

10:00 a.m. (EST)
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Tax Committee

June 11, 2019

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**2019 Tax Committee
Calendar**
Meetings will begin at 10:00 a.m.

Wednesday, November 6

OMA Tax Committee Meeting Sponsor:





OMA Tax Policy Committee

June 11, 2019

AGENDA

Welcome & Self-Introductions:	Shay Music, Chairman The J.M. Smucker Company
State Financial Update	Rob Brundrett, OMA Staff
Connections Presentation	Paul Nadin Senior Manager, Real Estate Group RSM
OMA Counsel's Report	Justin Cook, Bricker & Eckler LLP
Federal Update	Chris Netram, Vice President, Tax and Domestic Economic Policy, NAM
OMA Public Policy Report	Rob Brundrett, OMA Staff

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: 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:



Budget director readies new estimates as Ohio tax receipts climb \$1 billion over prior year

By [Jim Siegel](#)

The Columbus Dispatch

Posted Jun 7, 2019 at 2:03 PM Updated Jun 7, 2019 at 6:00 PM

State tax collections continue to come in strong, increasing the likelihood that Ohio lawmakers will have additional money to play with later this month when they finalize the two-year state budget.

On the heels of solid April numbers, tax receipts in May exceeded estimates by 3.1%, putting revenue \$617 million (3%) ahead of estimates through 11 months of this fiscal year.

Total tax collections are now \$1 billion ahead of the same period one year ago, an increase not seen since 2013, when revenue exceeded estimates by \$2 billion as the economy grew and people cashed in investment income out of concern about federal tax changes.

“The takeaway is that Ohio’s economy continues to be strong, and now is the time to make some investments for the future, as recommended in Gov. (Mike) DeWine’s budget,” said state Budget Director Kimberly Murnieks.

Later this month, after the Senate makes its changes to the two-year operating budget, all Statehouse eyes will be on Murnieks as she provides updated tax revenue figures to legislators, who will be in the final stages of the budget process.

When Murnieks gave them her initial revenue estimates in March, she was looking at December, January and February tax revenue results that all came in below estimates, by a combined \$96 million.

Even then, her tax numbers and Medicaid caseload figures estimated that \$700 million more would be available than what analysts with the state Legislative Service Commission were projecting. Some legislative leaders said they were more inclined to go with the commission’s more conservative figures, and the House-passed budget largely split the difference.

Tax receipts in April and May have made her optimistic forecast in March look better.

“As the fiscal year has progressed, they’ve proven we were not overly optimistic, but kind of right where we should be,” Murnieks said.

Legislators won’t see a replay of two years ago when then-Budget Director Tim Keen, who was well-known for conservative revenue projections, delivered bad news, revising down his initial revenue figure by \$949 million.

Murnieks is not saying how much her figures will increase from those she gave in March, or even whether they will rise at all.

“The nature of being a budget director is to be a little optimistic, but to be realistic as well,” Murnieks said. “We feel like we are on a good path.”

Factors playing into her new estimates include whether some income tax revenue this year was a one-time occurrence related to stock market volatility, and changes in federal trade policy, such as President Donald Trump’s threatened tariff of 5% to 25% on goods from Mexico.

“At this point, we believe the data supports our original projections,” Murnieks said.

“Definitely, the data does not support lowering the expectations from what we projected in March.”

The Senate is to unveil its first major wave of budget changes late Tuesday afternoon, and committee and full-chamber votes are likely during the week of June 17.

jsiegel@dispatch.com

May 10, 2019

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

FROM: Kimberly Murnieks, Director

SUBJECT: Monthly Financial Report

Report Overview

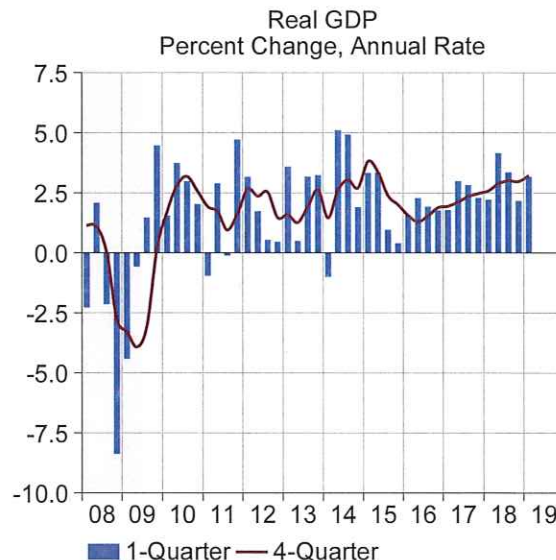
- Tax revenues exceeded the monthly estimate by \$414.2 million (20.0%), led by the Personal Income Tax, which was \$377.4 million (39.6%) above estimate as annual return tax due payments were \$350.3 million (67.5%) above estimate.
- The Auto-sales & Use Tax exceeded the estimate by \$17.2 million (12.1%) for the month and is up \$45.2 million (3.8%) for the year.
- U.S. real GDP growth accelerated to 3.2% in the first quarter of 2019, up from 2.2% in the fourth quarter of 2018. However, forecasts expect slower growth in the second quarter.
- U.S. nonfarm payroll employment increased by 263,000 jobs in April. Ohio employment increased by 6,300 job in March and is up 16,200 jobs year-to-date.

ECONOMIC SUMMARY

Economic Growth

Real GDP expanded much faster than anticipated in the first quarter, rising at an annual rate of 3.2% from the previous quarter in the best start to a year since 2015. Growth increased 2.2% in the fourth quarter, which was much slower than the 3.8% pace during the middle two quarters of the year. At 3.2%, the 4-quarter growth rate was the third best of this expansion, after the first two quarters of 2015.

Forecasters had predicted a substantial further slowdown during much of the first quarter, based on measures of economic activity as they were released. The government shutdown in January and a full percentage point of rate increases by the Federal Reserve during the previous year were believed to have cut into growth.



The increase in first-quarter activity was driven by strong exports and an increase in business inventories. Also, a greater share of domestic demand was met by U.S. production, as imports fell by the largest dollar amount since this expansion began. The decrease in imports was partly an adjustment to the increase in the second-half last year related to precautionary inventory-building of imported goods by businesses, which was spurred by concerns over the potential for new trade restrictions.

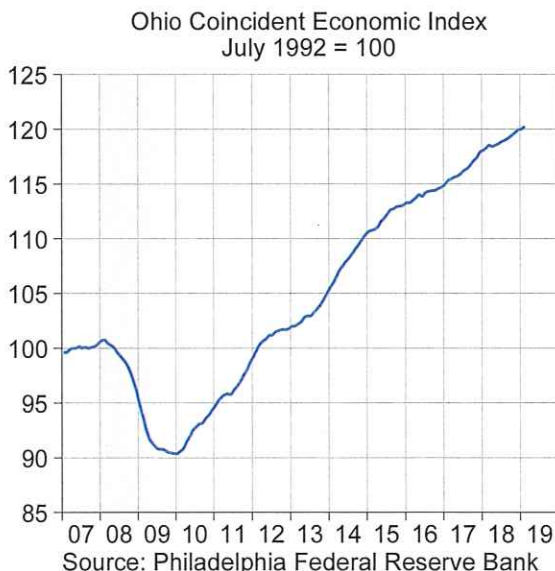
Personal consumption expenditures decelerated from 2.5% in the fourth quarter to just 1.2% in the first quarter. The slowdown occurred across major categories, but was especially evident in purchases of durable goods, where the motor vehicles and parts category fell at an annual rate of 18.4%. Business fixed investment continued to expand in the quarter, but also more slowly, rising 2.7% compared with a third-quarter increase of 5.4%. Federal government spending was unchanged due to a large drop in nondefense, while state and local government spending flipped from a 1.3% decline to a 3.9% gain. Residential fixed investment extended its string of quarterly declines to five.

The strength in inventories, the shift toward domestic-made products (as evidenced by the drop in imports), and the burst of growth in state and local government spending are not likely to be repeated in the second quarter. As a result, stronger growth in personal consumption expenditures and fixed investment will be required to sustain overall growth near the first-quarter pace in the second quarter.

The Small Business Optimism Index of the **National Federation of Independent Business (NFIB)** remained consistent with a somewhat slower pace of activity in March. Since a large decline from August to January, the index has been stable in February and March. Businesses reported that inventories were too high and plan to make reductions. Labor market indicators remained strong, capital spending plans were steady, and the outlook for both real sales and expansion improved. Despite the recent downshift, the overall index remains at an historically high level that is consistent with uninterrupted growth.

The **Ohio economy** accelerated in March, according to the Ohio coincident economic index from the Philadelphia Federal Reserve. The index increased 0.5% after an increase of 0.2% the month before. The increase was the eleventh in a row. Compared with a year ago, the index was higher by 1.9%. That is up from 1.6% the month before, but as recently as last June, the year-over-year rate of change was 2.4% and last March was 2.7%.

A regular survey by the Cleveland Federal Reserve Bank of business contacts in and around Ohio found that economic activity in the area rose modestly into early April. Construction of both residential and nonresidential structures, along with professional and business services, were major contributors to growth. Growth in retail, excluding auto, and banking was seasonally soft, but industry sources remained positive on the outlook. Manufacturers reported mixed conditions, while demand for freight hauling was said to be flat.



The diffusion of **state-level coincident economic indexes** deteriorated in March, as the indexes for eight states were lower than a month ago, up from three states in February. Compared with three months ago, five states posted lower readings, up from three in January. However, the recent pattern remains consistent with continuing growth in the national economy. For the five recessions since the data begin in 1979, the number of states with negative readings over 3-month spans three months before the onset of recession averaged nine and in the month the recessions began averaged thirteen.

The **Ohio leading index**, which is designed to predict growth in the coincident index during the next six months, was 1.6% in March, approximately twice the previous 12-month average. The number of negative readings among individual **state-level composite leading indexes** increased from one in December to six in January, six in February, and five in March. This remains at a level consistent with uninterrupted expansion in the near-term. Compiled by the Philadelphia Federal Reserve, the diffusion across these state leading indexes has been a leading indicator in the past. However, these indexes are very sensitive to the state unemployment rates, which are subject to large annual benchmark revisions early each year.

National leading indicators improved in March after being flat on balance during October-February. The Conference Board’s composite **Leading Economic Index** increased 0.4% – its best showing since last September. Eight of the ten components of the index made positive contributions, led by weekly unemployment claims. The remaining two components were neutral. The smoothed 6-month rate of change improved but was down by about two-thirds from the pace in the middle of last year.

As shown in the table below, the **consensus among forecasters** is that real GDP growth is slowing in the second quarter.

Source	Date	2019-Q2 GDP Forecast
Atlanta FRB (GDPNow)	5/1/19	1.2%
New York FRB (Nowcast)	4/26/19	2.1%
Blue Chip	5/1/19	2.6% (1.9%-3.2%)
IHS	5/2/19	1.9%

Employment

Nonfarm payrolls across the country increased by 263,000 jobs in April. The March change was revised down to 189,000 and the February change was revised up to a still-weak 56,000 for a net upward revision of 16,000 jobs. The 3-month average was 169,000 compared with a 12-month average of 218,000. The second consecutive solid report relieved concerns that the sharp dip in payroll growth in February indicated a serious economic slowdown.

Most major sectors experienced gains in employment in April, led by professional and business services (+76,000), where temporary help agencies contributed 17,900 net new jobs and education and health services (+62,000), where strength was concentrated in health care (+27,000) and social assistance (+26,600).

Leisure and hospitality (+34,000), construction (+33,000) and government (+27,000) also posted large increases. Within those sectors, food and drinking places contributed 25,000 jobs, nonresidential specialty contractors contributed 22,100 jobs, and local government contributed 27,000 jobs,

respectively. Both education and non-education contributed to the gain in local government jobs. Manufacturing employment increased by 4,000 jobs, matching the 3-month average, which is down from an average of 22,000 during the previous five months.

Only two sectors posted net job losses: mining employment fell by 3,000 jobs and information fell by 1,000 jobs. The retail industry, within the trade, transportation and utilities sector, lost 12,000 jobs, the third decline in a row and close to the 3-month average of -14,000.

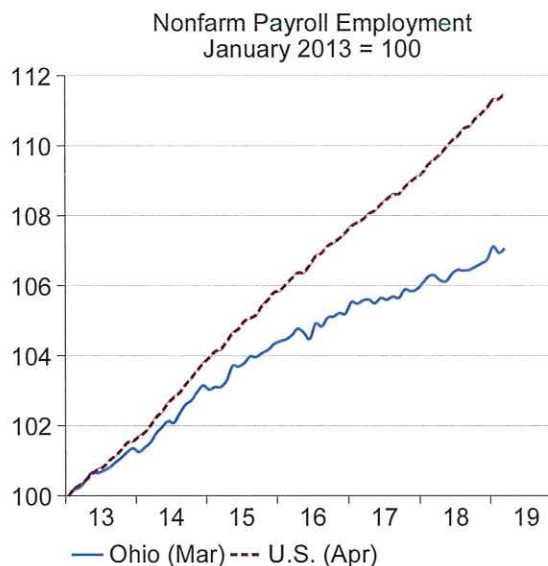
The **unemployment rate** decreased 0.2 per-centage points to a new expansion-low of 3.6%. The recent pattern of the unemployment rate remains strongly consistent with uninterrupted economic growth.

Average hourly earnings rose 0.2% for a year-over-year increase of 3.2% The tightness in labor markets as depicted by a number of indicators suggests that upward pressure on wages will continue.

Ohio nonfarm payroll employment increased by 6,300 jobs in March. The job count fell 9,200 in February after rising by 19,100 in January. Year-to-date, Ohio employment is higher by 16,200 jobs. The 12-month average in March was an increase of 3,300 jobs, about the same as for the year ending in March 2018.

Compared with a year earlier, Ohio employment was higher by 39,800 jobs in March. Educational and health services (+16,600), leisure and hospitality (+11,200), and manufacturing (+4,200) made the largest positive contributions. The only declines occurred in government (-4,100) and information (-1,100).

The **Ohio unemployment rate** decreased 0.2 percentage points to 4.4% in March, dipping below the 4.5% to 4.7% range of the most recent seventeen months. Total employment increased by 20,700 workers in March and the number of unemployed people fell by 6,900.



Across the country in April, the unemployment rate decreased notably from the month before in six states, with the largest declines occurring in Colorado, Ohio, and Wyoming (all by 0.2 percentage points). Three states had meaningfully higher rates than the month before: California, Minnesota, and Washington. Changes in the unemployment rate in the remaining 41 states and the District of Columbia were not statistically significant.

Among the **contiguous states**, employment increased on a year-over-year basis in West Virginia (+2.7%), Indiana (+1.3%), Kentucky (+0.9%), Pennsylvania (+0.8%), Ohio (+0.7%), and Michigan (+0.6%). Manufacturing employment increased year-over-year in West Virginia (2.3%), Kentucky (1.0%), Michigan (0.7%), Ohio (0.6%) and in Indiana (0.6%). It declined 0.3% in Pennsylvania.

Consumer Income and Consumption

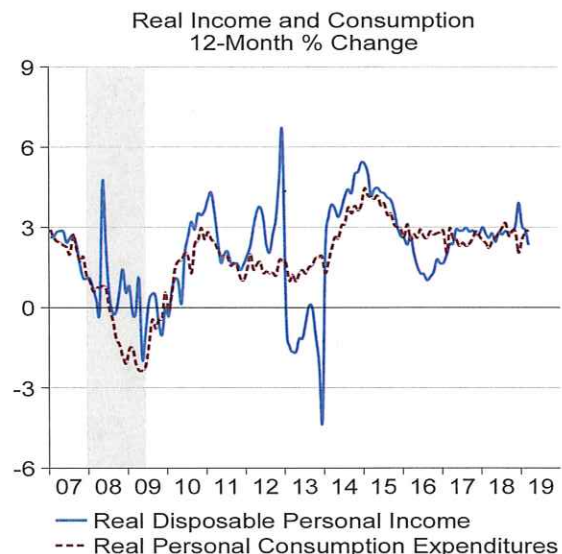
The slowdown in **personal income** growth that began at the turn of the year continued in March. The source of the recent weakness had been a number of one-time factors outside of **wage and salary disbursements**, which have maintained the solid advance of last year. At the same time, **personal consumption expenditures** posted the strongest increase in March since August of 2009 when the economy started to recover from the recession. As a result, the saving rate fell toward the lower end of the 6%-8% range during the most recent six years.

Personal income increased just 0.1% to end the quarter in March after a 0.2% increase in February and a 0.1% decrease in January. In contrast, **wage and salary disbursements** rose 0.4% in March following gains of 0.3% in February and 0.4% in January. The weakness in personal income, relative to wage and salary disbursements, reflected a large corporate dividend payment and Agricultural Department subsidies to farmers in December that were not repeated in January. In March, personal income was held back by another large decline in farm income and a drop in interest income. Compared with a year earlier, personal income was up 3.8% and wage and salary disbursements were up 4.2%.

After falling 0.6% in December, personal consumption expenditures increased 0.3% in January and 0.1% in February before surging 0.9% in March. The March advance in spending was widespread, with notable strength in the motor vehicles and parts industry arising from a 5.7% increase in unit sales. Within services, the largest contributor was the increase in spending on health care.

Strength in **labor markets** is still likely to support a revival in income and spending growth in coming months, despite weak income growth in the first quarter. Hourly earnings recently have been growing near the best pace in years while the length of the workweek has remained relatively stable. While the debt service burden for both mortgage loans and consumer debt remain low-to-moderate, measures of consumers' moods were very mixed in April.

The Conference Board Index of **Consumer Confidence** rebounded in April, continuing the see-saw pattern of recent months. Assessments of both current and expected conditions brightened. The university of Michigan index moved modestly in the other direction, as it did in March. The labor index from the Conference Board (the percentage of people saying jobs are plentiful, minus those saying they are hard to get) increased in line with the revival in job growth after a slow February, yet plans to purchase major appliances and homes declined in April. In historical context, confidence remains high, and with a healthy labor market and the government shutdown and stock market sell-off in the rearview mirror, expectations are for continued advances in consumer incomes and spending.



Industrial Activity

Industrial production decreased by 0.1% in March, offsetting the 0.1% increase in February and leaving the level below its November mark. Manufacturing production was flat, following declines in both January and February while mining was down and utility output was slightly up. Overall production declined at an annualized 0.3% in the quarter and manufacturing production fell 1.1%. In both cases this represents the first quarterly declines since the third quarter of 2017 when hurricanes Harvey and Irma disrupted activity.

Among industries that are key employers in Ohio, production was mixed in March. Primary metal output grew 1.2% and machinery output was up 0.5%. Production of motor vehicles and parts fell 2.5% and production of fabricated metals was down 0.2%. Compared with a year earlier, production increased in primary metal (+3.0%), fabricated metals (+3.0%), and machinery (+4.4%). In a shift from very strong year-over-year growth as of December, production of motor vehicles and parts was 3.2% lower than a year ago.

Purchasing managers in manufacturing reported less robust but still generally healthy conditions in April. The Purchasing Managers Index (PMI) decreased by 2.5 points to 52.8, which was below the average of 57.7 during the previous twelve months but still sufficiently above the neutral level of 50 to indicate expansion in the sector. Most sub-indexes eased during the month, with New Orders down 5.7 points to 51.7 and Production down 3.5 points to 52.3. Only measures of backlogs and inventories pointed toward more broad-based increases in manufacturing activity. Overall, increases in activity are much less broad-based than a year ago.

