrator or taxpayer to use other relevant factors. The 11 factors consider the location of (1) the individual's financial advisors, insurance agents, attorneys, accountants, or doctors, (2) business ventures in which the individual is a partner or shareholder or for which the individual serves on the board of directors, (3) charitable organizations to which the individual donates, (4) the individual's friends, dependents, and family members, (5) educational institutions attended by the individual's dependents, (6) where the individual shops, (7) where the individual is registered to vote, (8) property owned by the individual, (9) the address listed on the individual's driver's license, (10) where the individual is employed, and (11) the address on the individual's tax returns, bills, credit card statements, and other mail. (R.C. 718.012.)</p>

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<b>Resident credit for tax paid to other municipalities</b>	Authorizes municipal corporations to allow residents to claim a credit equal to all or a portion of the tax the resident paid to other municipal corporations on income earned in those other municipal corporations (R.C. 718.04(E)).	Same, except requires municipal corporations that allow the credit to allow it for tax the resident paid to all municipal corporations, including the municipal corporation of residence that allows the credit (R.C. 718.04(E)).
<b>Casual entrant rule</b>	<p><b>Exemption:</b> Prohibits a municipal corporation from taxing the compensation paid to a nonresident individual who worked in the municipal corporation for 20 days or fewer in a year (R.C. 718.01(C)(15)).</p> <p>No similar provision.</p> <p><b>Withholding:</b> Provides that employers are not required to withhold taxes against wages that an employee earns for work performed in a municipal corporation on 20 or fewer days per year if the employer withholds taxes against such wages for the municipal corporation in which the employee's principal workplace is located (R.C. 718.011(C)).</p> <p>Specifies that, when an employee provides services in a municipal corporation for 21 or more days per year, the employer must</p>	<p>Same as the As Introduced bill, except that such compensation is not exempt if the individual works in the municipal corporation on more than 20 days in a year and the individual's employer elects to withhold taxes from the individual's compensation for every day the employee worked in the municipal corporation (including for the first 20 days). (R.C. 718.01(C)(16)).</p> <p>Prohibits a municipal corporation from taxing any compensation paid to a nonresident employee of an employer with less than \$500,000 in annual gross receipts, if that employer's only fixed location is not located in the municipal corporation. (R.C. 718.011(E)).</p> <p><b>Withholding:</b> Same as the As Introduced bill, but allows an employee to receive a refund of such taxes withheld for the municipal corporation in which the employee's principal workplace is located. If the taxes are refunded, the employee's compensation is instead taxable by the municipal corporation in which the services were provided. (R.C. 718.01(C)(16) and 718.011(C).)</p> <p>Same as the As Introduced bill, but allows an employer to elect to withhold taxes on all wages a nonresident employee earned in a</p>

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	<p>begin withholding taxes on wages earned on and after the 21st day for the municipal corporation in which the services were provided (R.C. 718.011(D)).</p> <p><b>Small employers:</b> No similar provision.</p>	<p>municipal corporation during the year (including the wages earned on the first 20 days). An employer must make the election on the employer's annual net profit return filed with the municipal corporation. (R.C. 718.011(D)).</p> <p><b>Small employers:</b> Requires employers with under \$500,000 in annual taxable gross receipts for purposes of the commercial activity tax to withhold tax on all employees' qualifying wages only to the municipal corporation in which the employer has its sole fixed location. As with employees subject to the 20-day rule, the employee may receive a refund of such taxes on the basis that the employee performed work in another municipal corporation. In such a case, the employee is subject to tax in that other municipal corporation. A tax administrator may require an employer to submit its prior year federal income tax return to establish eligibility under the rule.</p>
<p><b>Apportionment of net profit</b></p>	<p><b>Sales factor:</b> Provides that, when computing a business' "sales" factor under the apportionment formula, goods are considered to have been sold in a municipal corporation only when the purchaser received the goods in the municipality.</p>	<p><b>Sales factor:</b> Provides that goods are considered to have been sold in a municipal corporation for purposes of the apportionment formula if the goods are:</p> <p>(1) Delivered within the municipal corporation, regardless of where title passes, if shipped or delivered from inventory within the municipal corporation;</p> <p>(2) Delivered within the municipal corporation, regardless of where title passes, even if transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its employees in the solicitation or</p>

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	<p><b>Stock options:</b> Removes a provision of current law that requires that, if a business deducts from its federal adjusted gross income the amount of a stock option granted to an employee, but that employee is not required to include the stock option in computing the employee's income in a municipal corporation to which the business apportions part of its net profit, the business must add the amount of such stock option back to the business' net profit apportioned to that municipal corporation.</p> <p><b>Gambling winnings:</b> Provides a specific rule for the apportionment of gambling winnings received by a person that is not engaged in a trade or business but whose "primary activity" is generating such winnings. Under the rule, the person's winnings are taxable in the municipal corporation in which the winnings are received and, if the person is an individual, the municipal corporation in which the individual resides.</p>	<p>promotion of sales within that municipal corporation and the sales result from that solicitation or promotion;</p> <p>(3) Shipped from a place within such municipal corporation to purchasers outside such municipal corporation, regardless of where title passes, if the taxpayer is not, through its employees or the employees of a related member, regularly engaged in the solicitation or promotion of sales at the place where delivery is made (<i>R.C. 718.02(D)(1)</i>).</p> <p><b>Stock options:</b> Maintains current law (<i>R.C. 718.02(G)</i>).</p> <p><b>Gambling winnings:</b> No similar provision.</p>

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	<p><b>Rental income:</b> Provides that, if a person receives income from rental activity but is not in the business of renting property, the person's net profit is taxable only where the property is located.</p> <p><b>Real estate activity:</b> Requires real estate brokers and agents to apportion their net profit to a municipal corporation based upon the proportion of the commissions that the agent or broker earned from the sale of property located in the municipal corporation as compared to the agent's or broker's total commissions in that year.</p> <p>No similar provision.</p>	<p><b>Rental income:</b> Provides that, if an individual receives income from rental activity, the individual's net profit is taxable by the municipal corporation in which the property is located and the municipal corporation in which the individual resides. The provision is similar to current law, except that current law refers to "persons not in the business of renting property" instead of "individuals." (<i>R.C. 718.02(E)</i>).</p> <p><b>Real estate activity:</b> Same as the As Introduced bill, but adds that real estate commissions earned from the sale of property must be situated to the municipal corporation in which the property is located, and that the apportionment rule applies to the purchase and lease of property, not just sales.</p> <p>Requires real estate brokers and agents to report their total net profit from real estate activity on the tax return filed with their municipal corporation of residence, but specifically allows the municipal corporation of residence to grant a credit for the taxes the broker or agent paid on such net profit to other municipal corporations.</p>
<b>Apportionment of professional athlete income</b>	Requires professional athletes to apportion their income to municipal corporations based on a specific formula that analyzes the number of "duty days" the athlete performed services in each municipal corporation ( <i>R.C. 718.011(F)</i> ).	No similar provision.
<b>Alternative apportionment formula</b>	<b>Request:</b> Allows a taxpayer to use an alternative apportionment formula on an	<b>Request:</b> Requires taxpayers to notify tax administrators prior to using an alternative

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	amended return or assessment appeal without the prior approval of the tax administrator, but requires prior approval for original returns. The bill specifies no rule for alternative accounting or filing methods. <i>(R.C. 718.02(D)(2).)</i>	apportionment formula, alternative method of accounting, or alternative filing method with respect to any tax return, including amended returns <i>(R.C. 718.02(B)(2)).</i>
<b>Annual return date</b>	The deadline for filing annual returns for all municipal corporations is established as the same filing deadline for the state income tax returns – i.e., April 15 <i>(R.C. 718.05).</i>	The deadline for filing annual returns for all municipal corporations is established as the same filing deadline for federal income tax returns – i.e., April 15. Also fixes an inconsistency in R.C. 718.08(C)(3) of the As Introduced bill, which required the balance due to be paid by the last day of the fourth month of the year following the year for which the declaration or amended declaration was filed – i.e., April 30. <i>(R.C. 718.05.)</i>
<b>Form of returns</b>	Requires the Municipal Tax Policy Board (MTPB) to prescribe the form of annual returns, and requires taxpayers to use either that form or a generic form that contains all information the Board requires by rule. The return must contain the taxpayer's signature (or the signature of the taxpayer's representative or return preparer) and Social Security or taxpayer identification number. <i>(R.C. 718.05(F)(1), (J), and (K).)</i>	Same as the As Introduced bill, except that the form of the annual return is prescribed by the tax administrator, and permits tax administrators to require a taxpayer to submit additional information, as applicable, along with the annual return, amended returns, and applications for refunds, as follows:  <b>Individual taxpayers:</b> All W-2 "Wage and Tax Statement" forms, 1099-MISC forms, K-1 forms, form 2106, schedules C, E, and F, and page 1 and 2 of federal return 1040.  <b>Nonindividuals filing net profit returns:</b> Federal forms 1041, 1065, 1120, 1120-REIT, 1120F, 1120S, 1125-A, 4562, 2106, 8825, 8903, and 8949; schedules A, D, E, and M-3; any supporting statements for "other income,"

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		<p>"taxes and licenses," "other deductions," and "other costs" reported on the foregoing forms and schedules; the method of accounting and allocation used to determine the income allocable to the municipal corporation; and, if the taxpayer is a pass-through entity, any K-1 schedules issued to or received by the taxpayer (or a schedule summarizing the information contained on such K-1 schedules), form 1096, the taxpayer's federal consolidated schedules (if filing a consolidated return), the taxpayer's NOL carry forward schedule providing for each year in which the NOL was sustained, the method of accounting and allocation used to determine the portion of NOL used as a deduction in prior years, and the amount of NOL claimed as a deduction in the current year.</p> <p><b>Filers of a withholding reconciliation return:</b> An information return for each employee from whom municipal income tax has been withheld specifying the municipality for which the tax is withheld and all other information required for federal income tax reporting purposes.</p> <p>Requires the Department of Taxation, by January 1, 2015, to prescribe a method by which nonindividual taxpayers filing net profit returns may submit the supplemental information required along with the return through the Ohio Business Gateway. (R.C. 718.05(E)(2), (3), and (4).)</p>

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<b>Filing extension</b>	Permits a taxpayer that receives a federal income tax return filing extension to automatically have an extension for filing municipal returns, without a tax administrator's consent, until the federal extension date. <i>(R.C. 718.05(F).)</i>	Retains current law, requiring a taxpayer receiving a federal extension and requesting a municipal filing extension to file a copy of the federal extension request to the tax administrator or OBG by the unextended filing date and setting the extended municipal filing date as the last day of the month following the month in which the federal extended filing is due. <i>(R.C. 718.05(F).)</i>
<b>Ohio Business Gateway filing extensions</b>	No similar provision.	Requires municipal corporations to allow any taxpayer subject to the tax on net profit from a business or profession to file a municipal income tax return extension by using the Ohio Business Gateway <i>(R.C. 718.051(A)).</i>  Current law requires municipal corporations to allow taxpayers to file municipal income tax returns and estimated municipal income tax returns using the Ohio Business Gateway <i>(R.C. 718.051(C) current law).</i>
<b>Extension for military personnel</b>	Permits active-duty National Guard members and military reservists to request municipal income tax filing and payment extensions that continue for the period of active duty status and for 180 days after termination of active duty. The extension must be applied for with the appropriate tax administrator, and the administrator may require supporting documentation. Once the extension ends, taxes are payable under an installment arrangement. If the amount due is \$2,400 or less, the taxes must be paid over a period of one year or less; if more than \$2,400, over a period of no more than two years. Under current law, a municipal corporation may grant	Same as the As Introduced bill, except that the requirement that the tax due be paid within one year if the tax owed is \$2,400 or less, or within two years if the tax owed is greater than \$2,400, is eliminated <i>(R.C. 718.052).</i>

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	extensions for such individuals but is not required to. (R.C. 718.052.)	
<b>Estimated tax payments</b>	<p><b>Minimum threshold:</b> Requires municipal corporations to collect estimated taxes from every taxpayer whose estimated annual tax liability, after subtracting for amounts to be withheld from the taxpayer's compensation, will be more than \$200.</p> <p><b>Annual return:</b> Requires taxpayers that pay estimated taxes to file an annual reconciliation return on or before the last day of the fourth month of the year after the year in which the estimated taxes were paid. (For calendar year taxpayers, April 30 of the following year.) (R.C. 718.08.)</p> <p><b>Application of refunds:</b> Provides that a tax refund from a prior year that is applied as a credit against a taxpayer's current estimated tax liability is considered to have been paid on the date the taxpayer files a return requesting the refund (R.C. 718.08(B)(1)(b)).</p>	<p><b>Minimum threshold:</b> Sets the threshold at \$100.</p> <p><b>Annual return:</b> Requires taxpayers that pay estimated taxes to file an annual reconciliation return on or before the 15th day of the fourth month of the year after the year in which the estimated taxes were paid. (For calendar year taxpayers, April 15 of the following year.) (R.C. 718.08.)</p> <p><b>Application of refunds:</b> Provides that a prior overpayment of tax applied as a credit against a taxpayer's current estimated tax liability is considered to have been paid on the date the overpayment was postmarked or, if the overpayment was made electronically, the date the overpayment was submitted (R.C. 718.08(B)(1)(b)).</p>
<b>Minimum filing and payment thresholds for individual taxpayers</b>	Provides that an individual taxpayer who owes \$5 or less to a municipal corporation is not required to pay the tax, but is required to file the corresponding return (R.C. 718.05(F)(1) and 718.19).	Same, except the minimum threshold is \$10 (R.C. 718.04(E) and 718.19).
<b>Minimum filing and payment thresholds for net profits</b>	<b>Minimum threshold:</b> Establishes, for tax years beginning after 2014, a minimum payment threshold for taxpayers with net profits apportioned or allocated to a municipal corporation. No tax payment is required with	<b>Minimum threshold:</b> Establishes, for tax years beginning after 2014, a minimum payment threshold of \$10 for taxpayers with net profits apportioned or allocated to a municipal corporation. (The \$10 threshold is the same as

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	<p>respect to a taxpayer's net profit if the taxpayer satisfies all of the following criteria for a taxable year:</p> <p>(1) The tax due to the municipal corporation is less than \$50;</p> <p>(2) The proportion of a taxpayer's total net profit to be apportioned or allocated to the municipal corporation is less than 1%;</p> <p>(3) The total amount of qualifying wages the taxpayer paid to employees for work performed in the municipal corporation is less than \$50,000.</p> <p><b>Filing requirements:</b> A taxpayer that qualifies for the payment exemption must file an affidavit exemption form but is not required to file an annual return unless the municipal corporation expressly requires such filing. The affidavit exemption form is prescribed by the MTPB. No taxpayer is required to file an affidavit exemption form until the MTPB prescribes the form. <i>(R.C. 718.05(G).)</i></p>	<p>the threshold that applies for individual taxpayers.) <i>(R.C. 718.05(G).)</i></p> <p><b>Filing requirements:</b> A taxpayer that qualifies for the payment exemption remains responsible for filing an annual net profit return <i>(R.C. 718.05(G)).</i></p>
<p><b>Employer withholding returns</b></p>	<p><b>Quarterly report deadline:</b> Requires employers who withheld and remitted tax on employee wages in an amount less than \$2,399 overall or \$200 for any month in the preceding year to file withholding returns quarterly by the last day of the month following the end of the last day of each calendar quarter <i>(R.C. 718.03(B)(3)).</i></p> <p><b>Reconciliation report deadline:</b> Requires employers to file a return listing each employee</p>	<p><b>Quarterly report deadline:</b> Requires quarterly return to be filed by the 15th day of the month following the end of the last day of each calendar quarter <i>(R.C. 718.03(B)(3)).</i></p> <p><b>Reconciliation report deadline:</b> Requires employers to file a return listing each employee</p>

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	<p>and the amount of tax withheld from each employee by February 28 (R.C. 718.03(H)).</p> <p><b>Immediate remission:</b> No similar provision.</p> <p><b>Electronic filing:</b> No similar provision.</p> <p><b>Return information:</b> Authorizes tax administrators to require that employers filing an annual withholding return submit information required by the tax administrator with the return in addition to other explicitly required forms and documents (R.C. 718.03(H)).</p> <p><b>Semimonthly remission:</b> Requires employers whose withholding in the preceding calendar year exceeded \$11,999 or \$1,000 in any month of that year to remit withholding twice per month (R.C. 718.03(B)(1)).</p>	<p>and the amount of tax withheld from each employee by February 28 (R.C. 718.03(H)).</p> <p><b>Immediate remission:</b> Authorizes a municipal corporation to require an employer that has accumulated \$100,000 or more in unremitted employee withholding to remit the withholding on the next business day (R.C. 718.03(B)(4)).</p> <p><b>Electronic filing:</b> Authorizes a municipal corporation to require an employer required to remit electronic employee withholding payments for federal tax purposes to remit employee withholding payments electronically to the municipal corporation (R.C. 718.03(B)(5)).</p> <p><b>Return information:</b> Same as the As Introduced bill, but additionally requires employers to include the total amount of qualifying wages, commissions, and other compensation paid to employees during the preceding calendar year (R.C. 718.03(H)).</p> <p><b>Semimonthly remission:</b> Does not require such semimonthly remission, but authorizes a municipal corporation to so require (R.C. 718.03(B)(2)(a)).</p>
<b>Treatment of voluntary employee withholding</b>	No similar provision.	Specifies that taxes withheld by an employer at the request of the employee that are not required to be withheld are subject to the withholding requirements applicable to mandatory withholdings (R.C. 718.03(K)).
<b>Consolidated taxpayers</b>	<b>Pass-through entity profit:</b> The net profit or loss of a pass-through entity member of an	<b>Pass-through entity profit:</b> If any portion of the net profit or loss of a pass-through entity is

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	<p>affiliated group filing a consolidated municipal income tax return is included in calculating the net profit and apportionment factors of the affiliated group if at least 80% of the pass-through entity's net profit or loss is included in the affiliated group's consolidated federal income. Such a pass-through entity is not required to collect or remit municipal income tax on behalf of its owners for the portion of the net profits included in the consolidated federal taxable income of the affiliated group. If less than 80% of the pass-through entity's net profit or loss is included in an affiliated group's consolidated federal income, the pass-through entity is required to collect and remit municipal income tax on behalf of its owners on the portion of the entity's net profits that are included in the consolidated federal taxable income of an affiliated group. The affiliated group is required to deduct any net profit and add any net loss of such a pass-through entity that was included in the consolidated federal income of the affiliated group in calculating the net profit and apportionment factors for municipal income tax purposes. (R.C. 718.06.)</p> <p><b>Mandatory consolidated return:</b> Implies that a tax administrator may require a taxpayer to file a consolidated return (R.C. 718.06(G)).</p>	<p>included in the consolidated federal taxable income of an affiliated group filing a consolidated municipal income tax return, the group may exclude the net profit and loss of the entity from the group's consolidated taxable income. If so excluded, the pass-through entity is subject to municipal income tax as a separate taxpayer on that portion of excluded net profits. If included in the group's income the pass-through entity is not subject to municipal income tax as a separate taxpayer on the portion of net profits included in the consolidated federal taxable income of the affiliated group. Another provision of the bill eliminates the H.B. 5 requirement that pass-through entities collect and remit municipal income taxes on behalf of their owners. (R.C. 718.06 and 718.43 [removed from the bill].)</p> <p><b>Mandatory consolidated return:</b> Expressly authorizes a tax administrator to require a taxpayer to file a consolidated return if the taxpayer is a member of an affiliated group that filed a federal consolidated return and the administrator determines that intercompany transactions are not at arm's length and there is a distortive shifting of income or expenses with regard to the allocation of net profits to the municipality. Mandatory consolidated returns</p>

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	<p><b>Exception for local telephone companies:</b> No similar provision.</p> <p><b>Electing consolidated filers:</b> If a taxpayer is a member of a group of affiliated corporations that filed a federal consolidated return, the taxpayer may elect to file a consolidated municipal return, and the election continues for subsequent years until the tax administrator approves discontinuation. <i>(R.C. 718.06(G).)</i></p> <p><b>Amended returns:</b> No similar provision.</p> <p><b>Pre-2015 elections:</b> Allows corporations that filed a consolidated return before the bill's changes take effect on January 1, 2015, to</p>	<p>must continue to be filed until the administrator approves single filing or a taxpayer experiences a "change I circumstances." <i>(R.C. 718.06(C).)</i></p> <p><b>Exception for local telephone companies:</b> Incumbent local telephone exchange companies may not be required and may not elect to file a consolidated municipal income tax return if their primary business in Ohio is providing local exchange telephone service; nor may their affiliated incumbent local exchange carriers whose primary business is providing local exchange service (other than cellular) outside Ohio. The income or loss of such companies also is excluded from the income and loss of the group for municipal income tax purposes. <i>(R.C. 718.06(A).)</i></p> <p><b>Electing consolidated filers:</b> Such an election lasts for five years and is renewed for consecutive five-year periods until the filer formally elects to discontinue. The taxpayer may elect to discontinue filing before the end of the five-year period only with the tax administrator's permission, for good cause shown. <i>(R.C. 718.06(B).)</i></p> <p><b>Amended returns:</b> Requires a taxpayer intending to file an amended consolidated municipal income tax return to notify the tax administrator. <i>(R.C. 718.41.)</i></p> <p><b>Pre-2015 elections:</b> Same, except specifies that the corporations may discontinue such filing for taxable years beginning after 2019</p>

