<u>10:00 a.m. (EST)</u>
1-866-362-9768
552-970-8972#

Tax Committee
November 9, 2016

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2017 Tax Committee Calendar

Meetings will begin at 10:00 a.m.
TBD

OMA Tax Committee Meeting Sponsor:

OMA Tax Policy Committee

November 9, 2016

AGENDA

Welcome & Self-Introductions:	Michele Kuhrt, Chairman Lincoln Electric
Guest Speakers	Matt Chafin, Chief Legal Counsel, Ohio Department of Taxation Dorothy Coleman, Vice President, Tax and Domestic Economic Policy, National Association of Manufacturers
OMA Counsel's Report	Mark Engel, Bricker & Eckler LLP
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:

Dorothy Coleman

Vice President, Tax and Domestic Economic Policy

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Dorothy Coleman is vice president of tax and domestic economic policy at the National Association of Manufacturers (NAM). Ms. Coleman is responsible for providing NAM members with important information related to tax issues and representing the NAM's position to Congress, the Administration and the media. An NAM spokesperson for tax policy issues, she coordinates membership coalitions; prepares testimony, reports and analyses; and responds to media inquiries. Before taking over as vice president of the tax policy department, she served as director of tax policy from April 1998 to April 2000.

Ms. Coleman came to the NAM from Arthur Andersen, where she worked as a manager in the Office of Federal Tax Services. Prior to her work at Arthur Andersen, she was chief legislative reporter for the Bureau of National Affairs' (BNA) "Daily Tax Report." She also was a legal editor for BNA's tax management series.

Ms. Coleman received her law degree from Georgetown University Law Center and her bachelor of arts in economics from Manhattanville College in Purchase, N.Y.

- See more at: http://www.nam.org/Dorothy-Coleman/#sthash.UWkJqfAA.dpuf

Matthew H. Chafin, Esq. – Chief Legal Counsel

Matt is responsible for the tax legal affairs of the department and management of four legal groups providing legislatively authorized services: Tax Appeals, Appeals Management, Bankruptcy, and Legal Counsels.

Prior to his appointment, Matt was an attorney examiner for the Ohio Board of Tax Appeals for eleven years. Previously, Matt served as an assistant prosecuting attorney for the Franklin County Prosecutor's Attorney, handling various civil matters, representation of elected officials, and representing the Franklin County Board of Revision. Matt has litigated cases before a variety of Courts of Appeals, County Common Pleas Courts, Federal District Court, Ohio Supreme Court, and the Board of Tax Appeals. While in law school Matt was a mediator in the Columbus City Attorney's Office, Night Prosecutor's program. Prior to becoming a member of the Ohio Bar, Matt served as a deputy county auditor and deputy county recorder. Matt graduated from Ohio University with a degree in Communications and earned his J.D. from Capital University Law School.

OBM

October 11, 2016

Note: Table 1 year-to-date non-tax and transfer information corrected on October 25, 2016.

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

FROM: Timothy S. Keen, Director TK

SUBJECT: Monthly Financial Report

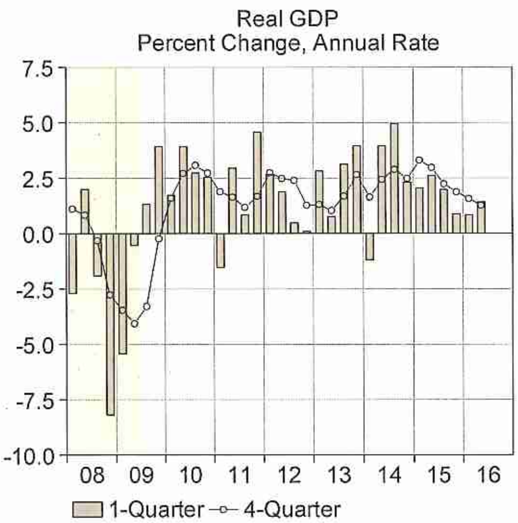
ECONOMIC SUMMARY

Economic Performance Overview

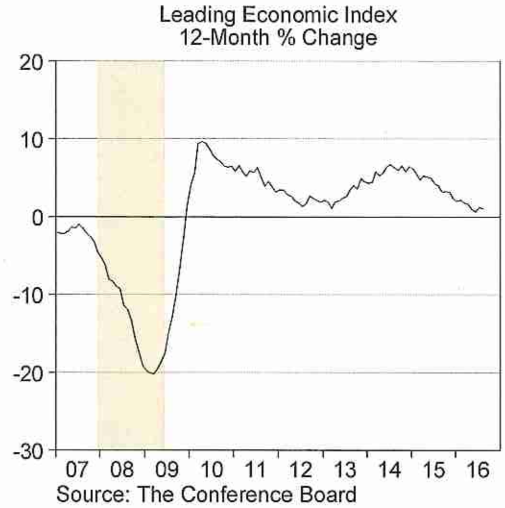
- Second quarter real GDP growth was revised up to 1.4% from an earlier reading of 1.1%. With the new estimate, real GDP has grown at a compound annual rate of 1.0% during the most recent three quarters. Forecasters still look for a moderate pickup in growth during the second half of the calendar year, but recently have revised expectations downward.
- U.S. employment increased by 156,000 jobs in September for a 3-month average increase of 192,000 jobs. The unemployment rate ticked up to 5.0%
- Ohio nonfarm payroll employment decreased by 2,000 jobs in August after rising by 10,300 jobs in June and 10,500 jobs in July. The Ohio unemployment rate decreased 0.1 percentage points to 4.7%.
- Leading indicators point toward continued growth at a modest pace, fueled by a healthy household sector but restrained by weak manufacturing.

Economic Growth

The growth rate in real GDP during the second quarter was revised up from 1.1% to 1.4% in the final estimate for the quarter. Personal consumption expenditures have been fueling growth, whereas investment has been weak. The revision left growth during the most recent three quarters at a very slow annual rate of 1.0%. The 3-quarter growth rate has been slower in only three other years outside of recessions – in 1956, 2011, and 2012.



Forecasters still expect economic growth to pick up in the third and fourth quarters, but by less than previously predicted. For example, the GDPNow projection by the Federal Reserve Bank of Atlanta for the third quarter has decreased from a high of 3.8% in early August to 2.2% as of early October. Moody's high frequency GDP forecasting model predicts third quarter GDP growth in the same neighborhood, at 2.6%. In comparison, the Blue Chip consensus, which is an average of forecasts from a group of professional forecasters, is slightly higher at 2.8%, with a range from the average of the highest ten to the lowest ten forecasts of 3.2% to 2.3%.

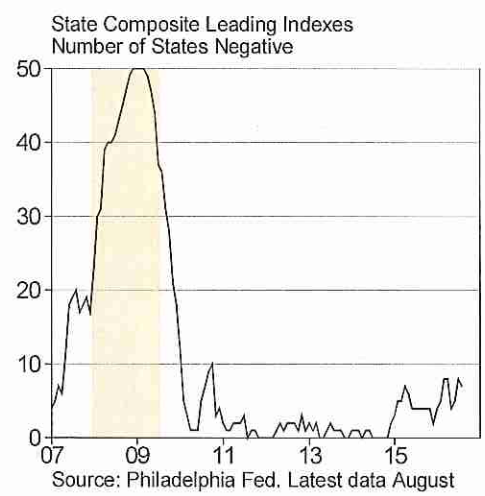


Business activity in and around Ohio grew at a modest pace from June through August, according to a regular survey of businesses conducted by the Federal Reserve Bank of Cleveland. The Ohio coincident economic index from by the Philadelphia Federal Reserve increased by 0.3% for the fourth month in a row in August to 3.4% above its year earlier level. The rates of growth in June and July were revised down from earlier estimates of 0.4% growth. The index is composed of four measures of labor market activity, and has represented business conditions accurately over time.

Leading economic indicators weakened in August, but remain consistent with a moderate pace of growth into early next year. The Leading Economic Index (LEI) from the Conference Board posted a decrease of 0.2% in August, matching the declines in January and May. Only six of the ten components made positive contributions in the most recent month, led by the length of the workweek in manufacturing and the ISM new orders index.

The year-over-year rate of change in the LEI ticked down from 1.2% to 1.1%, which is consistent with the pace observed during previous slowdowns. In contrast, the rate of change in the index regularly has turned negative in advance of recessions in the past. The weakness so far during this cycle appears to be related to manufacturing activity, which has been negatively affected by the strength of the dollar, weaker demand growth overseas, and the sharp pullback in the energy industry. Strength in labor markets and benefits from lower energy costs have continued to support consumer income and spending.

The message from state-level coincident and leading composite indexes remained cautionary again in August, but was not alarming. The **Coincident Economic Index** (CEI) for nine states declined, a level reached in advance of each of the last five recessions with only one false signal in early 1986, when the number went on to peak at twelve although no recession occurred. In light of the absence of confirmation from other key leading indicators, the diffusion of changes in state-level CEIs seems much more consistent with an ongoing slowdown in growth rather than a near-term recession.



The weakness in state coincident indexes was also reflected among state leading indexes. The **Leading Economic Index** for seven states declined in August, up from a revised six states in July. To put the recent pattern in historical perspective, the number of states with negative readings has averaged fourteen states three months in advance of the most recent three recessions and twenty-three states during the first month of those recessions.

Closer to home, the **Ohio Leading Economic Index** from the Philadelphia Federal Reserve was 0.9% in August, down from 1.8% in July, which was revised downward from an initial reading of 2.5%. Designed to predict the rate of change in the coincident index during the next six months, the Ohio index has trended down from the recent peak of 2.5% in May, a pattern consistent with only modest growth in the near-term.

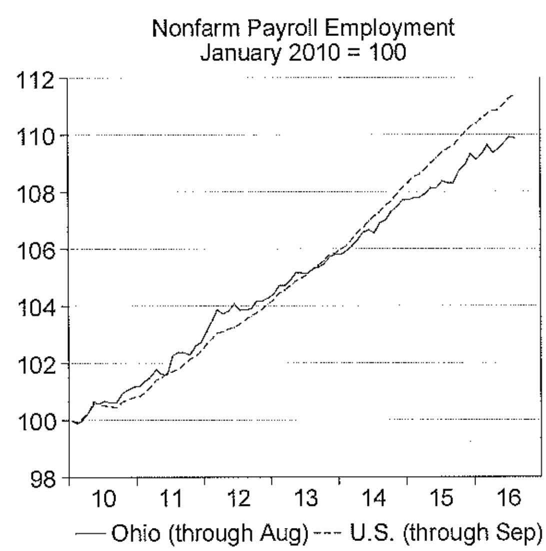
Employment

U.S. nonfarm payrolls increased by 156,000 jobs in September, not much different from the upwardly revised gain of 167,000 in August. Job growth has averaged 192,000 jobs in the most recent three months. During the most recent twelve months, job growth has averaged 204,000 per month.

Employment increases were led by professional and business services (+67,000), construction (+23,000), and health care (+22,000). Employment declined in manufacturing (-13,000), government (-11,000), and transportation and warehousing (-9,000). Mining employment was unchanged after a long string of declines.

The **unemployment rate** ticked up to 5.0% after three months at 4.9%, due to rounding. The broadest measure of unemployment – the U-6 unemployment rate – was unchanged again at 9.7%. The U-6 unemployment rate includes those who want to work but have stopped looking because they believe they cannot find a job, as well as those employed part time who would prefer full time work. Average hourly earnings rose 0.2% to 2.6% above the year earlier level.

Ohio nonfarm payroll employment decreased by 2,000 jobs in August after rising by 10,300 jobs in June and an upwardly revised 10,500 jobs in July. Changes in employment levels across sectors were mixed, with employment rising in government (+3,000), leisure and hospitality (+2,600), and construction (+2,100). Employment declines occurred in professional and business services (-5,500) and trade, transportation and utilities and other services (both -2,400).



During the twelve months ending in August, Ohio employment increased by 78,300 jobs. The largest employment gains occurred in education and health services (+18,900), leisure and hospitality (+17,700), government (+17,200), trade, transportation, and utilities (+8,600), and construction (+7,600). Year-over-year declines occurred in mining and logging (-2,600) and information (-300).

Among the **contiguous states**, year-over-year employment growth was strongest in Michigan (+1.8%), followed by Ohio (+1.4%). Pennsylvania, Kentucky, and Indiana all had employment growth of 1.0%. West Virginia employment had the lowest overall employment growth, at 0.2%. Manufacturing employment increased year-over-year only in Michigan (+1.5%) and Ohio (+0.1%). Manufacturing employment declined in Kentucky (-0.1%), Pennsylvania (-0.3%), Indiana (-0.8%), and West Virginia (-1.7%).

The **Ohio unemployment rate** declined for a fourth month in a row in August to 4.7%, back to its level of last November. The rate is up 0.1 points from the cyclical low of 4.6% reached last September. The increase during the eleven months since then resulted from a larger increase in the Ohio labor force (+78,000) than in total employment (+69,000). The unemployment rate has moved in a narrow range since the end of 2014.

Across the country in August, the unemployment rate increased by a statistically significant amount in six states, decreased in three states, and was not statistically different from the month before in forty-one states. The unemployment rate was lower than a year earlier by a statistically significant margin in ten states and meaningfully higher in five states, including neighboring Pennsylvania.