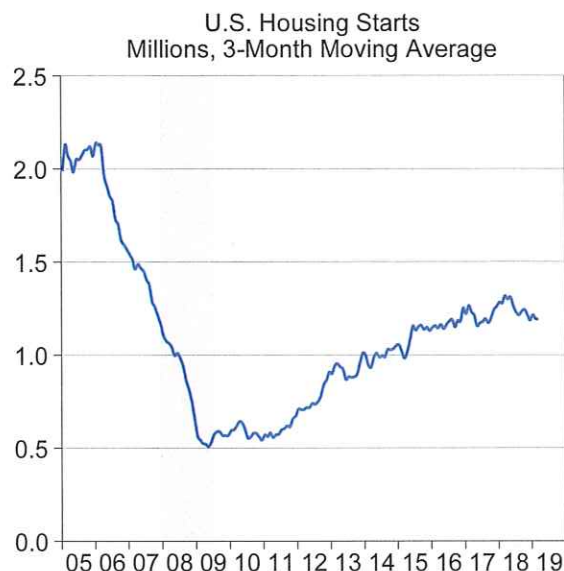
Of the eighteen industries tracked by the Manufacturing ISM[®] *Report on Business*, thirteen reported growth in the latest month, down from sixteen the month before. Among industries with a major effect on Ohio manufacturing employment, machinery and fabricated metal products reported growth, whereas primary metals and transportation equipment reported contraction.

A source in the primary metals industry said that the “order book remains strong,” but that the “outlook is beginning to soften a little.” Similarly, a contact in the fabricated metals industry reported that “business is steady,” and “we expect business to grow throughout the second quarter, then level in the third and fourth quarter.” Participants in the transportation equipment and the machinery industries indicated concern about Mexico border issues, with the machinery contact also mentioning China trade negotiations.



Construction

Construction put-in-place decreased 0.9% in March. The changes in January and February were revised down from 2.5% and 1.0%, respectively, to 0.7%. Compared with a year ago, total construction put-in-place was lower by 0.8%, down from 6.0% as recently as August. Private sector construction decreased 0.7% for the third monthly decline in a row and the fourth in five months. The main culprit has been residential, which has experienced weakness in single-family, multi-family, and improvements. Public construction fell 1.3% after a downwardly revised gain of 3.2% in February and a large 5.8% rise in January. Public sector construction was 8.6% higher than a year ago, up from just 2.7% year-over-year last December.



The **Housing Market Index (HMI)** from the National Association of Homebuilders (NAHB) improved further in April after dropping sharply during 2018 and starting to recover at the turn of the year. The index, which is based on assessments of current sales, expected sales in six months, and traffic of prospective buyers of new homes, remains 14.9% below the recent high in December 2017. The HMI for the Midwest has followed a similar pattern and stands 26.3% below its December 2017 level. The downward trends in the indexes are sufficiently pronounced to warrant attention.

Housing starts flattened out in March on a 3-month moving average basis, as a 1.1% decrease in single-family erased a 2.8% increase in multi-family. Starts were 9.4% below the year earlier level in March. Across the Midwest, starts decreased 1.4% as a 15.2% decrease in multi-family was not quite strong enough to offset the 1.4% decrease in single-family, all on a 3-month moving average basis. The more-forward-looking housing permits fell 1.0% across the country as both single-family (-0.5%) and multi-family (-1.7%) decreased. Permits rose 7.5% in the Midwest, however, due to a 24.4% jump in multi-family that more than offset a 2.4% decline in single-family.

Both **New and Existing home sales** were up in March on a 3-month moving average basis. Sales of existing homes increased 1.4% nationally but were down 5.4% from a year ago. Sales of existing homes in the Midwest decreased 0.6% to 5.5% below the year ago level. New home sales rose 7.0% nationally and 12.0% in the Midwest but remained flat-to-down compared with a year ago.

The substantial decline in mortgage rates might help revive housing activity this year, provided that employment continues growing and worker compensation continues to rise. Demographic trends are expected to provide some support to the market longer-term. An easing in the pace of home price increases might also provide a boost. **Home prices** posted their 84th straight monthly increase in February to 4.0% above the year earlier level – the lowest since a 3.1% increase in September 2012 – according to the Case-Shiller index. As recently as last April, prices were rising at a 6.5% year-over-year pace.



Understanding Qualified Opportunity Zone Benefits and Requirements



OMA Tax Committee Meeting
June 10, 2019

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Agenda

Topic

History and Policy of Opportunity Zones

Tax Benefits to Investors

Timeline of a Qualified Opportunity Fund

Qualified Opportunity Fund Requirements

Qualified Opportunity Zone Property

Qualified Opportunity Zone Business

Top 10 Takeaways from 2nd Tranche of Proposed Regs

Proposed Ohio Opportunity Zone Incentive

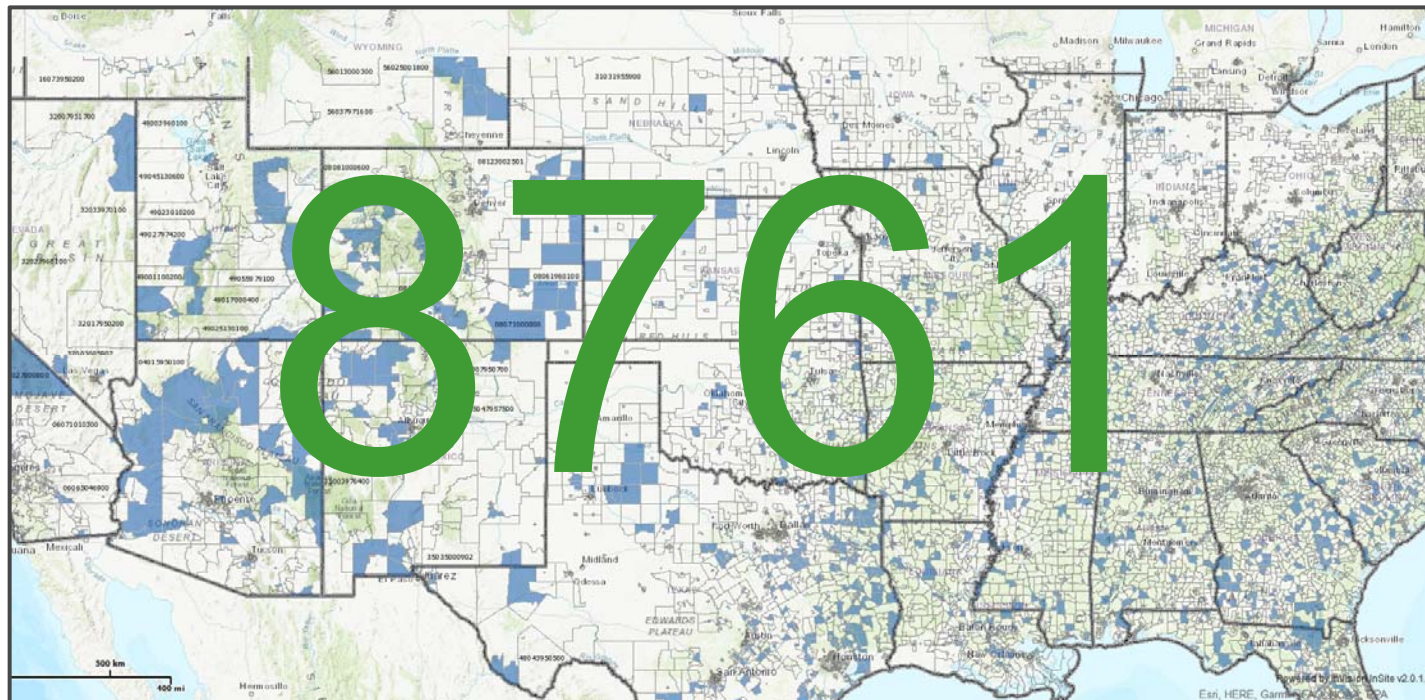
Questions and Answers



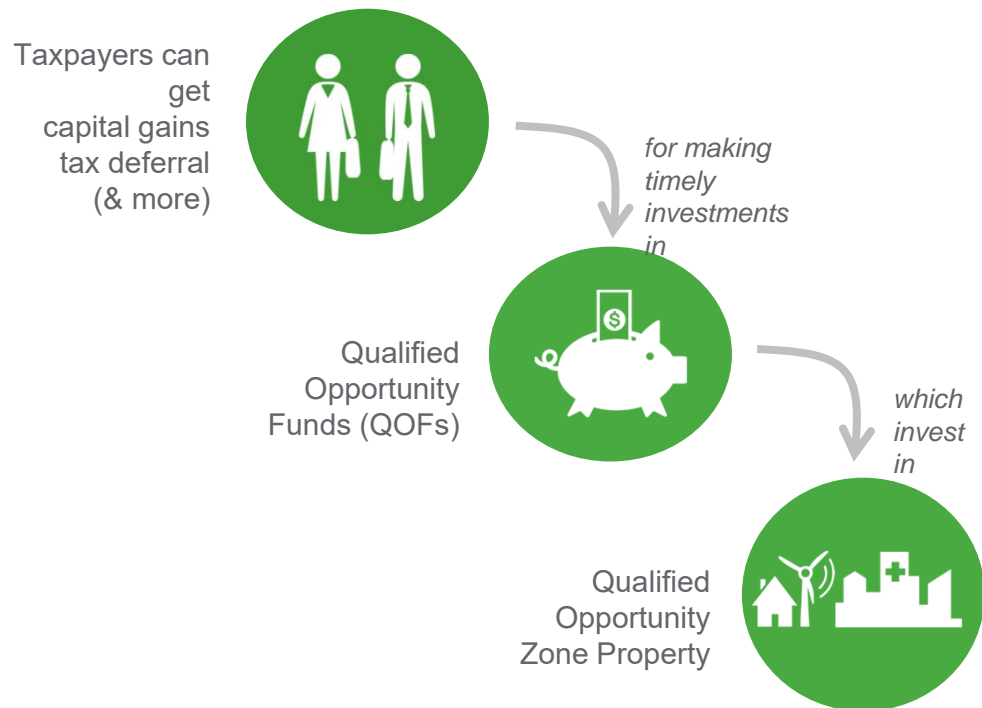
HISTORY AND POLICY OF OPPORTUNITY ZONES



Treasury certified opportunity zones



Overview of Opportunity Zone Program



Background to Opportunity Zones

- The Opportunity Zone program was created by the Tax Cuts and Jobs Act of 2017. New sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code create OZs.
- Intent is to spur economic growth in low income/distressed areas by harvesting unrealized gains and injecting capital into these designated areas
- 1st Tranche of Proposed Treasury Regulations issued October 29, 2018.
- 2nd Tranche of Proposed Treasury Regulations issued May 17, 2019.

TAX BENEFITS TO INVESTORS

Tax benefits to investors in QOF

1. ■ Deferral of gain recognition from original transaction (gain #1) until earlier of sale or Dec. 31, 2026
2. ■ Partial forgiveness (exclusion) of gain from original transaction (gain #1) (10 percent to 15 percent exclusion possible)
3. ■ Forgiveness (exclusion) of additional gains from the OZ fund investment appreciation (gain #2)

Eligible taxpayers

- Individuals
- Corporations (including REITs)
- Partnerships
- Common trust funds under section 584
- Qualified settlement funds
- Disputed ownership funds
- Other entities taxable under section 1.468B

Investor Requirements

Gains must be invested in a QOF within 180 days of the sale or exchange of the original asset

- Generally, the 180-day period begins on the day on which the gain would be recognized for federal income tax purposes
- Election will be required on investor's return to defer the gain. If capital gain was earned by a partnership, the partnership can make such election or if the partnership does not so elect, each partner may make own election
- Non-gain amounts invested in opportunity zones will not be eligible for the tax benefits described earlier

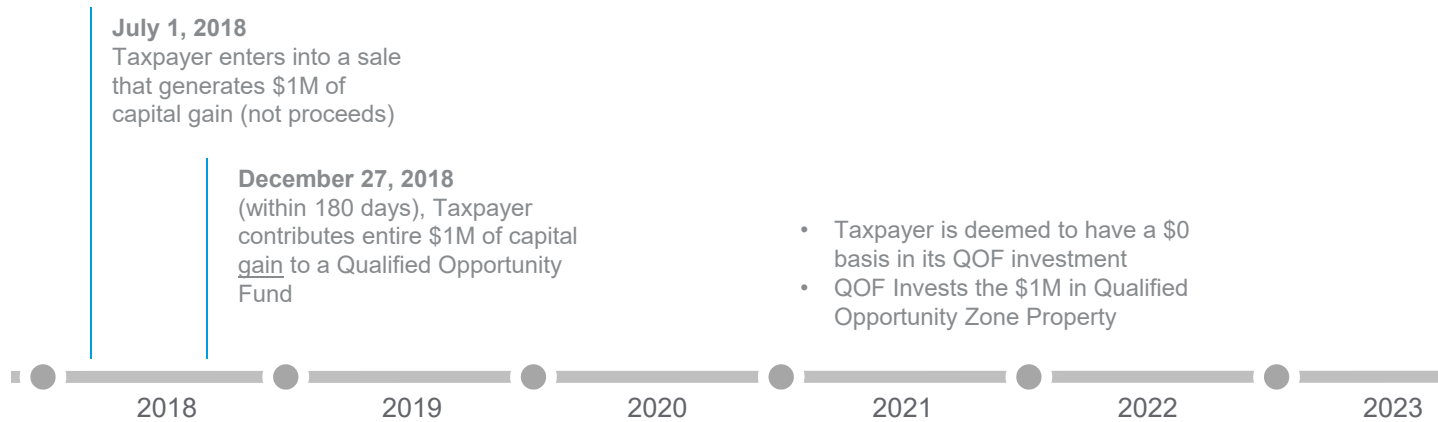
Opportunity zones: Who can benefit?

- Existing fund managers looking for new sources of capital
- High net worth individuals/family offices with significant unrealized gains
- Local developers/contractors that may have additional opportunities from newly invested capital
- Existing businesses looking to expand

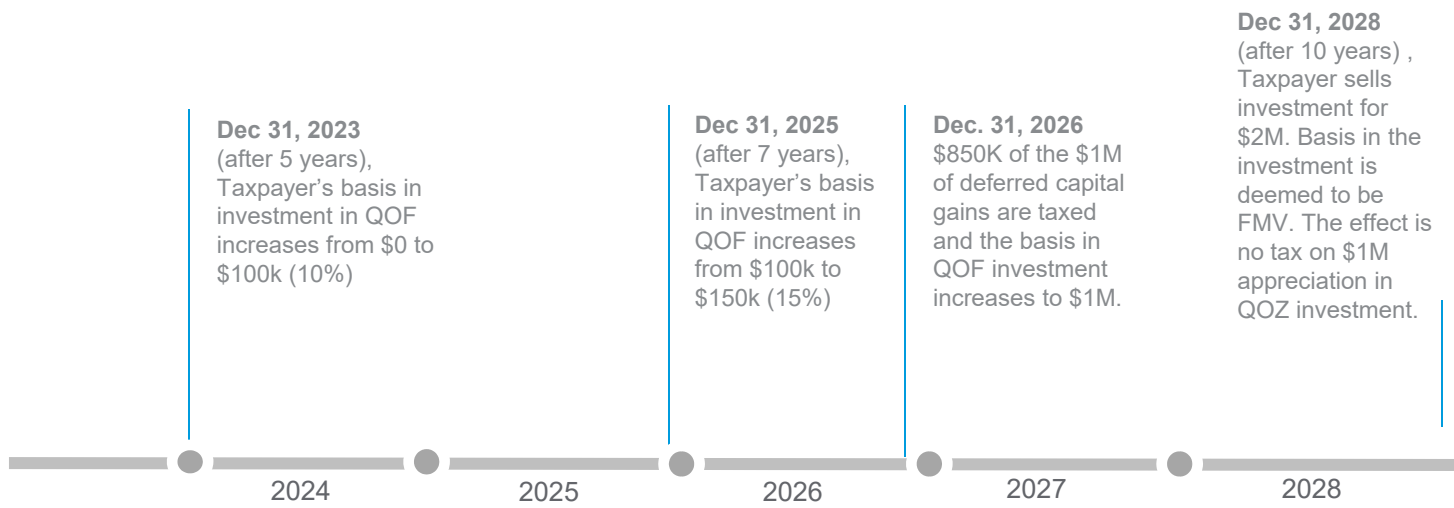


TIMELINE OF A QUALIFIED OPPORTUNITY FUND

Timeline of a QOF – Investment



Timeline of a QOF – Exit



QUALIFIED OPPORTUNITY FUND REQUIREMENTS



What is a Qualified Opportunity Fund (QOF)?

- A QOF is an investment vehicle organized as a domestic corporation or a domestic partnership.
- A QOF can be an LLC as long as it is not a disregarded entity
- A QOF cannot invest in another QOF.
- 90 percent of the QOF's assets must be invested in Qualified Opportunity Zone Property (QOZP); tested every 6 months.
- **QOZP is either QOZ stock, QOZ partnership interest, or QOZ business property (tangible property)**
- The investment in the QOZ entity must be made with cash
- Pre-existing entities are eligible if they otherwise meet the OZ program requirements.

90% Asset Test

- The 90% Asset Test is measured by the average percentage of QOZP held by the QOF:
 - On the last day of the first 6-month period of the QOF's taxable year, and
 - On the last day of the taxable year of the QOF.
- When is the first testing date for a QOF established mid-year?
 - If a QOF is established on March 1, 2018, and uses the calendar year as its taxable year, its first testing date is September 1, 2018, if it so elects to treat itself as a QOF on March 1. This date selection is made on Form 8996. If it selects July 1 as its first day as a QOF, its first testing date is December 31.

QOFs Can Self-Certify

- A QOF must self-certify.
- There is no explicit approval or action required by the IRS.
- Form 8996, Qualified Opportunity Fund, must be completed and attached to an eligible entity's tax return to self-certify and to report compliance with the 90% Asset Test.
- The proposed regulations require that a QOF be organized to invest in OZ property, and Form 8996 indicates that the entity's organizational documents should include a statement of the entity's purpose of investing in OZ property along with a description of the OZ business.