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	continue to file consolidated returns for the five-year period described above unless granted permission by the tax administrator to stop doing so (R.C. 718.06(H)).	without receiving permission from the tax administrator (R.C. 718.06(H)).
<b>Assessments</b>	<p><b>Definition:</b> An "assessment" is a written finding of the tax administrator finding that a person underpaid an amount owed (R.C. 718.01(PP)).</p> <p><b>Form:</b> Requires a formal written assessment to include the word "assessment" in all capital letters (R.C. 718.01(PP)).</p> <p><b>Service:</b> Requires, in the case of an assessment sent by certified mail that is returned because of an undeliverable address, the tax administrator to attempt to find the recipient's last known address. If unsuccessful, the assessment becomes final 60 days after the certified mail was returned.</p> <p><b>Accompanying notices:</b> Requires a tax administrator, when notifying a person of an assessment, to provide instructions on how the person may appeal the assessment, a description of the basis for the assessment, and a description of the collection remedies available to the tax administrator if the taxpayer does not pay the assessment. If the administrator does not provide this information, the person may request that the administrator waive any penalties and interest related to the</p>	<p><b>Definition:</b> An assessment, which the language renames "written determination by a tax administrator," is either a ruling in response to a taxpayer's written request or an administrator's written finding, regarding the taxpayer's tax liability (R.C. 718.01(PP)).</p> <p><b>Form:</b> Same as the As Introduced bill, but additionally requires "written determination" to be displayed in at least 18 point font at the top of the first page (R.C. 718.01(PP)).</p> <p><b>Service:</b> If the certified mail attempt is unsuccessful because of an undeliverable address and the attempt to find last known address is unsuccessful, the "determination" is considered served and final from the date of the postmark of a subsequent mailing of the assessment by ordinary mail. (R.C. 718.18.)</p> <p><b>Accompanying notices:</b> No similar provision.</p>

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	<p>assessment, but not any tax due. (R.C. 718.12(D) and (E).)</p> <p><b>Enforcement:</b> Prescribes a method for a tax administrator to enforce an assessment. The administrator, after the assessment becomes final, may file an entry making the assessment final with the court of common pleas, and the clerk of court may enter a judgment against the assessed person for the amount shown on the entry. (R.C. 718.12(F).)</p> <p><b>Appeals:</b> Requires an appellant appealing an assessment to pay the assessment amount within the 60-day appeal period if the person (1) filed a return that incorrectly reported a tax liability of less than one cent, (2) filed an incomplete, false, fraudulent, or frivolous return, or (3) did not file a return, unless the person owed less than \$1.01 with the return or the person asserts a lack of taxable nexus with the municipal corporation.</p> <p>Allows a taxpayer who successfully appeals an assessment to recover litigation costs from the municipal corporation; if an appeal is unsuccessful, the municipal corporation may recover its costs from the taxpayer (R.C. 718.44).</p>	<p><b>Enforcement:</b> No similar provision.</p> <p><b>Appeals:</b> No similar provision.</p>
<b>Jeopardy assessments</b>	<p>Authorizes municipal tax administrators to issue jeopardy assessments if the collection of the tax would be in jeopardy if action is delayed or if certain other conditions would impede collection (R.C. 718.20).</p>	<p>No similar provision.</p>

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<p><b>Statute of limitations for assessments and refund claims</b></p>	<p><b>Assessments:</b> Requires assessments to be issued within three years after a person filed the return subject to the assessment or after the due date of that return, whichever is later (<i>R.C. 718.12(B)</i>).</p> <p><b>Extensions:</b> Allows assessment limit to be extended if the assessed person and the administrator agree to an extension in writing. However, if a person does not file a return, or an employer or other payer fails to remit taxes that the employer or other payer withheld, the administrator may issue an assessment against that person up to ten years after the due date of the return subject to the assessment. In addition, there is no time limit for issuing an assessment against a person who fraudulently attempts to avoid a tax. (<i>R.C. 718.12(B) and (C)</i>.)</p> <p><b>Refunds:</b> Requires refund claims to be filed within three years after the date of the overpayment unless extended by mutual consent or an amended return is subsequently filed (<i>R.C. 718.19</i>).</p> <p><b>Interest on overpayments:</b> Requires a municipality to pay interest on any payment for an illegal or erroneous assessment in excess of \$5 at the interest rate used for state income tax overpayments. Interest accrues from the date of the payment until the date the refund is paid.</p> <p>Requires municipalities to charge the same rate on other overpayments from the date of the</p>	<p><b>Assessments:</b> Requires assessments to be issued within the later of three years after a person filed the return subject to the assessment or after the due date of that return, whichever is later, or one year and 60 days after an appeal of an assessment becomes final (<i>R.C. 718.12(A)</i>).</p> <p><b>Extensions:</b> Allows assessment limit to be extended by agreement, but specifies that the agreement also extends the allowable time for filing a refund claim by the same duration (<i>R.C. 718.12(A)</i>).</p> <p><b>Refunds:</b> Requires a refund claim to be filed within three years of the later the tax was due or paid (<i>R.C. 718.12(C)</i>).</p> <p><b>Interest on overpayments:</b> Treats interest on all overpayments similarly to how interest accrues on overpayments, other than those based on an illegal or erroneous assessment, under the Introduced bill.</p> <p>The interest rate equals the rounded federal short-term rate plus 5% (<i>R.C. 718.12(D)</i>).</p>

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	<p>overpayment until the date of the refund, but no interest is allowed if the overpayment is refunded within the later of 90 days after the final filing date or the date the return is actually filed (<i>R.C. 718.19(C)</i>).</p> <p><b>Criminal prosecutions:</b> No similar provision.</p>	<p><b>Criminal prosecutions:</b> Provides that prosecutions punishable under a municipal income tax ordinance must be commenced within three years after the commission of the offense, or six years in the case of fraud, failure to file a return, or the omission of 25% or more of reportable income (<i>R.C. 718.12(B)</i>).</p>
<b>Refund applications</b>	<p><b>Documentation:</b> No similar provision.</p> <p><b>Minimum refund amount:</b> Does not require municipal corporations to issue refunds of \$5 or less (<i>R.C. 718.19 and 718.41(B)</i>).</p>	<p><b>Documentation:</b> Expressly allows a tax administrator to require that a taxpayer provide substantiating documentation in support of a refund claim. (<i>R.C. 718.19(B)</i>).</p> <p><b>Minimum refund amount:</b> Does not require municipal corporations to issue refunds of \$10 or less (<i>R.C. 718.19 and 718.41(B)</i>).</p>
<b>Minimum thresholds filing annual returns</b>	<p>Requires amended returns to be accompanied by payment of any additional tax due plus accrued interest unless the tax due is \$5 or less (<i>R.C. 718.41(C)</i>).</p>	<p>Same, except the minimum threshold is \$10 (<i>R.C. 718.41(C)</i>).</p>
<b>Audits</b>	<p>Specifies that an audit does not include the review of any tax return when the tax administrator has not contacted the person about the return, precluding the tax administrator from fulfilling additional audit requirements (<i>R.C. 718.01(BB) and 718.36</i>).</p> <p>Requires municipal tax administrators to</p>	<p>No similar provision, thus generally maintaining the ability of each tax administrator to audit taxpayers according to its own standards and procedures.</p> <p>No similar provision.</p>

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	<p>provide taxpayers being audited a written description of the audit procedure and statement of the taxpayer's rights and notice of when the audit has begun, expressly permits taxpayers to be assisted or represented and to record the proceedings, and allows waiver of penalties and interest if the administrator does not comply (<i>R.C. 718.36</i>).</p> <p>Authorizes municipal tax administrators and agents to examine, among other things, the federal income tax returns of taxpayers or others potentially subject to taxation (<i>R.C. 718.23, 718.24, and 718.31</i>).</p> <p>Authorizes tax administrators to compel taxpayers or other persons with knowledge of a potential tax liability to attend a hearing or examination and to testify under oath (<i>R.C. 718.23</i>).</p>	<p>Same as the As Introduced bill, but includes state income tax returns.</p> <p>Same as the As Introduced bill, but adds that a person compelled to attend a hearing or examination may be represented by an attorney, accountant, bookkeeper, or other tax professional. The bill specifies that it does not authorize the practice of law by a person who is not an attorney (<i>R.C. 718.23</i>).</p>
<b>Taxpayer rights and responsibilities</b>	Provides taxpayer rights and responsibilities, similar to LSC 130 1581-1, but does not require that electronic descriptions of those rights and responsibilities be made available to the taxpayer.	Requires tax administrators to make electronic versions of a taxpayer's "rights and responsibilities" available to the taxpayer ( <i>R.C. 718.01(QQ) and 718.07</i> ).
<b>Tax administrator</b>	Authorizes the Regional Income Tax Association (RITA), the Central Collection Agency (CCA), or another entity to serve as a tax administrator for a municipal corporation only if the agency or entity administers the income tax of 31 or more municipal corporations ( <i>R.C. 718.01(U)(3)</i> ).	Same as the As Introduced bill, but removes 31- municipality threshold for all such entities ( <i>R.C. 718.01(U)(3)</i> ).

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<b>Tax administrator requests for additional information</b>	No similar provision.	Permits the tax administrator to request, from any taxpayer, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax obligation. Requires all taxpayers to comply with such requests. <i>(R.C. 718.05(E)(5).)</i>
<b>Notice to nonresidents</b>	Specifies that the Secretary of State becomes, by default, the statutory agent of any nonresident taxpayer for the purpose of serving municipal income tax notices <i>(R.C. 718.21).</i>	No similar provision.
<b>Civil penalties</b>	<p>Fixes the amount of penalties that municipal corporations may impose for failure to file returns or pay taxes on time, generally after the bill's effective date. Requires municipal corporations to impose the statutorily prescribed penalties but does not prohibit a municipal corporation from fully or partially abating (i.e., forgiving) penalties at the discretion of the tax administrator. <i>(R.C. 718.27.)</i></p> <p>Allows a municipal corporation to require taxpayers to reimburse the municipal corporation for costs and fees incurred by the municipal corporation to collect a tax liability, including litigation expenses and attorney's fees <i>(R.C. 718.27).</i></p> <p>Imposes a penalty for failure to pay municipal income tax or estimated taxes equal to 10% of the unpaid tax.</p>	<p>Same as the As Introduced bill, except that the fixed penalties apply generally to taxable years beginning after January 1, 2015. The penalties prescribed by municipal ordinances and rules apply generally to returns required to be filed and payments required to be made before January 1, 2015. <i>(R.C. 718.27.)</i></p> <p>Limits the collection costs and fees that a municipal corporation may impose on a taxpayer to post-judgment costs and fees, including attorney's fees.</p> <p>Penalty is 15%.</p>
<b>Criminal penalties and fines</b>	<p>Imposes the following penalties and fines:</p> <p>(1) For knowingly filing a fraudulent return, or for</p>	Same as the As Introduced bill, except that the penalty imposed for knowingly filing a fraudulent return or for failing to remit withheld

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	<p>failing to remit withheld taxes, a felony in the fifth degree;</p> <p>(2) For unlawfully disclosing confidential taxpayer information, a misdemeanor in the first degree (\$1,000, six months imprisonment, or both), or a greater penalty specified in the municipal ordinance;</p> <p>(3) For unlawfully disclosing confidential information received from the Internal Revenue Service, a felony in the fifth degree (R.C. 718.99).</p>	<p>taxes is a misdemeanor in the first degree, or any greater penalty specified in the municipal ordinance.</p> <p>The bill also specifically allows a municipal corporation to prosecute offenses under the municipal corporation's ordinance for which no specific penalty is provided under the bill (R.C. 718.35 and 718.99).</p>
<b>Publication of interest rate</b>	<p>Requires each municipal corporation imposing an income tax to publish the interest rate imposed against past-due taxes and penalties by October 31 of the year preceding the year to which the interest rate will apply. The interest rate equals the federal short-term rate, rounded to the nearest whole number, plus 3%. (R.C. 718.27(F).)</p>	<p>Same as the As Introduced bill, except the interest rate equals the federal short-term rate, rounded to the nearest whole number, plus 5% (R.C. 718.27(A)(5) and (F)).</p>
<b>Compromises</b>	<p>Authorizes municipal tax administrators to compromise tax claims and to allow unpaid liabilities to be paid over time and specifies conditions that must be considered in allowing a compromise or payment-over-time agreement, including that an assessment has been issued for the amount due and that the claim would likely be refunded once paid (R.C. 718.28).</p>	<p>Same as the As Introduced bill, except an assessment need not have been issued beforehand, the agreement need not be in writing or require the taxpayer to provide security, the tax administrator is not required to consider the specified conditions, and the potential for refund is not one of the conditions that may be considered.</p>
<b>Rules</b>	<p>Authorizes municipal corporations to adopt municipal income tax administrative rules, and states that they are not enforceable unless first published on the Internet as specified in the bill (R.C. 718.07 and 718.30).</p>	<p>Same as the As Introduced bill, but does not make the rules unenforceable if they are not first published on the Internet as specified in the bill.</p>

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<b>Municipal Tax Policy Board</b>	Creates a Municipal Tax Policy Board (MTPB) to create rules, prescribe forms and other documents, provide instructional materials to taxpayers, and take other actions concerning statewide administration and enforcement of municipal income taxes ( <i>R.C. 718.42</i> ).	Eliminates all provisions pertaining to the creation of an MTPB. Several of the powers and duties of the MTPB are assigned to tax administrators. For example: --Creating forms; --Prescribing rules for administering municipal income tax matters; --Prescribing record-keeping requirements.
<b>Terms of members of the local board of tax review</b>	Requires each municipal corporation to establish a local board of tax review consisting of three members, two of which are appointed by the municipal legislative authority and one of which is appointed by the top administrative official. The legislatively appointed board members serve a term of two years and the administratively appointed member serves at the discretion of the top administrative official ( <i>R.C. 718.11(A)</i> ).	Same as the As Introduced bill, but specifies that legislatively appointed board members are not subject to term limitations ( <i>R.C. 718.11(A)(3)</i> ).
<b>Publication of local board of review information</b>	Requires the tax administrator of each municipal corporation that imposes an income tax to post certain information about the local board of tax review on the web site of the tax administrator or of the municipal corporation. Such information includes the rules, names of the board members, and the address to which appeals and correspondence must be sent.  Prohibits tax administrators that fail to comply with this publication requirement from imposing penalties or interest ( <i>R.C. 718.11(G)</i> ).	No similar provision.

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<b>Appeals to Ohio Board of Tax Appeals</b>	Restricts appeals of decisions of a local board of tax review to the Ohio Board of Tax Appeals (BTA). Under current law, a taxpayer or tax administrator may appeal such decisions to the BTA or the appropriate Court of Common Pleas (R.C. 5717.011).	Restores current law permitting a taxpayer or tax administrator to appeal decisions of a local board of tax review to the BTA or to the appropriate Court of Common Pleas (R.C. 5717.011).
<b>Problem resolution officers</b>	Requires tax administrators of more populous municipal corporations to appoint at least one employee to serve as a problem resolution officer to assist taxpayers with pending administrative cases (R.C. 718.37).	No similar provision.
<b>Agent quotas</b>	Expressly prohibits municipal corporations from evaluating employees on the basis of a quota system based on the amount of assessments issued (R.C. 718.37).	No similar provision.
<b>Taxpayer actions for damages</b>	Permits taxpayers to bring a civil action against a municipal corporation or tax administrator to recover damages allegedly arising from an error or omission by the tax administrator or an employee (R.C. 718.39).	No similar provision.
<b>Tax administrator opinions</b>	Requires official opinions of a tax administrator issued after 2012 to legally bind the tax administrator (R.C. 718.38(G)).	Adjusts the date after which opinions legally bind the tax administrator from after 2012 to after 2014 (R.C. 718.38(G)).
<b>Ohio Business Gateway Steering Committee</b>	Increases the number of appointed members on the Ohio Business Gateway Steering Committee who may represent municipal tax administrators from one to three. Adds the chair of the MTPB or the chair's designee as an <i>ex officio</i> member (R.C. 5703.57).	Same as the As Introduced bill, except that the chair of the MTPB is no longer included on the committee (the bill removes all references to the MTPB), and the members appointed to the committee to represent municipal tax administrators must be selected from a list of candidates provided by the Ohio Municipal League (R.C. 5703.57).
<b>Report of tax data</b>	Requires each tax administrator to annually report to the Tax Commissioner the amount of revenue and refunds derived from each "type of	Similar to H.B. 5, but (1) incorporates the report into the existing LGF report, (2) includes JEDD and JEDZ levying an income tax in the

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	tax" levied by the municipal corporation. Failure to report results in loss of authority to impose tax penalties <i>(R.C. 718.13(C))</i> .	requirement, and (3) permits the Tax Commissioner to withhold LGF distributions for failure to report <i>(R.C. 5747.50)</i> .
<b>Electric and telephone company income tax data</b>	Allows tax administrators to request income tax data collected by the Tax Commissioner in relation to the municipal income tax that applies to electric and local exchange telephone companies and requires the Tax Commissioner to produce that data upon requests. Under continuing law, municipal income tax imposed on electric and local exchange telephone companies is administered by the Tax Commissioner. <i>(R.C. 718.051(H).)</i>	Same as the As Introduced bill, and additionally requires that the Tax Commissioner produce the requested data within 60 days of the request. The Commissioner may not impose a fee or charge on the municipal corporation for producing the data. <i>(R.C. 718.051(H).)</i>

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**Proposed Substitute House Bill 5 (130-1581-2)**  
**Features, Advantages & Benefits of Major Provisions**

Topic	Bill Features	Policy Advantages	Benefits for Ohio
<p style="text-align: center;"><b>Occasional Entrant Treatment (20 Day Rule)</b></p>	<p><i>Small employers</i> only withhold tax at their fixed location. Small employers are those with less than \$500,000 of gross receipts.</p> <p>Other employers must withhold payroll tax to principal place of work or withhold to other municipalities beginning on the 21<sup>st</sup> day that the employee is working in the other municipality.</p> <p>Other employers may opt to withhold back to the first day.</p> <p>Ensures consistent treatment for construction sites.</p> <p>Ensures that an employee can only be treated as in one city for any given calendar day.</p> <p>Ensures that tax is withheld to some city in almost all cases.</p>	<p style="text-align: center;">Increases simplicity.</p>	<p style="text-align: center;">Reduces cost of compliance and administration.</p> <p style="text-align: center;">Minimizes lost revenue for municipalities.</p>
<p style="text-align: center;"><b>Tax Due Dates &amp; Withholding Requirements</b></p>	<p>Establishes uniform due dates for all municipal tax returns.</p> <p>Establishes uniform withholding requirements for all employers.</p>	<p style="text-align: center;">Uniform treatment.</p> <p style="text-align: center;">Increases simplicity.</p>	<p style="text-align: center;">Improves Ohio's competitiveness.</p> <p style="text-align: center;">Reduces costs of compliance and administration by reducing unnecessary returns.</p>
<p style="text-align: center;"><b>Pending Tax Legal Cases</b></p>	<p>Current litigation will control treatment of Supplemental Employee Retirement Plans (SERPs) and professional athletes.</p>	<p style="text-align: center;">Uniform treatment.</p>	<p style="text-align: center;">Results in no current revenue impact on municipalities.</p>

**Proposed Substitute House Bill 5 (130-1581-2)**  
**Features, Advantages & Benefits of Major Provisions**

Topic	Bill Features	Policy Advantages	Benefits for Ohio
<b>Apportionment of Income</b>	<p>Provides uniform apportionment mechanism.</p> <p>Allows use of alternative apportionment to better reflect business activity in a municipality.</p> <p>Reinstates throwback rule that is similar to current law treatment.</p>	<p>Uniform treatment.</p>	<p>Reduces cost of compliance and administration.</p> <p>Mitigates negative revenue impact to municipalities.</p>
<b>Consolidated Tax Returns</b>	<p>Allows affiliate group of corporations to elect consolidated tax treatment, using federal tax group.</p> <p>Allows group to choose whether pass-through entity income will be taxed as part of group.</p>	<p>Uniform treatment.</p> <p>Increases simplicity.</p>	<p>Improves Ohio's competitiveness.</p> <p>Reduces costs of compliance and administration by reducing unnecessary returns.</p>
<b>Residency Test</b>	<p>Codifies eleven common-law elements of the domicile test.</p> <p>Permits tax administrator and taxpayers to use other facts to show residency.</p>	<p>Adds a level of clarity.</p>	<p>Municipalities retain flexibility to determine residency, similar to current law.</p> <p>No negative revenue impact to municipalities.</p>
<b>Audit, Assessment &amp; Appeals Procedures</b>	<p>Creates uniform audit and appeal procedures.</p> <p><i>Adds Taxpayer Bill of Rights.</i></p>	<p>Uniform treatment.</p>	<p>Lowers cost of compliance and administration.</p> <p>Ensures fair and local enforcement of municipal tax.</p>
<b>Tax Data</b>	<p>Enhances current LGF reporting of tax amounts collected each calendar year for publication.</p>	<p>No increased cost for municipalities to comply.</p>	<p>Increases government and municipal tax transparency.</p>

**Proposed Substitute House Bill 5 (130-1581-2)**  
**Features, Advantages & Benefits of Major Provisions**

Topic	Bill Features	Policy Advantages	Benefits for Ohio
<b>Penalty &amp; Interest</b>	<p>Establishes standard interest rate and penalty provisions.</p> <p>Requires interest be paid on assessments and refunds.</p>	<p>Uniform treatment.</p>	<p>Prevents imposition of usurious interest rates.</p> <p>Allows municipalities to enforce their ordinances locally.</p>
<b>Treatment of Pass-Through Entities, such as Partnerships and Partners</b>	<p>Only city of residence can tax an individual partner.</p> <p>All other cities must tax partnership at the entity level.</p>	<p>No new taxes.</p> <p>Uniform treatment.</p> <p>Increases simplicity.</p>	<p>Creates single layer of tax, except in city of residence.</p> <p>Easier compliance and audit.</p>
<b>Treatment of S-Corporations and Shareholders</b>	<p>S-Corp owners are treated the same as current law.</p>	<p>No new taxes.</p>	<p>Eliminates tax increases contained in original bill.</p>
<b>Net-Operating Loss (NOL)</b>	<p>Every city will provide a 5 year NOL carryforward period, but use of carryforwards is delayed until 2017 and then limited to 50% for 5 years.</p> <p>NOLs generated prior to law change remain intact, based on local ordinances.</p> <p>Permits current year offset of taxpayer gains and losses.</p> <p>Creates the <i>Net Operating Loss Review Committee</i> to evaluate potential future impact and report back before next budget.</p>	<p>Uniform treatment.</p> <p>Increases simplicity.</p> <p>No new taxes.</p>	<p>Improves Ohio's competitiveness.</p> <p>Reduces unfair taxes for many business taxpayers.</p> <p>Municipalities will have time to adjust to new rules.</p> <p>General Assembly will have time to make adjustments, if necessary.</p>



Chairman of the Board  
**RICK SCHOSTEK**  
Senior Vice President, Honda of America Manufacturing

President  
**ERIC L. BURKLAND**



November 5, 2013

The Honorable Peter Beck  
Chairman, Ways and Means Committee  
Ohio House of Representatives  
77 S. High St., 13<sup>th</sup> Floor  
Columbus, OH 43215

**RE Sub. H.B. 5 – Municipal Income Tax Reform**

Dear Chairman Beck:

Earlier this year, the Ohio Manufacturers' Association (OMA) submitted a letter to your committee urging favorable consideration of H.B. 5. We write today urging support for Sub. H.B. 5. OMA members have long realized that Ohio has one of the most complicated taxing structures in the country. This administrative burden is mostly attributed to Ohio's local income tax structure. The administrative cost in time and money puts Ohio at a disadvantage compared to its peers and diverts Ohio manufacturers' resources from production, the lifeblood of a manufacturer.