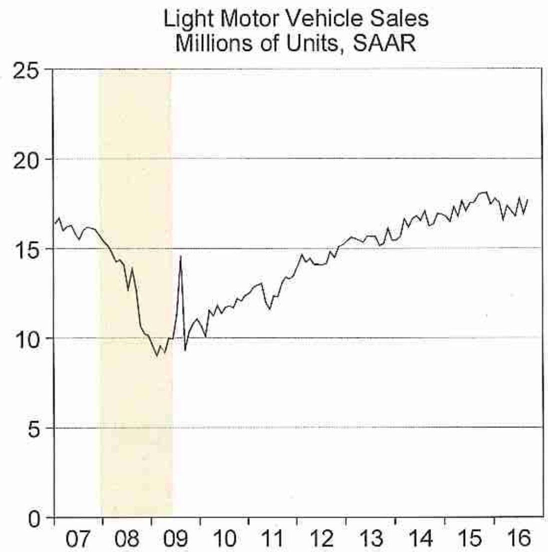
Consumer Income and Consumption

Personal income and personal consumption expenditures slowed abruptly in August after several months of solid increases. Growth in **personal income** slowed from 0.4% in July to 0.2% in August, pulled down by the slow 0.1% rise in wage and salary disbursements, which comprise more than one-half of personal income. Other Labor Income also increased 0.2% and Transfers increased 0.4%. Compared with a year earlier, personal income was up 3.1% and wage and salary disbursements were up 3.7%.

Inflation remained low but did pick up in August, pushing the change in real personal consumption expenditures into negative territory. The **Consumer Price Index** (CPI) increased 0.2% in August after no change in July. The increase reflected notably higher prices for shelter, medical care, car insurance, clothes, communication, and tobacco and occurred despite little change in the price of energy. The year-over-year rate of change ticked up from 0.9% to 1.1%.

Excluding the volatile food and energy categories as a means of assessing the underlying trend, the CPI increased 0.3% in July to 2.3% above its year earlier level. The Median CPI from the Federal Reserve Bank of Cleveland, which is an alternative measure of the trend in inflation, continued to track a little bit higher at 2.6% year-over-year. The measure of inflation that is most closely watched by the Federal Reserve, the personal consumption expenditure (PCE) deflator excluding food and energy (also known as the core PCE deflator) increased 0.2% in August to 1.7% above its year earlier level – the same as in February and up marginally from the year-over-year rate last summer.

Personal consumption expenditures were unchanged in August, probably representing a normal reversion to the mean after a solid 4-month run that was the fastest of the expansion, and in fact the fastest since September 2005, when promotions boosted auto sales. The mid-summer weakness presumably reflected the slower growth in income, especially wage and salary disbursements. In addition, shifting back-to-school shopping patterns that have consumers spreading purchases over a longer period that now starts earlier in July might have cut into August spending, according to IHS Markit.



Retail chains in and around Ohio reported higher sales compared with a year earlier, according to the Cleveland Fed survey. Respondents attributed the growth to employment growth, the lower price of gasoline, and promotional activity. A drop-off in international tourism was cited as a reason for weakness by a few chains. Some restaurants reported weakness in retail business that was offset by an increase in corporate catering. Year-to-date sales of new light motor vehicles were reported down 2% from the same period a year earlier with light trucks continuing to dominate sales.

Across the country a drop in sales of light motor vehicles from an annual rate of 17.8 million units in July to 16.9 million units in August contributed to a 1.3% decline in spending on durable goods. Spending on non-durables fell 0.2%, whereas spending on services increased a modest 0.3%. Light motor vehicle sales rebounded in September to an annual pace of 17.7 million units, which likely led to a reversal of the August decline in durable goods spending in September.

Consumer attitudes generally improved during September. **Consumer confidence** improved to the highest level since before the 2007-09 recession due to both brighter prospects and improved assessments of current conditions, according to the Conference Board. Once again, a key factor behind the more favorable sentiment about current conditions seems to be labor market improvement, as the percentage of respondents saying jobs are plentiful minus those saying jobs are hard to get expanded to the widest margin since the recession. The University of Michigan/Reuters index also improved, but continued to lag, as somewhat dimmer views of the current situation offset brighter expectations.

Manufacturing

Continuing the pattern in place for more than a year, industrial activity faltered in the latest month after reviving a bit in the previous month. A 0.4% decline in **industrial production** in August retraced much of the 0.6% rise in July that was initially reported as a 0.7% rise. Compared with a year earlier, industrial production was lower by 1.1% for the twelfth straight year-over-year reading below zero. In fact, industrial production has now fallen back to where it was in May 2014, so it is at the same level as it was over two years ago.

The industrial sector continues to be affected by the ongoing headwinds from the strengthening of the dollar during the past five years, the fallout from the big decline in the price of oil during the past two years, and the ongoing inventory adjustment. Just as the increase in production during July did not appear to be the beginning of a lasting acceleration, the decrease in August does not appear to be the onset of protracted deterioration.

Within the industrial sector, **manufacturing production** decreased 0.4% in August after a 0.4% increase the month before, but is now down 0.4% from a year earlier. Just as the back-to-back increases in June and July were not likely the beginning of a sustained revival in manufacturing, neither is the August decline a harbinger of sustained decreases. Production of motor vehicles and parts was again a positive contributor in August, with a 0.5% increase that followed a 1.0% increase the month before and a 5.3% increase the month before that. Among industries of special importance to Ohio, primary metals production decreased 1.1%, while production of fabricated metal products decreased 0.4% and output of machinery decreased 1.9%.

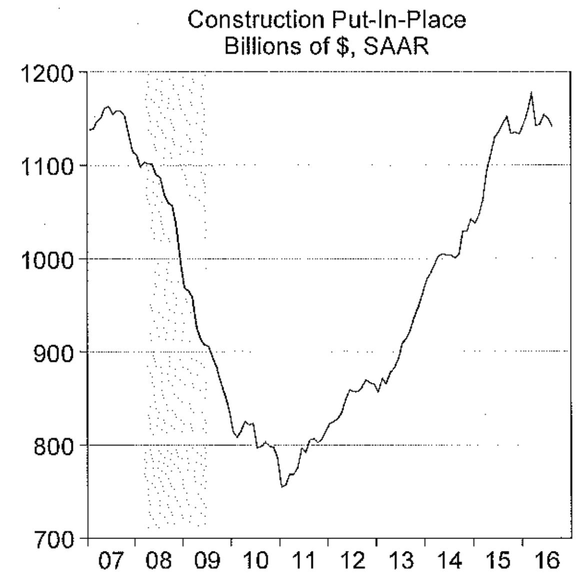
In and around Ohio, manufacturing output increased slightly from June to August, according to the Cleveland Fed survey. The strongest demand has occurred in domestic markets, especially for suppliers to the motor vehicle, aerospace, commercial construction, housing, and food industries. Mining and agricultural equipment suppliers reported weakness. Production at auto assembly plants in and around Ohio was down about 9% through July compared with the same period last year with declines occurring equally among cars and light trucks.

Mining output across the country advanced 1.0% in August after a downwardly revised increase of 0.2% in July, reflecting increased drilling for and production of natural gas. **Utility output** decreased 1.4% after a total increase of more than 5.0% during the two previous months, which reflected unusually hot weather. Compared with a year earlier, utility output was up by 1.7%.

Reports from **purchasing managers** in the manufacturing sector recovered in September after surprising weakness in August. The PMI® increased by 2.1 points from 49.4 in August to 51.5 in September. Both the New Orders and Production indexes recovered nicely, rising from 49.1 to 55.1 and from 49.6 to 52.8, respectively. The only other major improvement was in Customer Inventories, which suggests that the inventory drawdown is ending.

Of the eighteen industries tracked by the Manufacturing ISM® *Report on Business*, seven reported growth in the latest month. Among the industries with a disproportionate effect on Ohio manufacturing employment – transportation equipment, machinery, primary metals, and fabricated metal products – none reported expansion in September.

Construction



Construction put-in-place fell 0.7% in August on top of a 0.3% decline in July that was revised downward from no change. The August decline resulted from the second monthly decrease in a row in public construction that in August was joined by weakness in private construction. The pace of total construction is down slightly from a year ago, as a decline in public construction (-8.8%) has offset the gain in the larger category of private construction (+2.7%).

The decrease in **private** construction put-in-place in August resulted from declines in both residential (-0.3%) and nonresidential (-0.4%). The decline in residential construction resulted from declines in single-family and improvements that were larger than the increase in multi-family. The decline in nonresidential construction resulted mainly from declines in commercial, power, and manufacturing that outweighed the large increases in office and smaller increases in other categories.

Housing starts strengthened modestly across the nation during the three months ending in August, reflecting a 0.4% decrease in single-family starts and a 2.3% increase in multi-family starts. In contrast in the Midwest, total starts declined 3.7% as a 13.2% drop in multi-family starts outweighed the 2.4% rise in single-family starts. Compared with a year earlier, housing starts across the country were higher by 1.6% on a 3-month moving average basis, while they increased by 13.0% in the Midwest. The more-forward-looking housing permits data exhibited similar patterns, but without the weakness in multi-family housing.

Home sales generally remained at a high level in August on a 3-month moving average basis. Sales of newly built homes were up 2.4% on the month and 16.4% from a year earlier, while sales of existing homes fell 1.1% on the month but remained 0.6% above a year earlier. The pattern was similar in the Midwest, where new home sales increased 3.4% and existing home sales fell 0.8%. In and around Ohio, sales of new and existing homes through June were more than 7% above the year earlier level and the average sales price rose 4%, according to the Cleveland Fed survey.

REVENUES

NOTE: The revenue tables in this report contain OBM's July 2016 revised estimates of fiscal year 2017 tax revenues, non-tax revenues, and transfers. These revisions incorporate both changes to the baseline and law changes enacted since January, 2016.

September **GRF receipts totaled $2,736.5 million** and were $89.6 million (3.2%) below the estimate. Monthly tax receipts totaled $1,781.3 million and were $8.7 million (0.5%) above the estimate, while non-tax receipts totaled $953.8 million and were $99.7 million (9.5%) below the estimate. Transfers were $1.4 million above estimate.

For the fiscal year, GRF receipts were $235.0 million (2.7%) below the estimate. However, the majority of this shortfall is from federal grants, which are $212.1 million (6.3%) below estimate. Non-federal revenues including transfers are only $22.9 million, or 0.4%, below estimate. In non-federal revenues, overages in non-tax receipts have so far offset much of the tax revenue shortfall. Tax receipts are $71.9 million (1.3%) below the estimate, while non-tax receipts other than federal grants are $46.2 million (382.9%) above the estimate. Transfers are $2.8 million above estimate.

The year-to-date variances are summarized in the table below. September shortfalls in the income and sales tax caused the year-to-date variances in those taxes to grow somewhat larger in dollar terms, although the September variances were small enough that the percentage variances shrank. Other taxes such as the kilowatt hour tax and the cigarette and other tobacco products tax exceeded the September estimates and so overall tax revenues exceeded the September estimate, causing the year-to-date tax variance to decrease. For both the month of September and the fiscal year, the variance in federal grants is a positive development stemming from continued Medicaid underspending.

Category	Includes:	YTD Variance	% Variance
Tax receipts	Sales & use, personal income, corporate franchise, financial institutions, commercial activity, MCF, public utility, kilowatt hour, foreign & domestic insurance, other business & property taxes, cigarette, alcoholic beverage, liquor gallonage, & estate	($71.9 million)	-1.3%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	($165.9 million)	-4.9%
Transfers	Budget stabilization, liquor transfers, capital reserve, other	$2.8 million	22.5%
TOTAL REVENUE VARIANCE:		**($235.0 million)**	**-2.7%**
Non-Federal Revenue Variance:		**($22.9 million)**	**-0.4%**
Federal Grants Variance:		**($212.1 million)**	**-6.3%**

On a year-over-year basis, monthly receipts were $524.8 million (23.7%) higher than in September of the previous fiscal year. The change in federal grants was responsible for more than all of the increase, rising by $530.1 million. Federal grants in the GRF were artificially low last September due to computer system changes in August that temporarily delayed the crediting of federal grants to funds other than the GRF, thus artificially increasing August revenues but decreasing September revenues. In addition, about $250.0 million in grant revenue could not be shown as deposited into the GRF last September due to accounting system maintenance, further depressing federal grants last September. The large increase in federal grants this September is thus due to timing factors related to last year's grant receipts that are not of material concern. OBM anticipates that year-to-year comparisons of federal grants revenue will begin to smooth out in November, which is when prior year federal grants began to follow a pattern of depending primarily on Medicaid spending rather than accounting-related events.

Tax receipts fell by $14.4 million (0.8%) from September of last year, primarily as a result of a drop of $43.7 million (5.2%) in income tax collections. The decline in income tax collections was largely anticipated, and was mostly due to a decline of $71.8 million (30.7%) in quarterly estimated payments. This estimated payment decline will be discussed in greater detail in the following section, but briefly summarized it is the result of an ongoing shift in taxpayer behavior to reduce estimated payments to better match lower expected tax liability due to rate cuts and the expansion of the small business deduction.