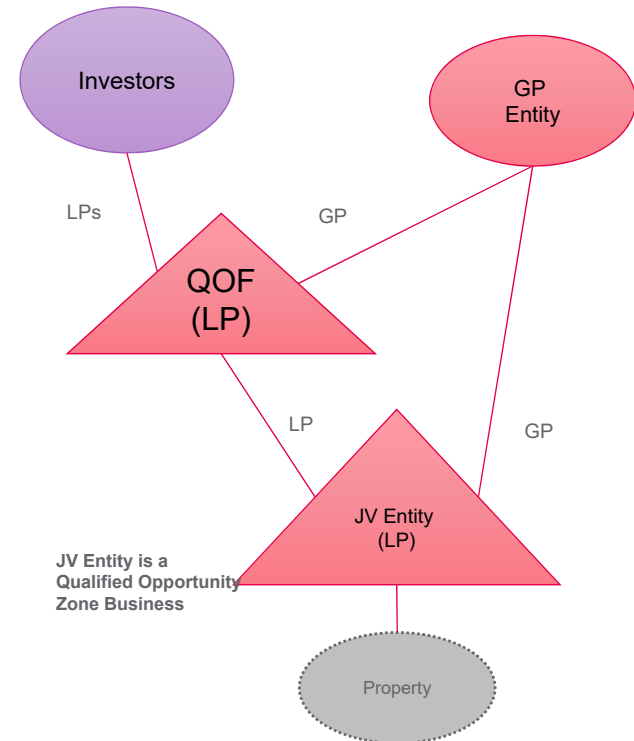
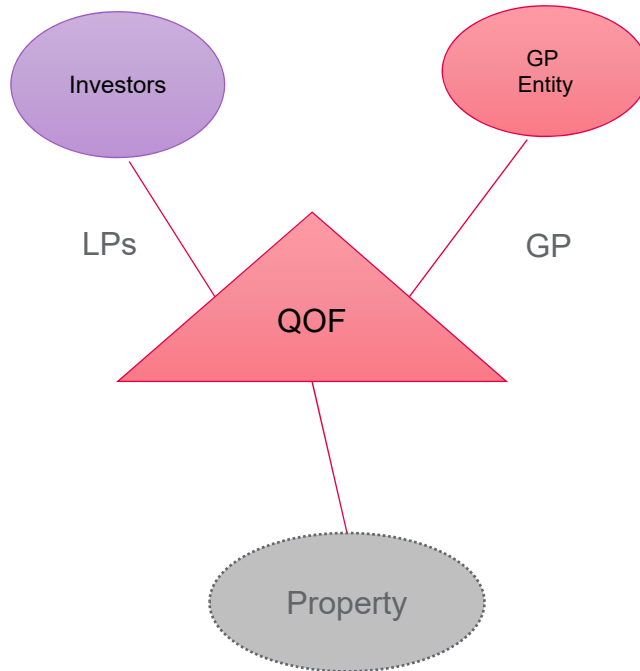
QUALIFIED OPPORTUNITY ZONE PROPERTY



Qualified opportunity zone property

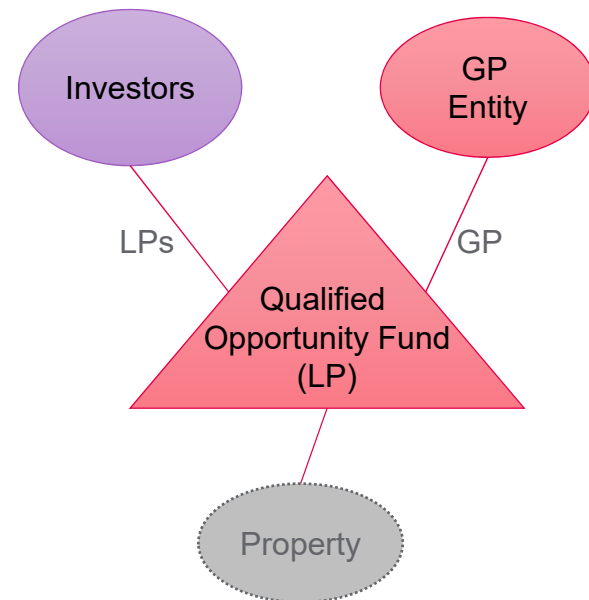


Direct Investment versus Indirect Investment



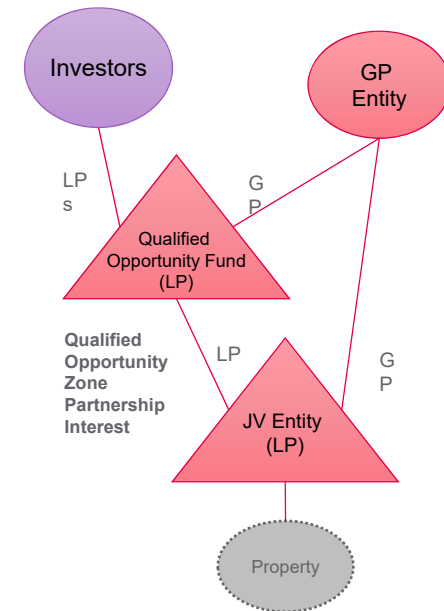
Single tier structure (Direct Investment)

- The QOF can meet its 90 percent asset test by owning Qualified Opportunity Zone Business Property (QOZBP) directly.
- QOZBP is tangible property used in a trade or business of the QOF if:
 - the property was acquired by QOF by purchase from an unrelated party after Dec. 31, 2017
 - the **original use** of property in the Qualified Opportunity Zone commences with the QOF or the QOF **substantially improves** the property; and
 - during substantially all of the QOF's holding period for property, substantially all of the use of property was in a Qualified Opportunity Zone



Two Tier Structure

- The QOF can meet its 90% asset test by owning a Qualified Opportunity Zone Partnership Interest (QOZPI).
- A partnership interest will be a QOZPI if:
 1. acquired by the QOF after 12/31/17 for cash;
 2. at time of acquisition, the partnership was a Qualified Opportunity Zone Business (or, if a new partnership, partnership was being organized for the purpose of being a Qualified Opportunity Zone Business); and
 3. during substantially all of the QOF's holding period for interest, the partnership qualified as a **Qualified Opportunity Zone Business**.

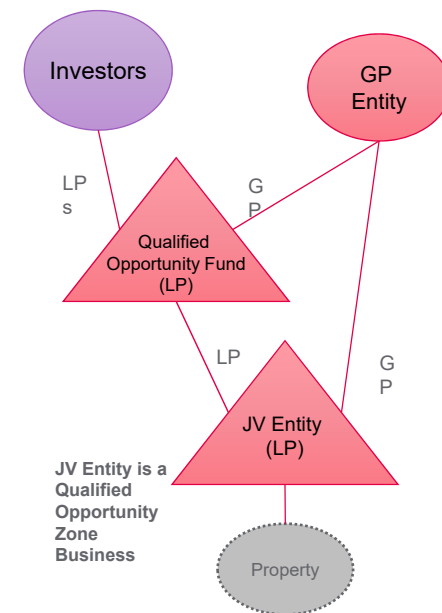


QUALIFIED OPPORTUNITY ZONE BUSINESS



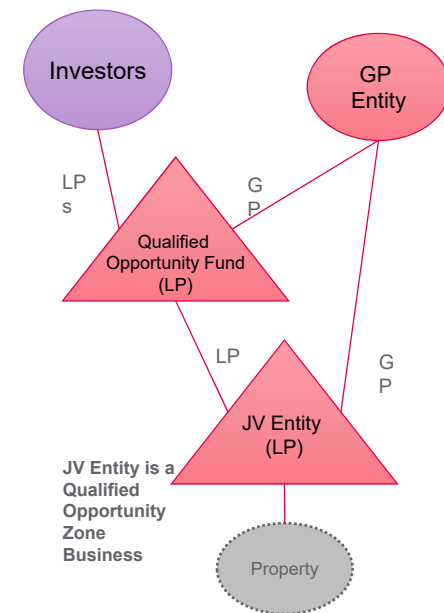
Qualified Opportunity Zone Business

- A Qualified Opportunity Zone Business (QOZB) is a trade or business:
 1. in which substantially all (70%) tangible property owned or leased by the QOZB is Qualified Opportunity Zone Business Property (defined later);
 2. in which at least 50% of the QOZB's gross income is derived from active conduct of the trade or business;
 3. in which a substantial portion of the QOZB's intangible property is used in the active conduct of the trade or business;
 4. in which less than 5% of the QOZB's property is financial property such as stock, debt, options, etc. (but QOZB can hold reasonable amounts of working capital); and
 5. which is not a specified "sin business" (defined later).



Qualified Opportunity Zone Business

- Qualified Opportunity Zone Business Property is tangible property used in a trade or business of the QOZB if:
 1. the property was acquired by the QOZB via purchase from an unrelated party after 12/31/17;
 2. the **original use** of property in the Qualified Opportunity Zone commences with the QOZB or the QOZB **substantially improves** the property (defined later); and
 3. during substantially all of the QOZB's holding period for such property, substantially all (defined later) of the use of property was in a Qualified Opportunity Zone.



Existing assets: Substantial improvement

- The QOF/QOZB “substantially improves” the property during any 30-month period
- The test is met if “additions to basis with respect to the property” in the hands of QOF/QOZB exceed the adjusted basis of the property at the beginning of the 30-month period (more than doubling the basis)
- If land and building are purchased, the test is measured by additions to basis of the building, not the land. Revenue Ruling 2018-29.

Qualified Opportunity Zone Business

- Substantially all tests
 - The partnership or corporation must be a QOZB during “substantially all” of the QOF’s holding period in the partnership or corporation.
 - “Substantially all” of the tangible property owned or leased by the QOZB is QOZBP. Proposed Regs stipulate at least 70% must be QOZBP.
- No more than 5% of the QOZB’s assets can be nonqualified financial property, but the QOZB can have a reasonable amount of working capital. Nonqualified financial property includes debt, stock, partnership interests, options, forward and future contracts, warrants, notional principal contracts, annuities, etc.

Working capital safe harbor under proposed regulations

- Provide a “safe harbor” when determining if working capital is reasonable. **Must meet three requirements:**
 1. Amounts must be designated in writing for acquisition, construction, and/or substantial improvement of tangible property in an OZ,
 2. Must be a written schedule consistent with ordinary start-up of trade or business for expenditure of the working capital, and
 3. Working capital must be spent within 31 months of receipt by the business and be used in a manner consistent with the items above.

Direct vs. indirect ownership comparison table

Direct ownership- single tier structure- QOF directly owns QOZB property used in a trade or business

- 90% Asset Test- 90% of all the QOF assets are QOZB property
- QOZB property is used in a QOF's trade or business
- Intangible property is not QOZB property for the 90% asset test
- No additional restrictions on financial property
- No working capital safe harbor
- No prohibition on "Sin businesses"
- No specific reference to the lease of property by a QOF

Indirect ownership- two tier structure- QOF indirectly owns QOZB property through a QOZB business

- 70% Substantially All test- 70% of the tangible property owned by the QOZB is QOZB property
- 50% of gross income of the QOZB from active conduct of trade or business within the QOZ
- A substantial portion of the business intangible property is used in the active conduct of the trade or business in the QOZ
- Less than 5% of the average of the aggregate unadjusted basis of the property is attributable to non-qualified financial property- which includes debt, stock, options, partnership interests, warrants, annuities and other similar property
- Working capital safe harbor
- QOZB cannot be a "Sin business"
- A QOZB is able to lease property and potentially qualify as QOZB property

TOP 10 TAKEAWAYS FROM 2ND TRANCHE OF PROPOSED REGS



Top 10 Takeaways From 2nd Tranche of Regs

1. Refinancing Distributions are Permitted: An investor in a partnership OZ fund may receive tax-free refinancing distributions, subject to basis limitations.
2. Clarification and Uncertainty on Section 1231 Gains: “Net” Section 1231 gains may be invested in an OZ fund, but the 180-day period begins on the last day of the tax year vs. the sale date
3. Limited Relief of the 31-Month Working Capital Safe Harbor: The 31-month time limit may be extended on account of governmental delay
4. Clarification of “Original Use”: Original use occurs when property is first placed in service for depreciation purposes. An existing building may qualify if it has been vacant for 5 years.
5. Treatment of Land: Land does not generally need to satisfy the “original use” or “substantial improvement” requirements, but land banking may be challenged.

Top 10 Takeaways From 2nd Tranche of Regs

6. **Guidance on Leases:** Leased property generally doesn't need to satisfy the "purchase" "original use" or "substantial improvement" tests. Related party leases are generally permitted.
7. **Active Trade or Business is Defined and Leasing Business is Permitted:** General rules provided, with clarification that holding real estate for rent satisfies the "active trade or business" requirement, but a triple net lease does not.
8. **Carried Interest:** An OZ fund investment is not eligible for OZ benefits to the extent an interest therein is received for services, including a sponsor's "carried interest".
9. **Limited Relief on Recycling:** An OZ fund may sell an asset and reinvest the proceeds in a new qualifying investment without violating asset test. However, gain from the sale is subject to tax.
10. **10-Year Gain Exclusion on Sale of Assets:** The 10-year gain exclusion is extended to capital gain attributable to the sale of qualifying property by the OZ fund.

PROPOSED OHIO OPPORTUNITY ZONE INCENTIVE



Proposed Ohio Opportunity Zone Incentive

- S.B. 8 was introduced on February 12, 2019. Referred to the Senate
- Ways and Means Committee on February 20, 2019. Hearings held on
- February 20, February 27, March 5, and March 12, 2019.
- • Sub. S.B. 8 was submitted to the Senate Ways and Means Committee
- on March 12, 2019.
- • **Investment Requirements to Receive Credit (Sub. S.B. 8)**
 - Ohio QOF does not need to be formed as an Ohio entity.
 - 100% of an Ohio QOF's assets must be invested in qualified opportunity zone property situated in Ohio QOZs.
 - § No other enumerated requirements for Ohio QOFs, e.g., use of an Ohio bank account.
 - No minimum investment to qualify for credit.
 - Investments not limited to reinvested capital gains.

Proposed Ohio Opportunity Zone Incentive

- **Credit Amount**
- – Nonrefundable tax credit equal to 10% of taxpayer’s total investments in Ohio QOFs against the Ohio income tax.
 - *§ Example: Taxpayer invests \$10 million in an Ohio QOF, which in turn invests that \$10 million in qualifying projects located in Ohio QOZs. Taxpayer is eligible to receive \$1 million in Ohio income tax credits (“Ohio OZ Credits”).*
- – Any excess Ohio OZ Credits can be carried forward for 5 years.
- • **Credit Award Limits**
- – \$50 million cap on total Ohio OZ Credits awarded in any fiscal biennium.
 - *§ Ohio OZ Credits are awarded in the order applications are received. The earlier the application is received in each fiscal biennium, the better.*
- – \$1 million cap on Ohio OZ Credits **PER TAXPAYER** during any fiscal biennium.

Proposed Ohio Opportunity Zone Incentive

- **Ohio OZ Credits are transferable under Sub. S.B. 8.**
- – However, this transferability feature appears to be of limited value if Sub. S.B. 8 is enacted in its current form.
- – As drafted, Ohio OZ Credits can only be applied against the Ohio income tax, which is only imposed on individuals, estates, and trusts.
- – Ohio OZ Credits cannot be used against the taxes paid by
- financial institutions or insurance companies, or the
- commercial activity tax (paid by corporations and some other taxpayers).

THANK YOU
FOR YOUR
TIME AND
ATTENTION

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Ohio Manufacturers' Association

Tax Counsel Report
June 11, 2019
By Justin D. Cook
Bricker & Eckler LLP

Proposed Legislation:

H.B. 166, Ohio's budget bill for FY 2020-2021, passed in the House and is before the Senate. It includes numerous proposed tax law changes, such as: (i) reducing income tax rates from seven to five brackets that range between 2.773% to 4.667%; (ii) reducing the business income tax deduction from \$250,000 to \$100,000; (iii) eliminating the 3% flat tax on business income, subjecting taxable business income to the otherwise applicable income tax rates; (iv) broadening the definition of substantial nexus and requiring market place facilitators to collect sales and use tax; and (v) exempting sales of supplies and services used to clean manufacturing equipment.

S.B. 153 was introduced on May 21, 2019 in the Ohio Senate. This bill (supported by the OMA and addressed in Mr. Brundrett's report) would amend the Job Retention Tax Credit to reduce the workforce size and investment eligibility thresholds.

S.B. 37 passed the Ohio Senate and is currently before the House. This bill would expand the Motion Picture Tax Credit to include live theater productions.

S.B. 95 is before the Senate and includes a host of tax incentives for "megaprojects" completed in Ohio.

H.B. 222 was introduced in the House to provide tax incentives for training commercial vehicle operators.

Judicial Actions:

Ohio Board of Tax Appeals

Marion Ethanol, LLC (et. al.) v. McClain, BTA No. 2017-337, 2017-338, 2019 WL 2266695 (May 16, 2019). *Marion Ethanol*, copy attached, involves the sales and use tax exemption for manufacturing equipment. This case addresses the point at which the manufacturing process begins.

Fiddle Stix Boutique, LLC v. McClain, BTA No. 2018-69, 2019 WL 2004681 (Apr. 29, 2019). *Fiddle Stix* illustrates the challenge of

seeking penalty remission on appeal. In this case, taxpayer contested a penalty assessed for failure to timely remit sales tax. Taxpayer filed its return and received confirmation that the tax was timely paid. It is unclear from the opinion whether taxpayer received the confirmation from its bank or from the Ohio Business Gateway. In any event, the funds were not remitted, resulting in a late payment of tax. The BTA upheld the Tax Commissioner's penalty assessment under these circumstances, despite the undeniable good faith of taxpayer. One interesting aspect of the opinion is that the BTA carefully points out that taxpayer did not allege the Tax Commissioner abused his discretion in assessing the penalty (the standard for overturning a penalty); it is unclear if the BTA would have reached a different conclusion if the proper standard was alleged.

MIBA Sinter USA LLC v. McClain, BTA No. 2018-1421, 2019 WL 2097860 (May 6, 2019). In *MIBA Sinter*, taxpayer asserted that certain items subjected to sales tax assessment were exempt as property used in the manufacturing process. Taxpayer submitted purchase invoices for the disputed items. However, the BTA concluded that taxpayer failed to provide sufficient factual evidence as to the exempt use of the items, such as through testimonial evidence. The sales tax assessment was, therefore, upheld.

Ohio Court of Appeals

Plain Local Schools Board of Education v. Stark County Board of Revision, Fifth Dist. Stark No. 2018CA00125, 2019-Ohio-1746, 2019 WL 2027217. *Plain Local Schools* involved a property tax valuation dispute. The property at issue was the subject of a recent arm's-length sale transaction that included the assets of an on-going business. While the sale price of the realty reflected on the conveyance statement was presumed to represent fair market value, taxpayer presented appraisal evidence supporting a lower valuation. Taxpayer's appraiser supported his valuation partially by reference to the price allocation under taxpayer's asset purchase agreement. This price allocation was supposedly lower than the amount reflected on the conveyance statement. Taxpayer's appraiser, however, did not review the sale documents (it appears they were not provided by taxpayer). Thus, while the BTA *considered* taxpayer's appraisal, it found the appraisal was based on hearsay and discounted its value. The Fifth District Court of Appeals upheld the BTA's decision.

Spirit Master Funding IX, LLC v. Cuyahoga County Board of Revision, Eighth Dist. Cuyahoga No. 107382, 2019-Ohio-1349, 2019 WL 1569794. *Spirit Master* was similar to *Plain Local Schools* in that it also involved a taxpayer's submission of an appraisal based on hearsay evidence. The Court remanded the case for further consideration by the BTA, holding the BTA had to consider taxpayer's appraisal. The Court, however, did not instruct the BTA to afford it any particular weight.

OHIO BOARD OF TAX APPEALS

MARION ETHANOL, LLC, (et. al.),

CASE NO(S). 2017-337, 2017-338

Appellant(s),

(SALES AND USE)

vs.

DECISION AND ORDER

JEFFREY A. MCCLAIN, TAX COMMISSIONER
OF OHIO, (et. al.),

Appellee(s).