While not perfect, Sub. H.B. 5 provides an opportunity for Ohio to adopt a more consolidated and streamlined income tax code that would create a more uniform statewide standard. This is an important step towards any broader tax reforms the state may be considering.

Sub. H.B. 5 is the product of extensive negotiations between the business community and local governments. The substitute bill would make Ohio's municipal income tax system simpler and more predictable, both important goals for successful businesses. The bill would minimize administrative costs by creating uniform treatment of filing requirements. The bill also provides a five year net operating loss carry-forward period, creates a presumption of residency, and would also synchronize certain state and local definitions.

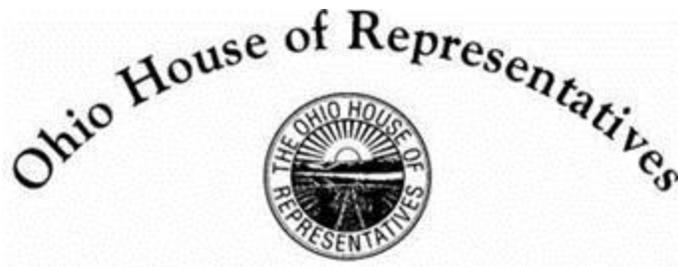
These important reforms of Ohio's municipal income tax system will help increase Ohio's manufacturing competitiveness. The OMA urges favorable consideration of Sub. H.B. 5. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Robert Brundrett".

Robert Brundrett  
Director, Public Policy Services  
Ohio Manufacturers' Association

CC: House Ways and Means Committee members



## **State Representative Jim Butler**

### **41<sup>st</sup> House District**

#### **House Bill 219 – Sponsor Testimony before the House Ways & Means Committee; Oct. 9, 2013**

Chairman Beck, Vice Chairman Boose and Ranking Member Letson, thank you for the opportunity to offer sponsor testimony for House Bill 219, which creates the Neighborhood Infrastructure Assistance Program, a private-public partnership tool that provides a state business tax credit for contributions to not-for-profit organizations or local governments working on projects in a defined geographic area. With the exception of Kentucky, all of Ohio's neighboring states use a similar tool to encourage public-private partnerships and neighborhood investments. This is a much better method to fund community development projects than just having the government doing it through the capital budget process because businesses will be investing their own money and will have 'skin in the game' to make sure projects are sound.

A key component of the Neighborhood Infrastructure Assistance Program (or 'NIAP') is that projects must be catalytic for the area, which means they can be expected to induce sustainable future investment. There have been major population changes in communities throughout Ohio in the last decade, and consequently, there are many towns, cities, villages, and townships in our state that have seen little or no investment in recent years. Having a tool like the NIAP in place will spark development and economic growth in areas where it is desperately needed. Examples of eligible physical investment projects include central business district revitalization, affordable housing development, land reutilization, community center expansions, microenterprise business lending for start-up entrepreneurs, and historic theater renovations, to name a few.

House Bill 219 requires an annual cost-benefit analysis of each approved project and of the program as a whole, and it also includes a sunset provision for five years after it commences to allow the General Assembly to review the program's effectiveness. The bill is supported by a broad coalition of non-profits, local governments and private businesses and requests a modest annual allocation of \$5 million in tax credits.

By providing incentives that will get local governments, the business community and the non-profit sector to work together to choose the most deserving projects, communities of all types around Ohio will be able get merit-based development projects off the ground in a collaborative fashion. Fifteen other states have enacted programs similar to the NIAP, and many of them have been in place for over two decades. The results are in, and as you will learn in future hearings, other states have used these tools in a highly effective manner.

Thank you, Chairman Beck and Members of the committee. I will gladly answer any questions you might have at this time.



# Ohio Legislative Service Commission

## Bill Analysis

Mackenzie Damon

### H.B. 219

130th General Assembly  
(As Introduced)

**Reps.** Butler, J. Adams, Stinziano, Fedor

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## BILL SUMMARY

- Authorizes a nonrefundable tax credit against various business taxes for businesses that contribute to economic development projects undertaken by local governments and nonprofit corporations.
- Provides that the credit equals the business' contribution, subtracted by certain adjustments and multiplied by 60% in the case of projects primarily benefiting rural areas and 50% in the case of projects primarily benefiting urban areas.
- Requires the Development Services Agency to administer the tax credit program.

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## CONTENT AND OPERATION

### Tax credit for contributions to economic development projects

The bill authorizes a tax credit for businesses that contribute money to an economic development project undertaken by a local government or nonprofit community development corporation. The nonrefundable credit is allowed against the income tax, commercial activity tax, financial institutions tax, insurance premiums taxes, or public utility taxes. In general, the credit equals 60% of a business' contribution to a project primarily benefiting a rural area, and 50% of a contribution to a project primarily benefiting an urban area.<sup>1</sup>

#### Eligibility

To qualify for the credit, a business must contribute at least \$5,000 to a "catalytic project" undertaken by a local government, community improvement corporation, or

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<sup>1</sup> R.C. 122.155 to 122.159, 5725.191, 5726.58, 5727.242, 5727.43, 5727.812, 5729.081, 5747.052, and 5751.54.

nonprofit community development corporation. A "catalytic project" is an economic development project that is expected to induce sustainable private investment in one or more local governments. Such a project may include building construction, infrastructure improvements, business district redevelopment, land reutilization, or microenterprise development.

Any local government or community improvement corporation may propose a catalytic project unless the Auditor of State has determined that the local government is in a fiscal emergency. A nonprofit corporation may propose a catalytic project if the corporation was organized primarily to administer such a project. The corporation must be exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code and, after January 1, 2015, be certified by the Development Services Agency (DSA).<sup>2</sup>

### **Application process**

Under the bill, a local government or nonprofit community development corporation that wishes to initiate a catalytic project must submit a proposal to the DSA. The proposal must include the name and contact information of each business that will contribute to the catalytic project and a project plan. The plan must describe the catalytic project, estimate its total costs, predict the economic impact of the project on local governments, and designate the project as a rural or urban catalytic project. A project is designated as "rural" if more than half of the total project expenditures will benefit counties with populations of less than 125,000. A project is an "urban" project if less than half of the total project expenditures will benefit such counties.

The DSA must approve or deny a proposal within 30 days after receiving the proposal. When evaluating a proposal, the DSA must consider the need for economic development in the local governments that will benefit from the project and the potential for the project to promote further investment in those local governments. The DSA may approve the full amount of a business' proposed contribution or only a portion of that amount. Either way, the approved contribution amount must be at least \$5,000.

The DSA must send a written notice to each applicant of the agency's decision to approve or deny a proposal. If the DSA decides to approve a contribution amount that is less than the business' proposed contribution, the notice must provide the reasons for that decision. Alternatively, if the DSA denies an application, the notice must provide reasons for the denial and may include suggestions for re-submitting the proposal. The

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<sup>2</sup> R.C. 122.155 and 122.156(A).



DSA's decision to approve or deny an application cannot be appealed, but applicants may re-apply or submit multiple applications.

The DSA notice must also provide an estimate of the tax credit for which each business is eligible. For approved rural catalytic projects, the estimated credit will equal 60% of the approved contribution amount. For urban catalytic projects, the estimated credit equals 50% of the approved contribution amount.<sup>3</sup>

#### **Application fee**

For each project proposal, the bill requires the payment of an application fee. The DSA may determine the amount of the fee, but no fee may exceed 10% of the estimated tax credits determined for the businesses contributing to the project. Any person or entity may pay the application fee. However, no portion of a business' approved contribution may be applied towards the fee.

If the DSA does not receive the application fee within 30 days after the date the proposal is approved, the approval is automatically revoked. If the fee is paid after those 30 days, the DSA must refund the fee and notify the business and local government or development corporation that the approval was revoked.<sup>4</sup>

#### **Project completion report**

Once a catalytic project is completed, the local government or development corporation that proposed the project must submit a project completion report. The DSA must receive the completion report within two years after the date the project was approved. The report must certify that the project is fully completed, the total amount of money spent on the project, the total amount of approved contributions made to the project, a list of any differences between the initial project plan and the completed project, and an estimate of the economic impact of any such differences.<sup>5</sup>

#### **Tax credit amount**

Upon receipt of a project completion report, the DSA will issue a tax credit certificate to each business that contributed to the project. The tax credit allowed to a business will equal the business' adjusted contribution amount, multiplied by 60% in the case of a rural catalytic project and 50% in the case of an urban catalytic project.

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<sup>3</sup> R.C. 122.156(A), (B), and (C).

<sup>4</sup> R.C. 122.156(D).

<sup>5</sup> R.C. 122.157(A).



A business' adjusted contribution equals the contribution amount approved by the DSA, subtracted by (1) any amount reimbursed to the business by the local government or development corporation, (2) the value of any nonmonetary compensation provided to the business by the local government or development corporation, and (3) if the total amount of approved contributions from all businesses are not expended on the project, the proportion of that deficiency that is attributed to the business' contribution. In addition, if the completed project differs from the initial project plan and that difference reduces the predicted economic impact of the project, the DSA may reduce a business' tax credit by an amount commensurate with that difference.<sup>6</sup>

#### **Carry-forward period**

If the tax credit exceeds a business' tax liability for any year, the business may carry forward the excess credit amount for up to five years.<sup>7</sup>

#### **Transferability**

A business may not transfer a tax credit certificate to any other person.<sup>8</sup>

#### **Deadline for approving credits**

The DSA may not approve any project or proposed contribution after December 31 of the fifth calendar year after the bill's effective date.<sup>9</sup>

#### **Credit cap**

Under the bill, a business may receive a tax credit for an approved contribution of up to \$500,000. The total amount of estimated tax credits approved for all businesses contributing to a single catalytic project cannot exceed \$500,000.

The bill also imposes an overall cap of \$5 million on the amount of estimated credits that may be approved each year. If the DSA approves less than \$5 million of estimated credits in any year, the excess amount may be carried forward and awarded in the next year. Before July 1 of each year, the DSA may award estimated credits for urban projects of no more than \$3.5 million of the \$5 million annual estimated credit

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<sup>6</sup> R.C. 122.157(A) and (B).

<sup>7</sup> R.C. 5725.191, 5726.58, 5727.242, 5727.43, 5727.812, 5729.081, 5747.052, and 5751.54.

<sup>8</sup> R.C. 122.157(C).

<sup>9</sup> R.C. 122.156(E).



allotment plus 70% of any estimated credit allotment carried forward from the previous year.<sup>10</sup>

### **Certification of nonprofit community development corporations**

After January 1, 2015, all nonprofit community development corporations that wish to participate in the tax credit program must be certified by the DSA. To be certified, the corporation must submit an application that includes a description of the catalytic project the corporation wishes to propose or administer, the estimated economic impact on local governments that would benefit from the project, the estimated date of completion of the project, and any other information the DSA requires.

The DSA must approve or deny a nonprofit corporation's application within 30 days after receipt. If the DSA denies an application, the notice provided to the corporation must include the reasons for denial. If the DSA approves an application, the certification is valid for two years from the date of the approval. A corporation may renew a certification for an additional two-year period by submitting a new application at least 30 days before the first certification expires.

The bill requires the DSA to maintain a list of certified nonprofit community development corporations and to provide copies of the list to the public upon request.<sup>11</sup>

### **Cost-benefit analysis**

On or before January 7 of each year, the DSA must conduct a cost-benefit analysis of each approved catalytic project and of the tax credit program as a whole. The DSA must provide the analysis to the Governor and the legislature, and make the analysis available to program participants and the general public upon request.<sup>12</sup>

### **Credit recapture**

If the DSA believes that a local government, development corporation, or business presented, or contributed to the presentation of, false information in connection with obtaining a tax credit certificate, the DSA must provide notice to those entities and allow them to contest the allegations. If the DSA determines that the allegations are true, it may revoke any remaining tax credit available to the business and refuse to accept any future project applications from the local government or

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<sup>10</sup> R.C. 122.156(E) and 122.157(E).

<sup>11</sup> R.C. 122.159.

<sup>12</sup> R.C. 122.157(F).



development corporation. The Tax Commissioner may also issue an assessment to recoup any amount of the credit the business has already claimed.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	06-25-13

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<sup>13</sup> R.C. 122.158.



Chairman of the Board  
**RICK SCHOSTEK**  
Senior Vice President, Honda of America Manufacturing



President  
**ERIC L. BURKLAND**

November 11, 2013

The Honorable Bill Beagle  
Ohio Senate  
Senate Building Room 132  
Columbus, OH 43215

**RE: S.B. 149**

Dear Senator Beagle:

The Ohio Manufacturers' Association (OMA) has been an ardent supporter of the 2005 tax reforms including the creation of the commercial activity tax (CAT). Some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against individual carve-outs and exemptions.

According to the Ohio Department of Taxation in a report dated March 12, 2013 in fiscal year 2012 manufacturers made up the third largest group of CAT taxpayers, at 10.1%. At the same time, in terms of CAT liability manufacturers made up the largest share, at 27.3% of the total. Manufacturers are concerned that any new carve-outs, exemptions, or credits could provide strain on the CAT forcing an increase in its rate.

S.B. 149 authorizes a nonrefundable tax credit against the CAT for businesses that contribute to economic development projects undertaken by local governments and nonprofit corporations. While manufacturers agree economic development is important and in some case must be incentivized; creating a credit against the CAT gives us great pause.

The General Assembly has only allowed a handful of credits against the CAT since its inception in 2005. We urge the General Assembly to stay strong against new carve-outs, credits and exemptions. If not we risk following the path of the ineffective and exemption riddled corporate franchise tax.

Thank you for your time and we would be happy to discuss this matter further in hopes to finding a workable solution that can benefit all parties.

Sincerely,

A handwritten signature in blue ink that reads 'Robert A. Brundrett'.

Robert Brundrett  
Director, Public Policy Services  
Ohio Manufacturers' Association

CC: The Honorable Jim Butler



# Ohio Legislative Service Commission

## Bill Analysis

Jennifer A. Parker

### S.B. 210

130th General Assembly  
(As Introduced)

**Sens.** Widener, Faber, Patton, Obhof, Oelslager

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### BILL SUMMARY

- Provides for a permanent income tax rate reduction of 4% for all tax brackets beginning in 2014.

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### CONTENT AND OPERATION

Under the bill, income tax rates for all income tax brackets are reduced by 4% for taxable years beginning in 2014. For that taxable year, the income tax is to be levied at rates ranging from 0.513% to 5.176%. There are nine income brackets with increasingly greater rates assigned to higher income brackets.<sup>1</sup>

The reduction provided by the bill is in addition to the rate reductions mandated by Am. Sub. H.B. 59 of the 130th General Assembly, the main operating budget.

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### HISTORY

ACTION	DATE
Introduced	10-22-13

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<sup>1</sup>R.C. 5747.02(A).



# Ohio Legislative Service Commission

## Bill Analysis

Jennifer A. Parker

### S.B. 228

130th General Assembly  
(As Introduced)

**Sens.** Widener, Patton, Uecker, Obhof, Schaffer, Seitz, Hughes, Oelslager

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### BILL SUMMARY

- Limits the Controlling Board's authority to approve the expenditure of certain federal and nonfederal funds that (1) are received in excess of the amount appropriated or (2) are not anticipated in the current biennial appropriations act.
- Requires a state agency, as part of a request to approve the making of a purchase, to provide to the Controlling Board certain information about a proposed supplier, or proposed subcontractor of that supplier, that is not headquartered in Ohio.
- Requires a state agency to contact each Ohio entity the agency approached to fulfill a purchase or to whom the agency sent a request for proposals but failed to respond to determine why the entity failed to respond, and requires the agency to report that information to the Controlling Board.

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### CONTENT AND OPERATION

#### Controlling Board authority to approve the expenditure of certain funds

The bill imposes a limitation on the Controlling Board's authority to approve the expenditure of certain federal and nonfederal funds.

#### Federal funds

The federal funds to which the bill applies are those received into any state fund from which transfers may be made by the Controlling Board under R.C. 127.14(D).  
Currently:

(1) If the federal funds received are greater than the amount of such funds appropriated by the General Assembly for a specific purpose, the Board may authorize the expenditure of those excess funds.

(2) If the federal funds received are not anticipated in an appropriations act for the biennium in which the new revenues are received, the Board may create funds for those revenues and authorize expenditures from those additional funds during that biennium.<sup>1</sup>

The bill stipulates that the amount of any expenditure authorized by the Board under (1) or (2), above, for a specific or related purpose or item in any fiscal year cannot exceed an amount greater than 1% of the GRF appropriations for that fiscal year.<sup>2</sup>

### **Nonfederal funds**

The nonfederal funds to which the bill applies are those received into any state fund from which transfers may be made by the Controlling Board under R.C. 127.14(D), as well as the Waterways Safety Fund and the Wildlife Fund.

Currently:

(1) If the nonfederal funds received are greater than the amount of such funds appropriated, the Board may authorize the expenditure of those excess funds.

(2) If the nonfederal funds received are not anticipated in an appropriations act for the biennium in which the new revenues are received, the Board may create funds for those revenues and authorize expenditures from those additional funds during that biennium.<sup>3</sup>

The bill stipulates that the amount of any expenditure authorized by the Board under (1) or (2), above, for a specific or related purpose or item in any fiscal year cannot exceed an amount greater than 1% of the GRF appropriations for that fiscal year.<sup>4</sup>

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<sup>1</sup> R.C. 131.35(A)(2) and (4).

<sup>2</sup> R.C. 131.35(D).

<sup>3</sup> R.C. 131.35(B)(2) and (3).

<sup>4</sup> R.C. 131.35(D).