GRF Revenue Sources Relative to Monthly Estimates – September 2016
($ in millions)

Individual Revenue Sources Above Estimate		**Individual Revenue Sources Below Estimate**	
Kilowatt Hour Tax	$9.2	Personal Income Tax	($11.9)
Cigarette and Other Tobacco Tax	$6.2	Auto Sales and Use Tax	($6.3)
Foreign Insurance Tax	$5.7	Federal Grants	($109.2)
Alcoholic Beverage Tax	$3.0	Other Sources Below Estimate	($1.7)
Commercial Activity Tax	$2.6		
ISTVs	$9.0		
Transfers In	$1.4		
Other Sources Above Estimate	$2.4		
Total above	**$39.5**	**Total below**	**($129.1)**

(Note: Due to rounding of individual sources, the combined sum of sources above and below estimate may differ slightly from the total variance.)

Non-Auto Sales and Use Tax

September non-auto sales and use tax collections totaled $718.4 million and were just $0.3 million (0.04%) below estimate. This brings year-to-date collections to $2,287.7 million, which is $19.5 million (0.8%) below estimates after larger shortfalls in the first two months of the fiscal year. September collections were up by $23.5 million (3.4%) from a year ago, after growing by only 1.2% in July and 0.7% in August. Collections during the first quarter of fiscal year 2017 are up $38.0 million (1.7%) from the first quarter of fiscal year 2016.

Growth in national retail sales, as reported by the Census Bureau, has been relatively weak, providing some basis for the slow growth in non-auto sales tax revenue. Total retail and food service sales minus motor vehicles and parts grew by only 1.0% in July (year-over-year) and by 2.8% in August.

Weak growth in non-auto sales tax is not unique to Ohio. Moody's economic analysis division noted that the Census Bureau release of state and local tax revenue data for the April-June quarter of 2016 showed sale tax revenue for all states combined showed zero growth from the same quarter of 2015, the weakest growth since the recession. Moody's pointed to significant deflation in retail sales prices as being one of the causes of low sales tax growth.

There are economic forces that would suggest stronger growth in retail sales and thus in non-auto tax revenues. Nationally and in Ohio, personal income is growing. Ohio income minus transfer payments grew by 3.1% in the second quarter from the prior year. Consumer confidence levels are up. Real personal consumption expenditure (which includes a large amount of spending on services not subject to sales tax) is growing fairly steadily. Whether these factors translate into faster non-auto sales tax growth is something that OBM will monitor closely each month.

Auto Sales Tax

Auto sales tax collections totaled $120.5 million in September and were $6.3 million (5.0%) below estimate. This comes after stronger August collections than were expected. Year-to-date collections total $366.0 million, which is $8.7 million (2.3%) below estimate. This slowdown in collections was expected due to August's weak performance in national light vehicle sales. August had a seasonally adjusted annual rate of 17.0 million light vehicle sales, which is on par with weak June numbers, but substantially below the average 17.3 million units seen during the first seven months of calendar year 2016.

Collections were down $5.2 million (4.1%) from a year ago, while year-to-date collections are actually up $1.4 million (0.4%) from the same point in the previous fiscal year. For the short term, a low interest rate environment and relatively low gasoline prices remain favorable to auto buyers. These factors are likely to persist at least in the near term with the Federal Reserve Board signaling a cautious approach to raising interest rates and record gasoline reserves. OBM expects to see a rebound in collections next month after a stronger than expected performance of light vehicle sales in September at a seasonally adjusted annual rate of 17.8 million.

For the longer term, expert opinion seems to be divided on what the trend in new U.S. vehicle sales is likely to be. Does the post-recession vehicle boom have more room to run? IHS Global Insight now sees new light vehicle sales as averaging about 17.4 million units for calendar year 2016, rising to 17.7 million units in calendar year 2017, but from there falling slowly to 17.1 million units by calendar year 2021. Moody's, in contrast, sees the high point of new vehicle sales as being the 17.4 million units sold in calendar year 2015, with calendar year 2016 and calendar year 2017 sales being very slightly below that, but sales then falling below 17 million units in calendar year 2019.

Personal Income Tax

September GRF personal income tax receipts totaled $789.9 million and were $11.9 million (1.5%) below the estimate. As in August, the single biggest contributor to the shortfall was employer withholding, but the shortfall in September withholding was only about a fourth of what it was in August. Employer withholding was $16.8 million (2.4%) below estimate in September. The September result actually extends a trend over the last 9 months, or three quarters, of monthly withholding (there is also withholding revenue known as "annual withholding," which is driven by different economic factors) running at about 2.5% below the forecast.

For the fiscal year to date, withholding is $57.4 million, or 2.8%, below estimate.

We cannot compare the forecasted Ohio wage and salary income with actual wage and salary income for the first three months of this fiscal year, because state income is reported by the Bureau of Economic Analysis (BEA) with roughly a three month lag. However, the shortfall in withholding in the last six months of fiscal year 2016 coincided with Ohio wage and salary income falling about 1% below the forecast, which leads us to conclude that wage income falling below estimate is a likely explanation of the withholding shortfall for the first three months of fiscal year 2017 as well.

FY2017 PERSONAL INCOME TAX RECEIPTS BY COMPONENT ($ in millions)

	ESTIMATE SEP	ACTUAL SEP	$ VAR SEP	ACTUAL SEP 2016	ACTUAL SEP 2015	$ VAR Y-over-Y
Withholding	$686.1	$669.3	($16.8)	$669.3	$629.1	$40.3
Quarterly Est.	$151.8	$161.7	$9.9	$161.7	$233.5	($71.8)
Trust Payments	$13.9	$21.4	$7.5	$21.4	$19.8	$1.6
Annual Returns & 40 P	$8.7	$7.7	($1.0)	$7.7	$7.9	($0.2)
Other	$5.6	$6.4	$0.8	$6.4	$4.5	$1.9
Less: Refunds	($29.7)	($43.5)	($13.8)	($43.5)	($29.7)	($13.8)
Local Distr.	($34.6)	($33.1)	$1.5	($33.1)	($31.4)	($1.7)
Net to GRF	**$801.8**	**$789.9**	**($11.9)**	**$789.9**	**$833.6**	**($43.7)**

For the non-withholding portion of income tax collections, refunds were $13.8 million below estimate in September, but the other types of payments – quarterly estimated payments, annual returns, etc. – were $17.2 million above estimate. As a result, the total income tax shortfall was smaller than the withholding variance.

For the year to date, besides the $57.4 million variance in withholding mentioned above, refunds are $31.5 million above estimate, and all other types of payments combined are $14.2 million above estimate. The refunds that have been paid in July through September are refunds on late or amended tax returns for the 2015 tax year, and as such are not indicators of outcomes in the filing season for the 2016 tax year.

On a year-over-year basis, September personal income tax receipts were $43.7 million (5.2%) below September 2015 collections. For the year to date, income tax collections are $93.7 million (4.5%) below fiscal year 2016 collections. For both the month and the year to date, the main culprit is a large decline in quarterly estimated payments. September estimated payments were $71.8 million below last September's level, and fiscal year 2017 estimated payments are down $81.5 million from last year (both figures are declines of about 31%). This is despite the fact that estimated payments are $9.9 million above the estimate.

The explanation for this is that the fiscal year 2017 estimates assumed a large drop in estimated payments, and there has in fact been a large decrease, just not quite as large as expected in the estimates. The reason for the decrease in estimated payments is that taxpayers have been adjusting their behavior to the tax rate cuts and especially to the increased small business deduction, so that rather than making overly large estimated payments and then filing for very large refunds in the January-June filing season, they have instead cut back on their estimated payments by more than 30%, which, all else constant, should be offset by smaller refunds paid out in January through June. So, income tax revenues are expected to be lower than last fiscal year all the way through January, before finally turning positive in February as lower expected refunds finally outweigh lower estimated payments.

Commercial Activity Tax

Commercial activity tax (CAT) September receipts deposited in the GRF totaled $8.1 million and were $2.6 million (47.8%) above the estimate. September was, as it generally is, a light collections month. Collections will pick up in October in advance of the November 10th quarterly filing due date.

For the first quarter as a whole, GRF CAT collections were $2.2 million, or 0.7%, below estimate. Despite being below estimate, receipts have grown by $14.8 million, or 5.2%, from a year ago. The CAT estimates for the remainder of the year actually assume somewhat slower percentage growth from the prior year, based in part on expectations about the timing of credits taken against the tax.

Cigarette and Other Tobacco Tax

Cigarette and other tobacco tax collections were $6.2 million (8.0%) above estimate in September, and are now $8.8 million, or 4.7%, above estimate for the year. Tax revenues for the first quarter were $5.9 million, or 3.0%, below the level from one year ago. The estimates had built in a 7.3% decline for the first quarter because last year's collections included inventory floor tax revenues due to the tax rate increase that should not be repeated this year.

Kilowatt Hour Tax

Kilowatt hour tax collections were $9.2 million (31.5%) above estimate in September. OBM does not have current data on kilowatt hour usage or tax liability by tier of the tax – the rate tiers thresholds are set to approximately represent typical residential, commercial, and industrial usage amounts – but because of the extremely warm summer weather our working hypothesis is that the overage is due to high air conditioning usage in the residential sector.

The September overage increased the year to date overage to $11.2 million, or 12.8%.

GRF Non-Tax Receipts

GRF non-tax receipts totaled $935.8 million in September and were $99.7 million (9.5%) below the estimate. Federal grants were responsible for more than the entire shortfall, coming in $109.2 million (10.4%) below estimate. This was largely driven by Medicaid underspending of $123.0 million. The federal revenue shortfall was somewhat larger than one might expect based on typical state/federal ratios of Medicaid spending, but this appears to be the result of the underspending in September being concentrated in programs with higher federal match rates. The recoding of prior month expenditures from higher match rate programs to lower match rate ones may also have resulted in some reduction in federal reimbursement that affected the September federal revenues.

September intrastate transfer voucher (ISTV) revenue was $9.0 million over estimate, as the state GRF received fiscal year 2016 indirect cost reimbursement from other state funds a month earlier than estimated.

U.S. TREASURY DEPARTMENT

OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL 5:00 PM EDT: October 13, 2016

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TREASURY'S ISSUES FINAL EARNINGS STRIPPING REGULATIONS TO NARROWLY TARGET CORPORATE TRANSACTIONS THAT ERODE U.S. TAX BASE

Regulations distinguish between debt and equity

WASHINGTON - Today, the U.S. Department of Treasury and the Internal Revenue Service (IRS) issued final regulations to address earnings stripping. This action will further reduce the benefits of corporate tax inversions, level the playing field between U.S. and non-U.S. businesses, and limit the ability of companies to lower their tax bills through transactions involving debt that do not support new investment in the United States. These regulations also require large corporations claiming interest deductions to document loans to and from their affiliates, just as businesses of all sizes do when they borrow from unrelated lenders. The rules were proposed in April along with temporary anti-inversion regulations. The final rules announced today are the product of extensive public comment and engagement.

"This administration has long called for legislative action to fix our broken tax system. In the absence of Congressional action, it is Treasury's responsibility to use our authority to protect the tax base from continued erosion. We have taken a series of actions to make it harder for large foreign multinational companies to avoid paying U.S. taxes and reduce the incentives for U.S. companies to shift income and operations overseas. Such tax avoidance practices are wrong and should be stopped." said Treasury Secretary Jacob J. Lew.

"Today's final regulations are an important step in addressing earnings stripping, a commonly used technique to minimize taxes after an inversion. Throughout our rulemaking process, we sought comments to help narrow the rule and avoid any unintended consequences. We engaged extensively with businesses, tax experts, the public, and lawmakers and carefully considered their comments and recommendations. As a result of this process, the final rule effectively addresses stakeholder concerns by more narrowly focusing the regulations on aggressive tax avoidance tactics and providing certain limited exemptions."

Coupled with Treasury's previous actions to address corporate inversions, today's final regulations balance the operational needs of companies while preventing the erosion of our U.S. corporate tax base. Specifically, today's final regulations narrowly target problematic earnings stripping transactions – transactions that generate deductions for interest payments on related-party debt that does not finance new investment in the United States – while minimizing unintended consequences for regular business activities.

- Exempting cash pools and short-term loans: Treasury requested comments in the proposed regulations on whether special rules are warranted for cash pools, cash sweeps, and similar arrangements. In response to thoughtful feedback, Treasury is providing a broad exemption for cash pools, which are essentially common funding accounts for related businesses. Treasury is also providing an exemption for loans that are short-term in both form and substance.

- Providing limited exemptions for certain entities where the risk of earnings stripping is low: Transactions between foreign subsidiaries of U.S. multinational corporations and transactions between pass-through businesses are exempt from the final regulations. Financial institutions and insurance companies that are subject to regulatory oversight regarding their capital structure are also excluded from certain aspects of the rules.

- Expanding exceptions for ordinary business transactions: Treasury has significantly expanded the exceptions for distributions to generally include all future earnings and allowing corporations to net distributions against capital contributions. Treasury is also including additional exceptions for ordinary course transactions, such as acquisitions of stock associated with employee compensation plans.

- Easing documentation requirements: Treasury has relaxed the intercompany loan documentation rules for U.S. borrowers. The regulations also extend the deadline by one year until January 1, 2018.