APPEARANCES:

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COLUMBUS, OH 43215

Entered Thursday, May 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters come before this board upon two notices of appeal, filed by taxpayers Marion Ethanol, LLC and Fostoria Ethanol, LLC, now known as POET Biorefining – Marion and POET Biorefining – Fostoria, respectively (collectively, “POET”). POET appeals from two final determinations of the Tax Commissioner that upheld, in part, use tax assessments related to POET’s purchases. We proceed to consider the matter upon the notices of appeal, the statutory transcripts certified by the commissioner, the record of the hearing before this board (“H.R.”), the parties’ written legal arguments, and POET’s notice of additional authority. We note that POET filed additional written argument with its notice of additional authority. We hereby strike such argument in accordance with Ohio Adm. Code 5717-1-17(A).

Pursuant to R.C. 5739.02, an excise (“sales”) tax is levied upon all retail sales made in Ohio. By virtue of R.C. 5741.02, a corresponding tax is imposed on the storage, use, or consumption in this state of any tangible personal property. The legislature has also provided numerous exceptions and exemptions to the collection of sales tax, and, through R.C. 5741.02(C)(2), has mandated that if acquisition of an item within the state would not be subject to tax, then the item’s use within the state is correspondingly not subject to tax. However, “[s]tatutes relating to exemption or exception from taxation are to be strictly construed, and one claiming such exemption or exception must affirmatively establish his right thereto.” *Natl. Tube Co. v. Glander*, 157 Ohio St. 407 (1952), paragraph two of the syllabus. See also *Ball Corp. v. Limbach*, 62 Ohio

St.3d 474 (1992). On appeal to this board, the burden is on POET to demonstrate that the Tax Commissioner's final determinations were in error. *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St.3d 213 (1983). In our review, we are mindful that "the tax commissioner's findings are presumed valid subject to rebuttal." *Accel, Inc. v. Testa*, 152 Ohio St.3d 262, 2017-Ohio-8798, ¶14.

The Production Process

POET operates biorefineries that manufacture ethanol and other corn-based products, including animal feed, corn oil, and wet and dry distillers grains ("DDGs"). The Tax Commissioner audited POET's use tax returns and ultimately issued two assessments finding that use tax was due on several items of equipment and chemicals purchased by POET during the audit period of January 1, 2007 through June 30, 2009. In the petitions for reassessment, POET asserted that the assessed purchases were exempt because the items are used in the manufacturing process. Although the Tax Commissioner adjusted the assessments, in his final determinations he denied POET's objections to the assessment of the "contract grains system" and "control systems monitor," finding that they are not used in the manufacturing process and therefore not exempt. He further denied POET's objection to the taxability of sodium hydroxide used in the biorefineries, finding that 95% of the chemicals were used directly in cleaning and therefore not exempt from use taxation. On appeal to this board, POET disputes the Tax Commissioner's determination of when its manufacturing process begins for purposes of the manufacturing exemption, and argues that sodium hydroxide is used in the manufacturing process to separate out corn oil and is added to the animal feed produced, and therefore exempt.

At this board's hearing, POET presented two witnesses who explained the operation of its facilities. Commodity Manager Brad Pope and General Manager Rick Fox explained that the primary raw material used at the biorefineries is corn, which is delivered by truck to its facilities at irregular intervals. The corn is then tested for quality, moisture, and temperature. Accepted corn is emptied into sub-grade hoppers which funnel the corn to a conveyor that runs through POET's facilities. After falling onto the conveyor, the corn is transported past a strong magnet designed to remove any metal contaminants, which range in size from metal filings to wrenches. It is at this point that POET argues its manufacturing process begins.

The corn continues to move through POET's facility from the magnet to bins designed to hold between 50,000 and 675,000 bushels. The corn is deposited into the bins based on the results of its initial testing at delivery, e.g., moisture content. Corn is emptied from the bins based on specified mixtures to ensure quality in the biorefining process, and proceeds from the bins to a scalper – a rotating bin that removes debris, such as corncobs, sticks, leaves, and stalks, from the corn. It is at this point that the Tax Commissioner argues POET's manufacturing process begins.

Sodium hydroxide is also used throughout the production process to remove residual starch and proteins that build up on equipment surfaces, and to balance the pH of water within the boilers for the distillation process. After doing so, the "waste" sodium hydroxide is added to animal feed to add protein and starch. Mr. Fox testified that none of the sodium hydroxide used to "clean" during the production process is discarded. After the audit period, beginning in 2012, sodium hydroxide was also used in the production of corn oil.

Manufacturing Exemption

POET seeks exemption of its purchases under R.C. 5739.02(B)(42)(g), which exempts from sales taxation sales where the purpose of the purchaser is "[t]o use the thing transferred *** primarily in a manufacturing operation to produce tangible personal property for sale." "Manufacturing operation" is defined in R.C. 5739.01(S) as "a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process." There is no dispute that POET engages in "manufacturing" at its Marion and

Fostoria facilities. The issue before us is at what point POET's manufacturing process begins – at the scalper as the Tax Commissioner determined, or at the magnet as POET contends.

As the Supreme Court explained in *LaFarge N. Am., Inc. v. Testa*, 153 Ohio St.3d 245, 2018-Ohio-2047, to determine at what point a manufacturing operation begins, we must answer two questions in this matter: (1) when is the corn “changed, converted, or transformed into a different state or form from which [it] previously existed,” and (2) when is the corn committed to the manufacturing process? *Id.* at ¶17. Ohio Adm. Code 5703-9-21(B)(1) further defines manufacturing:

“Manufacturing operation’ means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. ***

“***

“The manufacturing operation begins when the raw materials or parts are committed to the manufacturing process. If the raw materials or parts are stored after being received at the manufacturing facility, the raw materials are not committed until after they are removed from such initial storage. The point of commitment is where the materials handling from such initial storage has ceased or the point where the materials or parts have been mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process, whichever first occurs.”

POET argues that the magnet, over which the corn passes after it is accepted and placed on a conveyor to proceed into the facility, refines the corn by removing metal contaminants, and, therefore, is the beginning of the manufacturing process. “Refining” is defined as “removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.” Ohio Adm. Code 5703-9-21(B)(2). POET cites to Example 63 of Ohio Adm. Code 5703-9-21 as particularly instructive in determining when the manufacturing process begins at its facilities. The example indicates that the beginning of the manufacturing operation at a dairy is at the clarifier – a centrifuge that removes particle contaminants from raw milk. POET argues that the centrifuge in Example 63 is similar to the magnet at its facilities, which remove metal contaminants from the corn before it is moved to one of the various storage bins. It also cites to this board’s recitation of the final determination in our decision in *The Iams Company v. Zaino* (June 30, 2005), BTA No. 2003-B-1254, unreported, which indicated that manufacturing began at magnets used to remove metal contaminants. In addition, POET argues that the magnet “cleans” or prepares the corn for manufacturing, similar to the cleaning of metal castings explained to be manufacturing in Example 9 of Ohio Adm. Code 5703-9-21.

We acknowledge the commissioner’s argument that this board lacks jurisdiction to consider POET’s theory that the magnet “refines” the corn and therefore constitutes manufacturing, because such theory was not previously raised in its petition for reassessment and notice of appeal. We disagree. As the commissioner notes in his brief, POET’s petition for reassessment refers to “cleansing” of corn. We find such reference contemplates refining, and therefore find this board properly has jurisdiction to consider POET’s argument that the magnet “refines” the corn for purposes of the exemption. On the merits of the argument, the commissioner counters that prior cases involving magnets have found that their use does not constitute “manufacturing.” However, we find those cases distinguishable. In *Kurtz Bros., Inc. v. Tracy*, 8th Dist. Cuyahoga Nos. 70078 et seq., 1996 Ohio App. LEXIS 3192 (July 25, 1996), the court found that magnet cranes used to separate scrap metal materials from waste debris were not entitled to use tax exemption as the removal of scrap metal from the waste did not constitute “manufacturing” or “processing.” The magnet in *Kurtz*, unlike the magnet at POET’s facilities, did not ready materials for manufacturing. Rather, Kurtz was separating landfill debris from non-landfill debris (metal), for disposal. Likewise, in *Sims Bros. v.*

Tracy, 83 Ohio St.3d 162 (1998), the court held that the use of magnet cranes by Sims, which recycled scrap metal for sale, was not manufacturing. The court in *Sims Bros.* focused on the point of commitment to the manufacturing process, finding the magnet cranes were used prior to commitment, and merely moved scrap metal from initial storage to the processing machinery. We find the magnet refines the corn; therefore, the magnet is the beginning of the manufacturing process.

We therefore turn to the second prong of the inquiry set out by *Lafarge* – when is the corn committed to the manufacturing process? See also *Sims*, supra, at 166. We find that it is committed at the magnet. R.C. 5739.011 provides that the exemption in R.C. 5739.02(B)(42)(g) applies to equipment that moves a product through a “continuous manufacturing operation,” defined as “the process by which raw materials or components are moved through the steps whereby manufacturing occurs.” R.C. 5739.011(A)(6). Ohio Adm. Code 5703-9-21(B)(9) further indicates that “[t]he continuous manufacturing operation begins at the point where the raw materials or parts are committed ***.” Ohio Adm. Code 5703-9-21(B)(1) states that “[t]he commitment of the materials or parts need not be irrevocable, but they must have reached the point, after materials handling from initial storage has ceased, where they normally will be utilized within a short period of time.”

POET argues that its facilities are integrated from the point the corn passes over the magnet to the end of its manufacturing process – a closed manufacturing system. Corn goes from the magnet to bins where the corn is blended based on its temperature and moisture content to ensure the corn remains in a state of usability before it enters the next stage of manufacturing. H.R. at 47-50. POET “[cycles] through the corn in each bin once a month.” Id. at 51. Corn cannot be removed from the bins other than by going to the next step of the manufacturing process, i.e., travelling by conveyor to the scalper. Id. at 76, 126-127. POET therefore argues that the corn is committed to the manufacturing process at the magnet, thereby making the magnet the beginning of the manufacturing process for purposes of the manufacturing exemption. We agree. The corn does not go from the magnet to any initial storage. Instead, it moves through a continuous process from the magnet through the remainder of the manufacturing operation. Corn proceeds into the storage bins where it is blended and monitored to ensure quality, and is then able to be continuously fed into the manufacturing process which continues 24/7. H.R. at 75.

We find POET’s manufacturing process begins at the magnet, where the corn is refined by removing metal contaminants. We further find that the corn is committed to the manufacturing process at the magnet, given the integrated nature of the manufacturing operation and the short-term storage following the magnet before the corn proceeds onto the scalper and the remainder of the manufacturing process.

Based upon the foregoing, we find POET has met its burden as to the beginning of its manufacturing process and hereby reverse the Tax Commissioner’s final determination as to the equipment used prior to the scalper, i.e., beginning at the magnet.

Sodium Hydroxide



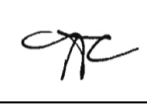
POET also appeals the Tax Commissioner’s determination that sodium hydroxide is not used in its manufacturing process, but, rather, only in cleaning equipment. To the contrary, POET argues that sodium hydroxide is used throughout the manufacturing process to remove excess starch and proteins, and then added to animal feed produced at POET’s facilities. The commissioner indicates that, during the audit, the parties agreed that 95% of the sodium hydroxide was used directly in cleaning, as memorialized in a Letter of Agreement. Because POET signed such agreement, the commissioner argues that it is bound by the determination that 95% of the sodium hydroxide is taxable. In response, POET argues it is not bound by the agreement, relying on a statement in the letter that “[t]he agreement does not constitute an admission of any tax liability nor waive the right of the taxpayer to appeal this or any provision of the review.” S.T. at 66.

As the Supreme Court stated in *Shugarman Surgical Supply v. Zaino*, 97 Ohio St.3d 183, 2002-Ohio-5809, while a taxpayer “may not like the results obtained by” its agreement with the commissioner, such fact does

not invalidate the agreement. Id. at ¶19, citing *Akron Home Med. Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 111 (1986). Notably, the agreement signed by the taxpayer in *Shugarman Surgical Supply*, supra, contained language identical to that cited by POET as invalidating the agreement in this matter. *Shugarman Surgical Supply* (Sept. 21, 2001), BTA No. 1997-D-1537, unreported, at 13 (quoting from the signed letter of agreement). We agree with the commissioner that POET is bound by the agreement its signed during the audit, and therefore is precluded from challenging the determination that 95% of the sodium hydroxide it purchased was used directly in cleaning and therefore not exempt from use taxation.

Conclusion

Based upon the foregoing, we find appellants have met their burden to prove error in the Tax Commissioner’s determination as to the equipment used in the manufacturing process, but not as to the sodium hydroxide used in the process for purposes of its use tax liability. It is therefore the order of this board that the final determinations of the Tax Commissioner are hereby reversed in part, and affirmed in part, in accordance with the foregoing decision.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary

TO: OMA Tax and Finance Committee
FROM: Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: June 11, 2019

Overview

At the beginning of the year, new Governor Mike DeWine appointed former legislator Jeff McClain as the newest Commissioner for the Ohio Department of Taxation. The OMA has a long history of working with Commissioner McClain both as a legislator and in the private sector. Transformational tax proposals were the budget norm under the Kasich administration. However the DeWine administration stayed away from major tax proposals in his recently introduced budget.

The Transportation Budget was a disappointment with a bifurcated tax. The OMA Tax Committee has worked with Chairman Dolan to introduce Senate Bill 153.

Tax Legislation

Senate Bill 8 – Ohio Opportunity Zone Tax Credits

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

House Bill 19 – Pink Tax Exemption

The bill would exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation. The bill has had four hearings in the House Ways and Means Committee.

Senate Bill 37 – Motion Picture Tax Credit

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

House Bill 60 – Diaper Sales Tax Exemption

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

House Bill 62 – Transportation Budget

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

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

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

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

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

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

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

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

House Bill 92 – County Sales Tax Voting

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

Senate Bill 95 – State and Local Tax Inducements

The bill will enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers. The bill provides a CAT credit the integrated supply chain to a qualifying project. The OMA submitted a letter with likeminded allies regarding protecting the integrity of the CAT. The Senate Ways and Means Committee reported the bill from committee.

Senate Bill 109 – Workforce Scholarship Program

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

House Bill 134 – March Sales Tax Holiday

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

Senate Bill 153 – Job Retention Tax Credit Manufacturer Eligibility

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

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

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

The bill would:

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

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

House Bill 162 – Motion Picture Tax Credit

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

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

House Bill 166 – State Operating Budget

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

- Ohio's Workforce and Innovation

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

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

The House-passed budget bill would reduce the business income tax deduction for pass-through entities from the current \$250,000 to \$100,000, and remove the 3% flat tax rate for income over that threshold. The tax savings generated by the deduction have allowed Ohio manufacturers to reinvest in their operations by purchasing new equipment, expanding production lines, hiring new employees, and boosting wages. This change would increase taxes on most pass-through entities.

The House included several good amendments:

- Language in the budget bill would exempt all manufacturers from sales and use tax on any supplies or janitorial services purchased to clean machinery in a manufacturing facility. This has long been an OMA Tax Committee priority. This provision would bring certainty to the current exemption law.
- Another provision in the budget bill would create parity among all food manufacturers by allowing a sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. Currently the exemption is only for dairy food manufacturing.

Finally the OMA is pushing for the inclusion of SB 153 in the Senate version of the budget bill.

House Bill 175 – Tax Exemption on Goods Movement

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

Manufacturing Sales and Use Tax Exemption – Regulation Update

In March the updated manufacturing sales and use tax rules went into effect. OMA worked closely with the Ohio Department of Taxation to ensure the rule provided the proper updates while at the same time not allowing the Department become more aggressive in their audits. Thank you to the members who participated in the working group.

Tax News

Former State Rep. McClain Appointed Ohio Tax Commissioner

Just after the new year, Governor-elect Mike DeWine appointed former State Representative Jeff McClain as the next Ohio Department of Taxation Commissioner.

Most recently, McClain had been serving as director of tax and economic policy for the Ohio Chamber of Commerce. He served in the state legislature for nearly eight years and was the long-serving Wyandot County auditor for 26 years.

While in the legislature McClain chaired the powerful House Ways and Means Committee which oversaw tax policy and legislation in that chamber.

The OMA has worked closely with McClain both as a state representative and in his most current role. We are excited to continue our working relationship as he takes over the Department of Taxation. Congratulations to Jeff and best of luck

Court Upholds Constitutionality of Streamlined Muni Income Tax Collections

Earlier this year the 10th District Court of Appeals ruled 2-1 that the municipal tax reform provisions of House Bill 49 and House Bill 5 are constitutional. The provisions had been challenged by more than 100 municipalities.

The legislation streamlined municipal income tax reporting and collections for businesses across the state. The OMA participated in a coalition that supported the changes.

It has yet to be determined if the municipalities will appeal the ruling to the Supreme Court of Ohio



May 21, 2019

The Honorable Lou Terhar
Chairman
Senate Ways and Means Committee
Ohio Senate
1 Capitol Square
Columbus, OH 43215

Dear Chairman Terhar:

Since the inception of the commercial activity tax (CAT), The Ohio Manufacturers' Association, The Ohio Society of CPAs, Ohio State Bar Association, Ohio Chemistry Technology Council, Ohio State Medical Association, and Ohio Dental Association have been united in opposition to diluting the CAT base.

The CAT is a broad-based, low rate tax that applies to gross receipts from virtually all business activities conducted in Ohio. It was enacted to conform to the four main elements of sound tax policy: equality, simplicity of compliance, transparency, and minimal disruption in economic decisions. The CAT promotes equality in that it applies to virtually all business activity in the state. It is simple due to the minimal calculations needed to determine the tax base and relatively few credits or exclusions. It is relatively transparent, while there is some pyramiding that is ameliorated by the low rate. Finally, because of the broad base and low rate, it minimizes the intrusion of tax considerations in economic decisions.

Senate Bill 95 authorizes tax incentives for the operators and certain suppliers of a "megaproject," i.e., a development project with at least \$1 billion in investment or that creates at least \$75 million in Ohio payroll. One of the tax incentives is a CAT exclusion for gross receipts of a megaproject supplier from sales to a megaproject operator.

When the CAT was first enacted, there were few exclusions and credits from the CAT. The tax expenditure associated with those exclusions in 2010, the first year the tax was fully phased in, totaled approximately \$300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2018 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures, without consideration of the credits, is more than \$700 million! Thus, since its enactment, CAT credits and exclusions have doubled the amount of the tax expenditure.

□

The CAT was created to fix an archaic business taxing system in Ohio that was riddled with exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries.

Thank you for considering our position of preserving the broad-base, low-rate nature of the CAT with very few exclusions and weighing the potential consequences of new large credits.