## Information to be provided to the Board regarding purchases from out-of-state suppliers

The bill requires a state agency to provide certain information about a potential supplier to the Controlling Board at the time the agency submits a request to the Board to approve the making of a purchase, if the proposed supplier is not headquartered in Ohio but has a presence in the state. The agency must include in the request the following information:

- The address or addresses of the supplier's places of business in Ohio;
- The total number of employees the supplier employs in each of its places of business in the state;
- The percentage of the requested purchase to be completed by employees of the supplier located in the state;
- A list of any suppliers, subcontractors, or other entities the supplier intends to use to fulfill the requested purchase that includes the address or addresses of the places of business in the state of each potential supplier, subcontractor, or entity; the number of employees that each potential supplier, subcontractor, or entity employs in each of its places of business in the state; and the percentage of the requested purchase to be completed by employees of the potential supplier, subcontractor, or entity located in the state.<sup>5</sup>

Additionally, the bill requires an agency, prior to submitting a request to approve the making of a purchase to the Controlling Board, to contact any entity headquartered in Ohio that the agency approached related to the proposed purchase or to whom the agency sent a request for proposals but who did not respond to the request and ascertain why the entity did not respond. The agency must then include this information as part of its request to the Board to approve the making of a purchase.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	11-05-13

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<sup>5</sup> R.C. 127.163.

<sup>6</sup> R.C. 127.164.





# Ohio Legislative Service Commission

## Bill Analysis

Sam Benham

### H.B. 230

130th General Assembly  
(As Introduced)

**Reps.** Grossman and Anielski, Duffey, Stinziano, Brenner, Hackett, Buchy, Stebelton, Derickson

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## BILL SUMMARY

- Creates a refundable income tax or commercial activity tax credit for a business that donates food inventory to charitable organizations, equal to a percentage of a federal income tax deduction taken by the business for the same donation.

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## CONTENT AND OPERATION

### Credit for food donations to charities

The bill creates refundable income tax and commercial activity tax credits for businesses that make charitable contributions of "apparently wholesome food" from its inventory to an organization that is exempted from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Under federal tax law, a business may take an "enhanced" deduction for the value of such contributions, up to 10% of the business's net income, for federal income tax purposes as a charitable contribution.<sup>1</sup> The amount of each refundable state credit equals 10% of the amount so deducted by the business for the taxable year.<sup>2</sup> Under federal law, "apparently wholesome food" is food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though that food may not be readily marketable because of the food's appearance, age, freshness, grade, size, surplus, or other conditions.<sup>3</sup>

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<sup>1</sup> 26 U.S.C. 170. The federal enhanced deduction specifically for apparently wholesome food is scheduled to expire December 31, 2013. The expiration likely will reduce the value of the federal deduction for donations of food inventory, and therefore the value of the bill's credit.

<sup>2</sup> R.C. 5747.78, 5747.98, 5751.55, and 5751.98.

<sup>3</sup> 42 U.S.C. 1791.

The commercial activity tax credit must be claimed for the tax period that includes the last day of the corresponding taxable year for which the business took the federal deduction. A business may claim the credit against either the income or commercial activity tax, but only to the extent the credit was not applied against the other tax.<sup>4</sup>

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## HISTORY

ACTION	DATE
Introduced	07-11-13

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<sup>4</sup> R.C. 5751.55.





**Representative Terry Blair**  
**42<sup>nd</sup> House District**  
**Representative John M. Rogers**  
**60<sup>th</sup> House District**

### **Sponsor Testimony on House Bill 246**

Good Afternoon Chairman Beck, Ranking Member Representative Letson, and fellow members of the Ways and Means Committee,

Thank you for affording Representative. Blair and I the opportunity to provide testimony on House Bill 246. I am honored to stand here today and present for your consideration, a piece of legislation that has initially garnered bi-partisan support. The legislation as proposed is intended to addresses one of the more difficult issues facing many Ohioans as well as others throughout our nation.

I suspect all of us share a common knowledge that the costs of a post-secondary education, continues to rise. Indeed student debt accumulated from financing secondary degrees and/or certifications often places a substantial financial burden on our young citizen as they begin to fen for themselves after graduation.

Each Individual who chooses to increase his or her own marketability in today's competitive job market must weigh the benefit of furthering their education against the personal risk of incurring significant debt at a young age.

The state of Ohio is classified as a high debt state with regard to outstanding student loans with the average amount of debt facing an Ohio graduate approximating \$29,000. Graduates finding post graduate employment often find themselves at the lowest level of their earning potential, regardless of career path, while at the same time beginning to repay their loans.

As legislators and proud Ohioans, I believe that we all share a desire to keep our young and talented individuals in our State. At the same time there is a common desire to support and strengthen our business community.

Representative Blair and myself believe that the legislation we have crafted, helps to address both of those important goals.

House Bill 246 was created to accomplish the following:

1. Support and strengthen a skilled and educated workforce for companies located here or looking to do business in Ohio.
2. Provide economic assistance to employers when a recent graduate is added to an existing employee base.
3. Offer an economic incentive as a form of assistance to those students who successfully complete their education.
4. Unique to Ohio, to create some incentive for graduates to remain here in Ohio after they complete their course of study.
5. Recognize and value, the men and woman who have invested in themselves and succeeded in obtaining post-secondary training, such as completing a technical program or graduating from a 2-year, 4-year and/or post-graduate institution of higher learning.

#### **QUALIFIED GRADUATE ADJUSTED GROSS INCOME ADJUSTMENT**

This proposal targets Qualified Higher Education Expenses which are defined as including: tuition, fees, books, supplies and equipment, room and board, and special needs beneficiaries.

The underlying premise of this legislation is to provide an adjustment, much like that which is currently available on Schedule A, Line 41(a) of the Ohio IT 1040 Individual Income Tax Form.

To determine the actual applicable adjustment, a worksheet would be completed on which all qualified education expenses would be listed. The sum of these expenses would be reduced by amounts received in the form of grants, scholarships, 529 program or similar payments.

The net amount of the actual out of pocket expenses incurred by students would then be the basis of a reduction to the individuals Adjusted Gross Income or AGI over the following specified period of years:

- 5 years for technical and Associate Degrees;
  - 10 years for baccalaureate, post-graduate and/or professional degrees.
1. Eligibility for this adjustment would require an ability to provide proof of completion/graduation, and
  2. The adjustment would be available in the calendar year following the year of graduation, (e.g.: a graduate in the class of 2013 would be able to adjust their gross income in the taxable 2014 calendar year)
  3. Students having completed a certificate program or having obtained their degree, and having begun the process of recognizing the credit in the following year, could choose to postpone further recognition of any remaining balance if a decision was made to seek an advanced degree.

## **AN EMPLOYER ADJUSTMENT TO THE RECEIPTS BASIS OF THE COMMERCIAL ACTIVITY TAX FOR NEWLY EMPLOYED QUALIFIED GRADUATES**

This legislation as previously stated is also designed to be beneficial to the newly employed graduate's respective employers.

Unlike a tax credit that is subject to the approval of Ohio's Department of Taxation or an across the board tax reduction, this legislation creates an easily calculated adjustment to the receipts upon which the Commercial Activity Tax (CAT) is calculated based on the employers' costs for the newly hired graduate.

The graduate must be an additional full time employee that has been added to an existing full-time staff.

This reduction, realized over a five year period, requires that the employee remain employed throughout the 5 year period.

The employers' CAT basis is reduced by 100% of the employee related costs incurred in the first year, 50% in the next year, 25% in the third, and continues in this manner through the fifth year.

In the event that the new employee does not continue employment for the duration of the five years, his or her replacement would provide the respective employer with a continued ability to adjust the businesses CAT basis reduction, from the point of change, until completion of the initial five year period.

Our goal is to provide support to these qualified individuals while encouraging them to live and work in Ohio, while supporting those businesses who expand their workforce when hiring them.

In closing, I again thank you Mr. Chairman, Ranking Member Representative Letson, and all of you for this opportunity to introduce this legislation.

We would welcome your support and both Representative Blair and I welcome any questions from the committee member's



# Ohio Legislative Service Commission

## Bill Analysis

Sam Benham

### H.B. 246

130th General Assembly  
(As Introduced)

**Reps.** Rogers and Blair, Cera, Barborak, Celebrezze, Antonio, Maag, Gerberry, Patterson, Slesnick, Stinziano, Henne, Beck

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## BILL SUMMARY

- Authorizes a post-secondary school graduate obtaining a degree after the effective date to take a personal income tax deduction for certain out-of-pocket higher education expenses.
- Authorizes an employer that hires a recent post-secondary school graduate to deduct, over five years, all or a percentage of the employer's costs of employing that graduate from the employer's gross receipts subject to the commercial activities tax.

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## CONTENT AND OPERATION

### Educational expense income tax deduction

The bill authorizes students that graduate on or after the effective date from an "eligible educational institution" to deduct, over a period of years beginning in the year after graduation, each graduate's "qualified higher education expenses" from the graduate's Ohio adjusted gross income. Deductible higher education expenses include all of the following incurred when the graduate was a student enrolled toward the completion of a degree program at an eligible educational institution:

(1) Tuition, fees, books, supplies, and equipment required for the student's attendance at the institution;

(2) Provided the student enrolled for at least one-half of the full-time course load, room and board expenses, up to the amount of the room and board allowance determined by the institution for federal financial aid purposes or the amount actually charged in the case of on-campus housing, whichever is greater;

(3) Special needs services required for the student's attendance at the institution;

The graduate is required to subtract from the above expenses the following:

(1) The amount of such expenses covered from grants, scholarships, gifts, or bequests;

(2) The amount of such expenses covered from payments from a qualified tuition program qualifying for federal tax exemption under section 529 of the Internal Revenue Code;

(3) The amount of any federal income tax reduction resulting from a deduction or credit claimed by the graduate on the basis of such expenses.

The resulting difference is the amount the graduate may deduct from the graduate's adjusted gross income.<sup>1</sup> An eligible educational institution broadly includes any college, university, vocational school, or other post-secondary educational institution eligible to participate in a student aid program administered by the United States Department of Education.<sup>2</sup>

A graduate who receives an associate or technical degree may deduct 20% of the graduate's qualified higher education expenses for each of the five taxable years beginning with the taxable year following the year in which the graduate received the degree. A graduate who receives a baccalaureate, master's, professional, or other advanced degree may deduct 10% of the graduate's expenses for each of the ten taxable years beginning with the taxable year following the year in which the graduate received the degree.<sup>3</sup> In either situation, a graduate may defer taking the deduction for any taxable year during which the graduate is enrolled full-time in an eligible educational institution to pursue a more advanced degree. The deferring graduate must retain evidence of such enrollment for possible inspection by the Tax Commissioner for four years after the graduate finishes taking the deduction.<sup>4</sup> Additionally, each graduate taking the deduction must retain proof of graduation for four years after the graduate finishes taking the deduction.

A graduate is required to add back any higher education expense deduction taken for the purpose of determining whether the graduate is eligible to claim the

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<sup>1</sup> R.C. 5747.01(32) and 5747.82.

<sup>2</sup> See 26 U.S.C. 529.

<sup>3</sup> R.C. 5747.82(B).

<sup>4</sup> R.C. 5747.82(C).



existing personal income tax credit that eliminates income tax liability for a person with an adjusted gross income of less than \$10,000.<sup>5</sup> Thus, the bill's deduction would not reduce a person's adjusted gross income such that a person otherwise ineligible for the credit would become eligible for the credit.

### **Commercial activity tax deduction for hiring recent graduates**

The bill authorizes an employer that hires a recent post-secondary school graduate after the bill's effective date to deduct the employer's costs of employing the graduate from the employer's gross receipts subject to the commercial activities tax. An employer may take the deduction only if the recent graduate meets certain criteria. First, in addition to the graduate being hired after the effective date, the graduate must be hired to a full-time position in Ohio requiring at least 2,080 compensated hours per year. Second, the graduate must have obtained a degree from an eligible education institution at some time within the two calendar years preceding the graduate's hiring date.<sup>6</sup> Third, employment of the graduate must result in an increase of the total number of employees employed in full-time positions by the employer on the bill's effective date.<sup>7</sup> An employer may take the deduction only on the basis of an employee that meets the above criteria ("qualifying new employee").

The bill allows the employer to deduct the employer's following costs associated with hiring a qualifying new employee:

- (1) Wages;
- (2) Social Security and Medicare excise taxes;
- (3) Premiums paid to provide health insurance to the employee;
- (4) Worker's compensation premiums;
- (5) Unemployment compensation taxes.<sup>8</sup>

The employer may take a deduction only for the first five years that the qualifying new employee is employed. The employer may deduct 100% of the costs described above for the first 12 months ("employment year") that the qualifying new employee is employed. Thereafter, the amount that may be deducted gradually

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<sup>5</sup> R.C. 5747.82(D).

<sup>6</sup> R.C. 5751.031(A)(2).

<sup>7</sup> R.C. 5751.031(D).

<sup>8</sup> R.C. 5751.031(A)(1).

decreases to 50% of costs paid in the second employment year, 25% in the third employment year, 12.5% in the fourth employment year, and 6.25% in the fifth employment year. The employer must take deduction for the tax period in which the employer paid the qualifying new employee's costs.<sup>9</sup>

If, before the end of the five-year period over which the employer may take the deduction, a qualifying new employee's employment relationship is terminated for any reason and the employer subsequently hires another qualifying new employee, the percentage of the subsequently hired employee's costs the employer may deduct equals the percentage of costs the employer could have deducted for that period if the subsequently hired employee had been the former employee. However, if the former employee leaves after employer has already claimed the full deduction on the basis of that employee, the employer may take the deduction on the basis of the subsequently hired employee according to the five-year subsiding percentage schedule described above if the subsequently hired employee is a qualifying new employee.<sup>10</sup>

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## HISTORY

ACTION	DATE
Introduced	08-15-13

H0246-I-130.docx/emr

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<sup>9</sup> R.C. 5757.031(B).

<sup>10</sup> R.C. 5751.031(C).



**As Introduced**

**130th General Assembly  
Regular Session  
2013-2014**

**H. B. No. 328**

**Representatives Young, Hagan, C.**

**Cosponsors: Representatives Adams, J., Amstutz, Becker, Brenner, Hood,  
Roegner**

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**A B I L L**

To amend section 131.35 of the Revised Code to modify 1  
the authority of the Controlling Board to approve 2  
certain expenditures. 3

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

**Section 1.** That section 131.35 of the Revised Code be amended 4  
to read as follows: 5

**Sec. 131.35.** (A) With respect to the federal funds received 6  
into any fund of the state from which transfers may be made under 7  
division (D) of section 127.14 of the Revised Code: 8

(1) No state agency may make expenditures of any federal 9  
funds, whether such funds are advanced prior to expenditure or as 10  
reimbursement, unless such expenditures are made pursuant to 11  
specific appropriations of the general assembly, are authorized by 12  
the controlling board pursuant to division (A) (5) of this section, 13  
or are authorized by an executive order issued in accordance with 14  
section 107.17 of the Revised Code, and until an allotment has 15  
been approved by the director of budget and management. All 16  
federal funds received by a state agency shall be reported to the 17  
director within fifteen days of the receipt of such funds or the 18

notification of award, whichever occurs first. The director shall 19  
prescribe the forms and procedures to be used when reporting the 20  
receipt of federal funds. 21

(2) ~~¶~~ Except as provided in division (D)(1) of this section, 22  
if the federal funds received are greater than the amount of such 23  
funds appropriated by the general assembly for a specific purpose, 24  
the total appropriation of federal and state funds for such 25  
purpose shall remain at the amount designated by the general 26  
assembly, except that the ~~expenditure of federal funds received in~~ 27  
~~excess of such specific appropriation may be authorized by the~~ 28  
controlling board may authorize the expenditure of the excess 29  
federal funds in an amount not exceeding three and one-half per 30  
cent of the amount appropriated for such purpose. 31

(3) To the extent that the expenditure of excess federal 32  
funds is authorized, the controlling board may transfer a like 33  
amount of general revenue fund appropriation authority from the 34  
affected agency to the emergency purposes appropriation of the 35  
controlling board, if such action is permitted under federal 36  
regulations. 37

(4) Additional funds may be created by the controlling board 38  
to receive revenues not anticipated in an appropriations act for 39  
the biennium in which such new revenues are received. Expenditures 40  
from such additional funds may be authorized by the controlling 41  
board, but ~~such~~ only in accordance with both of the following: 42

(a) Such authorization shall not extend beyond the end of the 43  
biennium in which such funds are created; 44

(b) Except as provided in division (D)(3) of this section, 45  
the amount of the expenditures authorized shall not exceed one per 46  
cent of the total amount appropriated to the agency responsible 47  
for administering the fund. 48

(5) Controlling board authorization for a state agency to 49

make an expenditure of federal funds constitutes authority for the 50  
agency to participate in the federal program providing the funds, 51  
and the agency is not required to obtain an executive order under 52  
section 107.17 of the Revised Code to participate in the federal 53  
program. 54

(B) With respect to nonfederal funds received into the 55  
waterways safety fund, the wildlife fund, and any fund of the 56  
state from which transfers may be made under division (D) of 57  
section 127.14 of the Revised Code: 58

(1) No state agency may make expenditures of any such funds 59  
unless the expenditures are made pursuant to specific 60  
appropriations of the general assembly. 61

(2) ~~If~~ Except as provided in division (D) (2) of this section, 62  
if the receipts received into any fund are greater than the amount 63  
appropriated, the appropriation for that fund shall remain at the 64  
amount designated by the general assembly or ~~as increased and~~ 65  
~~approved by~~ the controlling board may increase and approve the 66  
appropriation by an amount that does not exceed more than three 67  
and one-half per cent of the amount appropriated from that fund. 68

(3) Additional funds may be created by the controlling board 69  
to receive revenues not anticipated in an appropriations act for 70  
the biennium in which such new revenues are received. Expenditures 71  
from such additional funds may be authorized by the controlling 72  
board, but ~~such~~ only in accordance with both of the following: 73

(a) Such authorization shall not extend beyond the end of the 74  
biennium in which such funds are created; 75

(b) Except as provided in division (D) (3) of this section, 76  
the amount of the expenditures authorized shall not exceed one per 77  
cent of the total amount appropriated to the agency responsible 78  
for administering the fund. 79

(C) The controlling board shall not authorize more than ten 80

per cent of additional spending from the occupational licensing 81  
and regulatory fund, created in section 4743.05 of the Revised 82  
Code, in excess of any appropriation made by the general assembly 83  
to a licensing agency except an appropriation for costs related to 84  
the examination or reexamination of applicants for a license. As 85  
used in this division, "licensing agency" and "license" have the 86  
same meanings as in section 4745.01 of the Revised Code. 87

(D) The controlling board, by an affirmative vote of all 88  
members of the board, may do any of the following: 89

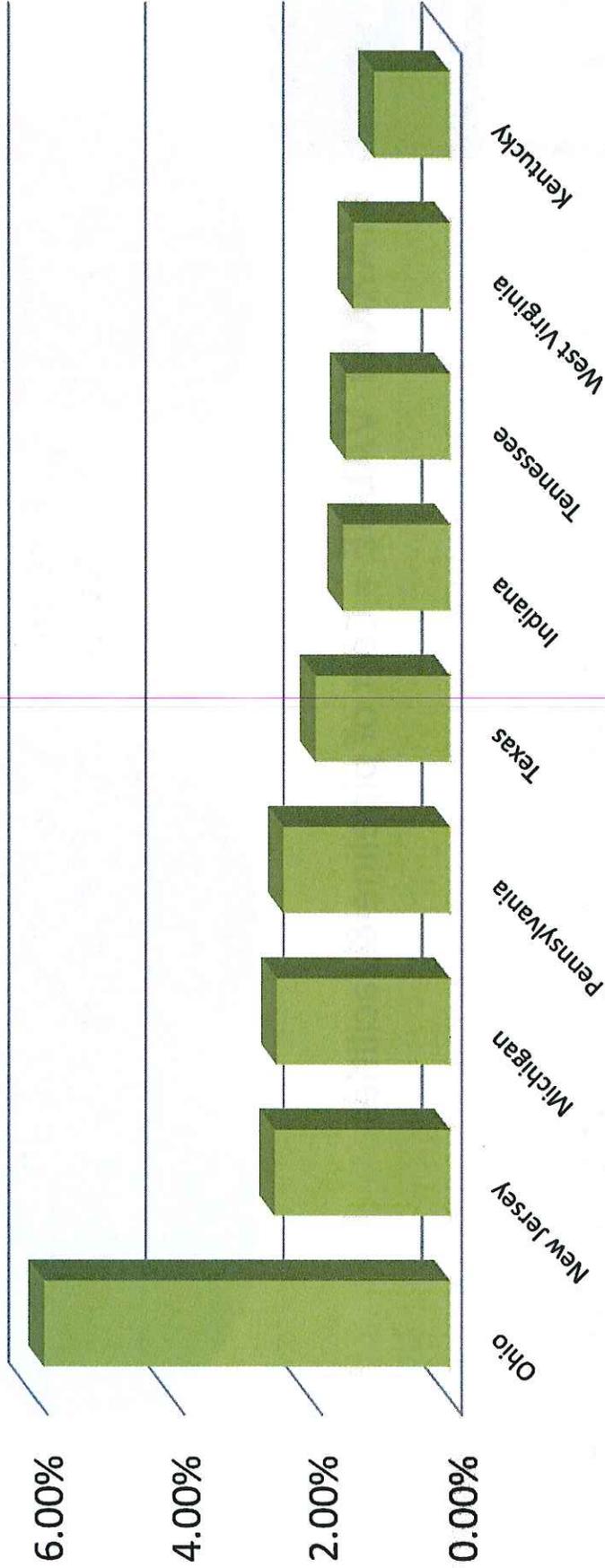
(1) Authorize the expenditure in any amount, up to all of the 90  
amount, of the excess federal funds received. 91