Earlier this year, Treasury issued temporary regulations to limit inversions by disregarding foreign parent stock attributable to recent inversions or acquisitions of U.S. companies – the third step Treasury has taken since 2014 to limit inversions. The temporary regulations prevent a foreign company (including a recent inverter) that acquires multiple U.S. companies in stock-based transactions from using the resulting increase in size to avoid the current inversion thresholds for a subsequent U.S. acquisition. Treasury continues to work to finalize these regulations, which went into effect on April 4, 2016.

Treasury continues to believe that the best way to address both inversions and earnings stripping is to fix our broken business tax system, which is why we released an updated business tax reform framework in April and why we have continued to urge Congress to move forward on reform.

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Fact Sheet: Treasury Issues Final Earnings Stripping Regulations

10/13/2016

On April 4, Treasury issued proposed regulations to address earnings stripping by strengthening the tax rules distinguishing between debt and equity. After extensive engagement with businesses, tax experts, the public, and lawmakers, today we are announcing the final regulations.

After a corporate inversion, multinational corporations often use a technique called earnings stripping to minimize U.S. taxes by paying deductible interest to the new foreign parent or one of its foreign affiliates in a low-tax country. This commonly-used technique can generate large interest deductions without requiring a company to finance new investment in the United States. The new regulations restrict the ability of corporations to engage in earnings stripping by treating financial instruments that taxpayers purport to be debt as equity in certain circumstances. They also require that corporations claiming interest deductions on related-party loans provide documentation for the loans, similar to the common practice for third-party loans. The ability to minimize income tax liabilities through the issuance of related-party financial instruments is not, however, limited to the cross-border context, so these rules also apply to related U.S. affiliates of a corporate group.

Coupled with our previous actions to address corporate inversions, today's final regulations balance the operational needs of companies while preventing the erosion of our U.S. corporate tax base. Specifically, today's final regulations narrowly target problematic earnings stripping transactions by – transactions that generate deductions for interest payments on related-party debt that does not finance new investment in the United States – while minimizing unintended consequences for regular business activities in the following ways:

- Exempting cash pools and short-term loans: Treasury requested comments in the proposed regulations on whether special rules are warranted for cash pools, cash sweeps, and similar arrangements that multinational firms commonly use to manage cash among their affiliates. In response to thoughtful feedback, Treasury is providing a broad exemption for cash pools and other loans that are short-term in both form and substance, and therefore do not pose a significant earnings stripping risk.
    - Treasury and IRS expect that the exemption will generally permit companies to continue to treat as debt short-term instruments issued among related entities in the ordinary course of a group's business.
- Providing limited exemptions for certain entities where the risk of earnings stripping is low:

- Transactions between foreign subsidiaries of- U.S. multinational corporations
  - Treasury has determined the income tax consequences of mischaracterizing equity instruments as debt in these circumstances are limited.

- Transactions between S-corporations
  - Treasury has determined that the income tax consequences of mischaracterizing equity instruments as debt in these circumstances are limited.

- Transactions between regulated financial companies
  - These firms are already subject to supervisory and regulatory requirements that restrict their ability to issue intercompany debt.

- Transactions between regulated insurance companies
  - Like regulated financial institutions, insurance companies subject to state insurance regulation have limited ability to issue instruments inappropriately characterized as debt.

- Transactions between mutual funds (RICs) and real estate investment trusts (REITs), other than those owned by affiliated groups of companies
  - Treasury has determined that the income tax consequences of mischaracterizing equity instruments as debt for these investment vehicles are limited.

- <u>Expanding exceptions for ordinary business transactions</u>: Treasury has expanded the exceptions for distributions (payments made to affiliated companies), to generally include future earnings and allowing corporations to net distributions against capital contributions. Treasury is also including additional exceptions for ordinary course transactions, such as acquisitions of stock associated with employee compensation plans.

  - Such distributions out of earnings and profits will not cause debt issued by a corporation to be recharacterized as equity.

- <u>Expanding exceptions for ordinary course transactions:</u> Treasury is also including additional exceptions for ordinary course transactions, such as acquisitions of stock associated with employee compensation plans.

- Easing documentation requirements: Treasury has relaxed the intercompany loan documentation rules for U.S. borrowers to ease compliance burdens while still fulfilling their purpose, including by moving the deadline for required documentation to when the tax return is due. The regulations also extend the effective date of the documentation rules by one year to January 1, 2018.

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TAX ALERT

Final and Temporary Section 385 Regulations

Summary

On October 13, 2016, final and temporary regulations under Section 385 were released which address related party financing instruments. The regulations were officially published today. The regulations were much-anticipated and contain numerous changes from their original proposed form, addressing comments and concerns raised by practitioners. The initially proposed regulations, released April 4, 2016, were intended to address earnings stripping and the use of cross border debt to reduce U.S. income tax. But, it is important to note that the proposed regulations were not limited to these transactions and could also have an impact on related party debt transactions structured exclusively in the U.S. or solely outside of the U.S.

The proposed regulations caused alarm and concern for multinational and domestic enterprises which use cash pooling and related party financing as typical business practices and contained rules detailing:

- The ability of the IRS to recharacterize a financing instrument as in part indebtedness and in part stock (bifurcation rule - Proposed Reg. Section 1.385-1(d)).
- Documentation requirements which must be maintained and prepared within 30 days of a related party debt instrument being issued, otherwise the debt would be re-characterized as stock, absent reasonable cause relief. (Proposed Reg. Section 1.385-2).
- Rules which could recharacterize related party debt instruments as stock in connection with certain corporate transactions (transaction recharacterization – Proposed Reg. Section 1.385-3(b)(2)) as well as recharacterization of principal purpose debt (funding recharacterization – Proposed Reg. Section 1.385-3(b)(3)).

Final and Temporary Section 385 Regulations (cont.)

What Has Changed?

While the essence of the proposed regulations has not gone away, the 518 pages of final and temporary regulations under Section 385 contain many changes. To highlight a few changes, the final and temporary regulations clarify the following significant areas:

- The regulations in final form exclude foreign issuers of debt.
- The controversial general bifurcation rule has been removed.
- Documentation requirements have been delayed and apply only to debt instruments issued on or after January 1, 2018.
- Up to $50 million of indebtedness is exempt from recharacterization (the proposed regulations included a “cliff effect”, applying the regulations to all indebtedness if the taxpayer had over $50 million in debt).
- The final regulations provide additional and expanded exceptions to recharacterization, including: equity compensation, certain subsidiary acquisitions, and an expanded earnings and profits (E&P) exception.

What Does this Mean to Me?

The good news is that many taxpayers will find that they are now exempt from the documentation and recharacterization rules of the final and temporary regulations. Now is the time to determine the effects of the recharacterization rules and documentation requirements, if they apply to you, and review available remediation with your GBQ tax advisor. The final and temporary regulations are complex and the impact varies based on the facts and circumstances of each taxpayer.

United States Tax Alert

October 14, 2016

Final/Temporary Regulations Address Treatment of Certain Interests in Corporations as Stock or Indebtedness

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On October 13, 2016, the United States Treasury and the IRS released final and temporary regulations under section 385 of the Internal Revenue Code (the "385 Regulations") that (i) establish threshold documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for U.S. federal income tax purposes; and (ii) treat as stock certain related-party interests that otherwise would be treated as indebtedness for U.S. federal income tax purposes.[1]

Although the 385 Regulations were released on October 13, 2016, they are expected to have a published date of **October 21, 2016**, for determining when the various effective dates described below begin to apply to taxpayers.

Background

The 385 Regulations follow the issuance of, and *are significantly narrower in scope* than, the proposed regulations issued on April 4, 2016, under section 385 (the "Proposed Regulations") that would have (i) authorized the IRS to treat certain related-party interests as part stock and part debt for federal tax purposes; (ii) established contemporaneous documentation requirements that must be satisfied for certain related-party debt to be respected for federal tax purposes; and (iii) treated certain related-party debt as stock for all purposes of the Code when issued in connection with certain distributions and acquisitions.[2] For a discussion of the Proposed Regulations, see United States Tax Alert dated April 6, 2016.

Scope: Debt Issued by Domestic Corporations to Related Parties

[1] TD 9790.
[2] REG 108060-16, 81 Fed. Reg. 20912.

The 385 Regulations apply to debt instruments issued by a domestic corporation to certain related persons. More specifically, the 385 Regulations apply to debt instruments that are: (i) issued by a "covered member," which is currently defined to mean a domestic corporation, or a disregarded entity of a covered member; and (ii) held by a member of the domestic corporation's "expanded group," which generally includes all corporations connected to a common parent that owns, directly or indirectly, 80% of the vote or value of each such corporation.

- Exclusion of foreign issuers – The term "covered member" is not currently defined to include foreign issuers (including CFCs) and the 385 Regulations reserve on all aspects of their application to foreign issuers (including CFCs); however, the preamble to the 385 Regulations (the "Preamble") indicates that any guidance that may subsequently be issued with respect to foreign issuers will apply prospectively only.
- Exclusion of S corporations and non-controlled RICs and REITs – S corporations and non-controlled regulated investment companies (RICs) and real estate investment trusts (REITs) are exempt from all aspects of the 385 Regulations.
- Exclusion of debt instruments held by a consolidated group member – Debt instruments between members of the same consolidated group are generally outside the scope of the 385 Regulations.

Observations: The 385 Regulations target the inbound financing of a foreign-parented multinational group's domestic subsidiaries, but do not currently address the financing of such group's U.S. branch operations. Further, the 385 Regulations can be expected to have limited application to U.S.-parented multinational groups, particularly where the group's domestic corporations join in filing a consolidated return.

Bifurcation Rule Eliminated

Unlike the Proposed Regulations, the 385 Regulations do not include a general bifurcation rule, which would have allowed the IRS to treat a single instrument as part debt and part equity.

Documentation Rules

Treasury Regulation §1.385-2 (the "Documentation Rules") imposes contemporaneous documentation requirements on certain related-party debt instruments as a prerequisite to treating such instruments as debt. The rules generally require written documentation of the following four indebtedness factors (the "Indebtedness Factors"): (i) the issuer's unconditional obligation to pay a sum certain, (ii) the holder's rights as a creditor, (iii) the issuer's ability to repay the obligation, and (iv) the issuer's and holder's actions evidencing a debtor-creditor relationship, such as payments of interest or principal and actions taken on default. With respect to credit facilities, revolvers, omnibus, master and cash pooling arrangements, the Documentation Rules provide special rules to satisfy Indebtedness Factors (i) through (iii).

As compared to the Proposed Regulations, the 385 Regulations incorporate the following significant changes:

- Extension of period required for timely preparation – The 385 Regulations eliminate the Proposed Regulations' 30-day timely preparation requirement, and instead treat documentation and financial analysis as timely prepared if it is prepared by the time that the issuer's federal income tax return is filed (taking into account all applicable extensions).

- Rebuttable presumption based on compliance with documentation requirements – The 385 Regulations provide that, if an expanded group is otherwise generally compliant with the documentation requirements, then a rebuttable presumption, rather than the per se recharacterization as stock, applies in the event of a documentation failure with respect to a purported debt instrument.

- Relaxed credit analysis – The 385 Regulations provide that an annual credit analysis may be used to support an issuer's ability to repay multiple debt instruments, rather than requiring separate credit analyses for each debt issuance. An annual credit analysis cannot be used, however, after the issuer suffers a "material event," which generally includes, but is not limited to, bankruptcy, insolvency, and disposition of more than 50% of the FMV of its assets. The rules also provide that the analysis of an issuer's ability to repay can assume that the principal amount of a debt instrument will be satisfied with the proceeds of another borrowing by the issuer, provided that such assumption is reasonable.

- Notional cash pooling arrangements are potentially in scope – The 385 Regulations provide that the written documentation requirements for Indebtedness Factors (i) and (ii) that are otherwise applicable to credit facilities, revolvers, omnibus, master and cash pooling arrangements are also applicable to notional cash pooling arrangements, if such arrangements would be treated as debt issued between expanded group members.

- Trade payables may be covered by master agreements – The 385 Regulations clarify that master agreements can be used to satisfy the written documentation requirements for trade payables.

- Treatment of disregarded entities – Unlike the Proposed Regulations, the 385 regulations provide that if a debt instrument issued by a disregarded entity ("DRE") is recharacterized as equity due to failure to satisfy the Documentation Rules, then such debt will be treated as equity in the covered member that owns the issuing DRE. In other words, failing the Documentation Rules will not spring a DRE into a partnership.

- Treatment of debt instruments issued by controlled partnerships –

The 385 Regulations also exclude debt instruments issued by controlled partnerships from the Documentation Rules, unless issued with a principal purpose of avoiding the application of the Documentation Rules.

- Delayed implementation – The 385 Regulations apply only to debt instruments issued on or after January 1, 2018.

The documentation rules apply to taxable years ending on or after the date that is 90 days after the date the 385 Regulations are published in the Federal Register.

Observations: As a general matter, the 385 Regulations are less strict and more administrable than the Proposed Regulations. Similar to the Proposed Regulations, however, it is unclear how a cash pool header that takes on deposits would evidence its ability to repay. Further, while the 385 Regulations do not automatically disregard notional cash pooling arrangements as conduits, the reference to such arrangements suggests that the government will pay more attention to them in the future; accordingly, taxpayers should reconsider the documentation and operation of their notional cash pooling arrangements. Finally, despite the delayed implementation date, taxpayers should consider preparing written documentation of the four indebtedness factors for debt instruments issued prior to January 1, 2018 under general U.S. federal income tax principles.