Sincerely,

Rob Brundrett
The Ohio Manufacturers'
Association

Greg Saul
The Ohio Society of CPAs

Todd Book
Ohio State Bar Association

Joe Rosato
Ohio State Medical
Association

Jennifer Klein
Ohio Chemistry Technology
Council

David J. Owsiany
Ohio Dental Association

DEPARTMENT OF TAXATION

Income taxes

- Reduces income tax rates by 6.6%.
- Eliminates the lowest two income tax brackets, thereby reducing the number of brackets from seven to five.
- Reduces the amount of the business income tax deduction, from \$250,000 to \$100,000.
- Eliminates the special 3% flat tax on business income.
- Requires that income excluded under the business income deduction be “added back” when determining a taxpayer’s eligibility for means-tested tax benefits.
- Reduces the rate of a tax paid by certain pass-through entities on a percentage of its nonresident investors’ distributive income.
- Authorizes a pass-through entity to avoid withholding the tax if the investor affirms that it will remit state income tax as required by law.
- Extends, from 60 to 180 days, the time in which an individual must file an amended state return after an adjustment is made to the individual’s federal tax return.
- Modifies the timeline in which the Tax Commissioner must issue an assessment, or a taxpayer must apply for a refund, after an amended return is filed.
- Establishes reporting and payment procedures for pass-through entity owners whose state tax liability is affected by an IRS partnership level audit.
- Requires that, for purposes of school district income taxes that use “earned income” as the tax base, earned income includes business income that a taxpayer deducts under the special deduction for business income under the state income tax law.
- Repeals the income tax credit for contributions to campaigns for statewide office.
- Repeals the income tax credit for a pass-through entity investor’s share of the financial institutions tax (FIT).
- Authorizes a nonrefundable tax credit for a taxpayer that claims a federal work opportunity tax credit on the basis of employing an ex-felon.
- Authorizes the Director of Health to award nonrefundable income tax credits for up to \$10,000 in costs incurred to abate lead in an Ohio residence constructed before 1978.
- Limits the amount of credits that may be awarded to \$5 million per fiscal year.

Municipal income taxes

- Requires a municipal corporation to pay money to the Treasurer of State if the net distribution amount for the municipal corporation’s state-administered municipal income tax accounts is less than zero in any month.

- Allows the Tax Commissioner to recover unpaid amounts by reducing a delinquent municipal corporation's various state administered tax distributions.
- Requires the Director of Budget and Management to transfer money from the GRF to the Municipal Income Tax Fund in the event that the balance of the Municipal Income Tax Fund is not sufficient to cover the required monthly distributions from that fund.
- Creates a separate Municipal Net Profit Tax Fund to receive revenue solely from the state-administered municipal tax on business income.

Sales and use taxes

- Modifies the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax.
- Requires persons that own, operate, or control a physical or electronic marketplace through which retail sales are facilitated ("marketplace facilitators") to register as a seller and collect and remit the use tax due on all transactions facilitated through that marketplace.
- Changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from "nexus in this state" to "substantial nexus with this state" in order to obtain consistency with use tax law.
- Repeals several sales tax exemptions relating to the sale of flight simulators, shares of a fractionally owned aircraft, and services and parts used to maintain an aircraft.
- Repeals the sales tax exemption for sales of investment bullion and coins.
- Repeals the sales tax exemption for sales of vehicles, parts, and repair services to a professional motor racing team.
- Exempts from sales and use tax sales of equipment and supplies used to clean equipment that is used to produce or process food for people.
- Exempts from sales and use tax sales of supplies or services to clean machinery in a manufacturing facility.
- Specifies the manner by which transportation network company services, i.e., services rendered when a rider uses a digital network to arrange transportation with a driver, are subject to sales and use tax.
- Allows counties and transit authorities to levy their local sales and use taxes in increments of 0.05%.
- Requires a hotel intermediary – i.e., an online booking company – to collect and remit sales and lodging taxes based on the amount the hotel would have charged the customer for the same lodging.

- Specifies that a person is not a hotel intermediary if the person charges a customer for the service of arranging a hotel reservation but separately lists that charge on the customer's bill or invoice.
- Allows for the extension of an existing county lodging tax that is levied by a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees.

Property taxes

- Requires a school board or the legislative authority of a county, municipal corporation, or township, before filing a property tax complaint or counter-complaint, to pass a resolution approving the complaint or counter-complaint at a public meeting.
- Modifies the circumstances under which a county auditor must notify the property owner or a school board that a property tax complaint has been filed against a property.
- Disallows local tax issues and certain other local tax-implicated issues from being submitted to voters at August special elections.
- Allows school districts to submit property or income tax levies at August elections if the purpose of the tax is to avoid the conditions that would trigger a fiscal emergency.
- Authorizes the board of trustees of a state community college district to levy a property tax for permanent improvements, or a combination bond issuance and tax levy for that purpose.
- Authorizes the board of education of a school district to propose a tax levy for school safety and security and give some of the revenue to chartered nonpublic schools located in the district to be used for that purpose.
- Exempts from property tax the value of unimproved land subdivided for residential development in excess of the fair market value of the property from which that land was subdivided, apportioned according to the relative value of each subdivided parcel.
- Authorizes the exemption for up to three years or until construction begins or the land is sold.
- Modifies the calculation of rental income when determining eligibility for existing tax exemptions for property held or occupied by a fraternal or veterans' organization.
- Authorizes a partial real property tax exemption for child care centers that serve children from households that receive public assistance.
- Excuses community schools from the requirement to file annual applications with the Tax Commissioner as a condition of obtaining a property tax exemption.
- Restores a prior law allowing county developmental disabilities boards to request that the board of county commissioners establish a county developmental disabilities Medicaid reserve fund.

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

Financial institutions tax

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

Commercial activity tax

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

Income taxes

The bill includes several changes to Ohio's income tax, principally: a reduction in income tax rates, the elimination of the two lowest income tax brackets, a reduction in the business income deduction, and the elimination of the special 3% flat tax on business income.

Tax bracket elimination

Current law prescribes seven tiered tax brackets, with increasingly greater rates assigned to higher income brackets. For 2018, the lowest bracket begins at \$10,500 of adjusted gross income and the highest applies to income of \$210,600 or more. Individuals with an adjusted gross income of less than \$10,500 are exempt from the tax.⁹⁸

The bill eliminates the first two tax brackets (\$10,500-\$15,800 and \$15,800-\$21,000 for the 2018 taxable year). Beginning in 2019, individuals with an adjusted gross income of less than \$22,250 would be exempt from the tax. (Similar to current law, individuals with income of more than \$22,250 would still pay the tax on their first \$22,250 of income. That tax is reflected as a dollar amount added to the remaining tax brackets.)⁹⁹

Reduction in tax rates

The bill reduces the tax rates applicable to the remaining five tax brackets by 6.6%. Currently, the rates in those five brackets range from 2.969% to 4.997%. Under the bill, those rates would range from 2.773% to 4.667%.¹⁰⁰

⁹⁸ These income amounts reflect inflation-indexing adjustments for the 2018 taxable year.

⁹⁹ R.C. 5747.02(A)(3) and Section 757.150.

¹⁰⁰ R.C. 5747.02(A)(2) and (3) and Sections 757.150 and 757.160.

Taxation of business income

Business income deduction

The bill reduces the amount of the business income deduction. Under current law, a taxpayer may deduct the first \$250,000 of the taxpayer's business income from the taxpayer's adjusted gross income. The bill lowers the deduction to \$100,000. (For married taxpayers that file separate returns, the deduction is reduced from \$125,000 to \$50,000 for each spouse.)¹⁰¹

Elimination of 3% flat tax

Under current law, a 3% flat tax applies to all business income in excess of the amount excluded under the business income deduction. The bill eliminates this flat tax, and instead subjects business income to the same tiered tax rates that apply to nonbusiness income (i.e., the same tiered rates that the bill reduces by 6.6%).¹⁰²

Eligibility for tax benefits

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

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

Under current law, Business Owner would be eligible for several means-tested benefits, while Nurse would not. Such benefits include the homestead exemption (which has an income threshold of \$32,000 for 2018) and several income tax exemptions and credits, such as the \$20 personal exemption (which has an income threshold of \$30,000).

Under the bill, Business Owner would be required to add-back any amount taken as a business income deduction when determining eligibility for means-tested benefits. Consequently, for the purposes of those benefits, Business Owner's AGI would be considered to be \$250,000 and Business Owner would not be eligible for any of the means-tested benefits.¹⁰³

Reporting of business income tax revenue

The bill repeals a requirement that the Department of Taxation report to OBM the tax liability (before tax credits) attributable to the taxation of business income versus the amount

¹⁰¹ R.C. 5747.01(A)(31) and Section 757.150.

¹⁰² R.C. 5747.01(HH) and 5747.02(A)(4) and Section 757.150.

¹⁰³ R.C. 323.151, 5747.01(JJ), 5747.022, 5747.025, 5747.05, 5747.054, 5747.055, and 5748.01 and Section 757.150.

attributable to nonbusiness income. OBM then must separately list these figures when reporting revenue estimates to the Governor and General Assembly.¹⁰⁴

Pass-through entity withholding tax

(R.C. 5733.40, 5733.41, and 5747.41; Section 757.50)

Under continuing law, the Ohio income tax applies to income received by an owner or investor in a pass-through entity (PTE) from the PTE's business activities in the state. (Pass-through entities include S corporations, partnerships, and limited liability companies treated for federal income tax purposes like partnerships.) Under current law, in order to ensure collection of the tax from nonresident individuals and entities – which, aside from their ownership of the PTE, would not be required to file an individual tax return – a PTE is required to withhold the income tax due from its nonresident investors. This “withholding tax” is imposed directly on the PTE, even though the underlying tax liability belongs to the investors.

The bill makes two changes to the withholding mechanism for collecting tax on PTE investor income. First, the bill lowers the rates at which PTEs remit taxes on investor income from 5% to 3% for individual investors and from 8.5% to 3% for nonindividual investors. The bill does not change an existing alternative means for a PTE to report and pay income taxes owed by its noncorporate investors: a PTE may file a composite return (Form 4708) covering its investors and pay tax for them at the highest of the graduated tax rates for nonbusiness income (4.997% currently, reduced to 4.667% by the bill).

Second, the bill expands the set of circumstances under which a PTE may be excused from the withholding tax for an investor. Under the bill, a PTE does not have to pay tax on the basis of a nonresident individual who has filed a statement with the PTE irrevocably agreeing that they are subject to the state's tax jurisdiction and will make a good faith effort to comply with all applicable tax reporting and payment requirements on their own behalf. Currently, a PTE may be excused from the withholding tax for a nonresident individual investor only if the PTE itself agrees to report and pay tax on the investor's behalf by filing the composite return, Form 4708.

The bill also adds a “catch-all” category of investors for which a PTE need not pay the withholding tax. The category includes any investor not otherwise covered by any other withholding tax exemption that irrevocably agrees, in a statement filed with the PTE, that it is subject to the state's taxing jurisdiction and will make a good faith effort to comply with the investors tax reporting and payment requirements on their own behalf.

This pass-through entity withholding tax modifications apply to a PTE's taxable years beginning on or after January 1, 2019.

¹⁰⁴ R.C. 5747.031.

Individual amended returns

(R.C. 5747.10; Section 757.70)

The bill extends, from 60 to 180 days, the time in which an individual must file an amended state return after an adjustment is made to the individual's federal tax return.

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

Timeline for assessments

If the changes result in more tax due, a payment must accompany the amended return. If the individual does not pay the additional tax, the Tax Commissioner may issue an assessment to collect the tax.

Under current law, the Commissioner must generally issue an assessment within four years after the date the amended return was filed or was due, whichever is later. The bill adds that, if a taxpayer fails to file an amended return or federal adjustments report (see below, "**Partnership level audits**"), omits information on a report, or understates the tax due on a report, the Commissioner has six years to issue an assessment. As under current law, an exception applies if the taxpayer's actions were fraudulent – in such cases, there is no time limit on issuing an assessment.

Timeline for refunds

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

Under the bill, a taxpayer is required to file a refund application either before the general deadline to apply for refunds (four years from the date of the overpayment) or one year after the date the taxpayer was required to file the amended return, whichever is later.

Partnership level audits

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

Federal partnership level audit changes

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

Under continuing law, partnerships file a federal tax return on their partners' behalf, but each partner separately reports and pays the partner's share of the entity's tax liability on the partner's own return. Before the BBA, audits functioned similarly – a partnership could be

audited at the entity level, but, generally, any increase or decrease in tax liability was “passed through” to each partner’s return and taxes were collected at the partner level.

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

Partnerships may elect to “push out” the tax liability to individual partners, in which case the liability shifts from the entity level to the individual partner level. In addition, certain partnerships may elect to “opt out” of the new BBA rules, and instead operate under the rules in place before the BBA.¹⁰⁵

New state procedures

The bill prescribes new procedures in response to this change in federal law. The new procedures closely mirror those drafted in a model statute adopted by the Multistate Tax Commission.¹⁰⁶

Under the bill, the default method for reporting changes in state tax liability arising from a federal audit is similar to the federal “push out” procedure. First, the audited partnership must report the changes in federal liability (“adjustments”) to the Tax Commissioner, notify each partner of the partner’s share of the adjustments, and submit an amended return that includes any additional tax that would have been due with the entity’s return if the items requiring adjustment had been reported correctly. Each partner is then responsible for filing a separate report and paying any additional tax due (less any amount already paid by the partnership on the partner’s behalf).

However, a partnership may elect to pay the additional tax liability directly, at the partnership level. Under this election, the partnership pays an amount “in lieu of” the taxes due from its partners: the amount generally equals the portion of the partnership’s federal adjustments that can be apportioned to Ohio (but includes a resident direct partner’s entire share of the adjustments), multiplied by the state’s highest income tax rate (currently, 4.997%).

Under this election, a partnership might pay more than the actual tax due from each partner as a result of the federal adjustments, but the partners avoid the administrative burden of each filing a separate report with the Department of Taxation. If the election is made, a partner may not, later, file an amended return to receive a refund of the difference between the amount paid on the partner’s behalf and the amount actually due from that partner. In addition, the election is irrevocable, unless the Tax Commissioner determines otherwise.

The bill also allows a partnership to request an alternative reporting and payment method, which the Tax Commissioner may approve at his or her discretion.

¹⁰⁵ Internal Revenue Code Subtitle F, Chapter 63, Subchapter C. Generally, to opt out, the partnership must have fewer than 100 partners and each partner must be a qualifying individual or entity.

¹⁰⁶ The model statute is available at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

Partnership representative

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

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

Application date

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

School district income tax base

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

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

Under continuing law, school districts that levy an income tax may use Ohio adjusted gross income (OAGI) or “earned income” as a tax base. “Earned income” includes compensation and self-employment earnings, but only to the extent that such income is included in OAGI. In computing their OAGI, taxpayers may deduct up to \$100,000 of their business income (the current deduction is up to \$250,000; see “**Business income deduction**,” above). Under current law, the deducted amount must be added back when computing the taxable income of taxpayers in school districts that use OAGI as a base, but not in districts that have an earned income tax base.

This change applies beginning for taxable years commencing in 2019.

Tax credit repeal

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

The campaign contribution tax credit is a nonrefundable credit for contributions made to the campaign committees of candidates for a statewide office (e.g., governor or member of the General Assembly). The credit cannot exceed \$50 per individual taxpayer.¹⁰⁷

The second credit repealed by the bill allows a taxpayer that owns a pass-through interest in a financial institution to claim an income tax credit that offsets the owner’s share of

¹⁰⁷ R.C. 5747.29.

the institution's FIT tax payments. The refundable credit equals the owner's proportionate share of the lesser of the FIT due or paid during the taxable year.¹⁰⁸

The credits are repealed for taxable years beginning in 2019 or thereafter.¹⁰⁹

Income tax credit for hiring ex-felons

(R.C. 5747.73 and 5747.98; Section 757.120)

The bill authorizes a nonrefundable income tax credit for a taxpayer that is eligible for the federal work opportunity tax credit (WOTC) for employing a qualified ex-felon, i.e., an individual convicted of a felony that is hired by the employer within one year after the individual is released from prison. The federal WOTC equals 40% of the first-year wages, up to \$6,000, paid to that employee.¹¹⁰ Thus, the maximum federal credit equals \$2,400. The new state credit equals 30% of the taxpayer's federal WOTC, making the maximum state credit \$720 per ex-felon employed. Any unclaimed balance may be carried forward for seven years.

Lead abatement income tax credit

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

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

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

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

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

¹⁰⁸ R.C. 5747.65.

¹⁰⁹ R.C. 5747.01, 5747.02, and 5747.98; Section 757.150.

¹¹⁰ Internal Revenue Code section 51.

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

The taxpayer may claim, for the taxable year in which the certificate is issued, a nonrefundable income tax credit equal to the amount stated on the certificate. Any unclaimed balance may be carried forward for up to seven years. Upon request, the taxpayer must furnish the Commissioner with documentation verifying the taxpayer's credit eligibility.

State administration of municipal income taxes

Beginning in 2018, continuing law allows businesses (other than sole proprietors) to choose between filing a separate tax return for each municipal corporation in which the business operates and filing a single return with the Department of Taxation that covers the business' total tax liability to all municipalities. Each municipality continues to administer its tax on businesses that choose to file separate returns. The Department assumes all aspects of administering the taxes of businesses that choose to file a single return. The Tax Commissioner is required to distribute municipal income tax revenue on a monthly basis, after deducting 0.5% of such revenue to cover the Department's administrative expense.

Net distribution deficiency

(R.C. 718.83, 321.24, and 5747.05; Sections 812.20 and 815.10)

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

The bill exempts the provision from the referendum, causing the provision to take effect immediately upon becoming law.

Municipal Net Profit Tax Fund

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

The Department of Taxation currently administers two income taxes on behalf of municipal corporations. Beginning in 2018, businesses may file their municipal income taxes centrally with the Department. In addition, the Department administers a separate municipal income tax on electric and telephone companies.

Under current law, revenue from both taxes is deposited into a single Municipal Income Tax Fund. The bill creates a separate fund – the Municipal Net Profit Tax Fund – to receive revenue from the state-administered municipal tax on business income. Revenue from

municipal taxes on electric and telephone companies will continue to be credited to the Municipal Income Tax Fund.

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

Sales and use taxes

Use tax collection

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

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

Substantial nexus

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

Background

The authority of states to require out-of-state sellers to collect and remit taxes is limited by the Commerce Clause of the U.S. Constitution. The U.S. Supreme Court held in *Complete Auto Transit v. Brady* that taxation of interstate commerce is permissible only if (1) the seller has a substantial nexus with the taxing state, (2) the tax is fairly apportioned, (3) the tax does not discriminate against interstate commerce, and (4) the tax is related to the services the state provides.¹¹¹

The first component of the *Complete Auto Transit* test, requiring a substantial nexus with the taxing state, is the subject of frequent litigation. In the abstract, "substantial nexus" is a connection or link between a seller and the taxing state that is sufficient to justify requiring the seller to collect and remit use tax to that state. Until recently, the controlling precedent on the subject was *Quill Corp. v. North Dakota*. In that case, the U.S. Supreme Court reaffirmed a standard that requires a physical presence by the seller in the taxing state to establish substantial nexus.¹¹² Most states, including Ohio, tailored their sales and use tax collection requirements for out-of-state sellers in conformance with the *Quill* standard.

¹¹¹ 430 U.S. 274, 279 (1977).

¹¹² 504 U.S. 298 (1992).

The U.S. Supreme Court overturned the *Quill* standard in a 2018 case, *South Dakota v. Wayfair, Inc.* In that case, the Court determined that substantial nexus is not established by physical presence, but instead when the seller avails itself of the privilege of carrying on business in the taxing state. In its decision, the Court declined to strike down South Dakota's substantial nexus standard which requires out-of-state sellers that engage in a high volume of sales into the state to collect and remit the state's sales tax irrespective of whether the sellers have a physical presence in the state.¹¹³

Ohio's standard

Ohio law requires out-of-state sellers to collect and remit use tax on sales into the state to the maximum extent permissible under the Commerce Clause of the U.S. Constitution. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.¹¹⁴

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

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

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

¹¹³ ____ U.S. ____, 138 S.Ct. 2080.