(2) Increase and approve the appropriation described in 92  
division (B)(2) of this section in any amount, up to all of the 93  
amount, of the receipts received; 94

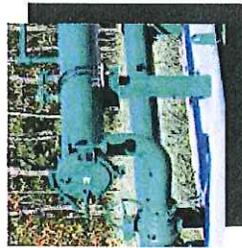
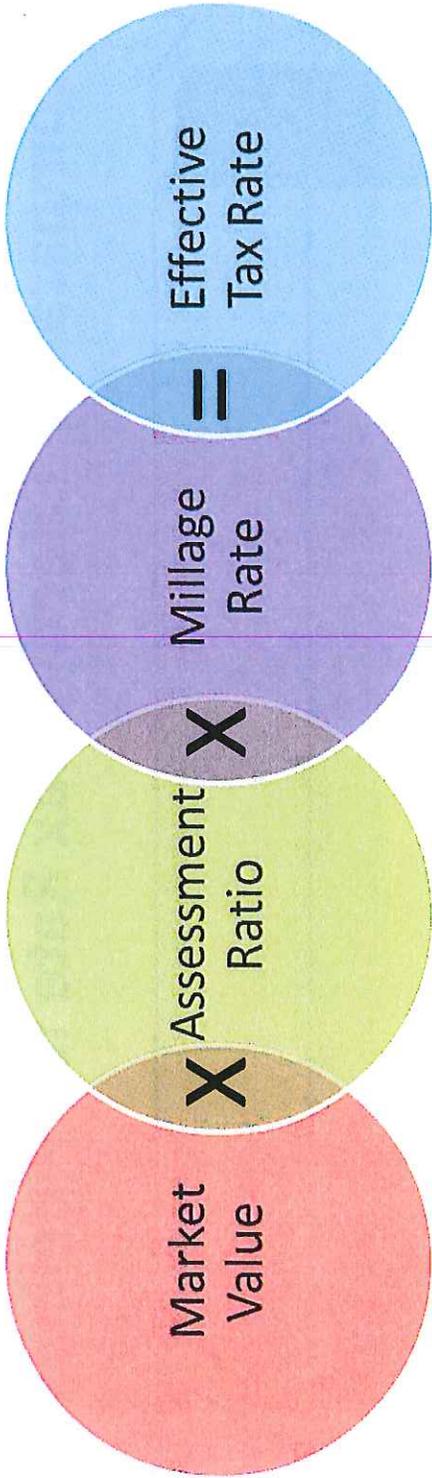
(3) Authorize expenditures from a fund in excess of the one 95  
per cent limitation established under division (A)(4) or (B)(3) of 96  
this section for the fund. 97

**Section 2.** That existing section 131.35 of the Revised Code 98  
is hereby repealed. 99

# Comparative Effective Tax Rate for Pipelines



STATE	ASSESSMENT RATIO	MILLAGE RATE	EFFECTIVE TAX RATE
Ohio	88%	Approximate: 67	Approximate: 5.90%
New Jersey	100%	25.3	2.53%
Michigan	50%	50	2.50%
Pennsylvania	100%	24	2.40%
Texas	100%	19.34	1.93%
Indiana	100%	15.3	1.53%
Tennessee	55%	27.03	1.49%
West Virginia	60%	22.3	1.38%
Kentucky	100%	10.84	1.08%



**MARKET VALUE** = Cost of pipeline & facilities



**ASSESSMENT RATIO** = Ratio of assessed value to market value



**MILLAGE RATE** = Statutorily defined tax rate for jurisdiction

## Tax

### House Bill 5 Finally Leaves Committee

After months of negotiations, House Bill 5 was finally reported out of the House Ways and Means Committee this week. Only Rep. [Stephen Slesnick](#) (D-Canton) crossed party lines to vote in the affirmative. The bill would make Ohio's municipal income tax system simpler and more predictable.

The committee accepted an omnibus technical amendment and a second amendment that requires the Net Operating Loss study committee, created by the bill, to make recommendations to mitigate any fiscal impacts to local governments created by the net operating loss provisions.

The OMA submitted [this letter](#) in support of the bill. Although the bill received strong support in committee, numerous legislators have yet to determine whether or not to support the bill.

Manufacturers should contact OMA's [Rob Brundrett](#) to learn how to help this beneficial measure, House Bill 5, to cross the finish line. 11/7/2013

### Ohio 22<sup>nd</sup> in Gasoline Tax Rate

With an average tax rate of 28.0 cents per gallon, Ohio [ranks](#) 22<sup>nd</sup> among the states in gasoline tax rates, according to the Tax Foundation. Ohio's rate is lower than its five contiguous neighbors: PA (32.3 cents), IN (38.2 cents), WV (34.7 cents), KY (32.3 cents), and MI (39.3 cents).

The highest rate in the nation comes in California at 53.2 cents per gallon. The lowest rate is in Alaska at 12.4 cents.

The foundation used a methodology of the American Petroleum Institute to calculate the average rates. 11/5/2013

### Substitute Version of Municipal Income Tax Uniformity Bill Introduced

This week the House Ways and Means Committee accepted a [substitute](#) version of

House Bill 5 (HB 5), the municipal income tax uniformity bill. The bill has gone through months of negotiations and contains several [changes](#) at the request of local government officials and will begin to receive hearings as early as next week.

The bill contains [numerous provisions](#) including, clarifying the residency test, providing uniform treatment of penalties, providing a 5 year NOL carry forward, simplifying occasional entrants, and creating uniform tax due dates among a host of other changes. Local governments have agreed to the majority of changes in the bill but still oppose the bill.

If you would like to testify on the importance of this bill and its impact on manufacturing, please contact [Rob Brundrett](#) and we can arrange for your voice to be heard. 10/24/2013

### Senate Introduces Income Tax Reduction

This week Senator [Chris Widener](#) (R-Springfield) introduced [Senate Bill 211](#). The bill provides a permanent income tax rate reduction of 4% for all of Ohio's tax brackets beginning in 2014. The bill's source of revenue would be state savings that will arise from the expansion of Medicaid. That is, Medicaid expansion is projected to generate enough unspent revenue to cover the cost of this tax cut. 10/25/2013

### OMA Provides Tax Reform Testimony to Senate Committee

John Konfala, Director of Tax, Emerson Network Power, presented [testimony](#) on behalf of the OMA this week at a Senate tax reform hearing, stressing the importance of preserving the integrity of the commercial activities tax (CAT). He stated, "Some of the most important aspects of the CAT are its broad-base, its low-rate, and its broad application to business entities." And, "Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions." The committee will continue to hold hearings throughout the fall. 10/17/2013

## Tax Foundation Releases its Yearly Rankings: Ohio 39<sup>th</sup>

The Tax Foundation, a nonprofit organization dedicated to tax analysis, recently released its [2014 State Business Tax Climate Index](#). The index purports to evaluate the business tax climate of the 50 states based on a series of factors. It values taxes on consumption over taxes on income; it generally favors broad tax bases with low rates; and exclusions, exemptions, and credits are generally disfavored.

Ohio came in at number 39 once again. [Mark Engel](#), OMA's tax counsel of Bricker & Eckler, explains: The primary criticisms of Ohio's tax structure are its graduated income tax rates; its convoluted municipal income tax code; and its sales tax that is riddled with exemptions and exclusions. *10/10/2013*

## Yet Another CAT Credit Proposal

[House Bill 219](#), sponsored by Rep. [Jim Butler](#) (R-Oakwood) is the latest bill to take aim at the commercial activity tax (CAT) base. Rep. Butler said in [testimony](#) that the bill would authorize a nonrefundable tax credit against various business taxes, including the CAT, for businesses that contribute to economic development projects undertaken by local governments and nonprofit corporations. *10/10/2013*

## Legislature Plays More CAT Games

The House Ways and Means Committee heard sponsor testimony on Wednesday on two bills that would create new carve outs to the commercial activity tax (CAT).

[House Bill 230](#), sponsored by Reps. [Cheryl Grossman](#) (R-Grove City) and [Marlene Anielski](#) (R-Independence), authorizes an income tax or commercial activity tax credit for businesses that donate food inventory to charitable organizations. According to [sponsor testimony](#), a taxpayer could claim a refundable tax credit for charitable food contributions from their business or trade with a tax credit of ten percent of the value of the contribution made to a nonprofit entity.

And, Reps. [John Rogers](#) (D-Mentor on the Lake) and [Terry Blair](#) (R-Washington Twp.) provided [sponsor testimony](#) on [House Bill 246](#). This bill authorizes an employer that hires a recent graduate to deduct the costs of employing the graduate from gross receipts subject to the commercial activities tax. *10/3/2013*

## Senate Undertakes Tax Study

Senator [Bob Peterson](#) (R-Sabina) conducted the first hearing of the Senate Tax Reform Committee. The committee was established, according to Chairman Peterson, to examine Ohio's taxes going forward and not to dwell on the tax changes that have taken place over the last few years.

The committee heard testimony from Ohio University economist Richard Vedder as well as others, including Rep. [Gary Scherer](#) (R-Circleville) who provided [observations](#) from the House Tax Reform Study Committee, which he chaired this summer. Rep. Scherer said, "I believe it is time to review how the CAT is imposed; the overall rate of the CAT, and what impact the CAT has on Ohio businesses."

The Senate will be scheduling more hearings throughout the fall. *9/26/2013*

## IRS Filed Final Tangible Property "Repair" Regulations

OMA Connections Partner, [GBQ Partners, LLC](#), [reports](#) that last week, the Internal Revenue Service filed with the Federal Register the text of the 'much-anticipated' final [tangible property regulations](#). The final regulations provide guidance to taxpayers on the treatment of costs paid to acquire, produce, or improve tangible property under sections 162(a) and 263(a). *9/16/2013*

## Ohio 12th in Top Marginal Tax Rate for Pass-Throughs

The Tax Foundation this week released national [maps](#) of state rankings for the top marginal income tax rates for sole proprietorships and S-Corps. Ohio ranked 12th highest in the country.

The foundation says: "A "marginal" rate is the amount that is taxed of the next dollar of income earned by pass-through businesses in each state's highest tax bracket. These rates reflect the sum of federal, state, and local income taxes (minus the state and local tax deduction); self-employment taxes; and the limitation on itemized deductions." 9/10/2013

### **House Tax Study Committee Hears from Manufacturers**

The Ohio House Study Committee Chaired by Representative [Gary Scherer](#) (R-Circleville) was in Bowling Green on Tuesday to hear more testimony on Ohio's tax structure. The committee heard from OMA members O-I and Winzeler Stamping Company.

Julie Flannagan, O-I Director of North America Tax, [testified](#) in defense of the commercial activity tax stating that, "O-I supports preserving the 2005 tax reforms and opposes carve outs or exemptions for individual industries." Richard Conrad from Winzeler Stamping [testified](#) on how his company is benefiting from the small business tax cut included in the recent budget bill.

The next hearing will take place in North Ridgeville on September 12. If you are interested in testifying, please contact OMA's [Rob Brundrett](#). 9/5/2012

### **State Sales and Income Tax Changes Now in Effect**

The personal income tax reduction and sales tax increase established in the biennial budget took effect as of September 1. Here are the new employer [withholding tables](#). The tables reflect a 9% reduction in the withholding rates previously in effect for 2013, to conform with the 8.5% and 0.5% decrease in individual income tax rates in effect for taxable years 2013 and 2014, respectively. The new tables are to be used for the remainder of the 2013 calendar year and for all of 2014.

The state [sales and use tax](#) rate increased from 5.5% to 5.75%. 8/29/2013

### **Rep. Scherer Talks Tax Reform at OMA**

[Rep. Gary Scherer](#) (R-Circleville) updated the OMA Government Affairs Committee this week on the Ohio House Tax Reform Study Committee that he is chairing. He thanked the OMA for its comprehensive testimony on the history and performance of the commercial activity tax.

He said that the committee is digesting testimony it is hearing across the state and will compile it's report by year-end. The majority of testimony has come from local governments reacting to the past two state budgets. The OMA is one of the few organizations that is not a local government to go on record with the committee.

The next [hearing](#) is September 3 in Bowling Green. Rep. Scherer encouraged manufacturers to testify on their perspectives of the competitiveness of Ohio's business taxes. To testify at a future hearing, please contact OMA's [Rob Brundrett](#). 8/22/2013

### **Ohio Among Worst in Outmigration of Personal Income**

The Tax Foundation released a [map](#) of the migration of personal income among the states from 2000 to 2010. Ohio ranked 46th, with a \$14.7 billion outflow.

Florida led the state winners, as interstate migrants brought a net \$67.3 billion dollars in annual income. The next two highest gainers were Arizona (\$17.7 billion) and Texas (\$17.6 billion). Meanwhile, New York lost the most income (\$-45.6 billion), followed by California (\$-29.4 billion) and Illinois (\$-20.4 billion). 8/20/2013

### **Ohio House Holds First Summer Tax Hearing**

This week the Ohio House Tax Reform Study Committee held its first hearing at Ohio University - Chillicothe.

OMA tax counsel, [Mark Engel](#), from [Bricker & Eckler LLP](#), provided comprehensive [testimony](#) about the history of, goals for, and outcomes

produced by Ohio's commercial activity tax (CAT).

Engel summarized: "Since the enactment of (2005) tax reform, OMA has maintained a simple, consistent approach to tax policy in Ohio. That approach insists on certainty, equity, simplicity, and transparency. The erosion of the tax reform legislation, in the form of carve-outs, exclusions, and ear-marks, reduces certainty, creates disparity by selecting winners and losers, renders the tax code more complicated, and reduces transparency as it becomes more difficult to determine who is entitled to which exclusions."

And Engel called for this specific, manufacturing-friendly sales tax reform: "... just as wages are not subject to the CAT; and ingredients, machinery and equipment constituting business inputs are exempted from the sales tax, so, too, should amounts paid for temporary employees engaged in activities that are otherwise exempt from the sales tax, be excluded from that tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained."

The committee will be in Batavia next week for its second hearing. Committee Chairman [Rep. Gary Scherer](#) (R-Circleville) has reserved the final hearing in Columbus for input on the municipal income tax uniformity legislation, [House Bill 5](#). 8/15/13

### **North Carolina Passes Tax Reform**

OMA members with facilities in North Carolina will want to read up on recently passed legislation in that state. House Bill 998, The Tax Simplification and Reduction Act of 2013, generally reduces income taxes for both corporations and individuals, and expands the scope of the sales and use tax to include certain services.

With tax reform on the mind of Governor Kasich, it's instructive to monitor other manufacturing states' tax law.

OMA Connections Partner, GBQ Partners, has a good [analysis](#) of the NC plan. 8/13/2013

### **House to Study Taxes over the Fall**

Speaker Bill Batchelder (R- Medina) created three study committees that'll work through the fall: one on taxation, one on higher education, and one on health care and drug addiction.

The chairman of the House Tax Reform Legislative Study Committee, Rep. Gary Scherer (R-Circleville), announced the [hearing schedule](#) this week. He'll have five hearings in August and September in various locations around the state. The first four hearings will look at state and local taxes (except municipal income taxes), and the last one will focus on municipal taxes only.

Separately, Governor Kasich continues to push his agenda for continuing tax reforms; his aim is to have the most business competitive tax system in the country. More to come on that.

Contact OMA's [Rob Brundrett](#) for more information. 8/8/2013

### **Ohio House to Hold Special Study Hearings this Summer**

This week Speaker Bill Batchelder appointed three special study committees to hold summer hearings around the state on ways to "reform" higher education, health care, and tax policy. Of special interest to manufacturers is the tax reform study committee, which will be chaired by [Rep. Gary Scherer](#) (R-Circleville).

The panels plan to hold hearings across the state in August and September to gather information to help lawmakers develop a final report and potential legislative recommendations.

OMA will coordinate on behalf of members to make sure relevant tax issues are elevated to the [participating House members](#).

Hearing dates and locations will be determined in the near future. 7/31/2013

**Taxation Legislation**  
**Prepared by: The Ohio Manufacturers' Association**  
**Report created on November 11, 2013**

- HB5**      **MUNICIPAL CORPORATIONS INCOME TAXES** (GROSSMAN C, HENNE M) To revise the laws governing income taxes imposed by municipal corporations.  
*Current Status:* 11/6/2013 - House Ways and Means, (Twelfth Hearing)  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_5](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_5)
- HB24**      **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.  
*Current Status:* 6/12/2013 - House Ways and Means, (First Hearing)  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_24](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_24)
- HB26**      **SALES-USE TAX EXEMPTION** (MAAG R) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.  
*Current Status:* 6/5/2013 - House Ways and Means, (Second Hearing)  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_26](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_26)
- HB40**      **INVESTIGATION OF LOST FUNDS-LIBOR** (FOLEY M) To require the Treasurer of State to investigate whether state treasury funds, custodial funds, or funds of state institutions of higher education were lost as a result of fraudulent manipulations to the LIBOR and to declare an emergency.  
*Current Status:* 2/13/2013 - Referred to Committee House Policy and Legislative Oversight  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_40](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_40)
- HB46**      **SMALL CLAIMS DIVISION-TAX APPEALS BOARD** (AMSTUTZ R) To create a small claims division of the Ohio Board of Tax Appeals, to allow for parties to file a notice of appeal to the Board by facsimile or electronic transmission using electronic mail, to require the Board to establish a case management schedule for appeals, and to authorize the Tax Commissioner to expedite and issue a final determination for residential property value appeals with written consent of the parties.  
*Current Status:* 2/13/2013 - Referred to Committee House Ways and Means  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_46](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_46)
- HB54**      **INTERNAL REVENUE CODE** (BECK P) To expressly incorporate changes in the Internal Revenue Code since December 20, 2012, into Ohio law, and to declare an emergency.  
*Current Status:* 3/12/2013 - Referred to Committee Senate Ways and Means  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_54](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_54)
- HB56**      **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:* 3/12/2013 - House State and Local Government, (First Hearing)  
*State Bill Page:* [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_56](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_56)
- HB59**      **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.

**Current Status:** 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_59](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59)

- HB63**      **TAX CREDIT- OIL AND GAS PRODUCTION** (CERA J, O'BRIEN S) 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 or dislocated workers who have enrolled in or completed a federally registered apprenticeship program.  
**Current Status:** 2/20/2013 - Referred to Committee House Ways and Means  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_63](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_63)
- HB81**      **TAX EXPENDITURES EFFECTIVENESS** (DRIEHAUS D, FOLEY M) To provide for the periodic appraisal of the effectiveness of tax expenditures.  
**Current Status:** 2/27/2013 - Referred to Committee House Policy and Legislative Oversight  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_81](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_81)
- HB107**     **CAREER EXPLORATION INTERNSHIPS-TAX CREDIT** (BAKER N) To authorize a tax credit for businesses that employ high school students in career exploration internships.  
**Current Status:** 11/6/2013 - Re-Referred to Committee  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_107](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_107)
- HB118**     **BOND ISSUES BALLOT LANGUAGE** (ROEGNER K) To revise the ballot language requirements for bond issues.  
**Current Status:** 6/11/2013 - House State and Local Government, (Second Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_118](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_118)
- HB135**     **INCOME TAX CREDIT-VACANT INDUSTRIAL SITE** (PELANDA D, CERA J) To authorize a nonrefundable credit against the income tax and certain business taxes for the rehabilitation of a vacant industrial site.  
**Current Status:** 11/12/2013 - Senate Ways and Means, (Second Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_135](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_135)
- HB138**     **TAX APPEALS BOARD LAW CHANGES** (MCCLAIN J, LETSON T) 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 authorize the Tax Commissioner to expedite and issue a final determination for residential property value appeals with written consent of the parties.  
**Current Status:** 7/11/2013 - **SIGNED BY GOVERNOR**; Eff. 10/11/2013; Some Provisions Other Dates  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_138](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_138)
- HB189**     **JOBSONIO ACCOUNTABILITY ACT** (LUNDY M) To create the JobsOhio Accountability Act.  
**Current Status:** 6/4/2013 - Referred to Committee House Policy and Legislative Oversight

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_189](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_189)

- HB198**      **TAX INCREMENT FINANCING** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before adopting the TIF resolution, and to permit such owners to exclude their parcels from the incentive district by submitting a written response.  
**Current Status:** 11/12/2013 - House State and Local Government, (Second Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_198](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_198)
- HB212**      **SEVERANCE TAX-HORIZONTAL WELLS** (HAGAN R) To levy a tax on the severance of oil, gas, condensate, and natural gas liquids from horizontal wells, to distribute revenue from the tax to environmental and oil and gas regulatory purposes, local governments impacted and not impacted by horizontal well development, and a permanent fund to promote economic development, and to provide for the administration, investment, and use of the permanent fund.  
**Current Status:** 6/25/2013 - Referred to Committee House Agriculture and Natural Resources  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_212](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_212)
- HB219**      **CONTRIBUTIONS-ECONOMIC DEVELOPMENT PROJECTS** (BUTLER, JR. J) To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and nonprofit corporations.  
**Current Status:** 10/9/2013 - House Ways and Means, (First Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_219](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_219)
- HB224**      **TAX CREDITS** (GONZALES A, TERHAR L) To make various changes to the administration of the investment tax credit and the venture capital loan loss tax credit, including the increase of the maximum amount of the investment tax credit and the venture capital loan loss tax credit and the elimination of the Industrial Technology and Enterprise Advisory Councils.  
**Current Status:** 6/26/2013 - Referred to Committee House Ways and Means  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_224](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_224)
- HB230**      **TAX CREDIT-FOOD DONATIONS** (GROSSMAN C, ANIELSKI M) To authorize an income tax or commercial activity tax credit for businesses that donate food inventory to charitable organizations.  
**Current Status:** 10/2/2013 - House Ways and Means, (First Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_230](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_230)
- HB245**      **PROPERTY TAX ROLLBACK** (BARBORAK N) To extend the 10% and 2.5% partial property tax "rollback" exemptions to new and replacement levies approved at the 2013 general election and to declare an emergency.  
**Current Status:** 9/19/2013 - Referred to Committee House Finance and Appropriations  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_245](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_245)
- HB246**      **TAX DEDUCTION-COLLEGE GRADUATES** (ROGERS J, BLAIR T) To allow recent college graduates to claim an income tax deduction for qualified higher education expenses and allow employers of recent college graduates to deduct the employer's costs of employing the graduate from the employer's gross receipts subject to the commercial

activities tax.