Debt Recast Rules

Treasury Regulation §1.385-3 and Temporary Treasury Regulation §1.385-3T (together, the "Debt Recast Rules") generally adopt the following operative rules of the Proposed Regulations in targeting debt instruments issued in connection with distributions and certain acquisitions by members of the Expanded Group:

- A "General Rule" that applies if a domestic corporation distributes a debt instrument, or issues a debt instrument as consideration to acquire expanded group stock or issues a debt instrument as boot that is received by an expanded group member in an asset reorganization; and
- A "Funding Rule" that generally recharacterizes certain debt as equity if a domestic corporation distributes property other than debt, acquires stock for property other than debt, or issues boot other than debt in an asset reorganization, if the domestic corporation has issued such debt instrument within a 36-month period before or after one of the foregoing transactions, or the debt was otherwise issued with a principal purpose of funding one of the foregoing transactions.

As compared to the Proposed Regulations, the 385 Regulations incorporate the following significant changes:

- Certain debt instruments excluded – The following debt instruments are excluded from the scope of the Debt Recast Rules: (i) debt instruments issued before April 5, 2016; (ii) debt instruments issued by a regulated financial or insurance company, in each case as defined in the 385 Regulations; (iii) certain debt instruments that are issued by a domestic corporation to, or acquired by, a dealer in securities; and (iv) certain short-term debt instruments that are either issued for property other than money in the ordinary course of business, or have a short term and meet a number of conditions in the 385 Regulations.

- Expanded and Added Exceptions:
  - Subsidiary stock exception – The 385 Regulations retain and broaden the subsidiary stock exception in the Proposed Regulations to cover not only acquisitions of expanded group stock by issuance, but also acquisitions of expanded group stock from other members of the Expanded Group, in each case so long as the acquirer controls the issuer or seller immediately after the acquisition. As with the Proposed Regulations, control means direct or indirect ownership of 50 percent of the combined voting power and value of the corporation.
  - Earnings & profits exception – The earnings and profits exception has been retained and continues to apply by reducing the amount of debt reclassified as stock based on the order in which the prohibited transactions occur. However, the exception has been broadened to include not only current earnings and profits but also earnings and profits that were accumulated by the member in taxable years ending on or after April 5, 2016. The exception provides several limitations and anti-avoidance provisions. Primarily, the amount of earnings and profits available to reduce prohibited transactions engaged in by the domestic corporation is limited to only those earnings and profits that were accumulated by the domestic corporation while it continued to have the same expanded group parent. In addition, there is a "look-through" rule that disregards earnings and profits of lower-tier subsidiaries that are distributed up the chain of ownership if, generally, those earnings and profits were accumulated in taxable years ending before April 5, 2016, or were accumulated while the distributee was a member of a different expanded group.
  - "Net equity" contribution exception – There is a new exception for "net equity" contributions, where contributions of certain types of property to a corporation in exchange for its stock within a specified time frame may be applied to reduce the amount of prohibited transactions undertaken by the transferee corporation. The reduction is applied based on the order in which prohibited transactions have been undertaken by the transferee corporation.
  - Threshold exception – The "cliff effect" of the threshold exception under the Proposed Regulations is removed, so that the first $50 million of debt instruments (measured by reference to adjusted issue price) is exempt from recharacterization, regardless of whether a taxpayer has issued more than $50

million of debt instruments that are subject to recharacterization under the 385 Regulations.

- o Other new exceptions – The 385 Regulations also incorporate a number of new exceptions, such as (i) acquisitions of stock to be used as equity compensation that is delivered to individuals that are employees, directors, and independent contractors as consideration for the provision of services, (ii) deemed distributions or acquisitions resulting from transfer pricing adjustments, (iii) acquisitions of stock by dealers in securities, and (iv) an exception to address the "cascading problem" by exempting acquisitions of expanded group stock resulting from the application of the rules as being treated as giving rise to additional prohibited transactions that could cause the 385 Regulations to apply again.

- Treatment of controlled partnerships – For purposes of the General and Funding Rules, the 385 Regulations adopt an aggregate approach to controlled partnerships. If there is an event that would otherwise result in the treatment of a controlled partnership's debt instrument as equity, in lieu of recharacterizing the debt instrument as stock, the expanded group member that holds the debt instrument is deemed to contribute its receivable from the controlled partnership to the expanded group partner that undertook the distribution or acquisition in exchange for stock in that expanded group partner (but only if the expanded group partner is otherwise a covered member). This is known as the "deemed conduit approach."

- Scrutiny of partnership preferred equity – The Treasury Department and the IRS state in the Preamble that they intend to closely scrutinize, and may challenge under the anti-abuse rule, transactions in which a controlled partnership issues preferred equity to an expanded group member and the Debt Recast Rules would have applied had the preferred equity been denominated as a debt instrument issued by the partnership.

Subject to certain transition rules, the Treas. Reg. §1.385-3 generally applies 90 days after the date on which the regulations are *published* in the Federal Register.

For debt instruments that have been issued after April 4, 2016, but before 90 days after the 385 Regulations are published, and where the 385 Regulations would have applied to recharacterize them as stock during this period, the debt instruments will not be recharacterized as stock until the 91st day after the 385 Regulations have been published. There are additional transition rules that deal with the treatment of certain payments with respect to such debt instruments outstanding during this transition period, as well as a rule that avoids double counting such debt instruments as both within the scope of the General Rule and the Funding Rule.

Finally, the 385 Regulations provide an option to taxpayers to elect to apply the Proposed Regulations in lieu of the 385 Regulations for specific issuers (and members of its expanded group that are domestic corporations) during the period from April 4, 2016, through October 13, 2016. The option is solely for the purpose of determining if a debt instrument is treated as stock and must be consistently applied by the taxpayer.

Observation: Because the earnings and profits exception is limited to only those earnings and profits that were accumulated by the domestic corporation while it continued to have the same expanded group parent, taxpayers should consider whether the exception applies to acquisition indebtedness incurred by a domestic target corporation.

Consolidated Group Rules

Like the Proposed Regulations, the 385 Regulations treat members of a consolidated group as one corporation for purposes of applying the Debt Recast Rules. Generally, the Temporary Treasury Regulation §1.385-4T does not apply to issuances of interests and related transactions among members of a consolidated group, because the concerns addressed therein generally are not present when the issuer's deduction for interest expense and the holder's corresponding interest income offset each other in the group's consolidated federal income tax return. Special rules apply, however, when a debt instrument becomes, or ceases to be, a consolidated group debt instrument, or a consolidated group member that is a party to a debt instrument becomes, or ceases to be, a consolidated group member.

Blocker Entities

Although the Preamble to the Proposed Regulations asked for comments on whether to extend the proposed regulations to indebtedness issued by certain “blocker” entities to investment partnerships, the 385 Regulations do not adopt special rules for debt instruments in the context of investment partnerships, including indebtedness issued by certain “blocker” entities. However, Treasury and the IRS noted that they will continue to study these structures and transactions.

State Income Tax Implications

The proposed regulations had required that “all members of a consolidated group (as defined in §1.1502-1(h)) are treated as one corporation” for purposes of applying both the documentation rules and the debt recast rules. The temporary regulations now provide that, for purposes of applying the consolidated group rules and prohibited leveraging rules, “all members of a consolidated group (as defined in §1.1502-1(h)) that file (or that are required to file) consolidated U.S. federal income tax return are treated as one corporation.” For purposes of the documentation rules, the final regulations now exempt from the documentation requirements an intercompany obligation defined in the consolidated return rules as an obligation between members of the consolidated group (Treas. Reg. §1.1502-13(g)(2)(ii)), or an interest issued by one member of a consolidated group and held by another member of the same consolidated group.

According to the Preamble, the change to the language applicable to the prohibited leveraging rules was adopted by the Treasury in response to a commenter's concern that "if a state applies the one-corporation rule based on the composition of the state filing group rather than the federal consolidated group, transactions could be subject to the regulations for state income tax purposes even when the transactions are not subject to the regulations for federal income tax purposes." A comment suggesting all domestic corporations under common control be treated as one corporation, regardless of whether such corporations elected to file a consolidated return, was not adopted. State implications could include:

- Separate entity application of the rules in states with statutory requirements to compute taxable income beginning with *pro forma* separate federal taxable income;
- Differing combined group filing thresholds, including 50 percent ownership requirement, worldwide filings, and inclusion or exclusion of entities with a certain percentage of apportionment factors within or outside the U.S. (80/20 companies); and
- Differing earnings and profits and basis, absent application of the consolidated return regulations.

Companies should consult with their Deloitte tax advisors about the potential implications in specific jurisdictions.

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Ohio Manufacturers' Association

Tax Counsel Report
November 9, 2016
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Administrative Actions:

None to report.

Legislative Actions:

Nothing to report. Please see report of OMA staff for any additional items.

Judicial Actions:

Ohio Supreme Court

In *International Paper Co. v. Testa*, 2016-Ohio-7454, the Supreme Court held that an adjustment to the amortizable amount for purposes of the credit against the CAT for NOLs had to be journalized, but did not need to be mailed, by the statutory deadline of June 30, 2010. The Court ruled that the Tax Commissioner did have to take official action by the deadline, and remanded the case to the BTA for the Board to consider the arguments of the taxpayer on the merits, which had not been addressed.

In *Olentangy Local Schools v. Delaware Cty. Bd. of Revision*, 2016-Ohio-7381, the Court ruled that the BTA must evaluate the evidence upon which the BOR bases a reduction in value, and the BTA must make an independent determination of value where the BOR rejected the auditor's value.

In *Jefferson Industries Corp. v. Madison Cty. Bd. of Revision*, 2016-Ohio-7089, the Court ruled that the BTA must discuss the differences between dueling appraisal reports and explain why it accepted portions of one or the other. Its failure to do so is unreasonable and unlawful.

In *New York Frozen Foods, Inc. v. Bedford Heights Income Tax Bd. Of Review*, 2016-Ohio-7582, the Court held that a taxpayer that originally filed a separate return that correctly stated its tax liability may not file an amended return on a consolidated basis that results in a refund. The Court ruled that the filing did not correct any errors, and that it constituted a change in accounting method that can only be done with the permission of the tax administrator. The dissent argued that the taxpayer's appeal was untimely because it had filed a motion to reconsider with the BTA, which was rejected although a correcting decision was issued. The appeal was filed within 30 days after the modified decision, but beyond 30 days after the initial decision was issued.

In *Columbus City Schools v. Franklin Cty. Bd. Of Revision*, 2016-Ohio-7466, the Court held that the BTA could base a determination of value on a restricted use appraisal because the evidentiary value of the appraisal report was not limited by the USPAP characterization of the report. The Court also noted that market data need not be set forth in the report where the appraiser testifies and the information is subject to examination and cross examination. It noted that if the BOE felt the appraisal report was defective, it could have presented its own evidence of value.

<u>Ohio Court of Appeals</u>

Nothing to report.

<u>Ohio Board of Tax Appeals</u>

Nothing to report.

<u>Tax Commissioner Opinion</u>

No opinions to report.

<u>Other</u>

Nothing to report

TO: OMA Tax and Finance Committee
FROM: Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: November 9, 2016

Overview

This fall the Administration will begin to prepare Governor Kasich's final budget. The biggest issue concerns a budget hole estimated around $1.5 billion as a result of Medicaid tax changes. There is a good chance that any new budget proposal may include a personal income tax reduction. Regardless of what policy provisions are included in the introduced budget it is expected to be a very tight budget. How the budget hole and a possible income tax reduction are paid remains a mystery.

Tax Legislation

2020 Tax Policy Study Commission

The Study Commission continues to hold hearings to discuss the various aspects of Ohio's tax climate. The OMA has testified twice before the committee. First the OMA testified on general tax conditions and impacts on manufacturing. The second time, the OMA testified specifically on tax credits.

Representative Tim Schaffer replaced the now resigned Jeff McClain as Co-Chairman of the commission.

The Study Commission plans to have some recommendations for the next budget, and has already released a study on the historic rehabilitation tax credit.

After much inaction over the summer, the commission has held meetings in the past two months.

House Bill 9 – tax expenditure review committee

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The bill was voted out of the Senate on May 25. However due to an amendment dealing with controlling board, the bill has been held up.

Senate Bill 88 – CAT credit

Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings. Nor is it expected to move.

House Bill 102 – CAT credit

House Bill 102 sponsored by Reps. Niraj Antani (R-Miamisburg) and Hearcel Craig (D-Columbus), would provide a bid preference for state contracts to a veteran-owned business and would have authorize a personal income and CAT credit for a business that hires and employs a veteran for at least one year. However the sponsors introduced a substitute version of the bill at its first hearing removing the CAT provisions from the bill. The bill only received a first hearing for sponsor testimony last year.