¹¹⁴ R.C. 5741.12(B), not in the bill.

Marketplace facilitators

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

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

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

Substantial nexus

The general standard for determining whether a marketplace facilitator has substantial nexus with Ohio is the same as for other sellers (i.e., to the fullest extent allowable under the Commerce Clause of the U.S. Constitution). However, the bill prescribes only two examples of activities that, if done in the current or preceding calendar year, are sufficient to establish a presumption of substantial nexus for a marketplace facilitator: (1) obtaining gross receipts in excess of \$100,000 from sales made or facilitated into Ohio, or (2) making or facilitating 200 or more separate sales into Ohio. These presumptions are identical to the presumptions added by the bill for other sellers except that, for marketplace facilitators, direct sales and sales facilitated on behalf of marketplace sellers are treated cumulatively. As with other sellers, the presumption of substantial nexus may be overcome if the marketplace facilitator demonstrates that the activities are not significantly associated with the marketplace facilitator’s ability to establish or maintain the Ohio market.

Meaning of “facilitated”

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

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

Destination-based sourcing

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

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

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

Liability relief

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

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

Audits

The bill prohibits the Tax Commissioner from auditing any person other than the marketplace facilitator respecting sales for which the marketplace facilitator is required to collect and remit use tax. Under current law, the Commissioner may audit either the seller or the consumer if the Commissioner has information that indicates that the amount of use tax paid is less than what is due. The bill specifies that marketplace sellers and consumers remain personally liable for unpaid use tax if the marketplace facilitator is relieved of liability for a particular transaction.

Class action lawsuits

The bill prohibits any person from filing a class action lawsuit related to an overpayment of use tax against a marketplace facilitator on behalf of consumers. Under continuing law, consumers may seek a refund of overpaid use tax from the Tax Commissioner.¹¹⁵

Tobacco products tax

The bill changes the phrasing of three nexus-related references in current law involving sellers of tobacco products from “nexus in this state” to “substantial nexus with this state” in order to obtain consistency with R.C. 5741.01. The current tobacco products language expressly references the definition of “nexus” in R.C. 5741.01, so the distinction between the two standards was likely unintentional. However, logic suggests that demonstrating a seller has “nexus” in Ohio is a lower bar to clear than demonstrating that the seller has “substantial nexus” with the state. So the change is substantive rather than technical.

Repeal of sales tax exemptions

The bill repeals the following sales tax exemptions, beginning October 1, 2019:

- An exemption for sales of flight simulators used for pilot or flight crew training. The exemption also includes sales of repair or maintenance parts and services for such simulators.
- An exemption for sales of investment bullion and coins.
- An exemption for services and parts used to maintain and repair an aircraft.
- An \$800 cap on the sales tax that may be charged on sales of shares of a fractionally owned aircraft (e.g., NetJets).
- An exemption for the sale of services and parts used to maintain and repair a fractionally owned aircraft.
- An exemption for sales of vehicles, parts, and repair services to qualified motor racing teams. To qualify, the racing team must employ at least 25 full-time employees and conduct its business with the purpose of competing in at least ten professional racing events per year.¹¹⁶

Sales tax exemption for food manufacturing equipment

(R.C. 5739.011)

The bill expands a sales tax exemption for equipment and supplies used to clean other equipment that is used to produce or process food for people. The existing exemption applies only if the food being produced or processed is a dairy product.

¹¹⁵ R.C. 5741.10, not in the bill.

¹¹⁶ R.C. 122.175, 5739.01, 5739.02(B)(38), (44), (49), (50), and (54), 5739.025, and 5739.05; Section 757.140.

Exemption for manufacturing cleaning supplies and services

(R.C. 5739.011(B)(14); Section 757.140)

The bill exempts from sales and use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility by categorizing those supplies and services with other exempt purchases used primarily in manufacturing operation to produce items for sale. These cleaning supplies and services are not currently categorized as exempt manufacturing operation purchases, except for equipment used to clean dairy processing equipment.

The exemption applies on and after October 1, 2019.

Taxation of transportation network company services

(R.C. 5739.01(B)(3)(r), (C), (H)(5), and (RRR); Sections 757.60, 757.130, and 757.140)

Current law subjects to sales and use tax sales of services by which a person is transported by motor vehicle or aircraft within Ohio. The bill specifies how sales and use tax applies to a subcategory of these “transportation services.” Specifically, the bill prescribes the manner by which sales and use tax is assessed against “transportation network company services,” which are rendered when a rider uses a digital network to arrange transportation with a driver, e.g., a ride-hailing application such as Uber or Lyft.

First, the bill specifies that the company furnishing the digital network, e.g., Uber or Lyft, is the vendor required to collect and remit sales and use taxes, rather than the driver. Second, the bill specifically excludes from the taxable price of such services any fees charged for the service other than base fares or fees based on distance or time. Excluded fees include airport access fees, booking fees, and tolls.

Finally, the bill provides that such services are only subject to sales or use tax if the rider is picked up and dropped off in Ohio. Under current law, such services are subject to tax only if the transportation occurs entirely within Ohio.

These modifications apply beginning October 1, 2019.

Local sales and use tax rate increments

The bill allows counties and transit authorities to levy their local sales and use taxes in rate increments of 0.05%. Currently, a county or transit authority may levy or increase a rate only in increments of 0.1% or 0.25%.¹¹⁷

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

¹¹⁷ R.C. 5739.021, 5739.023, and 5739.026. The 0.1% increment was authorized recently, in H.B. 69 of the 132nd General Assembly. Before July 1, 2018, rates could only be levied in increments of 0.25%.

Taxation of hotel intermediaries

(R.C. 5739.01(H)(6), (SSS), and (TTT))

Under continuing law, state, county, and transit authority sales and use taxes apply to hotel stays of less than 30 consecutive days. For the purposes of those taxes, a hotel includes any place having at least five rooms available for sleeping accommodations. Generally, the taxes are collected from a customer at the time the customer pays for the room and are remitted to the state by the hotelier. The bill prescribes a method by which sales and use taxes are collected and remitted when the customer arranges for the hotel stay through a “hotel intermediary.”

The bill requires a hotel intermediary to collect sales or use taxes from a customer based on the price the hotel itself would have charged for the same lodging. Under current law, sales and use tax is based on the “total amount of consideration . . . for which . . . [the lodging] services are sold.”

A hotel intermediary is defined as a person that enters into arrangements to sell hotel reservations. “Hotel intermediary” does not include a hotel or a person receiving a commission from a hotel to arrange a reservation (e.g., travel agent). In addition, a person is not considered a hotel intermediary if the person charges a customer for arranging a reservation but separately lists that charge on the customer’s bill or invoice.

Local lodging taxes

(R.C. 351.021, 353.06, 5739.082, and 5739.09(O))

The bill similarly modifies the law authorizing lodging taxes to be levied by local subdivisions. Under continuing law, counties, townships, municipal corporations, convention facilities authorities, and lake facilities authorities have limited authority to levy “lodging” or “bed” taxes on hotel stays. The local lodging taxes apply to the same hotel transactions the state, county, and transit authority sales and use taxes apply to, except that a county lodging tax can be applied to hotels with fewer than five rooms and to separate cabin-type accommodations spread among several structures.

Similar to the bill’s change to sales and use taxes on lodging, the bill requires a hotel intermediary to collect lodging taxes from a customer on the basis of the price the hotel would have charged for the same lodging.

The bill also specifies that a hotel intermediary must collect from the customer and remit local lodging taxes to the subdivision levying the tax.

Application date

(Section 757.180)

The bill’s hotel intermediary provisions apply beginning on the first day of the first month after the bill’s 90-day effective date.

Lodging tax

Counties, townships, municipal corporations, and certain convention facilities authorities are authorized to levy lodging taxes. In general, the maximum lodging tax rate permitted in any location is 6%. Municipalities and townships may levy a lodging tax of up to 3%, plus an additional 3% if they are not located, wholly or partly, in a county that already levies a lodging tax. Counties may levy a lodging tax of up to 3%, but only in municipalities or townships that have not already enacted an additional 3% levy. On occasion, the General Assembly has authorized certain counties to levy additional lodging taxes for special purposes.

Unless specifically authorized otherwise, a county that levies a lodging tax must return up to one-third of its net lodging tax revenue to the municipalities and townships within the county that do not levy a lodging tax. The remaining revenue must be used to support a convention and visitors' bureau. The bureau must generally use the revenue for tourism sales, marketing, and promotion.

For county agricultural societies

(R.C. 5739.09(L))

Continuing law authorizes an additional lodging tax of up to 3% for a county that hosts, or that has an independent agricultural society that hosts, an annual harness horse race with at least 40,000 one-day attendees. The additional lodging tax revenue must be used by the county to pay for the construction, maintenance, and operation of permanent improvements at sites where the agricultural society conducts fairs or exhibits. The additional tax is proposed by resolution of the board of county commissioners and is subject to voter approval. The county is not required to return any portion of the additional tax revenue to townships or municipal corporations.

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

Property taxes

Local government challenges to property tax assessments

(R.C. 5715.19; Section 757.190)

Filing of property tax complaints

The bill requires that, before a school district or other political subdivision may file a property tax complaint or counter-complaint with respect to property the political subdivision does not itself own, the school board or legislative authority must first adopt a resolution authorizing the complaint or counter-complaint. The bill also modifies the circumstances under which a county auditor must notify the property owner or a school board that a property tax complaint has been filed against a property.

Under continuing law, property tax complaints may be initiated by property owners, an owner's spouse, certain agents of the owner or spouse, a county treasurer or prosecuting attorney, the mayor of a municipal corporation, a school board, or the board or legislative authority of a county, township, or municipal corporation. Such complaints may challenge a property's value as assessed for tax purposes or its classification as residential/agricultural or commercial/industrial for "H.B. 920" tax reduction purposes, as agricultural property eligible for current agricultural use valuation (CAUV), or as nonbusiness property eligible for the 10% rollback. Complaints also may challenge recoupment charges imposed for conversion of CAUV land to nonagricultural use. The vast majority of property tax complaints challenge a property's assessed value.

Complaints are heard before the county board of revision. Generally, a party may initiate a complaint with respect to a particular parcel only once in each three-year period between a reappraisal or assessment update (the "interim period") unless certain events have occurred in the meantime, such as the property having been sold.

Once a complaint has been initiated, a counter-complaint may be filed in response by a school board or, if the owner did not initiate the complaint, by the owner, spouse, or their authorized agent. For example, if a property owner initiates a complaint to reduce the assessed value of the property, a school board may respond with a counter-complaint defending the assessed value or alleging a different value.

Approval of complaints

Under the bill, before filing a property tax complaint or counter-complaint, a school board or legislative authority that is permitted by law to file a complaint or counter-complaint must first adopt a resolution approving the action at a public meeting. Similarly, before a complaint may be filed by a mayor, the municipal legislative authority must first adopt such a resolution. The resolution must identify the parcel number and, if available in the county auditor's online records, the address of the parcel that is the subject of the complaint or counter-complaint, include the name of an owner, and, if the board or legislative authority is initiating a complaint, the basis for that complaint (e.g., assessed value, tax classification, CAUV status). A single resolution is confined to identifying a single parcel or multiple parcels under common ownership.

Before adopting such a resolution, the board or legislative authority must send written notice by certified mail to one of the property owner's last known property tax-mailing address and, if different, to the property's street address. Alternatively, the notice may be sent to the owner by ordinary mail if it is also sent electronically to the owner. The notice must declare the intent of the board or legislative authority to adopt the resolution and state the proposed date of adoption and, if the resolution is initiating a complaint, the basis for the complaint. The notice must be postmarked at least 14 days before the resolution is scheduled to be adopted.

The board or legislative authority may adopt one or more of these resolutions by a single vote, provided no other type of resolution addressing a different matter is adopted pursuant to that same vote. A copy of the resolution must be filed with the board of revision no later than 30 days after the last day the complaint or counter-complaint against that property

may be filed. (The general deadline for filing complaints is March 31; counter-complaints are generally required to be filed no later than 60 days later.) If the resolution is not timely filed, the board of revision does not have jurisdiction and must dismiss the complaint or counter-complaint, although the board retains jurisdiction and may not dismiss the complaint if the sole error is that the resolution or notice fails to correctly identify the property's owner or the street address. (Continuing law similarly prohibits a board of revision from dismissing a complaint that fails to correctly identify a property's owner.)

Complaint form

The bill requires any property tax complaint form prescribed by a board of revision or the Tax Commissioner to include a box that a board, legislative authority, or mayor filing the complaint may check to certify that the board or legislative authority or, in the case of a mayor, the municipal legislative authority, has adopted a resolution authorizing the complaint and provided notice of the resolution to the property owner, when applicable under the bill's new requirements.

Counter-complaint threshold

Under continuing law, when a property owner initiates a complaint to reduce the assessed value of the owner's property, a school board may respond with a counter-complaint defending the assessed value or alleging a different value, or vice versa. The county auditor must notify a school board or property owner whenever a property owner or school board, respectively, alleges a change in value of at least \$50,000 in fair market value (\$17,500 in taxable value). However, a school board or property owner can file a counter-complaint against any initial complaint, regardless of the change in value alleged, but will not be notified of the initial complaint by the auditor. (However, the property's owner will eventually receive notice from the board of revision that a complaint has been filed against the property ten days or more before the scheduled hearing.)

The bill specifies that multiple complaints filed with respect to parcels that are part of the same "economic unit" must be treated as a single complaint and aggregated for purposes of calculating this \$17,500 taxable value notice threshold. An "economic unit" is property that includes multiple parcels, but that is united by an economic function such that it would normally be sold as a single property. The property need not be contiguous, nor owned by the same person, but must be managed and operated on a unitary basis.

Effective date

The bill's requirements apply to any complaint or counter-complaint filed for tax year 2019 or any later tax year.

Local issues at August special elections

(R.C. 3501.022, 133.06, 133.18, 306.32, 306.321, 306.322, 306.70, 307.695, 307.697, 323.17, 349.14, 505.14, 505.20, 505.47, 511.27, 511.28, 511.34, 703.20, 707.30, 715.38, 715.691, 715.70, 715.71, 715.72, 718.04, 718.09, 718.10, 1545.041, 1545.21, 3311.21, 3311.213, 3311.22, 3311.231, 3311.26, 3311.50, 3313.38, 3313.911, 3318.06, 3318.061, 3318.063, 3318.361, 3354.02, 3354.12, 3357.02, 3357.11, 3381.03, 4301.421, 4301.424, 5705.191,

5705.192, 5705.194, 5705.199, 5705.21, 5705.211, 5705.212, 5705.213, 5705.217, 5705.218, 5705.219, 5705.2111, 5705.2112, 5705.221, 5705.222, 5705.23, 5705.233, 5705.24, 5705.25, 5705.251, 5705.261, 5705.55, 5705.72, 5739.021, 5739.026, 5739.028, 5739.09, 5743.021, 5743.024, 5743.026, 5748.02, 5748.021, 5748.08, and 5748.09; Section 130.23)

The bill prohibits tax and certain other issues proposed by local governments from being placed on an August special election ballot, with one exception for school districts, described below. The bill does not prohibit those questions from appearing on the ballot at a November general election or a primary election. (Primary elections – elections to nominate candidates for public and political offices – are held in May or, in a presidential election year, March.) Any tax-related question currently authorized to be proposed at either or both of those elections may continue to be proposed at those elections. The bill’s prohibitions on August special elections apply to all of the following issues proposed by a local government:

- A property tax levy proposed by a taxing authority, including any proposal to renew or replace an existing levy. (Under current law, some, but not all, types of voted property tax issues may appear on the August special election ballot.)
- Certain sales taxes proposed by a county.
- A sales tax proposed by a transit authority.
- An income tax proposed by a school district, including a combined income tax and property tax.
- An income tax proposed by a municipal corporation.
- County lodging tax proposals that require voter approval.
- A liquor or alcoholic beverage tax levied by a county.
- A cigarette excise tax levied by a county.
- Whether to create a subdivision in which a tax may be levied or to add territory to an existing taxing subdivision, including a referendum to oppose the subdivision’s creation or expansion.
- Whether to dissolve a village, as proposed by the village or a petition submitted by residents, or to dissolve a new community authority.
- Whether to extend a municipal corporation’s income tax to a Joint Economic Development Zone (JEDZ) or Joint Economic Development District (JEDD).

This prohibition applies to any election held on or after the 100th day after the bill’s 90-day effective date.

Exception: school district tax levies

(R.C. 5705.214 and 5748.07)

School boards would continue to be permitted to submit property or income tax issues to voters at an August special election if the purpose of the levy is to prevent the conditions that would qualify the school district for fiscal emergency status.

Under continuing law (R.C. 3316.03(B)), the Auditor of State may declare a school district to be in fiscal emergency if the Auditor finds that any of the following conditions exist:

- The forecasted operating deficit for the current fiscal year exceeds 15% of the school district's general fund revenue for the preceding fiscal year, and the district has not passed a levy to eliminate the deficit in the succeeding fiscal year.
- A school district in fiscal watch fails to submit a recovery plan that is acceptable to the Department of Education (ODE).
- A school district in fiscal watch is not materially complying with the provisions of an original or updated recovery plan and the ODE has determined that declaration of a fiscal emergency is necessary to prevent further fiscal decline.
- A school district in fiscal watch has restructured certain debt and the school district further experiences an operating deficit, fails to satisfactorily comply with the terms of the recovery plan, or fails to submit an acceptable updated plan when required.
- The forecasted operating deficit for the current fiscal year is between 10% and 15% of the school district's general fund revenue for the preceding fiscal year, the district has not passed a levy to eliminate the deficit in the succeeding fiscal year, and the Auditor determines that declaring a fiscal emergency is necessary to correct the district's fiscal problems and to prevent further fiscal decline.

State community college permanent improvements levy

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

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

Under continuing law, a state community college district is a political subdivision created by the Ohio Board of Regents upon receiving a proposal from a technical college district or a state university or upon a proposal by boards of county commissioners or initiative petition. The purpose of the district is to establish, own, and operate a state community college. It is governed by a board of trustees consisting of nine members appointed by the

Governor. The territory of the district is composed of the territory of a county, or of two or more contiguous counties. The district must have a population of at least 150,000.¹¹⁸

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

Tax levy for safety and security of private schools

(R.C. 5705.21(F))

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

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

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

Exemption of residential development property

(R.C. 5709.54)

The bill exempts from property tax a portion of the value of land subdivided for residential development for up to five years (see “**Exempted portion,**” below). Specifically, the exemption applies to any unimproved parcel subdivided pursuant to a plat and on which

¹¹⁸ R.C. 3358.01, not in the bill.

construction of residential buildings, e.g., single- or multi-family dwellings, is planned but has not started (referred to in the bill as “pre-residential development property”). The exemption applies beginning with the tax year in which the subdivided parcel first appears on the tax list, but no sooner than the tax year that includes the provision’s effective date.