**Current Status:** 10/2/2013 - House Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_246](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_246)

**HB260 ELECTRONICALLY FILED TAX RETURNS (GONZALES A)** To allow the Department of Taxation to provide taxpayers who file electronic returns the option of receiving their income tax refund in the form of a credit card, debit card, prepaid card, or other device used to electronically transfer funds.

**Current Status:** 10/9/2013 - House Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_260](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_260)

**HB282 SALES-USE TAX LICENSE (ROGERS J)** To authorize vendors and others required to hold a sales or use tax license whose business and home address is the same to apply to the Tax Commissioner to keep such address confidential.

**Current Status:** 10/23/2013 - House Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_282](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_282)

**HB284 HISTORIC REHABILITATION TAX CREDIT INCREASE (SCHURING K)** To increase the maximum historic rehabilitation tax credit allowed to a taxpayer, from \$5 million to \$25 million, and to limit the amount of such credit that may be claimed in each year to \$5 million.

**Current Status:** 10/10/2013 - Referred to Committee House Ways and Means

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_284](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_284)

**HB289 JOINT ECONOMIC DEVELOPMENT ZONE-DISTRICT (SCHURING K)** To require subdivisions to obtain written approval from owners and lessees of real property located within a proposed or existing joint economic development zone (JEDZ) or joint economic development district (JEDD) before approving, amending, or renewing the JEDZ or JEDD contract, to require that income tax revenue derived from a JEDZ or JEDD approved, amended, or renewed after the bill's effective date be used to carry out the JEDZ or JEDD economic development plan before being used for other purposes, and to institute contiguity requirements for which subdivisions may create a JEDZ or JEDD.

**Current Status:** 10/29/2013 - House State and Local Government, (Second Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_289](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_289)

**HB312 ELECTRIC LIGHT COMPANY-JOB RETENTION PROGRAM COSTS (JOHNSON T)** To permit a public utility electric light company to recover costs of an economic and job retention program from all public utility electric light customers in Ohio.

**Current Status:** 10/30/2013 - Referred to Committee House Public Utilities

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_312](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_312)

**HB319 INFRASTRUCTURE DEVELOPMENT RIDER-GAS COMPANIES (GROSSMAN C)** To permit natural gas companies to apply for an infrastructure development rider to cover costs of certain economic development projects.

**Current Status:** 10/30/2013 - Referred to Committee House Public Utilities

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_319](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_319)

**HB336 GASEOUS FUEL VEHICLE CONVERSION PROGRAM (O'BRIEN S, HALL D)** To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural

gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.

**Current Status:** 11/6/2013 - Introduced

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_HB\\_336](http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_336)

- HCR6 FEDERAL EXCISE TAX-MEDICAL DEVICES (BRENNER A, HUFFMAN M)** To urge the Congress of the United States and the President of the United States to repeal the new federal excise tax on medical devices.
- Current Status:** 4/30/2013 - Referred to Committee Senate Medicaid, Health and Human Services
- State Bill Page:** [http://www.legislature.state.oh.us/res.cfm?ID=130\\_HCR\\_6](http://www.legislature.state.oh.us/res.cfm?ID=130_HCR_6)
- SB27 PROPERTY TAX EXEMPTION-MILITARY VETERANS (SCHAFFER T)** To exempt from property taxation the primary residences of military veterans who are 100% disabled from a service-connected disability.
- Current Status:** 2/27/2013 - Senate Ways and Means, (First Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_27](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_27)
- SB28 INTERNAL REVENUE CODE (OBHOF L)** To expressly incorporate changes in the Internal Revenue Code since December 20, 2012, into Ohio law, and to declare an emergency.
- Current Status:** 3/22/2013 - **SIGNED BY GOVERNOR**; Eff. 3/22/2013
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_28](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_28)
- SB29 INCOME TAX REFUND-JUDGMENT DEBTOR TENANT (SCHAFFER T)** To enable a judgment creditor landlord to obtain a court order directing the Tax Commissioner to pay the judgment debtor tenant's income tax refund to the landlord.
- Current Status:** 2/27/2013 - Senate Ways and Means, (First Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_29](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_29)
- SB30 AMERICAN RED CROSS CONTRIBUTIONS (SCHAFFER T)** To allow taxpayers to make contributions to the American Red Cross Ohio Disaster Response Readiness and preparedness Fund through their income tax returns.
- Current Status:** 2/27/2013 - Senate Ways and Means, (First Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_30](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_30)
- SB31 INCOME TAX CREDIT-TEACHERS (SCHAFFER T)** To allow a credit against the personal income tax for amounts spent by teachers for instructional materials.
- Current Status:** 2/27/2013 - Senate Ways and Means, (First Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_31](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_31)
- SB42 PROPERTY TAXES-SCHOOL SECURITY (MANNING G, GARDNER R)** To authorize school districts to levy a property tax exclusively for school safety and security purposes.
- Current Status:** 6/19/2013 - House Ways and Means, (Third Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_42](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_42)
- SB52 PROPERTY TAX COMPLAINTS (COLEY W)** To permit property tax complaints to be initiated only by the property owner.
- Current Status:** 6/18/2013 - Senate Ways and Means, (Fourth Hearing)
- State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_52](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_52)
- SB56 INCOME TAX REFUNDS (KEARNEY E)** To require the Department of Taxation to provide

taxpayers the option of receiving their income tax refund in the form of a prepaid debit card.

**Current Status:** 3/5/2013 - Senate Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_56](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_56)

**SB76**

**NONPROFIT CORPORATION CORRECTIONAL FACILITY TAX EXEMPTION**

(SCHIAVONI J) To specify that a nonprofit corporation, the principal purpose of which is operating a halfway house, community-based correctional facility, or other venue offering rehabilitative residential programming to criminal offenders is presumed to be a charitable institution exempt from property taxation.

**Current Status:** 6/18/2013 - Senate Ways and Means, (Second Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_76](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_76)

**SB85**

**TAX EXEMPTION-INVESTMENT METAL BULLION-COINS (JORDAN K, BEAGLE B)**

To exempt from sales and use taxes the sale or use of investment metal bullion and coins.

**Current Status:** 4/16/2013 - Senate Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_85](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_85)

**SB89**

**EARNED INCOME TAX CREDIT (SKINDELL M)** To grant a state earned income tax credit equal to a percentage of the federal earned income tax credit.

**Current Status:** 6/11/2013 - Senate Ways and Means, (First Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_89](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_89)

**SB108**

**INCOME TAX (JONES S)** To repeal the income tax deduction for wagering losses, to increase the income tax credit for the legal adoption of a child to \$10,000 for each child, and to increase the maximum income tax deduction for college savings contributions to \$10,000 annually for each beneficiary.

**Current Status:** 4/30/2013 - Senate Ways and Means, (Second Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_108](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_108)

**SB120**

**TECHNOLOGY INVESTMENT TAX CREDIT PROGRAM (KEARNEY E)** To increase the total amount of credits that may be awarded under the Technology Investment Tax Credit Program from \$45 to \$145 million.

**Current Status:** 5/8/2013 - Referred to Committee Senate Finance

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_120](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_120)

**SB149**

**CONTRIBUTIONS-ECONOMIC DEVELOPMENT PROJECTS (BEAGLE B)** To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and nonprofit corporations.

**Current Status:** 11/12/2013 - Senate Ways and Means, (Second Hearing)

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_149](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_149)

**SB159**

**PROPERTY TAX ROLLBACK EXEMPTIONS (SCHIAVONI J)** To extend the 10% and 2.5% partial property tax "rollback" exemptions to new and replacement levies approved at the 2013 general election and to declare an emergency.

**Current Status:** 9/26/2013 - Referred to Committee Senate Ways and Means

**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_159](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_159)

**SB203**

**INCOME TAX CREDIT-NONPROFITS (SCHAFFER T, TAVARES C)** To authorize an income tax credit for individuals that earn a nonprofit management degree or certain professional designations and to allow a sales tax exemption for out-of-state nonprofit corporations that relocate jobs to Ohio.

**Current Status:** 10/15/2013 - Referred to Committee Senate Ways and Means  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_203](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_203)

**SB210**      **INCOME TAX RATE REDUCTION (WIDENER C)** To provide for a permanent income tax rate reduction of 4% for all tax brackets beginning in 2014.

**Current Status:** 10/30/2013 - Referred to Committee Senate Finance  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_210](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_210)

**SB211**      **INCOME TAX CREDIT (SCHAFFER T, PETERSON B)** To authorize an income tax credit for donations to the permanent endowment fund of an eligible community foundation.

**Current Status:** 11/12/2013 - Senate Ways and Means, (Second Hearing)  
**State Bill Page:** [http://www.legislature.state.oh.us/bills.cfm?ID=130\\_SB\\_211](http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_211)

**SCR1**      **FEDERAL EXCISE TAX-MEDICAL DEVICES (JORDAN K)** To urge the Congress of the United States and the President of the United States to repeal the new federal excise tax on medical devices.

**Current Status:** 2/13/2013 - Referred to Committee Senate Medicaid, Health and Human Services  
**State Bill Page:** [http://www.legislature.state.oh.us/res.cfm?ID=130\\_SCR\\_1](http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_1)

Ohio Manufacturers' Association  
Tax Policy Committee  
Tax Counsel Report  
November 12, 2013

By Mark A. Engel  
Bricker & Eckler LLP

**Administrative Actions:**

On July 31, 2013, the Department of Taxation issued a press release summarizing the income tax modifications made by Am. Sub. H.B. 59. A copy of the release is appended to this report.

On October 31, the Department of Taxation revised an Information Release regarding instructions for filing Ohio income tax returns for same-sex couples. IT 2013-01 – *Filing Guidelines for Taxpayers Filing a Joint Federal Income Tax Return with Someone of the Same Gender* – Issued Oct. 11, 2013 – Revised Oct. 30, 2013. Such individuals may not file and claim married status, either jointly or separately. In addition, if the parties filed a joint federal return, both individuals will be required to file separately and include Schedule IT S with their Ohio returns. The amendment of returns for prior years is not permitted. A copy of the release is appended to this report.

The Department of Taxation recently published a series of rules to implement the new financial institutions tax (FIT). Those rules include

Rule 5703-33-01 – guidance regarding mandatory electronic filing of taxes and procedures to seek permission to be excused from such filings.

Rule 5703-33-02 – clarification of the computational test to determine whether an entity is a “captive finance company, which is excused from paying the tax.

Rule 5703-33-03 – procedures for notifying the Tax Commissioner when a taxpayer is no longer subject to the tax, either individually or as a member of a combined group.

Rule 5703-33-04 – clarifies how pawn shops and pawnbrokers, who are excluded from the tax, are to be treated.

Rule 5703-33-05 – explains how total equity capital, which is the base on which the tax is computed, is calculated.

Rule 5703-33-06 – explains various sourcing rules for determining the Ohio apportionment factors for determining Ohio equity capital.

**Legislative Actions:**

House Bill 5, which would revise Ohio’s municipal income tax laws, continues to be the subject of intense lobbying and negotiation between representatives of the business community and cities. Primary areas of contention include

- whether Net Operating Losses have to be recognized and if so, for how long;
- revision of the current rule that does not require withholding for employees who are in a community for 12 days or fewer;
- “throw-back” provision for sourcing sales of tangible goods; and
- taxation of pass-through entities and their owners.

A substitute bill has been accepted by the House committee and may be reported out this week.

For additional bills that are pending, see OMA staff legislative report.

### **Judicial Actions:**

#### Ohio Supreme Court

In *Bd. of Edn. of Dublin City Schools v. Franklin Cty. Bd. of Revision*, 2013-Ohio-4543, the Supreme Court ruled that in a case where a property owner produced evidence of value upon which the BOR relied, as the party taking an appeal from the BOR to the BTA, the Board of Education had the affirmative duty to present evidence to support the auditor’s value. Where the appellant failed to do so, it was error for the BTA to reject the taxpayer’s evidence and to reinstate the auditor’s original finding of value where evidence demonstrates that the auditor’s decision was in error.

#### Ohio Court of Appeals

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, 2013-Ohio-4504 (10<sup>th</sup> Cir., Oct. 10, 2013), the Court of Appeals affirmed a decision of the BTA holding that the price paid for property in the course of a sale of real property as part of a sale-leaseback transactions nevertheless determined the value of the property for tax purposes. The transaction was found to be at arm’s-length and based on the desire of the parties to maximize their benefits from the property.

#### Ohio Board of Tax Appeals

None to report.

#### Tax Commissioner Opinion

No opinions to report.



**Joseph W. Testa**, Tax Commissioner

Issued: July 31, 2013

## **Individual Income Tax / Pass-Through Entity Tax: HB 59 Modifications Impacting Taxpayers Subject to Ohio Income Tax**

On June 30, 2013, Amended Substitute House Bill 59 (HB 59) of the 130<sup>th</sup> General Assembly (also known as the fiscal year 2014-2015 biennial budget bill) was signed into law. HB 59 contains the following modifications and additions to the law that impact taxpayers subject to Ohio income tax:

### ***Income Tax Rate Reductions***

HB 59 reduces income tax base amounts and rates by 8.5% in taxable year 2013, an additional .5% to total 9% in taxable year 2014, and an additional 1% to total 10% in taxable year 2015. *See ORC 5747.02.* More information regarding corresponding changes to employer income tax withholding tables will be forthcoming, as these changes will not occur until September 2013. Beginning September 2013, taxpayers will see a reduction in the Ohio income tax withholding from their paychecks.

### ***New 50% Small Business Income Deduction***

For taxable years beginning on or after January 1, 2013, an individual taxpayer filing the IT1040 is allowed a deduction amounting to 50% of the taxpayer's Ohio small business income of up to \$250,000. The deduction cannot exceed \$62,500 for each spouse filing separately or \$125,000 for all other taxpayers. Ohio small business investor income means the portion of a taxpayer's adjusted gross income that is business income reduced by deductions from business income and apportioned or allocated to Ohio under ORC 5747.21 and 5747.22 to the extent not otherwise deducted or excluded in computing federal or Ohio Adjusted Gross Income for the taxable year. As such, net business income as reported on the taxpayer's federal 1040 Schedules C, E and F will be used in calculating the deduction. The deduction will be available on Schedule A of the IT1040. Additional clarification regarding how this deduction is calculated will be forthcoming. Note that the deduction will not impact the calculation of a taxpayer's school district income tax liability. Instead, it will be added back to Ohio Taxable Income for school district income tax purposes. *See ORC 5747.01(A)(31), 5747.21, 5747.22 and 5748.01(E)(1)(a).*

### ***Means Testing of \$20 Personal Exemption Credit***

For taxable years beginning on or after January 1, 2013, the \$20 personal exemption credit is only available to taxpayers with Ohio Taxable Income of less than \$30,000 on either an individual or joint return. Ohio Taxable Income is defined as Ohio Adjusted Gross Income less exemptions. The credit will continue to be available to eligible taxpayers on line 9 of the IT1040. *See ORC 5747.022.*

### ***Ability to Take Deduction for Same Dependent on Two Returns Eliminated***

For taxable years beginning on or after January 1, 2014, taxpayers are prohibited from claiming either a personal exemption or a \$20 personal exemption credit on their returns if they are being claimed as a dependent on the federal income tax return of another taxpayer. *See ORC 5747.022 and 5747.025.*

### ***New Ohio Earned Income Tax Credit***

For taxable years beginning on or after January 1, 2013, a non-business non-refundable earned income tax credit is available for taxpayers who were eligible for the Federal Earned Income Credit (FEIC) on their federal 1040 returns. The Ohio Earned Income Tax Credit (OEITC) is equal to 5% of the taxpayer's FEIC. However, if the taxpayer's Ohio Taxable Income (Ohio Adjusted Gross Income less exemptions) exceeds \$20,000 on either an individual or joint return, then the credit is limited to 50% of the tax otherwise due after deducting all other credits that precede the credit except for the joint filing credit. For taxable years beginning on or after January 1, 2013, taxpayers must have earned income and Federal Adjusted Gross Income (FAGI) of less than the following amounts to be eligible for the FEIC:

- \$46,227 (\$51,567 married filing jointly) with three or more qualifying children
- \$43,038 (\$48,378 married filing jointly) with two qualifying children
- \$37,870 (\$43,210 married filing jointly) with one qualifying child
- \$14,340 (\$19,680 married filing jointly) with no qualifying children

Concurrently, the maximum FEIC amounts that these taxpayers can be allowed to take on their federal returns will be the following:

- \$6,044 with three or more qualifying children
- \$5,372 with two qualifying children
- \$3,250 with one qualifying child
- \$487 with no qualifying children

As such, the maximum OEITC amount allowable to taxpayers on their state returns in taxable year 2013 is \$302 (5% of \$6,044). The credit will be available to eligible taxpayers on the 2013 IT1040 Schedule B. More guidance on how taxpayers can calculate this credit will be forthcoming. *See new ORC 5747.71.*

### ***Military Retirement Pay Deduction Expanded***

Beginning in taxable year 2014, taxpayers who receive retirement income related to uniformed service in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and the Commissioned Corps of the Public Health Service (PHS) are allowed a deduction for the entire amount of such pay to the extent it is included in FAGI. This deduction can be taken on Schedule A, line 37b of the IT1040. Prior to this change, the deduction was only available to former service members of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps receiving military retirement pay. *See ORC 5747.01(A)(26).*

### ***Wagering Loss Deduction Repealed***

The wagering loss deduction that was slated to be effective for taxable year 2013 is now repealed. The item would have allowed taxpayers to deduct losses from wagering transactions included in FAGI that were allowed as an itemized deduction for federal purposes under IRC 165 and that the taxpayer deducted in computing federal taxable income. Due to HB 59's repeal of the provision, no wagering loss deduction will be available for taxpayers in 2013 or thereafter. See *ORC 5747.01(A)(29)*.

### ***Income Tax Apportionment for Non-Residents Clarified***

Effective for taxable year 2013, HB 59 clarifies that non-resident taxpayers are allowed a credit equal to the amount of tax otherwise due on the portion of adjusted gross income not *apportionable* to Ohio. Prior to this change, the term "allocable" was used, but not "apportionable". This change makes the provision consistent with the income tax apportionment provisions in *ORC 5747.20 to 5747.23*. See *ORC 5747.05*.

### ***\$1 Minimum for Tax Payments and Refunds***

Effective September 29, 2013, the Tax Commissioner is excused from issuing any tax refund if the amount of the refund is \$1 or less. Concurrently, taxpayers are excused from paying a tax if the total amount due with the taxpayer's return is \$1 or less. Currently, the \$1 minimum applies only to income tax, employer withholding, and pass-through entity income tax withholding. See *ORC 5703.75, 5747.08, 5747.10, and 5747.11*

### ***Calculation of Interest on Refunds Upon Filings of Returns or Reports***

With respect to income tax refunds upon filings of returns or reports, the law prior to HB 59 mandated the accrual of refund interest only if the Tax Commissioner does not refund the overpayment within 90 days after the due date of the taxpayer's return or the date the return was actually filed, whichever is later. If interest was allowed, it accrued from *90 days from the due date of the taxpayer's return or the date the return was actually filed, whichever is later*, until the refund payment date.

Effective September 29, 2013, HB 59 eliminates *ORC 5747.11(C)(1)*, which is repetitive in part of (C)(2) and makes other minor technical edits to *ORC 5747.11*. It continues to not require interest on refund payments made by the Commissioner within the aforementioned 90 day period. However, if interest is allowed, it now requires calculation of the interest to begin from *the date of the overpayment* until the refund payment date. The bill does not, however, modify the calculation of interest on payments of illegal or erroneous assessments. See *ORC 5747.11*.