House Bill 176 – CAT credit
House Bill 176 sponsored by Reps. Hall (R-Millersburg) and O'Brien (D-Bazetta) creates the Gaseous Fuel Vehicle Conversion Program. The bill allows a credit against the income or commercial activity tax for the purchase or conversion of alternative fuel vehicle. It reduces the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by us to $500. It applies the motor fuel tax to the distribution or sale of compressed natural gas. The bill also authorizes a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel. The bill was introduced in the previous General Assembly, but stalled in the legislative process. Earlier this year it was passed out of House Ways and Means Committee. The bill was re-referred to Finance Committee and voted out of committee last November.

An alternative fuel vehicle conversion grant program was included in House Bill 390. The OMA has long advocated for grant programs in place of tax credits.

Senate Bill 198 – non-resident municipal income tax
SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident. This bill has opposition from Ohio's cities and villages. The bill had one hearing last fall. It is not expected to move.

House Bill 232 – seller use tax collection
HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville. The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax. The bill has not had a hearing.

Senate Bill 235 – increased value property tax
Senate Bill 235 was introduced by Senators Beagle (R-Tipp City) and Coley (R-Liberty Township) and would exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences. The bill was passed by the Senate in late May and is supported by local chambers of commerce.

Senate Bill 246 / House Bill 398 – change the CAUV computation
Senator Hite (R-Findley) and Representative Hill (R-Zanesville) introduced companion bills to require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup and to stipulate that CAUV land used for a conservation practice or enrolled in a federal land retirement or conservation program for at least three years must be valued at the lowest of the values assigned on the basis of soil type.

The bill is proving to be controversial due to the fact that agriculture land is already taxed at a reduced rate compared to residential and commercial property. The Senate and House bills have had multiple hearings to vet the issue.

Senate Bill 264 / House Bill 454 – permanent holiday sales tax
Last year Ohio passed a pilot project to exempt sales tax during one week of back to school shopping. There is interest in making that a permanent tax break. The General Assembly quickly passed the Senate version earlier this year.

Senate Bill 288 – income tax for pass through entities reform
SB 288 was introduced by Senator Eklund (R-Munson Township). The bill revises the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors. The bill has had two official hearings. Interested party meetings have continued through the summer.

Senate Bill 289 / House Bill 475 – increase the motion picture tax credit
The motion picture tax credit companion bills sponsored by Senator Patton (R-Strongsville) and Representative Schuring (R-Canton) would expand the current motion picture tax credit. The bills would be applied against the current credit against the commercial activity tax. A version of HB 475 was amended into HB 390 and passed.

Senate Bill 310 – capital appropriations
SB 310 was introduced by Senator Oelslager (R-Canton). The capital bill is expected to move quickly. It is scheduled to leave the Senate this week after only one week of hearings. It is expected to have strong bi-partisan support. The bill provides funding for capital projects across the state and in all the legislative districts. The bill was quick passed and signed by the Governor in May.

House Bill 343 – remove sale tax on temp employees
HB 343 was introduced by Representatives Romanchuk (R-Mansfield) and Young (R-Leroy Township). The bill would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles.

The bill was finally voted out of House Committee during an extremely busy May.

The OMA and members Whirlpool and Cargill testified in support of the measure last fall.

House Bill 355 – employee misidentification
Rep. Wes Retherford (R – Hamilton) introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

There have been two interested stakeholder meetings regarding the bill. The OMA has weighed in on several occasions regarding the provisions in the bill.

<u>House Bill 390 – unemployment compensation pay off</u>
During the May legislative session HB 390 morphed into a catch all for tax and finance provisions. Two bills important to manufacturers were amended into HB 390, and one stand-alone provision was also included.

The bill incorporated the portions of HB 473 that required voter approval before a county may levy a new utilities services tax. The amendment was in response to a controversy that occurred in Hamilton County when the commissioners attempted to levy the tax without the input of the voters.

Second, the bill incorporated HB 475 and expanded the motion picture tax credit. The General Assembly approved the amendment to House Bill 390 which expanded Ohio's current motion picture tax credit. The action would have increased the total amount of credits that may be awarded from $20 million per fiscal year to $75 million per fiscal year. The vast majority of the claimed credits are taken against the commercial activity tax (CAT).

The legislature scaled back the proposal, opposed by the OMA, by almost half by reducing the amount of allowable credits to $40 million per fiscal year and disallowing any carryover of credits if less than $40 million is awarded in any year.

OMA opposes carve outs and credits to the CAT as they threaten its broad-base and low rate.

Finally the General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than $400 million in FUTA penalties. Without this fix employers were staring at a possible $168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

<u>House Bill 394 – unemployment compensation reform</u>
HB 394 was introduced last November by Representative Sears (R-Monclova Township). The bill is a priority for the business community. Ohio is one of two states that continue to carry debt owed to the federal government due to its insolvent unemployment trust fund. The bill offers a balanced package of reforms to pay off the debt and build solvency in the system to prevent another major solvency issue in the next recession.

The bill has had multiple hearings in the House Insurance Committee. The OMA and its business allies hired a national expert to testify and set the record straight regarding the provisions of the bill to the General Assembly.

House and Senate leaders have established a Joint Unemployment Compensation Reform Committee to hear testimony on how to address the system's lack of solvency. The OMA testified twice at the hearings urging the legislature to find a workable solution during the lame duck period.

<u>House Bill 467 – unemployment compensation debt</u>
HB 467 was introduced by Representative Butler (R-Oakwood). The bill establishes a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund. However, while the bill finds a way to pay off the debt prior to November 2016, it does nothing to address the long term solvency issues of the fund.

<u>House Bill 491 – CAT tax credit pilot program</u>
HB 491 was introduced by Representative Anielski (R-Walton Hills). The bill creates a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.

The bill has had two hearings.

<u>Tax News</u>
<u>Budget Concerns</u>
Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

<u>Attorney General</u>
Just prior to the 4th of July holiday, Ohio Attorney General Mike DeWine filed an amicus brief requesting certiorari from the United States Supreme Court in the case *Gillette Co. v. Franchise Tax Board*. The case involves whether member states may ignore provisions of the Multistate Tax Compact, in this case to the detriment of taxpayers. The Attorney General focuses the state's arguments on the compact/contract issue and its importance to states in general. The broader implications of this case and the impacts and precedent it could set for other state compacts could prove troublesome for both

manufacturers and states. The case is of critical importance for manufacturers and we truly appreciate the Attorney General's willingness to engage the U.S. Supreme Court in this matter.

Last month, the U.S. Supreme Court declined to accept the appeal of the California Supreme Court decision brought by the Gillette Company. The court's refusal to hear the case means that the California decision remains the law of that state.

Tax Commissioner Visit with Members

Ohio Tax Commissioner Joe Testa visited with OMA members to discuss how the state's tax policy impacts Ohio manufacturers.

The group advanced concepts for consideration in Ohio's operating budget which will be written next year as well as ways to improve the tax code to make Ohio more competitive for manufacturing.

Members reiterated the OMA tax principles and described how the 2005 tax reforms continue to benefit manufacturing in the state.

Site Selection Ranks Ohio's Business Climate Third Overall

Ohio finished third overall in Site Selection's annual ranking of state business climates. Georgia and North Carolina were numbers one and two.

Fifty percent of the ranking is based on a survey of site selectors – corporate facility investors and site consultants — who indicate simply which states they deem to be the most business friendly. That's the subjective part. The other 50 percent — the objective side — is a combination of factors primarily based on announced project data that resides in the Conway Projects Database which credits areas with corporate facility projects of at least $1 million in capital investment, 20 or more new jobs or new construction of at least 20,000 sq. ft.

Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 343 of the 131st G.A.

Date: May 31, 2016

Status: As Reported by House Economic and Workforce Development

Sponsor: Reps. Romanchuk and Young

Local Impact Statement Procedure Required: Yes

Contents: To exempt sales of employment services and employment placement services from the sales and use tax beginning July 1, 2017

State Fiscal Highlights

STATE FUND	FY 2017	FY 2018	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Loss of $164 million	Loss of $169 million in FY 2019. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2016 is July 1, 2015 – June 30, 2016.

- The bill reduces the sales and use tax base, and thus decreases sales and use tax revenue starting in FY 2018.
- State sales and use tax receipts are deposited in the GRF which would bear the majority of the revenue loss. Any reduction to GRF tax receipts would also reduce the amount distributed to the Local Government Fund (LGF) and Public Library Fund (PLF) as these local funds receive distributions from GRF tax receipts.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2016	FY 2017	FUTURE YEARS
Counties, municipalities, townships, and public libraries (LGF and PLF)			
Revenues	- 0 -	Potential loss	Loss of $5.6 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -
Counties and Transit Authorities			
Revenues	- 0 -	Potential loss	Loss of $41.5 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill reduces revenue from local permissive county and transit authority sales taxes. Those taxes share the same base as the state sales and use tax.
- Receipts from the state sales and use tax are deposited in the GRF. A share of GRF tax revenues is distributed under permanent law to the LGF and PLF. Thus, any reduction to GRF tax receipts would also reduce the amount distributed to the LGF and PLF.

Detailed Fiscal Analysis

Under current law, the sale or use of services is generally not taxable unless expressly made subject to the sales tax; and employment services and employment placement services have been explicitly subject to the tax since 1993. Employment services are transactions in which a service provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to the purchaser for a short period of time or on a long-term basis, and are paid by the service provider or a third party that supplies the personnel to the service provider. Generally, if employment services are supplied by a third party to a service provider, and then by the service provider to a purchaser, only the transaction between the service provider and the purchaser is taxable. H.B. 343 would exempt all taxable employment and employment placement services beginning July 1, 2017, thus affecting sales tax revenue starting in FY 2018.

Sales taxes on employment services are generally remitted by businesses with North American Industry Classification System (NAICS) codes starting with 5613. These would include employment placement agencies (NAICS 561311), executive search services firms (NAICS 561312), temporary help services firms (NAICS 561320), and professional employer organization firms (NAICS 561330). Additionally, certain users of employment services and employment placement services pay use taxes directly to the state. Roughly $155 million was collected from the state sales and use tax on employment and employment placement services in FY 2015, according to the Department of Taxation.

Separately, data from the U.S. Census Bureau suggest revenue from establishments in the administrative and support services industries (NAICS 561) which declined during the last economic recession grew about 6% per year, on average, in the most recent years.[1] Assuming a revenue growth rate of 3% for firms in the employment and employment placement services in Ohio, the potential revenue from the sales and use tax on employment services might be about $169 million in FY 2018 and $174

[1] Nationwide, revenue growth at businesses in the Administrative and Support Services sector (NAICS 561), which includes firms relevant to the bill, was about 6% per year between 2011 and 2014, according to the 2014 Service Annual Survey and administrative data from the Economic Census.

million in FY 2019, and possibly higher depending on the growth of the industry. The amounts above would also correspond to the potential revenue loss from H.B. 343, which is likely to increase in future years, though the magnitude of the increases would depend on the business cycle.[2]

Receipts from the state sales and use tax are deposited into the GRF. Under permanent law, a portion of GRF tax receipts is subsequently transferred to the Local Government Fund (LGF) and the Public Library Fund (PLF). Under permanent law, the GRF would receive 96.68% of sales tax revenue, and the LGF and the PLF 1.66% each.[3] Thus, the GRF loss would be about $164 million in FY 2018. Reduced distributions to the LGF and PLF would be about $2.8 million for each local government fund. In FY 2019, estimated revenue losses from the bill would be about $169 million to the GRF, and $2.9 million each for the LGF and the PLF.

Local permissive county and transit authority sales taxes share the same tax base as the state sales tax, and are approximately 24.5% of state sales tax revenues. Thus, the revenue loss to local governments from permissive county and transit authority sales and use taxes from H.B. 343 would be about $41.5 million in FY 2018 and $42.7 million in FY 2019. Adding those amounts to the potential revenue losses to the LGF and the PLF, revenue reductions to local governments would total $47.1 million in FY 2018 and $48.5 million in FY 2019, and are likely to grow in future years.

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[2] Though a small share of nonfarm payroll employment (2.1% in 2014), the temporary help industry plays an outsized role in workforce adjustment during recessions and recoveries. Generally, during recessions, companies increase their use of temporary help, lengthen existing temporary help assignments, or reduce hiring from their pool of temporary workers in response to economic uncertainty. The reverse tends to occur in periods of economic recovery.

[3] Under temporary provision in H.B. 64, the budget act for the current biennium, the PLF share would be 1.70%, instead of 1.66%.

UNEMPLOYMENT COMPENSATION REFORM JOINT COMMITTEE
SENATOR BOB PETERSON AND REPRESENTATIVE KIRK SCHURING,
CO-CHAIRMEN

TESTIMONY
OF
LARRY HOLMES

VICE PRESIDENT, FINANCE
FORT RECOVERY INDUSTRIES
OMA CHAIRMAN, SAFETY AND WORKERS' COMPENSATION COMMITTEE
AND
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION

OCTOBER 20, 2016

Chairman Peterson, Chairman Schuring and members of the Committee, my name is Larry Holmes. I'm Vice President of Finance at Fort Recovery Industries. Fort Recovery Industries, headquartered in Fort Recovery, Ohio, manufactures superior die cast hardware and components for market-leading manufacturers worldwide. I also serve as the Chairman of The Ohio Manufacturers' Association's (OMA) Safety and Workers' Compensation Committee. I'm testifying today to give a manufacturer's perspective regarding the current lack of solvency in Ohio's unemployment compensation system.