The exemption applies for at least three, but no more than five, tax years; the exemption ends at the end of three years unless a reappraisal year does not occur in that three-year period, in which case the exemption continues until the next sexennial reappraisal. However, if the parcel is sold or construction of a residential building begins during the exemption period, the exemption ceases to apply to the tax year following the year in which either event occurs. The bill specifies that residential construction is not deemed to have begun solely on the basis of streets, sidewalks, curbs, driveways, or water, sewer, or other utility lines having been constructed or installed. Also, if title to the parcel is transferred without payment of any money or other consideration, the transfer would not be considered a sale that terminates the exemption.

Exempted portion

The bill exempts the value of each subdivided parcel in excess of a portion of the “true,” or fair market value of the parcel from which each such parcel was subdivided (in the bill’s terms, the larger parcel is the “original property”).

Under continuing law, real property is valued according to its “fair market value,” which, generally, is the unconditioned price the property would sell for in an arm’s length sale, or the price for which it has in fact been sold recently in such a sale. However, certain agricultural land may alternatively be valued according to the land’s current agricultural use value (CAUV), which is the estimated value of the land based on its income-producing potential as farmland. County auditors must appraise the fair market value of CAUV land even though the land is taxed according to its CAUV.

Regardless of whether the original property was valued according to its fair market value or CAUV, the bill attributes a base, taxable value to each parcel resulting from the subdivision since a subdivided parcel would not have had its own individual assessed value before it was subdivided. This base value (“unexempted value” in the bill’s terms) equals the original property’s fair market value apportioned to each subdivided parcel according to the parcel’s appraised value once the subdivision occurs in proportion to the total of the appraised values of all parcels resulting from the subdivision.

For example, if original property having a CAUV of \$46,000 and an appraised fair market value of \$100,000 is subdivided into two residential development parcels that, once the subdivision occurs, are assessed at a fair market value of \$50,000 and \$75,000, the unexempted values are \$40,000 and \$60,000, respectively, since the first parcel’s assessed value is two-thirds of the second’s value. The bill would exempt the value of the first parcel in excess of \$40,000 and the value of the second parcel in excess of \$60,000, which combined equals the original property’s \$100,000 fair market value. If the exemption continues until another reappraisal or assessment update occurs – i.e., no construction has begun and the property has

not been sold in the meantime – the new assessed value of each parcel would be exempted to the extent that it exceeded the parcel’s unexempted value of \$40,000 or \$60,000.

The bill accounts also for how the exemption applies if a residential development parcel that resulted from a prior subdivision is itself further subdivided. In such a case, the exemption continues to apply to the new parcels resulting from the later subdivision, with each of the new parcels having an unexempted value that is a proportion of the unexempted value of the larger parcel from which it was most recently subdivided; the proportion is based on each new parcel’s appraised value relative to the total appraised value of all the new parcels.

The bill specifies that the partial exemption does not create a new method for valuing property for tax purposes and reaffirms that fair market value and CAUV are the only two authorized valuation methods.

Real property tax valuation, generally

Under continuing law, the value of each parcel of real property is appraised for tax purposes and is entered as a separate entry on the tax list. The appraisal is supposed to approximate the fair market value or, if applicable, the CAUV of the parcel.¹¹⁹ Each parcel is so valued as of January 1 of each year (the “tax lien date”). When a parcel is subdivided into several parcels, each new parcel is then valued as a separate unit.

The subdivision of land itself might cause the aggregate appraised true values of the new parcels to exceed the appraised true value of the original parcel before it was subdivided, because the subdivision itself might influence the market value of the land or make the land ineligible for CAUV. Also, the appraised value of any parcel, subdivided or not, may change because of market factors or changes in the CAUV formula without the parcel itself undergoing any construction or other physical change.

Exemption application

A parcel’s owner is required to apply annually to the Tax Commissioner for the bill’s exemption, as with other property tax exemptions. However, as part of an exemption application for pre-residential development property, the owner must expressly certify that the parcel qualifies as such.

Fraternal and veterans’ organization exemptions

(R.C. 5709.17; Section 757.90)

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

¹¹⁹ R.C. 5713.01, 5713.03, and 5713.31, not in the bill; Article II, Section 36 and Article XII, Section 2, Ohio Constitution; see also *State, ex rel. Park Investment Co. v. Board of Tax Appeals*, 175 Ohio St. 410 (1964).

fraternal organizations. Similarly, for purposes of qualifying for the veterans' organization exemption, the bill excludes rent received from other veterans' organizations in determining whether or not the rental income produced by the property exceeds that limit.

These modifications apply beginning in tax year 2019.

Partial property tax exemption for child care centers

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

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

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

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

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

Local governments are not reimbursed by the state for revenue lost as a result of the partial exemption.¹²⁰

Community school property tax applications

(R.C. 5713.08 and 5715.27)

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

¹²⁰ R.C. 319.302, 323.155, and 323.16; Section 757.100.

Under continuing law, property used for an educational purpose, including such community school property qualifies for a property tax exemption.¹²¹ Current law, with only a few exceptions, requires property owners to apply annually to either the Tax Commissioner or the county auditor to obtain an exemption for the tax year.¹²² The Commissioner or county auditor evaluates and decides whether to approve the exemption.

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

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

County developmental disabilities Medicaid reserve fund

(R.C. 5705.091)

The bill allows county developmental disabilities boards to request that the board of county commissioners establish a county developmental disabilities Medicaid reserve fund, which may be used for providing services to individuals with developmental disabilities, or to ensure the availability of adequate funds in the event a county property tax levy for developmental disabilities services fails.

Such revenue funds were authorized under a prior law until 2006, when the authority was eliminated.

Property tax abatement for certain municipal property

(Section 757.170)

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

To qualify, the property must be owned by a municipal corporation that, within the past 25 years (1) was part of a federal disaster area declared due to severe storms or flooding and (2) following that declaration, obtained the title to property pursuant to the terms of a hazard

¹²¹ R.C. 5709.07(A).

¹²² The current exemption application, prescribed by the Department of Taxation, is DTE 23, which may be accessed online at https://www.tax.ohio.gov/portals/0/forms/real_property/DTE_DTE23.pdf.

mitigation grant from the Federal Emergency Management Agency (FEMA). The property must also currently be used for an exempt purpose.

The application for exemption and abatement must be filed with the Tax Commissioner within 12 months of the provision's effective date.

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

Financial institutions tax

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

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

Limitation on tax base

For tax years beginning in 2020 or thereafter, the bill limits the tax base upon which the FIT is computed for any financial institution having total equity capital in excess of 14% of its total assets. Total equity capital in excess of 14% of an institution's total assets would not be included in the FIT base. In other words, if total equity capital exceeds 14% of total assets, only the amount of equity capital equal to 14% of assets would be apportioned to Ohio on the basis of the institution's gross receipts and multiplied by the applicable tax rates.

An institution's total assets are derived from information that must be filed with federal regulatory authorities (i.e., FR Y-9 or call reports), as is an institution's total equity capital.

Technical amendment

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

Commercial activity tax

CAT administrative expense earmark

(R.C. 5751.02; Section 812.20)

The bill reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.75% to 0.65%, beginning July 1, 2019. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures." H.B. 49 of the 132nd General Assembly previously reduced the earmark from 0.85% to 0.75% beginning July 1, 2017.

Temporary historic rehabilitation CAT credit

(Section 757.40)

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

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



May 23, 2019

The Honorable Matt Dolan
Chairman, Finance Committee
Ohio Senate
1 Capitol Square, 1st Floor
Columbus, OH 43215

RE House Bill 166 – OMA Written Interested Party Testimony: Taxation

Dear Chairman Dolan:

I write to provide written testimony relative to four tax provisions, three of which are in the House-passed version of House Bill 166.

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were eventually made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was subsequently passed.

The rationale for exclusions is simple: Sales taxes are intended to be imposed upon the final consumption of goods and, now, also on certain services. Intermediate transactions preceding the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed.

The current version of House Bill 166 includes two provisions that add much needed parity and clarity to the state's manufacturing sales and use tax exemption. The bill provides parity by exempting from sales tax equipment and supplies used to clean equipment used to produce or process food for human consumption. Currently the law only allows the exemption if the food being produced or processed is a *dairy product*. Today, more than ever, it is important that food for human consumption is free from contamination and this provision provides parity for Ohio's booming food processing industry. In fact, Ohio is the largest frozen food processor in the country.

A second provision provides much needed clarity for the entire manufacturing sector. The House-passed version of House Bill 166 exempts from the sales and use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility.

Manufacturers have found themselves being audited by – or in court against - the Ohio Department of Taxation over this issue as various administrations have had different interpretations of current law and policies. Without the required cleaning, repairs and maintenance, machinery breaks down and complicates the process of producing quality parts and products for sale to customers. Cleaning industrial assets is critical to the manufacturing process. As certainty is one of the most important aspects of a prosperous business climate, codifying this sales exemption into law will eliminate the costly guessing game that has taken place.

At the end of the House Finance Committee budget deliberations, revisions to what has been referred to as the Business Income Tax Deduction (BID) were included in the current version of House Bill 166. The bill now reduces the BID from \$250,000 to \$100,000 and eliminates the 3% flat rate on business income above those amounts.

The OMA urges the Senate to reinstate the current thresholds and flat rate regarding the BID. The tax savings generated by the deduction allow Ohio's manufacturers to reinvest in their operations by purchasing new equipment, expanding production lines, hiring new employees, and raising wages.

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

In order to ensure we are supporting Ohio companies that are competing globally, we would like to see the recently introduced Senate Bill 153 amended into House Bill 166. That bill is designed to increase the number of manufacturers and eligible Foreign Trade Zone companies to apply for the JRTC, thereby creating an incentive for Ohio employers to make capital investments that preserve existing jobs.

While the provision does expand the number of companies and projects eligible to apply for a JRTC, it would not alter the existing cap on the amount of credits that may be awarded annually by the tax credit authority.

Thank you for the committee's consideration of each of these important tax recommendations that would contribute to Ohio's competitiveness.

Sincerely,



Robert Brundrett
Director, Public Policy Services



May 20, 2019

The Honorable Matt Dolan
Chairman, Finance Committee
Ohio Senate
1 Capitol Square, 1st Floor
Columbus, OH 43215

RE House Bill 166 – Sales Tax Exemption for Food Equipment and Other Manufacturing Cleaning Supplies and Services

Dear Chairman Dolan:

I write to express support for two tax provisions in the House-passed version of House Bill 166.

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were eventually made permanent, and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was subsequently passed.

The rationale for exclusions is simple: Sales taxes are intended to be imposed upon the final consumption of goods and, now, also on certain services. Intermediate transactions preceding the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed.

The current version of House Bill 166 includes two provisions that add much needed parity and clarity to the state's manufacturing sales and use tax exemption. The bill provides parity by exempting from sales tax the equipment and supplies used to clean equipment used to produce or process food for human consumption. Currently the law only allows the exemption if the food being produced or processed is a *dairy product*. Today, more than ever, it is important that food for human consumption is free from contamination and this provision provides parity for Ohio's booming food processing industry. In fact, Ohio is the largest frozen food processor in the country.

A second provision provides much needed clarity for the entire manufacturing sector. The House-passed version of House Bill 166 exempts from the sales and use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility. Manufacturers have found themselves being audited by - or in court against - the Ohio Department of Taxation over this issue as various administrations have had different interpretations of current law and policies. Without the required cleaning, repairs and maintenance, machinery breaks down and complicates the process of producing quality parts and products for sale to customers. Cleaning industrial assets is critical to the manufacturing process. As certainty is one of the most

important aspects of a prosperous business climate, codifying this sales exemption into law will eliminate the costly guessing game that has taken place.

These important revisions are extremely important for Ohio's manufacturers and their ability to compete to the highest level. Thank you for your work on this important bill. If you wish, please contact me at (614) 629-6814 or rbrundrett@ohiomfg.com to discuss further.

Sincerely,



Robert Brundrett
Director, Public Policy Services

CC: Larry Obhof, Ohio Senate President
Dave Burke, Vice Chairman, Finance Committee
Ray DiRossi, Director, Budget and Finance



May 7, 2019

The Honorable Scott Oelslager
Chairman, Finance Committee
Ohio House of Representatives
77 S. High St., 13th Floor
Columbus, OH 43215

RE: House Bill 166 – Small Business Income Tax Deduction

Dear Chairman Oelslager:

Over the past week the House Finance Committee has debated making changes to the current small business income tax deduction. The current version of House Bill 166 would reduce the small business income tax deduction from \$250,000 to \$100,000. This change would detrimentally impact many smaller manufacturers across the state.

The OMA respectfully urges the House Finance Committee to reinstate the current thresholds for the small business tax deduction. The tax savings generated by the deduction allow Ohio's manufacturers to reinvest in their operations by purchasing new equipment, expanding production lines, hiring new employees, and raising wages.

Thank you for the opportunity to comment on this portion of House Bill 166. If you wish, please contact me at (614) 629-6814 or rbrundrett@ohiomfg.com to discuss further.

Sincerely,

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

Robert Brundrett
Director, Public Policy Services

If this e-mail does not display properly, [click here](#) to view our online version.

To ensure continued delivery of this e-mail, please add OMA@informz.net to your e-mail address book.



May 20, 2019

Dear Rob,

The Ohio Senate is currently debating the state budget bill (HB 166). The budget bill includes several tax changes, both good and bad for manufacturers.

You can protect your company by letting your state senator know that Ohio's number one industry is watching and will hold them accountable. [We've made it easy to contact your senator here.](#)

First, the good:

1. A provision in the budget bill would **exempt all manufacturers from sales and use tax on any supplies or janitorial services purchased to clean machinery** in a manufacturing facility. This has long been an OMA Tax Committee priority. This provision would bring certainty to the current exemption law and reduce competing interpretations by different administrations.
2. Senate Finance Chairman Matt Dolan (R-Chagrin Falls) is working on a bill that would **expand eligibility for the Job Retention Tax Credit**. His proposal would be aimed at manufacturers. It would expand eligibility based on new capital investment and not be tied to payroll or employee count.
3. A provision in the budget bill would **create parity among all food manufacturers** by allowing a sales and use tax exemption for equipment and supplies used to clean equipment used to produce or process food for human consumption. Currently the exemption is only for *dairy food* manufacturing processes.

Now the bad:

1. The House-passed version of the budget bill **reduced the business income tax deduction for pass-through entities from the current \$250,000 to \$100,000** and removed the 3% flat tax rate for income over the threshold. The tax savings generated by the deduction have allowed Ohio manufacturers to reinvest in their operations by purchasing new equipment, expanding production lines, hiring new employees, and raising wages.

You can [contact your state senator easily here](#) to encourage him or her to keep and/or restore legislation that:

1. Codifies into law the janitorial cleaning sales and use tax exemption for manufacturing machinery
2. Expands eligibility for the Job Retention Tax Credit to reflect capital investment
3. Creates parity for all food manufacturers, not just dairy processors, by exempting cleaning equipment and supplies from sales and use tax
4. Maintains the current threshold for the business income tax deduction which protects tax savings

Please contact me if you have questions or concerns about these or other tax issues.

Rob Brundrett

Director

OMA Public Policy Services

rbrundrett@ohiomfg.com

Direct: (614) 629-6814

Cell: (614) 348-1233

The Ohio Manufacturers' Association | 33 North High Street | Columbus, OH 43215

If you have consented to receive OMA emails, you may withdraw it. Please [click here](#) to unsubscribe from all OMA emails, or write us at the above address.

To update your OMA profile and email preferences, please [click here](#).



MATT DOLAN
STATE SENATOR, 24TH DISTRICT

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Columbus, Ohio 43215
Phone: 614.466.8056
dolan@ohiosenate.gov

SB 153 Sponsor Testimony
Senate Ways and Means Committee
June 4, 2019

Chairman Terhar, Vice Chair Roegner, Ranking Member Williams, members of the Senate Ways and Means Committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 153.

The purpose of Ohio's Job Retention Tax Credit ("JRTC"), as its name implies, is to foster job retention through increased capital investment in Ohio. You will hear testimony stating that, over the years, too few Ohio job creators have taken advantage of the JRTC. The belief is that the minimum workforce size and capital investment thresholds are too high and have been a barrier for most companies to apply for the credit.

In order to support Ohio companies globally, SB 153 is designed to increase the number of manufacturers and eligible Foreign Trade Zone companies to apply for the JRTC, creating an incentive for Ohio employers to make capital investments that preserve existing jobs.

The bill would:

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

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

Thank you, Chairman Terhar and members of the committee for allowing me to speak to this legislation. I would be happy to answer any questions at this time.



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MEMORANDUM

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

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

DATE: June 3, 2019

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

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

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

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

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

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

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

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



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 153
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Dolan

Mackenzie Damon, Attorney

SUMMARY

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

DETAILED ANALYSIS

Job Retention Tax Credit

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

Current requirements

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

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

The bill

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

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

HISTORY

Action	Date
Introduced	05-21-19

S0153-I-133/ks

¹ R.C. 122.171.

Tax

Contact Your State Senator on Key Budget Issues May 31, 2019

The Ohio Senate continues to debate the state budget bill (**HB 166**), which includes several tax changes — both good and bad for manufacturers. The OMA encourages you to let your state senator know that Ohio's number one industry is watching and will hold lawmakers accountable. We've made it easy to **contact your senator**

First, the good news on tax-related legislation.

- Language in the budget bill would exempt all manufacturers from sales and use tax on any supplies or janitorial services purchased to clean machinery in a manufacturing facility. This has long been an OMA Tax Committee priority. This provision would bring certainty to the current exemption law.
- Senate Finance Chairman **Matt Dolan** (R-Chagrin Falls) introduced a bill (**SB 153**) that would expand eligibility for the Job Retention Tax Credit. His proposal would be aimed at manufacturers, and would expand eligibility based on new capital investment — versus being tied to payroll or employee count.
- Another provision in the budget bill would create parity among all food manufacturers by allowing a sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. Currently the exemption is only for dairy food manufacturing. Now the bad news.
- The House-passed budget bill would reduce the business income tax deduction for pass-through entities from the current \$250,000 to \$100,000, and remove the 3% flat tax rate for income over that threshold. The tax savings generated by the deduction have allowed Ohio manufacturers to reinvest in their operations by purchasing new

equipment, expanding production lines, hiring new employees, and boosting wages.

Please contact **Rob Brundrett** with the OMA if you have questions or concerns about these or other tax issues. *5/30/2019*

OMA Advocates for Tax Exemption Clarity in Budget May 24, 2019

This week, the OMA sent a **letter** to the chairman of the Senate Finance Committee stressing the importance of two House changes to the budget bill.

The current version of **House Bill 166** includes two provisions that add much needed clarity to the state's manufacturing sales-and-use tax exemption. The bill's current language would provide parity by exempting from sales tax the equipment and supplies used to clean equipment that produces or processes food for human consumption. Current law allows the exemption only if the food produced or processed is a dairy product.

A second provision in HB 166 provides much needed clarity for the entire manufacturing sector. The House-passed version exempts from the sales-and-use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility. Some manufacturers have been audited or faced legal action brought by the Ohio Department of Taxation over this issue as various administrations have had different interpretations of current law. Codifying this exemption into law will eliminate the costly guessing game that has taken place over the years.

By **clicking here**, you can take action on these two issues — in addition to advocating for the eligibility expansion of the Job Retention Tax Credit, and the restoration of the business income tax deduction. *5/23/2019*

Senator Dolan Introduces OMA-Backed Tax Bill May 24, 2019

Senator **Matt Dolan** (R-Chagrin Falls) has introduced **Senate Bill 153** to make changes to the Job Retention Tax Credit (JRTC) at the

suggestion of the OMA Tax and Finance Committee.