### ***Ability of Nonresident Pass-Through Entity Investors to File IT1040***

For taxable years beginning on or after January 1, 2013, all nonresident investors in a pass-through entity on whose behalf the entity files an Ohio composite return (IT4708) and pays tax may now file an individual return (IT1040) and claim the refundable credit for taxes the entity paid on the investor's behalf. These include nonresident investors with no other Ohio-sourced income who currently are not

required or permitted to file an individual return if the entity files the composite. Note that in light of this change, the Department will be retracting the Business Tax Division Alert issued on August 10, 2011, which formerly precluded nonresident individual investors participating in a composite and having no other Ohio-sourced income from filing an IT1040 return. *See ORC 5747.08.*

#### ***Modification of Requests for Alternative Apportionment of Income***

For taxable years beginning on or after January 1, 2013, individuals and pass-through entities who intend to submit requests for alternative apportionment are now required to submit such requests with a timely filed return or amended return. Prior to this change, the request was not required to be submitted by the return's due date. Also, HB 59 makes a technical correction to clarify that taxpayers may request the alternative to also effectuate equitable "apportionment" of business in Ohio and not only equitable "allocation". *See ORC 5747.21.*

#### ***Modification to the Job Creation Tax Credit***

Continuing law authorizes the Tax Credit Authority (TCA) to grant job creation tax credits (JCTCs) against the income tax. Currently, a taxpayer that has entered into an agreement with the TCA for a JCTC on the basis of home-based employees must report to the development services agency the number of employees and home-based employees employed by the taxpayer in Ohio. Beginning in 2014, the reporting date is now modified from January 1 to March 1 of each year. The refundable JCTC is taken on forms IT1040 or IT4708. *See ORC 122.17 and 5747.058.*

#### ***Modification to the Job Retention Tax Credit***

Continuing law authorizes the TCA to grant job retention tax credits (JRTCs) against the income tax. Qualifying businesses having a capital investment project and retaining a specified number of full-time equivalent employees or maintaining a certain payroll threshold can be entitled to the JRTC. Effective September 29, 2013, the JRTC is now extended to eligible businesses whose principal place of business is not located in the same political subdivision as the capital investment, as long as the business maintains a unit or division with at least 4,200 employees at the project site. Generally, JRTCs are nonrefundable. However, between July 1, 2011, and December 31, 2013, the TCA may grant refundable JRTCs to eligible businesses that meet certain additional criteria. The JRTC is taken on forms IT1040 or IT4708. *See ORC 122.171 and 5747.058.*

#### ***Technology Investment Tax Credit Eliminated***

Effective September 29, 2013, the Technology Investment Tax Credit for Ohio taxpayers who invest in certain research and development or technology-oriented businesses is no longer available. However, taxpayers who are currently carrying forward an excess credit amount from prior years may continue to do so until the amount is exhausted within the 15 year carry forward period allowed by law. *See ORC 122.152 and 5747.33.*

***Calculation of Post-Assessment Interest Modified***

Effective September 29, 2013, interest that is charged after an assessment has been issued will be calculated based on the assessment tax liability only. The interest will no longer be calculated on the penalty and pre-assessment interest amounts. Therefore, the requirement of calculating interest on interest and penalties has now been removed until an assessment becomes certified to the Ohio Attorney General for collection. Interest after certification will continue to be calculated on the entire unpaid portion of the assessment. *See ORC 5747.13.*

***Change in Electronic Notice or Order Delivery Requirement***

Under current law, the Tax Commissioner may serve a tax notice or order upon a person through secure electronic means with the recipient's consent. If the recipient does not access the notice within ten business days after service, the Tax Commissioner is currently required to then serve it by certified mail, personal service, or delivery service. Effective September 29, 2013, the Commissioner may deliver the notice or order to the intended recipient by ordinary mail after a second attempt to deliver through electronic means is unsuccessful. *See ORC 5703.37(B)(2).*

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Should you have any questions concerning how HB 59 may affect your Ohio income tax liability or your business, contact your designated tax professional or visit [tax.ohio.gov](http://tax.ohio.gov). You may also submit a question to the Ohio Department of Taxation using the "Contact Us" option on the website.

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Department of  
Taxation

Joseph W. Testa, Tax Commissioner

Issued: October 11, 2013

## **Individual Income Tax - Information Release**

### **IT 2013-01 - Filing Guidelines for Taxpayers Filing a Joint Federal Income Tax Return With Someone of the Same Gender - Issued Oct. 11, 2013 – Revised Oct. 30, 2013**

#### *Introduction*

This information release offers guidance to a taxpayer who is filing a joint federal income tax return with someone of the same gender and who is filing an Ohio income tax return meeting the following criteria:

- Original Ohio return for taxable year 2012 and earlier filed on or after September 16, 2013 (the date prescribed in IRS Revenue Ruling 2013-17).
- Original Ohio return filed for taxable years 2013 and after.

#### *Background*

On June 26, 2013, the U.S. Supreme Court issued a decision on the constitutionality of section 3 of the federal Defense of Marriage Act (DOMA), which had established a federal definition of marriage. Following the Court's decision, the Internal Revenue Service issued Revenue Ruling 2013-17. The ruling provides that a marriage between same-gender individuals performed in a jurisdiction that recognizes such a marriage will now be recognized for federal income tax purposes. As a result, same-gender married couples may file joint federal income tax returns on or after September 16, 2013 even if they are domiciled in a jurisdiction whose laws do not recognize a same-gender marriage.

#### *Ohio Guidance*

Under Article XV §11 of the Ohio Constitution, Ohio does not recognize marriage between persons of the same gender. Individuals who entered into such a marriage in another

jurisdiction shall not use the filing status of “married filing jointly” or “married filing separately” when filing Form IT 1040. Each individual must instead file an Ohio return in accordance with the following guidelines:

- File a separate Ohio income tax return using Form IT 1040 and check the box on the first page indicating that Schedule IT S (explained further below) will be filed.
- Use the filing status of “single” or, if qualified, “head of household”.
- Complete Ohio Schedule IT S, *Federal AGI to be Reported by Same-Gender Taxpayers Filing a Joint Federal Return*, which is a supplement to Form IT 1040. This is a schedule on which individuals shall allocate the federal adjusted gross income (“federal AGI”) reported on their joint federal income tax return. The Schedule enables each individual to determine federal AGI using the filing status of “single” or “head of household”. These amounts shall be reported as the individuals’ federal AGI for Ohio purposes including, but not limited to, on line 1 of the IT 1040. One Schedule IT S shall be completed and a copy submitted with each individual’s IT 1040 return. The Schedule and instructions are available online at <http://www.tax.ohio.gov/Forms.aspx>.
- Taxable year 2013 returns may be filed electronically using Ohio electronic filing services at [www.tax.ohio.gov](http://www.tax.ohio.gov) and commercial software products, or by paper. Original returns for taxable years 2012 and prior must be filed via paper. Taxpayers may not file any of these returns using Form IT 1040EZ or TeleFile.

Although the IRS Revenue Ruling permits same-gender couples to file amended federal returns to change filing status to “married filing jointly” or “married filing separately”, no corresponding Ohio amended returns may be filed to change filing status for prior years.

### *Questions?*

Taxpayers may visit [www.tax.ohio.gov](http://www.tax.ohio.gov) for more information. Questions may be submitted by clicking on the “Contact” link found at the top right of the page and then choosing the “Email Us” option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780.



# Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

Volume 130 Issue 3

May 22, 2013

## The Controlling Board\*

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### Origin

The Controlling Board is the principal instrument by which the General Assembly exercises a measure of continuing control over the enacted budget. The Board was first created in a general appropriations act in 1915. That act differed from earlier appropriations acts in that it contained numerous detailed appropriation line items rather than “lump sum” items.<sup>1</sup> But if appropriations were to be more detailed, a means of making adjustments in them when the General Assembly was not in session seemed to be needed. Therefore, an unnamed board was created to authorize the expenditure of appropriated money “otherwise than in accordance with the detailed classifications” of the appropriations act “but within the same category of purposes for which the appropriation” was made.<sup>2</sup>

The Board was reestablished, and named the Controlling Board, in the General Appropriations Act of 1917,<sup>3</sup> and every two years afterward until 1975. During this period, the Board shared budget adjustment responsibilities with the Emergency Board, which had come into existence in 1892.<sup>4</sup> The Emergency Board was permitted to authorize more money to be spent to take care of a deficiency or an emergency requiring the expenditure of money not specifically provided for by law.<sup>5</sup> In 1975, the Controlling Board was established as a permanent agency and assigned most of the fiscal duties of the Emergency Board.<sup>6</sup> The Emergency Board was abolished in 1989.<sup>7</sup> At that time, its only remaining function was to approve or disapprove requests for state officers and employees to travel outside the state at state expense.

### Membership

The Controlling Board consists of seven members, all but one of them from the legislative branch: (1) the Director of Budget and Management or an employee of the Office of Budget and Management (OBM) designated by the Director, (2) the chairpersons or vice-chairpersons of the House and Senate Finance committees, (3) one member of the majority party and one

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*After an appropriations bill is enacted, the Controlling Board exercises a measure of oversight in its implementation.*

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*The Controlling Board was created in 1915. For many years, it shared budget adjustment responsibilities with the Emergency Board. In 1975, the Controlling Board assumed many of the Emergency Board's duties. The Emergency Board was abolished in 1989.*

\* This *Members Only* brief is an update of an earlier brief on this subject dated November 21, 2008 (Volume 127 Issue 19).



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*The Controlling Board consists of seven members, six of whom are members of the General Assembly. A representative of the Governor serves as Board President.*

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*The dominance of the Controlling Board by the legislature helps to ensure that legislative intent can be implemented.*

member of the minority party of the House appointed by the Speaker, and (4) one member of the majority party and one member of the minority party of the Senate appointed by the Senate President.<sup>8</sup>

The Attorney General and the Auditor of State were removed from the Board in 1969,<sup>9</sup> presumably because they had “no great stake in either policy making or execution.” Four legislators, in addition to the Finance Committee chairpersons or vice-chairpersons, also were added in 1969, which helped ensure that agency spending would reflect legislative intent, recognized the impact of the Board’s decisions on future fiscal and program policy, and extended representation to the minority party in each house of the General Assembly.<sup>10</sup>

The Speaker of the House may serve or designate a House member to serve in a House Board member’s absence, and the Senate President may serve or designate a Senate member to serve in a Senate Board member’s absence. When engaged in their duties as members of the Board, the legislative members are paid a per diem of \$150, plus necessary traveling expenses.<sup>11</sup>

### **President and Secretary**

In practice, the Director of Budget and Management designates an individual to serve as President of the Controlling Board. Traditionally, that individual has served as a deputy director of OBM.<sup>12</sup>

The President is directed to prepare the “proposed agenda” for Board meetings and, at least seven days before each meeting, to distribute the agenda and supporting documentation to the members of the Board and the Legislative Service Commission (LSC).<sup>13</sup> Nevertheless, as the Ohio Supreme Court noted in 1981, the General Assembly indicated, in the statute setting forth the notice requirement, an “awareness through the use of the phrase ‘proposed agenda’ that in some circumstances notice is not practical. Clearly a proposed agenda can be altered. Thus the board is allowed, where an exigency exists, to make a decision without providing such notice.”<sup>14</sup>

“Practically speaking,” the *Controlling Board Manual* states, “as a representative of the executive branch, the President acts in the interest of the administration by determining which requests are to be presented to the Board for consideration and by working with agencies to help ensure the approval of agency requests.”<sup>15</sup> Yet it is possible for the legislative members of the Board to consider an item in opposition to the President. If the Senate, House, Supreme Court, Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, or Attorney General submits a request to the President that an item be added to the agenda, a majority of the Board has the power, if the item is not currently before the Board, to require that it be added for a specified future meeting.<sup>16</sup>



Also, after items on the regular agenda have been disposed of, “the Controlling Board may agree to consider additional items.”<sup>17</sup> Usually these “add-ons” are items that were requested too late to be placed on the announced agenda but which the President has determined are of an emergency nature or otherwise urgent to consider.

Finally, the Board may choose to adopt rules authorizing the President “to act on its behalf in exigent circumstances affecting the public health, safety, or welfare.”<sup>18</sup> In adopting these and any other rules, the Board is exempt from having to adhere to the rule-making requirements that apply to most other agencies. Accordingly, Board rules are not subject to review by the Joint Committee on Agency Rule Review.<sup>19</sup>

The Secretary of the Board is designated by the Director of Budget and Management from among OBM’s employees. The Secretary is charged with assisting the President, making and keeping a record of each request received by the Board and its action on the request, and certifying a copy of the record of each action to each member of the Board and the Director.<sup>20</sup> By Board rule, the Secretary is also charged with keeping the minutes of each regular or special meeting or executive session and with giving notice of special meetings to any person, including representatives of the news media, who requests it. In addition, the Secretary must maintain a list of persons who have requested

in writing to be notified of meetings at which subjects that they designate will be discussed.<sup>21</sup>

## Meetings

The Controlling Board is empowered to adopt procedural rules for the conduct of its business.<sup>22</sup> Under this authority, the Board has specified the information that must appear in a request that comes before it. There are five common types of request, each requiring different forms of documentation: capital, operating, operating transfer, fund/appropriation, and land acquisition.<sup>23</sup>

Ordinarily a request must be submitted electronically to the Board, via its e-Controlling Board web site, by 9 a.m. on the 21st day prior to the meeting. The first part of this period is for “technical, substantive, and policy review of the request by OBM.”<sup>24</sup> Exceptions to the 21-day requirement must be arranged with the President. The President has the option of placing an item on the agenda, sending it back for modification or further information, or deferring the item from the agenda. The agenda is then made available on the web site seven days before the hearing.<sup>25</sup>

The second part of the 21-day period is for review by the legislative members of the Board, their aides, caucus staff, and LSC analysts.<sup>26</sup> Analysts’ comments, summaries, and background information, as well as analyst questions and agency answers, concerning some requests

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*The President of the Controlling Board sets the agenda.*

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*Normally, a request for an item to be placed on the agenda must be received at least 21 days prior to the meeting.*

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*The Controlling Board can defer, approve, reject, or modify requests submitted to the Board.*



*The primary statutory provisions relating to the Controlling Board are in R.C. Chapter 127.*

*Normally, action by the Board requires only a simple majority vote.*

are compiled into a briefing document that LSC distributes to the leadership of the General Assembly, Controlling Board members and their aides, and caucus staff. The LSC briefing document is added to the e-Controlling Board web site on the day of the hearing. As requested, LSC also briefs individual Controlling Board members and their aides prior to the meeting and provides staff to assist the Board in exercising its duties and powers.<sup>27</sup> That staff regularly attends Board meetings.

The Board must meet at least once each month,<sup>28</sup> but usually meets every other Monday at 1:30 p.m. in the North Hearing Room of the Senate Building. Typically, a meeting lasts two to four hours and, in the course of a year, over 2,000 items are considered.<sup>29</sup> Because of the advanced distribution of agency requests, action at a Board meeting can be quite expeditious.

Only a small number of items are rejected or modified, but that in itself is not a good measure of the Board's impact. Agencies generally want their requests to avoid controversy or rejection. The result is a measure of self-screening by the agencies and further screening by the Board President.

Beginning in 1969, when the Board's membership was expanded to seven, a simple majority has usually sufficed for any action. Exceptions during the past few decades have included requirements of no fewer

than five of the seven members or no fewer than four of the six legislative members.<sup>30</sup>

## **Powers**

The powers of the Controlling Board are found throughout the Revised Code and in the uncodified law of a variety of acts, especially appropriations acts. However, its organization and principal powers are set forth in R.C. Chapter 127.

The powers of the Controlling Board can be grouped into four main categories: (1) transferring money from one fund, appropriation item, or fiscal year to another, (2) releasing, or approving the expenditure of, appropriated funds, including waiving competitive selection for purchases, (3) approving miscellaneous requests, and (4) authorizing expenditures of excess or unanticipated revenue. The Board may "approve, disapprove, modify as to specific dollar amounts, or defer requests."<sup>31</sup>

## **Transfers**

Under Article II, Section 22 of the Ohio Constitution, money cannot be drawn from the state treasury except in pursuance of a specific appropriation made by law. However, money can be moved from one fund or appropriation to another, or from one fiscal year to another, without being drawn from the state treasury. The Director of Budget and Management has statutory authority to make transfers in a number of situations,<sup>32</sup> but the



most comprehensive authority to make transfers rests with the Controlling Board. The Board is permitted, at the request of any state agency or the Director of Budget and Management, to authorize any of the following:<sup>33</sup>

(1) Transfers of all or part of an appropriation within but not between state agencies, except such transfers as the law authorizes the Director of Budget and Management to make. For example, upon the request of a state agency, the Controlling Board may authorize the transfer of the agency's remaining Maintenance appropriation to its Personal Services appropriation. The Board may also delegate to the Director of Budget and Management the power to approve transfers among items of appropriation within state agencies, but no such transfer may be made for the purpose of effecting new or changed levels of program service not authorized by the General Assembly. The Attorney General has stated that before the Board may consent to a transfer of funds from one item to another, it must be satisfied that the amount is not needed for the purposes for which it was appropriated.<sup>34</sup>

(2) Transfers of all or part of an agency's appropriation from one fiscal year to another. Such transfers are frequently made near the end of the first fiscal year of a biennium in order that unused appropriations for that fiscal year will not lapse but will remain available to the agency during the second fiscal year of the biennium. The Supreme Court held in 1981 that

the Board's exercise of this power does not constitute an improper delegation of legislative authority, as long as "there is some indication, implied or express, of a legislative intent to allow such action."<sup>35</sup> This principle is stated in R.C. 127.17: "The Controlling Board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly."

(3) Transfers of all or part of an appropriation within or between state agencies made necessary by administrative reorganization or by the abolition of an agency or part of it. For example, in the 1996 legislation that provided for the Ohio Athletic Commission to succeed the State Boxing Commission, the Director of Budget and Management was required to determine the unexpended balances in the Boxing Commission's appropriation accounts and to recommend to the Controlling Board their transfer to the Athletic Commission's appropriation accounts.<sup>36</sup> This power, the Supreme Court had determined in 1941, does not constitute a delegation of legislative power.<sup>37</sup>

(4) Transfers of all or part of cash balances in excess of needs to the General Revenue Fund from any other fund of the state, or to such other fund of the state to which the money would be credited if the fund with the excess did not exist. However,

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*The Controlling Board may not transfer appropriated funds between state agencies or within an agency if the purpose is to implement a new program not authorized by the General Assembly.*



there are numerous funds from which the Board may not authorize such transfers.<sup>38</sup>

(5) Transfers of money included in the Emergency Purposes appropriation of the Controlling Board. Any such money that is not required to accomplish the purposes designated in the original request seeking the transfer must be returned to the Board. Temporary transfers may be made subject to conditions specified by the Board at the time the transfers are authorized.

(6) Temporary transfers of all or part of an appropriation or other money “into and between existing funds, or new funds, as may be established by law when needed for capital outlays for which notes or bonds will be issued.”