Ohio's unemployment insurance trust fund, which is funded by employers and pays benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. Prior to the passage of House Bill 390 this past summer which allowed the state to use unclaimed funds to eliminate Ohio's unemployment compensation debt obligations to the federal government, Ohio was one of only three states that still owed money to the federal government due to Title XII loan borrowing. I personally thank each of the elected officials on this committee, along with Senate President Keith Faber, Ft. Recovery Industries' state senator, and Speaker Cliff Rosenberger for passing the legislation that enabled the debt to be retired prior to November of this year.

The Great Recession of 2008 was the nation's longest and deepest since the Great Depression of the 1930s. A majority of states including Ohio did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the recession.

Because of the borrowing, Ohio employers regardless of their experience rate, began repaying the more than $3 billion back to the federal government. The failure to have sufficient funds in the trust fund cost employers dearly over the past years. Because Ohio was unable to pay off the full loan amount by November 10 of the second year following borrowing, the 5.4% FUTA tax *credit* employers in Ohio received was reduced annually as a penalty mechanism to incent federal debt repayment. At Ft. Recovery industries our per person federal FUTA tax liabilities went from $42 per person to $147 per person this past year. The increases alone cost us $165,000 over the years since the penalty took effect.

As this committee continues its important work to find a balanced approach to achieve sustained system solvency; I would like to urge members to pass legislation in the near future. House Bill 390 contained a penalty provision that states that if Ohio borrows funds from the federal government to cover future unemployment compensation liabilities, all employers are subject to an immediate contribution rate increase as determined by the Director of the Ohio Department of Jobs and Family Services, in an amount up to ½ of 1%, for the purpose of eliminating the principal on any outstanding loan balance. This provision will be removed upon passage of new fund-solvency legislation.

Finally, the best solvency plan is one that includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason we need to be sure that Ohio's rates are in line with surrounding states and states with which Ohio competes to attract and retain new businesses. I see this firsthand being a manufacturer who operates on the Ohio-Indiana border and with operations in both states.

Again thank you for the opportunity to share these thoughts and I will be happy to try to answer any questions you have following Rob's testimony.

Chairman Schuring, Chairman Peterson and members of the Committee. Thank you for the opportunity to testify today regarding Ohio's unemployment compensation insurance system. My name is Rob Brundrett, and I am Director, Public Policy Services for The Ohio Manufacturers' Association (OMA). The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has more than 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Ohio's unemployment trust fund is among the least solvent in the country. If it were not for the recent payment made by the state of Ohio enabled by House Bill 390, I would be standing before you today discussing a potential $168 per employee penalty staring employers in the face.

The unemployment insurance (UI) burden in Ohio generally increased as a result of the Great Recession, as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state UI premium was reduced. However the FUTA tax continued to increase as Ohio's Title XII loan was not repaid.

Experience rate reductions were restrained due to tax increases automatically triggered by the state's failure to meet Ohio's Minimum Safe Level (MSL) standard for UI trust fund solvency. This solvency provision results in the maximum contribution rate for Ohio employers being increased to 8.6%, although the maximum rate on the base rate schedule is just 6.7%. Therefore, businesses experienced triple the pain: 1) an increase in base rates, 2) Minimum Safe Level tax triggers, and 3) FUTA penalties.

The OMA encourages this committee to review all the information that has been offered before this committee and during the House Bill 394 process as it works to craft legislation that responsibly addresses the solvency issue.

Ohio has already taken some action to help both employers and employees. Several years ago under the leadership of Senator Peterson and Representative Scherer, Ohio enacted House Bill 37. That bill created Ohio's Shared Work program. Under the program an employer can reduce the number of hours worked by employees in lieu of layoffs, and those employees can qualify for unemployment compensation benefits from the state to offset their reduced hours. This has been a proven and successful program to help alleviate the burdens caused by mass layoffs.

One issue that has not been addressed through testimony at this committee – to our knowledge - is the option to bond any future UI debt. Bonding is not the preferred solution advocated by the OMA; however, it would be irresponsible to not acknowledge the option that other states have successfully used to address solvency issues.

While Ohio was one of many states that borrowed money from the federal government, due to Ohio's constitution, the state was unable to entertain the option of issuing bonds to pay off the debt in order for employers to avoid the burdensome increase in FUTA penalties.

Ohio tried this before. Amended Substitute House Bill 171 effective July 1, 1987 directed the Ohio Treasurer to issue bonds to repay outstanding advances made by the federal government to the Ohio unemployment compensation program, to pay interest on advances and to reimburse the general revenue fund for interest paid.

However the Ohio Supreme Court denied a mandamus action. The Court in a 4-3 decision held that the law allowing for the issuance of bonds was unconstitutional under Sections 1,2, and 3 of Article VIII of the Ohio Constitution and further that the "special fund" exception created by the Supreme Court in a prior decision also did not allow for the type of bonding directed in the bill.

During the past recession eight states (Arizona, Colorado, Idaho, Illinois, Michigan, Nevada, Pennsylvania, and Texas) turned to bonding in order to avoid onerous federal penalties. By bonding the debt, the states were able to take advantage of lower interest rates saving the states and employers money.

For example the Texas statute allows for the preemptive issuance of bonds if the state is in the position that borrowing from the federal government is likely. The statute allows the state to make the decision whether to issue bonds or borrow money from the federal government depending on various factors, most importantly the prevailing interest rates. In some instances this option also allows states time to review their solvency provisions so neither drastic cuts nor huge tax increases are rushed through in a moment of panic.

We acknowledge that passing bonding language with any solvency package would require a change in Ohio's Constitution; a ballot initiative moved by the General Assembly would have the best chance of passing in a referendum.

A second issue that has not been addressed or offered to the OMA's knowledge during the discussions on UI is exempting unemployment compensation from the state income tax, thus keeping more benefits in the pockets of qualified recipients. State taxation of unemployment benefits varies. Of the 41 states that tax wage income, six states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Montana, Pennsylvania, and Virginia). Two states (Indiana and Wisconsin) partially exempt a fixed dollar amount of benefits from state income tax but tax the rest. The remaining states fully tax unemployment benefits.

Finally the OMA would like to comment on the definition of solvency standard. A lot has been said regarding 1.0 of the Average High Cost Multiple (ACHM). This is the solvency standard used in House Bill 394 and in the model advocated by Policy Matters Ohio. The primary U.S. Department of Labor (DOL) solvency guideline recommends states maintain a trust fund balance equal to or exceeding one and one-half times the High Cost Multiple determined by taking the historically highest claims activity in the state for a year and multiplying by 1.5. However even DOL determined this standard is unrealistically high.

Instead it often refers to the aforementioned 1.0 AHCM. This is determined by reviewing claims over the most recent 20 years, or last three recessionary periods, and sets the solvency goal at the average of the three highest years of claims.

Meanwhile, Ohio has traditionally used Ohio's Minimum Safe Level (MSL) as its standard for solvency. This standard was birthed out of the recession in the early 1980s. The MSL sets the minimal solvency at an amount to cover a reasonably foreseeable recession without building up a trust fund balance that would only be needed for the historically deepest recession. There is no universally agreed upon calculation for what the optimum solvency target should be. The OMA believes the truest solvency number falls somewhere short of 1.0 AHCM.

In conclusion, unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. The first step was to pay off the remaining Title XII loan balance, which the General Assembly achieved this summer. The OMA and its members thank and appreciate the leadership of the General Assembly in accomplishing that pay off. Now it is imperative to pass a solvency bill in order to protect Ohio's employers and employees from being subjected to onerous federal penalties during any future economic recession.

Thank you and Mr. Holmes and I would be happy to answer any questions you might have.

TESTIMONY
OF
DOUG HOLMES
PRESIDENT
UWC – STRATEGIC SERVICES ON UNEMPLOYMENT & WORKERS' COMPENSATION

NOVEMBER 3, 2016

Chairman Peterson, Chairman Schuring, and members of the committee, thank you for the opportunity to testify before you today. My name is Doug Holmes and I am the President of UWC - Strategic Services on Unemployment & Workers' Compensation (UWC). I testified previously before the Insurance Committee of the House of Representatives on November 18, 2015 and on January 19, 2016.

UWC was established in 1933 and is a broad-based national association exclusively devoted to the issues of national unemployment insurance and workers' compensation public policy. I am here today to testify on behalf of The Ohio Manufacturers' Association, Ohio Chamber of Commerce, National Federation of Independent Businesses – Ohio, The Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

First, permit me to thank the House and Senate in developing and enacting HB 390 to address the immediate need to avoid additional dramatic increases in the Federal Unemployment Tax for 2016 and 2017. This legislation was a very important first step to eliminate the outstanding federal loan debt and to set the stage for longer term solvency measures in anticipation of the next recession.

We appreciate the leadership of Representative Sears who started the conversation on Unemployment Insurance (UI) solvency reform, the House Insurance Committee and this committee in conducting a series of hearings and giving careful attention to UI solvency.

During my tenure with the Ohio Department of Job and Family Services and the Ohio Bureau of Employment Services from 1984 to 2005 I supervised or served directly as the Secretary of the Unemployment Compensation Advisory Council. During the span of 21 years the UCAC addressed many solvency challenges after recessions and in anticipation of the next recession.

I was involved in assisting the Ohio General Assembly and business and labor leaders in crafting successful responses to - or in anticipation of - the recessions of the early 1980s, 1992 and 2002. In all cases the legislative solution incorporated a balanced approach that included additional revenue and reductions in benefit payout.

The first step always included an assessment of the current status of the fund, the tax burden, and projections of what was needed to pay benefits. It is helpful at this point to take a look at the trust fund with updated information. With the enactment of HB 390 and an additional year of reduced benefit payout, the trust fund balance has improved, yet we are also one year closer to the next recession and the differential between contribution revenue and benefit payout on an annual basis. Additional solvency measures are clearly needed in order to produce a positive balance sufficient to withstand a recession without having to once again borrow from the federal unemployment account or secure some other financing.

According to the U.S. Department of Labor Quarterly Data Summary for the 2nd quarter of 2016, Ohio collected $1.1 billion in revenue for the year ending June 30, 2016 and paid $967 million in unemployment compensation. Assuming that the current trust fund balance after repayment of the outstanding Title XII loan is $500 million, a net positive annual addition to the trust fund balance of just

$130 million per year is clearly not sufficient to generate the balance needed to reach a minimum safe level under current law of $2.7 billion or the even higher federal 1.0 Average High Cost Model level.

To get to a solvency level of $2.7 billion at the current rate of recovery would take approximately 16 years and the next recession is likely much sooner than that. The options to generate that much additional revenue and/or reduction in benefits in such a short period of time are frankly distasteful as a matter of policy and can significantly impact employers, unemployed workers and the Ohio economy.

HB 394 included significant tax and benefit measures in recognition of the size of the problem to be solved and borrowed from solvency measures in other states that had been successful. Each state, however, is different, with a different industrial mix and employment base.

Ohio is not the only state that is still not prepared for the next recession. As we meet today, seven years after the end of the recession of 2008-09, the country is still recovering, and unemployment insurance trust fund balances in most states are not sufficient to withstand a reasonably foreseeable recession. As of the second quarter of 2016, only 17 states had unemployment trust fund balances that met or exceeded the U.S. Department of Labor suggested solvency level, but all of them are smaller states – the largest being the state of Washington. None of the top 11 largest industrialized states meet the 1.0 AHCM solvency guideline and are unlikely to reach that level.

California	$3.1 billion outstanding Title XII debt
New York	0.04
Pennsylvania	Outstanding Bond debt
Illinois	Outstanding Bond debt
Ohio	Recently paid off Title XII debt – outstanding state loan to be repaid in 2017
Michigan	Outstanding Bond debt
Florida	0.88
Texas	Outstanding Bond debt
Massachusetts	0.27
New Jersey	0.33
North Carolina	0.57

The only large states approaching a 1.0 AHCM are the states that took dramatic steps to reduce unemployment compensation benefit payout: Florida and North Carolina.

As a practical matter, a review over a period of decades shows that larger states have chosen not to require trust fund balances of 1.0 AHCM because the increased tax burden to reach that level would place them at a competitive disadvantage with other industrialized states and the world market. A review of Ohio's unemployment trust fund history shows that a trust fund balance of between 0.6 and 0.7 times AHCM was sufficient to withstand the recessions in the early 1990s and 2002.

Increasing taxes at rates that are greater than competing states in order to reach 1.0 AHCM will impact the cost to Ohio employers of hiring new employees and could result in the loss of new employers who choose to locate in lower tax states.

Although steps taken in HB 390 improved the immediate unemployment trust fund balance, Ohio is still among the least solvent states in the country. Only California and the Virgin Islands have outstanding federal loan balances.

Many states with outstanding federal loan debt due to the 2008 recession took action to improve trust fund solvency in order to avoid the imposition of federal tax increases and to improve solvency in anticipation of the next recession. The responses included reductions in benefit payout, improved integrity, increased state tax bases and rates, state loans and appropriations, private bank loans and revenue bonds.