The purpose of the JRTC is to foster job retention through increased capital investment in Ohio. But over the years, too few Ohio job creators have taken advantage of the credit. The qualifying criteria — with respect to applicants' minimum workforce size and capital investment threshold — are too high and have been a barrier for most companies.

To ensure that Ohio companies can compete globally, SB 153 is designed to increase the number of manufacturers and eligible Foreign Trade Zone companies that can apply for the JRTC, thereby creating an incentive for Ohio employers to make capital investments that preserve existing jobs.

The bill would:

- Allow companies headquartered in Foreign Trade Zones to be eligible to apply without meeting current payroll and employee count minimums.
- Eliminate the minimum payroll size and number of employees required for manufacturers to apply for the JRTC.
- Require a minimum capital investment for manufacturers of the lesser of \$50 million or an amount equal to 5% of the tangible personal property at the project site.
- Require manufacturers to maintain their FTE count during the term of the credit.

While SB 153 would expand the number of companies and projects eligible to apply for a JRTC, it would not alter the existing cap on the amount of credits that could be awarded annually by the tax credit authority. In 2019, the JRTC would be capped at \$130 million. Each year, the cap would increase by \$13 million until 2024. For 2024 and each year thereafter, the maximum credits that could be awarded annually would be capped at \$195 million. *5/23/2019*

OMA Leads Coalition to Stop CAT Erosion

May 24, 2019

This week, the OMA led a coalition of business organizations in defense of the Ohio Commercial Activity Tax (CAT). Since 2005, the OMA and like-minded associations have continually reminded lawmakers the importance of keeping the CAT broad-based and set at a low rate.

On Tuesday, May 21, the Senate Ways and Means Committee reported out **Senate Bill 95**, which authorizes tax incentives for the operators and certain suppliers of a “mega-project” — such as a development project with at least \$1 billion in investment or that creates at least \$75 million in Ohio payroll. One of the tax incentives is a CAT exclusion for gross receipts of a mega-project supplier from sales to a mega-project operator.

The OMA and others **provided testimony** to point out that “the CAT was created to fix an archaic business taxing system in Ohio that was riddled with exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries.”

The OMA remains the state’s only major business organization to fight back and not support an expansion of CAT credits and carveouts. *5/23/2019*

OMA Asks Senate for Support on Pro-Manufacturing Provisions in State Budget **May 24, 2019**

The OMA this week **submitted testimony** on House Bill 166 — the bill to fund the state’s two-year operating budget — as the Senate Finance Committee received testimony on the legislation. The OMA made its suggestions based on changes made to the budget by the House of Representatives.

The OMA requested the following:

- Remove the detrimental House changes to the business income tax deduction.
- Support exempting from sale tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility.

- Support exempting from sales tax any equipment and supplies used to clean equipment that produces or processes food for human consumption.
- Support the eligibility expansion for the Job Retention Tax Credit.

The Senate is expected to make a variety of changes to the bill in the first week of June. The budget must be signed by June 30 for the appropriations to take effect on July 1, the first day of the new state fiscal year. 5/23/2019

New Guidance Provided on Opportunity Zone Initiatives
May 24, 2019

OMA Connections Partner **Calfee** this week provided an update on the federal Opportunity Zone Program, created as part of the 2017 Tax Cuts and Jobs Act. The program is back in the headlines because the long-awaited second round of proposed regulations was recently published by the Treasury Department, **Calfee reports**. This guidance helps clarify how investments in these zones would work. The goal of Opportunity Zones is to provide tax incentives for investors who make long term capital investment in designated low-income areas. Investors must invest through a qualified Opportunity Fund. **Ohio** has opportunity zones in 73 of Ohio's 88 counties. 5/23/2019

Ohio's Pass-Through Tax Incentive Would Be Reduced by 60% Under House Plan
May 3, 2019



This week, Ohio House Speaker Larry Householder (R-Glenford) announced a plan to include a personal income tax cut in Ohio's two-year budget. The tax cut would be funded by reducing or eliminating selected incentives.

Specifically, the House's income tax cut would be paid for by reducing the amount that pass-through businesses — such as partnerships, sole proprietorships or LLCs — could earn before paying the state income tax. The exemption threshold, passed in 2015, would go from the current \$250,000 to \$100,000. The House may also consider eliminating a 40% break for income over \$250,000, the speaker noted.

Other provisions that could be used to pay for the income tax cut include Ohio's motion picture tax credit and an exception for fractional ownership of airplanes. 5/2/2019

OMA Lands Two Manufacturing Tax Exemptions in Budget Sub-Bill
May 3, 2019

Thursday afternoon, the House Finance Committee unveiled the updated House version of the state budget bill (HB 166). Included were two amendments that the OMA urged lawmakers to include.

The first accepted amendment would expand the existing sales tax exemption for equipment and supplies used to clean equipment used in the production or processing of dairy products. This would include equipment used to produce or process any sort of food for human consumption.

The other accepted amendment would exempt from sales-and-use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility.

Both amendments have been OMA Tax Committee priorities over the years. It is imperative that manufacturers **contact their state representative** to keep both provisions in the budget. 5/2/2019

OMA Tax Committee Hears from State Officials
April 12, 2019



This week, the OMA Tax Committee held its first meeting of 2019. Guest speakers were Ohio Tax Commissioner **Jeff McClain** and Rep. **Gary Scherer** (R-Circleville), vice chair of the House Finance Committee and a member of the House Ways & Means Committee.

Appointed by Gov. Mike DeWine last January to head the Department of Taxation, Commissioner McClain briefed committee members on his agency's priorities, including implementation of the lead-abatement credit, opportunity zones, and adjustments to the state's employment services tax.

Rep. Scherer discussed key aspects of Ohio's new transportation funding plan, signed last week by Gov. DeWine to provide an additional \$865 million a year for roads funding. Rep. Scherer also spoke about efforts to craft legislation that would establish guidelines for internet retail sales tax collections. Last summer's U.S. Supreme Court ruling (*South Dakota v. Wayfair*) allows states to collect sales taxes from out-of-state online retailers that have sales of more than \$100,000, or more than 200 annual transactions.

Follow tax issues affecting Ohio manufacturers [here](#). 4/10/2019

OMA Pushes for Elimination of Sales Tax on Temp Employees **April 12, 2019**

Today is the deadline for Ohio House members to submit their amendment priorities to leadership for the state budget. One of the **amendments the OMA was able to secure** for submission is the elimination of sales tax on temporary manufacturing employees. This has been a long-time pain for Ohio's manufacturers. Effective January 1993, in order to fill a hole in the state budget, employment services were added as a taxable service by a legislative conference committee facing a midnight deadline to reach agreement on a new budget. Since then Ohio has been one of the

minority of states to burden employers with this additional tax.

OMA continues to seek a solution for manufacturers through the manufacturing sales and use tax exemption, which should include temporary labor. To learn more about this issue and how you can be involved, contact OMA's **Rob Brundrett**. 4/11/2018

Tax Commissioner McClain Gives Budget Testimony – Meet Him at OMA Next Week **April 5, 2019**

This week Ohio Department of Tax Commissioner **Jeff McClain** provided **budget testimony** on behalf of his department. Unlike the past several state budgets, **House Bill 166** does not include a substantive shift in Ohio's taxing schemes, much to the relief of manufacturers.

Commissioner McClain will be visiting with the OMA Tax Committee next Tuesday, April 9, at the OMA offices. Members will be discussing the budget in detail and also visiting with House Finance Committee Vice Chairman **Gary Scherer** (R-Circleville). **Register today!** 4/4/2019

Ohio Taxpayers May Be Missing a Big Deduction Opportunity **April 5, 2019**

From OMA Connections Partner Clark Schaefer Hackett: "A surprising number of Ohio taxpayers are missing a golden opportunity to reduce their tax liability using a relatively straightforward deduction.

"The Ohio Business Income Deduction allows taxpayers to deduct from their federal adjusted gross income the first \$250,000 of business income earned by single taxpayers or married taxpayers who file jointly. For married taxpayers who file separately, the deduction applies to the first \$125,000 of business income."

Read **more about this opportunity**. 4/1/2019

RSM Reports Middle Market Business Index for Q1 **April 5, 2019**

From OMA Connections Partner: "The RSM US Middle Market Business Index tumbled in the

first quarter to 124.1 from 132. The decline in both current conditions and the expected outlook for the economy and capital expenditures should be interpreted by policymakers as a signal that the “uncertainty tax” generated by the direction of U.S. trade policy and recent volatility in financial markets has spilled over into the real economy.

“While we are not suggesting that an end to the current business cycle—which is approaching the longest-running economic expansion in post-World War II U.S. history—is imminent, but the probability of one has increased due to the uncertainty that lingers in the economy.

“Despite the souring economic outlook and modest deterioration in revenues and profits during the current quarter, middle market businesses expect improvement in the next six months with 62 percent expecting revenues to increase and 60 percent anticipating a rise in net earnings.”

Read more and **download the report here.** *4/1/2019*

Beware the Ides of March — If You Own a Pass-Through Entity **March 8, 2019**

From OMA Connections Partner, GBQ Partners: “Shakespeare’s words don’t apply just to Julius Caesar; they also apply to calendar-year partnerships, S corporations and limited liability companies (LLCs) treated as partnerships or S corporations for tax purposes. Why? The Ides of March, more commonly known as March 15, is the federal income tax filing deadline for these “pass-through” entities.”

Read **more from GBQ.** *3/5/2019*

New Standard Applies to Private Companies in 2019 **February 22, 2019**

From OMA Connections Partner GBQ: “While we all have been distracted discussing the implementation of the new accounting standards for leases and revenue recognition, there is another Accounting Standards Update (ASU) sneaking in that is effective for fiscal years beginning after December 15, 2018. The update impacts private companies including not-for-

profits and employee benefit plans that hold financial assets or owe financial liabilities.”

Read **more from GBQ here.** *2/20/2019*

Lease Accounting FAQs **February 15, 2019**

From OMA Connections Partner Clark Schaefer Hackett: “In February 2016, the Financial Accounting Standards Board (FASB) issued new lease accounting standards. These standards change the way leased real estate and equipment are reported by both public and private companies.

“It’s estimated that the total impact of this change will result in more than \$2 trillion of operating lease commitments reflected as a liability on corporate balance sheets.”

Learn **more here.** *2/12/2019*

2019: Tax Opportunities and Challenges for Manufacturers **February 8, 2019**

Here is a recent one-hour **recorded webinar** from OMA Connections Partner RSM that explains the potential tax challenges and opportunities in 2019, articulates key tax and business issues facing businesses today, and discusses the latest updates to federal, state and local tax. *2/4/2019*

Court Upholds Constitutionality of Streamlined Muni Income Tax Collections **February 1, 2019**

This week the 10th District Court of Appeals **ruled 2-1** that the municipal tax reform provisions of House Bill 49 and House Bill 5 are constitutional. The provisions had been challenged by more than 100 municipalities. The legislation streamlined municipal income tax reporting and collections for businesses across the state. The OMA participated in a coalition that supported the changes.

It has yet to be determined if the municipalities will appeal the ruling to the Supreme Court of Ohio. *1/31/2019*

IRS Provides Final QBI Deduction Regs & Guidance

February 1, 2019

From OMA Connections Partner Clark Schaefer Hackett: “When President Trump signed into law the Tax Cuts and Jobs Act (TCJA) in December 2017, much was made of the dramatic cut in corporate tax rates. But the TCJA also includes a generous deduction for smaller businesses that operate as pass-through entities, with income that is “passed-through” to owners and taxed as individual income.

“The IRS issued proposed regulations for the qualified business income (QBI), or Section 199A, deduction in August 2018. Now, it has released final regulations and additional guidance, just before the first tax season in which taxpayers can claim the deduction. Among other things, the guidance provides clarity on who qualifies for the QBI deduction and how to calculate the deduction amount.”

Read **more here**. *1/30/2019*

Withholding Taxes on Payments to Foreign Individuals
January 25, 2019

From OMA Connections Partner GBQ: “As many middle market businesses are forced to adapt to the increasing globalization of the marketplace, they are not always properly equipped to deal with the variety of regulatory and compliance-related issues they will face as their business crosses borders. One prevalent issue is the withholding tax requirement imposed by the U.S. on payments to foreign persons. Two common payment types are payments to foreign individuals for personal services, which include:

- Payments to foreign individuals as independent contractors
- Wages paid to nonresident aliens as employees

“The company making these payments is considered the “withholding agent” and is required to withhold taxes on these amounts and remit the tax to the IRS, similar to the way that taxes are withheld on a U.S. employee’s W-2 wages.”

More **from GBQ here**. *1/22/2019*

Former State Rep. McClain Appointed Ohio Tax Commissioner
January 11, 2019

Just after the new year, Governor-elect Mike DeWine appointed former State Representative Jeff McClain as the next Ohio Department of Taxation Commissioner.

Most recently, McClain had been serving as director of tax and economic policy for the Ohio Chamber of Commerce. He served in the state legislature for nearly eight years and was the long-serving Wyandot County auditor for 26 years.

While in the legislature McClain chaired the powerful House Ways and Means Committee which oversaw tax policy and legislation in that chamber.

The OMA has worked closely with McClain both as a state representative and in his most current role. We are excited to continue our working relationship as he takes over the Department of Taxation. Congratulations to Jeff and best of luck. *1/10/2019*

Tax Cuts and Jobs Act Impacts 2018 Filing Season
January 11, 2019

Even before the federal government shut-down, there was plenty of complexity going into the 2018 tax-filing season. Here’s food-for-thought from OMA Connections Partner RSM:

“The one-year anniversary of the signing of sweeping tax law changes under the law commonly referred to as the Tax Cuts and Jobs Act (TCJA) brings a new challenge, the need for taxpayers, practitioners, and the IRS to implement the most significant changes in over 30 years as they prepare their tax filings. While few would suggest filing taxes as one of their favorite activities, unfortunately, based on a report from the Treasury Inspector General for Tax Administration (TIGTA), the 2019 filing season will likely present additional headaches. Based on the report by TIGTA, the IRS has fallen behind on necessary forms, procedures, and guidance for taxpayers to file their 2018 taxes. The delays in IRS readiness and the complexity of the tax law changes will create challenges for taxpayers and their advisors. At a

minimum, taxpayers should be prepared to extend and file their returns later in the year, even if they have previously filed by the March or April 15 deadlines. Taxpayers should consult their tax adviser and make a plan to address the appropriate timing and additional steps necessary to file their 2018 returns.”

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 10, 2019

- HB17** **SURVIVING SPOUSES-HOMESTEAD EXEMPTION** (GINTER T) To allow an enhanced homestead exemption for surviving spouses of public safety personnel killed in the line of duty.
Current Status: 2/19/2019 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-17>
- HB19** **PINK TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.
Current Status: 5/7/2019 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-19>
- HB46** **STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 5/15/2019 - **REPORTED OUT**, House State and Local Government, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB47** **TAX COMPLAINTS-LEGAL ASSISTANCE FOUNDATION** (GREENSPAN D) To increase the time within which property tax complaints must be decided.
Current Status: 5/29/2019 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-47>
- HB54** **LGF TAX REVENUE INCREASE** (CERA J, ROGERS J) To increase the proportion of state tax revenue allocated to the Local Government Fund from 1.66% to 3.53% beginning July 1, 2019.
Current Status: 2/12/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-54>
- HB56** **MINE SAFETY EXCISE TAX** (CERA J) To allocate 3.75% of kilowatt-hour excise tax revenue for mine reclamation, mine drainage abatement, and mine safety.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-56>
- HB57** **HEATING SOURCES TAX EXEMPTION** (PATTERSON J, CERA J) To exempt certain heating sources from sales taxation and to hold local governments and libraries harmless from the revenue effect.
Current Status: 2/12/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-57>
- HB60** **DIAPER SALES TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales and use tax the sale of child and adult diapers.

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

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

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

- HB135 SALES TAX HOLIDAY EXPANSION (ANTANI N)** To expand the class of products exempt from sales tax if bought during a sales tax holiday.
Current Status: 4/30/2019 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-135>
- HB162 MOTION PICTURE TAX CREDIT (PATTON T)** To increase the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium.
Current Status: 3/26/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-162>
- HB166 OPERATING BUDGET (OELSLAGER S)** To make operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/17/2019 - Senate Finance, (Eleventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-166>
- HB175 TAX EXEMPTION-GOODS MOVEMENT (ANTANI N)** To exempt from sales and use tax things used primarily to move completed manufactured products or general merchandise.
Current Status: 4/2/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-175>
- HB183 TAX CREDIT-BEGINNING FARMERS (MANCHESTER S, PATTERSON J)** To allow income tax credits for beginning farmers who participate in a financial management program and for businesses that sell or rent agricultural land, livestock, facilities, or equipment to beginning farmers.
Current Status: 4/30/2019 - House Agriculture and Rural Development, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-183>
- HB187 TAX ISSUES-AUGUST (MERRIN D, WIGGAM S)** To prohibit local tax-related proposals from appearing on an August special election ballot.
Current Status: 4/10/2019 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-187>
- HB197 TAX CODE CORRECTIONS (POWELL J, MERRIN D)** To enact the "Tax Code Streamlining and Correction Act" to make technical and corrective changes to the laws governing taxation.
Current Status: 5/7/2019 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-197>

- HB222** **CDL TRAINING TAX CREDIT** (STOLTZFUS R, HOWSE S) To authorize an income tax credit for an employer's expenses to train a commercial vehicle operator.
Current Status: 5/8/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-222>
- HB245** **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.
Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>
- SB1** **REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.
Current Status: 6/12/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>
- SB8** **TAX CREDITS-OHIO OPPORTUNITY ZONE** (SCHURING K) To authorize tax credits for investments in an Ohio Opportunity Zone.
Current Status: 5/8/2019 - House Economic and Workforce Development, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-8>
- SB37** **MOTION PICTURE TAX CREDIT** (SCHURING K) To extend eligibility for and make other changes to the motion picture tax credit.
Current Status: 5/8/2019 - **PASSED BY SENATE**; Vote 32-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-37>
- SB39** **MIXED USE DEVELOPMENT PROJECTS-TAX CREDIT** (SCHURING K) To authorize an insurance premiums tax credit for capital contributions to transformational mixed use development projects.
Current Status: 6/5/2019 - **REPORTED OUT AS AMENDED**, Senate Finance, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-39>
- SB95** **STATE AND LOCAL TAX INDUCEMENTS** (KUNZE S, PETERSON B) To enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers.
Current Status: 5/21/2019 - **REPORTED OUT**, Senate Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-95>
- SB109** **WORKFORCE SCHOLARSHIP PROGRAM** (SCHURING K) To establish the Workforce Scholarship Program, to terminate the provisions of the Scholarship Program on December

31, 2023, to authorize tax credits for graduates of the Scholarship Program and their employers, and to make an appropriation.

Current Status: 4/24/2019 - Senate Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-109>

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

Current Status: 4/10/2019 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-125>

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

Current Status: 5/1/2019 - Referred to Committee Senate Transportation, Commerce and Workforce

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-132>

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

Current Status: 6/4/2019 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-153>