In making these six kinds of transfers, the Controlling Board may not only make transfers to an existing appropriation item but also create and make transfers to a new appropriation item.<sup>39</sup>

#### ***Transfers related to capital appropriations***

The Board also may authorize any state agency that receives a capital improvements appropriation to spend the money for purposes other than those set forth in an appropriations act through (1) transfers among items or (2) the creation of new items and the authorization of transfers to them. However, prior to such action, the agency seeking the transfer must

notify by mail the General Assembly members elected from the counties affected, stating the time and place of a hearing on the proposed transfers. The Board is expressly prohibited from authorizing an agency to use a capital appropriation for operating expenses unless the General Assembly provides for it.<sup>40</sup>

#### ***Money appropriated to the Board***

Like most other state agencies, the Controlling Board receives appropriations from the General Assembly. Unlike most other agencies, however, the Board is not authorized to spend money; instead, it is merely authorized or directed to transfer the money to other agencies to spend. The best known of these appropriations is the one for emergency purposes. In fiscal year 2012, for example, an appropriation to the Controlling Board Emergency Purposes Fund was designated to be used by the Director of Budget and Management for anticipated expenses associated with agency closures.<sup>41</sup>

Another appropriation to the Board is one for “Employee Compensation Adjustment” (appearing usually when pay raises for state employees are provided for in the same act). Indeed, almost 73% of the General Revenue Fund appropriations to the Board for fiscal year 2001 were for that one item. The main operating appropriations act authorized the Board to (1) transfer amounts from the appropriation to the agencies affected to assist in paying the GRF share of

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*The Controlling Board may create, and transfer money to, a new appropriation item.*

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*The Controlling Board is frequently authorized to transfer additional funds under its control to state agencies to pay for increases in the cost of state employee benefit packages negotiated by the state and employee collective bargaining units.*



employee compensation increases and (2) “increase appropriations for any fund, as necessary for the various state agencies, to assist in paying the costs of increases in employee compensation . . . .”<sup>42</sup>

On various occasions, all or part of an appropriation for another state agency has been made to the Controlling Board rather than to the agency itself. For example, the 129th General Assembly made an appropriation to the Controlling Board for each fiscal year of the biennium ending June 30, 2013, to be transferred to the Secretary of State to pay for public notices associated with statewide ballot initiatives.<sup>43</sup>

### **Releases**

Occasionally, an amount is appropriated to a state agency along with *uncodified* language stipulating that it may not be spent until the Controlling Board “releases” it or “approves” its expenditure. For example, in fiscal years 2012 and 2013, \$25 million was appropriated to the Department of Education for grants and assistance to enable school districts to remain financially solvent, but the awards had to be approved by the Controlling Board.<sup>44</sup>

More frequently, *codified* laws make the spending of certain types of appropriations subject to Controlling Board approval. For example, the Department of Education is prohibited from distributing any money appropriated for the School

Foundation Program (under which state subsidies are paid to school districts) without the approval of the Controlling Board. Moreover, a school district board of education that does not conform to the requirements of law may not participate in the distribution except for good and sufficient reason established to the satisfaction of the State Board of Education and the Controlling Board.<sup>45</sup>

The constitutionality of the Board’s power to release appropriations was upheld by the Supreme Court in a 1950 case that tested the constitutionality of the Ohio Turnpike Act:

In giving its approval and consent, the controlling board is exercising administrative and not legislative power. In effect, instead of having conferred the administrative power to determine whether to expend available moneys for the study of a turnpike project on the Director of Highways alone, the General Assembly has conferred that administrative power on the director and the controlling board acting together.<sup>46</sup>

### **Waiving competitive selection**

The principal statute that requires Controlling Board approval for noncompetitively selected purchasing contracts is R.C. 127.16. It prohibits a state agency from using money that has been appropriated to it directly to make purchases from any particular supplier that, when combined with the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of

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*On occasion, appropriations to a state agency are made to the Controlling Board for release to the agency when certain conditions are met.*



*The Controlling Board  
may waive competitive  
bidding on expenditures  
over a certain amount.*

all outstanding encumbrances for purchases made by the agency from the supplier, would amount to \$50,000 or more, unless the purchase is (1) made by competitive selection, (2) approved by the Controlling Board, or (3) exempted by statute from Controlling Board approval. The threshold for leases of real estate, which the law treats separately from purchases, is \$75,000.

Purchases or leases made by competitive selection, with Board approval, or that are exempt from the selection or approval requirements are excluded when computing whether these thresholds have been reached. Leases of real estate are also to be excluded when calculating the \$50,000 purchase threshold for all other purchases.

An explanation may clarify the prohibition. First, the term “state agency” refers to “every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.”<sup>47</sup>

Second, an appropriation made “directly” to a state agency refers, for example, to an appropriation made to the Ohio Board of Regents or to The Ohio State University. An appropriation like the instructional subsidy that is made to the Board of Regents and, in turn, is distributed to OSU and other institutions of higher education by the Board of Regents is not viewed as a direct appropriation to those institutions.

Third, the word “purchase” means not only to buy, but also to rent, lease, lease-purchase, or otherwise acquire supplies or services. The prohibition does not cover building construction and repairs, but does cover professional design services.<sup>48</sup> “Disbursements” and “encumbrances” refer, respectively, to cash payments and to amounts reserved from an agency’s appropriation to make purchases or leases. Finally, “competitive selection” refers to the procedures that the Department of Administrative Services is required to follow in making purchases. Those procedures include competitive sealed bidding, competitive sealed proposals, or reverse auction.

This power of the Controlling Board to approve a purchase without competitive selection may be exercised, upon the request of either a state agency or the Director of Budget and Management, as R.C. 127.16 states, “after the controlling board determines that an emergency or a sufficient economic reason exists.” This standard for Board action formed the basis of a 1963 appellate court decision finding that the “action of the State Controlling Board approving a request to purchase, without competitive bidding . . . is invalid where there is no statement by such board that an emergency existed, nor any facts or reasons stated from which it could be implied that an emergency existed, and where on the evidence of record no emergency was shown.”<sup>49</sup>



Any person who authorizes a purchase in violation of R.C. 127.16 is liable to the state for any state funds spent on the purchase, and the Attorney General is required to collect the amount from the person. Such a recovery has been threatened on a couple occasions but, apparently, never carried out. This fact, as well as the willingness of the Board to grant retroactive approvals, has diminished the deterrent effect of the sanction.<sup>50</sup>

There are numerous categories of exemptions from the R.C. 127.16 prohibition, including, by way of illustration: (1) various highway construction and repair contracts entered into by the Director of Transportation, (2) entertainment contracts for the Ohio State Fair, provided certain procedures are followed, (3) purchases made with money for the Per Cent for Arts Program, (4) any agency of the legislative or judicial branch, (5) purchases of fuel, or emergency repairs, for motor vehicles, aircraft, or watercraft when made in accordance with rules of the Department of Administrative Services, (6) purchases of liquor for resale by the Division of Liquor Control, (7) purchases from other state agencies, including state-assisted institutions of higher education, and (8) purchases from a qualified nonprofit agency for the severely disabled.<sup>51</sup>

#### *Approval of purchases*

In addition to its authority to waive competitive selection for certain state

agency purchases and leases, the Controlling Board also may approve a purchase, on the request of a state agency or the Director of Budget and Management, if the agency used one of the following:

- Competitive sealed bidding;
- Competitive sealed proposals;
- Reverse auctions;
- Evaluation and selection for professional design services; or
- Agency released competitive opportunity that demonstrates a competitive process involving a request for proposals, qualifications, or information.

The agency must submit with its request a detailed explanation of the competitive selection or evaluation and selection process it used.

The Board, by majority vote, may disapprove or defer a purchase request, or may request that the agency resubmit the request, if the agency fails to demonstrate use of one of the processes.

The law specifies that this approval authority does not modify cumulative purchasing thresholds (\$50,000 per supplier and \$75,000 for leases) under the Controlling Board competitive selection law.<sup>52</sup>

#### *Releasing capital appropriations*

Controlling Board approval is required for the release of any money appropriated for (1) the purchase of

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*Any person who authorizes a purchase in violation of state laws requiring Controlling Board approval for noncompetitively selected purchases may be liable for any funds spent.*



*Release of appropriated funds by the Controlling Board is critical for certain capital improvement projects.*

*The Controlling Board is authorized to approve several types of additional requests. These include: the approval of professional licensing boards to charge fees exceeding statutorily specified amounts; the adoption of certain administrative rules; salary schedules of certain physicians; and similar miscellaneous approvals.*

real estate or (2) capital projects of a “general” nature. Within 60 days after the effective date of any act that makes appropriations for capital projects, the Director of Budget and Management must determine and list which appropriations are for “general projects” and which are for “specific projects,” and must submit to the Board a list of all the specific projects. As the Board is authorized to release money appropriated for general projects, the Director is authorized to release money appropriated for specific projects. However, the release of money for any specific higher education project that is to be funded from general purpose appropriations from the Higher Education Improvement Fund or the Higher Education Improvement Taxable Fund but is not on the list, and the release of money for any specific higher education project that is on the list but will exceed estimated expenditures by more than 10%, are subject to Controlling Board approval.<sup>53</sup>

Also, any request made to the Director of Budget and Management or the Board for release of capital appropriations for contracts that are to be awarded by the Department of Administrative Services must contain a contingency reserve in an amount determined by the Department. Funds that remain in the reserve when the project is completed may, with Controlling Board approval, be released for other capital facilities projects of the agency or instrumentality.<sup>54</sup>

### *Miscellaneous approvals*

Not all laws requiring Controlling Board approval involve the transfer of money or the release or spending of appropriated funds. The following selection of other laws illustrates the range of miscellaneous approval power that has been granted to the Board:

(1) A number of professional licensing boards are empowered to establish fees in excess of those set forth in statute, although not by more than 50%, if the Controlling Board approves.<sup>55</sup>

(2) The Director of Veterans Services, subject to Controlling Board approval, is required to adopt rules for determining the ability of a resident of the Home to pay a portion of the expenses of the resident’s support.<sup>56</sup>

(3) A state agency, with the approval of the Controlling Board, may establish a supplementary compensation schedule for licensed physicians employed by the agency in positions requiring a licensed physician.<sup>57</sup>

(4) The Chancellor of the Ohio Board of Regents, with the periodic review and approval of the Controlling Board, may enter into reciprocal contracts with a contiguous state under which each state agrees to provide financial aid to the other state’s qualified students to attend its approved post-secondary educational institutions.<sup>58</sup>



(5) If the Chief of the Division of Wildlife determines that the various wildlife licenses, permits, and stamps yield insufficient revenue to support proper wildlife management, the Chief, with the approval of the Controlling Board and the Wildlife Council, may adopt rules to provide for the issuance and governance of management permits and to establish fees for the permits that do not exceed the fees established by law for hunting, fishing, or trapping.<sup>59</sup>

(6) The Director of Environmental Protection is authorized to spend up to \$1.5 million from the Environmental Education Fund in any fiscal year, but must seek Controlling Board approval to spend in excess of that amount.<sup>60</sup>

(7) The Ohio Board of Dietetics, subject to Controlling Board approval, may contract with a state agency or nonprofit corporation as necessary to carry out its powers and duties.<sup>61</sup>

(8) The main operating appropriations act for the biennium ending June 30, 2013, limits undergraduate tuition increases for “state-assisted institutions of higher education,” except as necessary to comply with preexisting legal obligations or unfunded mandates; however, with the approval of the Controlling Board, the Chancellor of the Board of Regents may modify these limitations in response to exceptional circumstances.<sup>62</sup>

### ***Authorizing expenditures of excess or unanticipated revenue***

Article II, Section 22 of the Ohio Constitution states: “No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.” This is the foundation on which rests the General Assembly’s “power of the purse.”

But what constitutes a “specific appropriation”? The Supreme Court has declared: “It is apparent that the General Assembly may specify a purpose for which an appropriation is to be spent, and that an appropriation, although not in itself specific as to the amount but the purpose of which is reasonably within that authorized by the General Assembly, is a specific appropriation under Section 22 of Article II of the Constitution.”<sup>63</sup>

Most appropriations, in fact, authorize a specific amount of money. Sometimes, however, the General Assembly authorizes spending for a specific purpose, but not for a specific amount. An illustration appears in the appropriations for the Judiciary/Supreme Court for the biennium ending June 30, 2013:

Continuing Judicial Education  
The Continuing Judicial Education Fund (Fund 6720) shall consist of fees paid by judges and court personnel for attending continuing

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*Appropriations by the General Assembly need not be for specific amounts if the specific purpose is identified.*



education courses and other gifts and grants received for the purpose of continuing judicial education. The foregoing appropriation item 005601, Continuing Judicial Education, shall be used to pay expenses for continuing education courses for judges and court personnel. If it is determined by the Administrative Director of the Supreme Court that additional appropriations are necessary, the amounts are hereby appropriated.<sup>64</sup>

Another illustration, which appears in the same appropriations act, concerns any appropriation that is insufficient to pay a final judgment rendered against the state by a court, or the settlement of a claim approved by a court, in an action arising out of a construction contract where the costs are payable from a state capital projects appropriation. In that case, the Director of Budget and Management may apply to the Controlling Board to (1) make payment out of its Emergency Purposes appropriation or another appropriation for emergencies or contingencies or (2) increase or create an appropriation out of the unencumbered money credited to the capital projects fund from which the initial state appropriation was made. The amount of the increase or new appropriation is, the act states, “hereby appropriated from the applicable capital projects fund and made available for the payment of the judgment or settlement.”<sup>65</sup>

As a matter of permanent law, R.C. 131.35 provides:

(1) If federal receipts into any fund of the state from which transfers

of cash balances in excess of needs may be made under R.C. 127.14 are greater than the amount appropriated by the General Assembly for a specific purpose, the Controlling Board may authorize the expenditure of the excess federal money.

(2) If the nonfederal receipts of any such fund, or of the Waterways Safety Fund or the Wildlife Fund, are greater than the amount appropriated from it, the Board may increase the appropriation; however, the Board may not authorize more than 10% of additional spending from the Occupational Licensing and Regulatory Fund except to cover costs related to the examination or reexamination of applicants for a license, certificate, permit, card, etc.

(3) The Board may create additional funds to receive federal or nonfederal revenue not anticipated in an appropriations act for the biennium and may authorize the expenditure of such additional funds during the rest of the biennium in which the funds are created.

At first glance, these three provisions seem to be contrary to the prohibition against drawing money from the state treasury without a specific appropriation “made by law.” However, the General Assembly that enacted R.C. 131.35 in 1977 endeavored to reconcile the new statute with the Constitution by including the following section in the main operating appropriations act for 1977-1979:

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*Although delegated broad powers, the Controlling Board may not take any action that does not carry out legislative intent.*



Section 32. Any moneys which the Controlling Board approves for expenditure pursuant to the provisions of Section 131.35 of the Revised Code as enacted in Am. Sub. S.B. 221 of the 112th General Assembly are hereby appropriated for the period ending June 30, 1979.<sup>66</sup>

Controlling Board authorization to expend money under R.C. 131.35 must accord not only with Article II,

Section 22 of the Constitution, but also with the prohibition of R. C. 127.17 against the Board's taking any action that does not carry out legislative intent "regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts . . . ."



## Endnotes

- <sup>1</sup> 1914-1915 Ohio Laws 33, 100. The act made general appropriations for the 135-day period beginning February 16, 1915. It was a short transitional fiscal period leading to the adoption of a fiscal year beginning July 1 and ending the following June 30.
- <sup>2</sup> 1914-1915 Ohio Laws at 100.
- <sup>3</sup> 1917 Ohio Laws 187, 350.
- <sup>4</sup> 1892 Ohio Laws 407. At the time of its creation, the Emergency Board consisted of the Governor, Attorney General, Auditor of State, and the chairmen of the House and Senate Finance committees.
- <sup>5</sup> 1921 Ohio Attorney General Opinions No. 2407.
- <sup>6</sup> 1975-1976 Ohio Laws 781.
- <sup>7</sup> 1989-1990 Ohio Laws 4170, 4312.
- <sup>8</sup> R.C. 127.12.
- <sup>9</sup> 1969 Ohio Appropriation Acts 7, 64-65.
- <sup>10</sup> Albert H. Rose, *Ohio Government: State and Local*, 4th ed. (Dubuque: Kendall/Hunt, 1974), 464; inferred from Legislative Service Commission, *Budget Preparation and Execution*, by David A. Johnston, David E. Watson, and James K. Tully, 1963, Staff Research Report no. 60, at 42-44.
- <sup>11</sup> R.C. 127.12.
- <sup>12</sup> Controlling Board, *Controlling Board Manual*, 2012, at 11, available at: [www.ecb.ohio.gov](http://www.ecb.ohio.gov).
- <sup>13</sup> R.C. 127.13 and *Controlling Board Manual* at 94. Although the Revised Code contains references to the "Legislative Budget Office," the LBO was merged into LSC in 2000.
- <sup>14</sup> *State ex. rel. Meshel v. Keip*, 66 Ohio St.2d 379, 389 (1981).
- <sup>15</sup> *Controlling Board Manual* at 11.
- <sup>16</sup> R.C. 127.13.
- <sup>17</sup> *Controlling Board Manual* at 99.
- <sup>18</sup> R.C. 127.13.
- <sup>19</sup> R.C. 111.15 and 119.01.
- <sup>20</sup> R.C. 127.13.
- <sup>21</sup> Ohio Administrative Code 126:1-1-01.
- <sup>22</sup> R.C. 127.13.



- <sup>23</sup> *Controlling Board Manual* at 37-91.
- <sup>24</sup> *Controlling Board Manual* at 93.
- <sup>25</sup> *Controlling Board Manual* at 93-94.
- <sup>26</sup> *Controlling Board Manual* at 94.
- <sup>27</sup> R.C. 103.23.
- <sup>28</sup> R.C. 127.13.
- <sup>29</sup> *Controlling Board Manual* at 8, 11-12, and 97.
- <sup>30</sup> For examples, see 1953 Ohio Appropriation Acts 14, 158; 1969 Ohio Appropriation Acts at 64-68; R.C. 4981.10; 1981-1982 Ohio Laws 3370, 3397; and 1985-1986 Ohio Laws 2761, 3001.
- <sup>31</sup> R.C. 127.13.
- <sup>32</sup> For example, R.C. 126.15 provides that if the Director of Budget and Management determines that adjustments to the capital or operating budgets are required because of the reorganization of administrative agencies, transfer of programs, creation of new funds, modification of capital projects, or consolidation of funds, as authorized by an act of the General Assembly, the Director may transfer the appropriate amount between the funds involved.
- <sup>33</sup> R.C. 127.14.
- <sup>34</sup> 1927 Ohio Attorney General Opinions No. 687.
- <sup>35</sup> *Keip*, 66 Ohio St.2d at 386.
- <sup>36</sup> Section 6 of Am. Sub. S.B. 240 of the 121st General Assembly.
- <sup>37</sup> *State ex rel. McCaw v. Ferguson*, 139 Ohio St. 1, 6 (1941).
- <sup>38</sup> The Board may not authorize such transfers from the Accrued Leave Liability Fund, Auto Registration Distribution Fund, Budget Stabilization Fund, Development Bond Retirement Fund, Facilities Establishment Fund, Gasoline Excise Tax Fund, General Revenue Fund, Higher Education Improvement Fund, Highway Improvement Bond Retirement Fund, Highway Obligations Bond Retirement Fund, Highway Capital Improvement Fund, Highway Operating Fund, Horse Racing Tax Fund, Improvements Bond Retirement Fund, Public Library Fund, Liquor Control Fund, Local Government Fund, Local Transportation Improvement Program Fund, Mental Health Facilities Improvement Fund, Ohio Fairs Fund, Parks and Recreation Improvement Fund, Public Improvements Bond Retirement Fund, School District Income Tax Fund, State Agency Facilities Improvement Fund, State and Local Government Highway Distribution Fund, State Highway Safety Fund, State Lottery Fund, Undivided Liquor Permit Fund, Vietnam Conflict Compensation Bond Retirement Fund, Volunteer Fire Fighters' Dependents Fund, Waterways Safety Fund, Wildlife Fund, Workers' Compensation Fund, and any other fund that the Director of Budget and Management determines to be a bond fund or bond retirement fund.
- <sup>39</sup> R.C. 127.14.
- <sup>40</sup> R.C. 127.15.
- <sup>41</sup> Sections 229.10 and 247.10 of Am. Sub. H.B. 153 of the 129th General Assembly; see also R.C. 127.19.
- <sup>42</sup> Section 30 of Am. Sub. H.B. 283 of the 123rd General Assembly.
- <sup>43</sup> Section 247.10 of Am. Sub. H.B. 153 of the 129th General Assembly.
- <sup>44</sup> Section 267.30.80 of Am. Sub. H.B. 153 of the 129th General Assembly.
- <sup>45</sup> R.C. 3317.01.
- <sup>46</sup> *State ex rel. Kauer v. Defenbacher*, 153 Ohio St. 268, 279 (1950).
- <sup>47</sup> R.C. 1.60.



- <sup>48</sup> R.C. 153.69.
- <sup>49</sup> *Columbus Blank Book Co. v. Maloon*, 116 Ohio App. 393 (10th Dist. 1963) (paragraph one of the syllabus).
- <sup>50</sup> A person who violated the prohibition might be expected to challenge its enforcement on the grounds that it allows recovery without limit as to amount, without proof of bad faith, and without evidence that the person improperly gained or that the state received less than full value for its expenditure.
- <sup>51</sup> R.C. 122.05, 127.16, 175.12, 1509.071, 1513.37, 5103.12, 5501.311, and 5526.08.
- <sup>52</sup> R.C. 127.162.
- <sup>53</sup> R.C. 126.14.
- <sup>54</sup> Section 509.30 of Sub. H.B. 482 of the 129th General Assembly.
- <sup>55</sup> R.C. 4701.21, 4703.51, 4709.12, 4713.11, 4715.38, 4717.07, 4723.081, 4725.34, 4725.45, 4729.65, 4731.75, 4732.26, 4733.25, 4734.56, 4736.12, 4740.09, 4755.412, 4759.08, 4760.20, 4761.08, 4762.20, 4766.05, 4774.20, and 4775.08.
- <sup>56</sup> R.C. 5907.13.
- <sup>57</sup> R.C. 124.181.
- <sup>58</sup> R.C. 3333.18.
- <sup>59</sup> R.C. 1533.113.
- <sup>60</sup> R.C. 3745.22.
- <sup>61</sup> R.C. 4759.04.
- <sup>62</sup> Section 371.20.70 of Am. Sub. H.B. 153 of the 129th General Assembly.
- <sup>63</sup> *State ex rel. Brown, v. Ferguson*, 32 Ohio St.2d 245, 250 (1972).
- <sup>64</sup> Section 315.10 of Am. Sub. H.B. 153 of the 129th General Assembly.
- <sup>65</sup> Section 503.30 of Am. Sub. H.B. 153 of the 129th General Assembly.
- <sup>66</sup> 1977-1978 Ohio Appropriation Acts 441, 513.

PUBLISHED BY THE OHIO  
LEGISLATIVE SERVICE  
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