Ohio's long term imbalance is driven principally by 1) maximum weekly benefit amounts that are higher than the national average and higher than most surrounding states, 2) the automatic increase in the maximum weekly benefit amount tied to increases in the statewide average weekly wage, 3) the availability of up to 26 weeks of unemployment compensation, and 4) a relatively low tax base. Ohio's tax base at $9,000 is below the national average and slightly below tax bases in surrounding states. There are also a number of claims eligibility and integrity measures that could improve the solvency of the fund. Measures to improve the effective collection of overpayments and prosecution of fraud are available.

Clearly, it is imperative that Ohio take steps to improve the solvency of its unemployment trust to better align benefits and contributions, and build a significant balance in the state's trust fund before the next recession. Although the state may be later in the economic cycle than other states to act, choosing not to address state trust fund solvency in advance of the next recession risks that the trust fund will become depleted requiring the state to borrow and the state or employers to pay interest on federal loans or opt to enact bond authority and pay debt service. In the second year of an outstanding federal debt the FUTA tax increases that were just eliminated through the enactment of HB 390 would once again begin to increase until federal loan balances were paid off.

A number of measures should be considered in developing the solvency package. Based on best practices from other states, below are options to consider.

1. **Freeze and/or Limit Maximum Weekly Benefit Amounts**

Limitations on increases in the Maximum Weekly Benefit Amount to be provided are commonly imposed as one of the possible solvency measures. Ohio enacted limitations as part of solvency measures in response to the recession of the late 1970s and early 1980s. Many states have automatic increases in maximum weekly benefit amounts tied to the statewide average weekly wage, but 18 states have specific dollar maximums that do not automatically go up with the state average weekly wage. The automatic increase in maximum weekly benefit amounts is a significant cost driver for the UI system and contributed to Ohio's current insolvency.

Freezing maximum weekly benefit dollar amounts or limiting the maximum to a lower percentage of the statewide average weekly wage for new applications filed for weeks beginning on and after January 1, 2018 would reduce benefit payout and can be modeled to project savings. The 50% of Statewide Average Weekly Wage (SAWW) is already generally the maximum amount for claimants, except higher wage earners who have dependents. By applying a freeze or a 50% of SAWW limitation to new applications filed for weeks beginning on or after January 1, 2018, no current claimants would see a reduction in weekly benefit amount through the end of their current benefit years.

2. Repeal Higher Maximum Benefit Amounts for High Wage Claimants with Dependents

Ohio is one of only 14 states that has some form of dependency provision which increases the weekly benefit amount that is provided to claimants with dependents. Unlike most of the 14 states, Ohio law only provides for higher maximum benefit amounts for those who have average weekly wages during their base periods that are higher than the statewide average weekly wage.

The dependency provision is not required by federal law, no additional administrative funding is provided for the staff needed to determine the various classifications of dependency, and the time taken for dependency determinations makes it more difficult to determine eligibility within the expedited time frame expected for UI claims.

The repeal of this provision will save benefit payout, simplify administration, and will not impact low wage claimants.

3. Increase the State Unemployment Tax Base Effective January 1, 2018

An increase in the state unemployment tax base to $11,000 from $9,000 would be consistent with the trend in other states addressing solvency and produce dedicated additional revenue to improve the solvency of the unemployment trust. This increase of 22% in tax base will place Ohio's tax base higher than all surrounding states except West Virginia.

Raising the tax base even higher may raise additional revenue but would put Ohio at a disadvantage in attracting new business and keeping existing employers from moving to lower cost states.

4. Set a Reasonable Minimum Safe Level for the UI Trust Fund

Although the U.S. Department of Labor Guideline recommends a positive balance of 1.0 Average High Cost Multiple (AHCM), the tax increases and/or benefit reductions required to meet this level would place Ohio at a disadvantage in attracting new employers and retaining existing Ohio businesses and the increases in tax and/or cuts in benefits would be too great before the beginning of the next recession. A review of the history of the trust fund demonstrates that a minimum safe level set under current law was sufficient to respond to a reasonably foreseeable recession. In the event of a much larger recession, Ohio and the other larger industrial states would all respond with significant measures as necessary to finance benefits. There is a need to build a significant balance in preparation for the next recession; however, building excessive balances through state UI tax increases takes money away from investment in job creation by employers.

At this point in the economic cycle I recommend gradual increases in tax base and reductions in benefit eligibility, with careful ongoing review of the trust fund balance and the status of the trust fund. It is unlikely that the state will be able to avoid borrowing to pay benefits as a result of a significant recession. Additional adjustments may be needed in response to the next recession.

5. Adjust the Range of the Number of Potential Weeks of Unemployment Compensation

In response to the Great Recession many states enacted changes to the number of potential weeks of unemployment compensation that would be available to individuals filing for unemployment compensation and a number of states tied the number of potential weeks of benefits to the state unemployment rate.

Michigan	20 weeks
Missouri	20 weeks
Kansas	16-26 weeks depending on total unemployment rate
Arkansas	25 weeks
Florida	12-23 depending on total unemployment rate
Georgia	14-20 depending on total unemployment rate
North Carolina	12-20 depending on total unemployment rate
South Carolina	20 weeks

Current Ohio law uses a sliding scale of the number of weeks based on the number of base period qualifying weeks from 20 to 26. Because a qualifying week is any week with respect to which wages are paid or earned the percentage of claimants with fewer potential weeks of less than 26 is very small.

A change in the determination of the total number of weeks potentially available twice a year based on the state seasonally adjusted three month total unemployment rate before January and July would be consistent with changes made in other states tied to the total unemployment rate. A sliding scale which sets the number from as low as 12 weeks when the rate is 5.5% or below up to 20 weeks if the rate is 9% or higher would follow the practice established in North Carolina. Experience with other states adopting these sliding scales has shown a significant reduction in benefit payout and a reduction in the average duration of unemployment. Such a provision would more quickly align benefit payments with contribution revenue and assist in building a positive balance in the unemployment trust fund.

A change similar to Michigan, Missouri and South Carolina would be to set a single maximum at 20 weeks. Such a provision would reduce benefit payments to some degree without impacting the majority of claimants. The average duration of unemployment compensation in Ohio as of the 2nd quarter of 2016 was 14.5 weeks.

6. Consider Exempting Unemployment Compensation from State Income Tax

Unemployment compensation is not uniformly subject to state income tax. The policy underpinning for states choosing not to subject unemployment compensation to taxation is that the payments are not being made to individuals for services performed and that to subject them to taxation would reduce their value as temporary wage replacement while individuals were unemployed and searching for work.

Although federal law requires that unemployment compensation be treated as income and states generally follow federal law in defining that which is subject to taxation as income, some states elected not to tax unemployment compensation as income under state law.

According to a Tax Foundation study, of the 41 states that tax wage income, 5 states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Pennsylvania, and Virginia). Two states partially exempt a fixed dollar amount of benefits from state income tax but tax the rest.

An amendment to provide that state unemployment compensation is not taxable as income under state law would increase the wage replacement value of the benefits without negatively impacting the state unemployment trust fund.

There would be some additional administrative expense associated with the different treatment for state income tax purposes and there could be an impact on state revenue; however, it would also reduce the impact in net benefits that otherwise may be imposed in solvency measures.

7. Improve Overpayment Collection

Current law requires that non-fraud overpayment determinations must be made within three years after the end of the benefit year in which benefits were claimed. This period is shorter than many other states, restricting agencies from determining overpayments to be collected. A period to six years would be more consistent with best practices in other states.

Current law requires that if non-fraud overpayment amounts are not repaid or recovered within three years from the date of the director’s order becoming final, the agency shall initiate no further action to collect the overpaid benefits and cancel the amounts not recovered.

This three year limitation restricts overpayment collection, particularly when the agency is able to locate the individual and finds that the individual is once again claiming unemployment compensation and/or has significant resources with which to make repayment.

Removing the artificial time frame for collection in favor of discretion by ODJFS to use best practices in collection enables more effective overpayment identification and collection. It will reduce the amount of overpayments that should not have been written off and improve the solvency of the UI Trust Fund.

A review of the annual Mutualized Account report for the period ending June 30, 2015 shows that approximately $6 million in uncollected benefit overpayments were written off. Permitting ODJFS to extend the period of collection would reduce the annual write off and improve trust fund solvency.

8. Eliminate Double Payment Of Wage Replacement When Unemployment Compensation is Claimed for the Same Week as Workers' Compensation Total Disability and/or Social Security Disability

To be eligible to be paid unemployment compensation under federal law an individual must be able to work, available to work and actively seeking work during each week that he or she claims unemployment compensation. Despite this requirement, individuals who have been determined unable to work for a week or weeks for purposes of workers' compensation or Social Security Disability have been found to claim all of these benefits for the same week, resulting in some cases in more in wage replacement than the wages to be replaced. This can result in discouraging individuals from recovering from disabilities and seeking work. It also unduly costs the UI trust fund.

A requirement that no individual may be paid unemployment compensation for a week if the individual was determined not to be able to work for that week for purposes of workers' compensation or Social Security Disability Insurance not only encourages individuals to recover and seek work but also reduces the unnecessary payment of benefits from the UI trust fund.

To the extent that individuals may be partially disabled and still able to work, consideration may be given to permit them to claim unemployment compensation reduced by workers' compensation and disability payments that may be allocated to weeks of unemployment compensation claimed.

9. Require Sustained Workforce Attachment to Qualify for Benefits

Many states require that individuals have a significant attachment to the workforce with employment in multiple quarters of the base period. Most states, including Ohio, have an alternative base period (ABP) provision that enables more individuals to qualify to establish benefit rights and/or uses the most recent quarterly wages in determining whether an individual is eligible to establish a benefit year in which the individual may be paid unemployment compensation for weeks claimed.

The ABP provisions generally were enacted in recognition that in some cases individuals had more recent work prior to becoming unemployed that was not captured in states that used the first four of the most recently completed calendar quarters. In Ohio, if the number of qualifying weeks and/or wages paid in the four quarter period is not sufficient to qualify for benefit rights the agency will review the **most recently completed four quarters** prior to the filing of the application for benefits by the individual in determining eligibility.

Ohio enacted its ABP provision in the late 1980s in response to concerns expressed by workers, particularly in the construction industry, in recognition that work in the industry may fluctuate from quarter to quarter and that capturing more recent employment in these cases would be more representative of the individual work history immediately prior to an individual becoming unemployed.

For example, a “regular” base period for an individual filing an application in November would be the four quarters ending June of 2016. If the individual did not have sufficient weeks or wages in that period the agency would examine the weeks and wages in the most recently completed four calendar quarters (the four quarters ending September 30th).

The effect of the ABP generally is to qualify more individuals for unemployment compensation and has the effect of increasing the average weekly benefit amounts of those who qualify because of more recent wage information.

A requirement that an individual have wages (earn remuneration) in at least two of the most recently completed three calendar quarters in the individual’s base period, whether it is the regular or alternative base period, would ensure that there is a recent significant attachment to the workforce as part of the determination to qualify to establish benefit rights. Such a provision would have minimal impact on whether an individual had sufficient weeks or wages in the regular or alternative base period.

Another option in many states is to require that a certain amount of wages or a percentage of base period wages be earned outside the high quarter. Pennsylvania, for example, has required that an individual have worked at least 18 weeks in his or her base period and have at least 49.5% of base period earnings in other than the high quarter. Indiana requires that an individual have wages of at least $2,500 in the last two quarters.

10. Enhance Fraud Penalties, Prosecution, and Overpayment Collection

The current law requires that if ODJFS finds fraudulent misrepresentation by an applicant for unemployment compensation that the director shall reject or cancel the applicant’s entire weekly claim for benefits that was fraudulently claimed or the entire benefit rights if the fraud was in connection with the application; however, the authority to make such determinations is limited to four years after the end of the benefit year in which the fraudulent misrepresentation was made.

Removing the limitation within which the fraudulent determinations may be made and giving broader discretion to ODJFS would assist in the identification and prosecution of fraudulent claims.

The current law requires that if there is misrepresentation in the determination of benefit rights ODJFS shall impose two penalty weeks to be canceled for payment for each week of fraud. The penalty applies for six years after the discovery of the misrepresentation.

This specific time limitation for the imposition of the penalty weeks should be amended to remove the statutory six year limitation on the period of time for administrative or legal proceedings for the collection of fraudulently claimed benefits or interest due on such benefits. The provision requiring that such amounts not be filed as liens and be canceled as uncollectible should also be deleted.

These integrity provisions will enable a more active and sustained collection effort, including greater coordination with the IRS through the Treasury Offset Program under which uncollected benefit amounts may be collected through offset against federal income tax refunds. The provisions will also enable the agency to be more aggressive in prosecution of fraud.

11. Deny Benefit Payments for a Week when a Claimant Cannot Verify that the Claimant Continues to be Unemployed after Additional Employment

Ohio currently requires that an individual serve a waiting week in establishing benefit rights and claiming the first week during his or her benefit year. A similar waiting week is not currently required when an individual returns to work full time during his or her benefit year after claiming weeks of unemployment compensation. The reporting of additional employment or an extended period during an individual's benefit in which the claimant does not claim benefits may raise an issue for review by the agency to determine whether the individual continues to be unemployed so as to be eligible to be paid unemployment compensation for subsequent weeks.

The imposition of a waiting week to be served after a break in claiming benefits of three consecutive weeks during his benefit year before claiming subsequent weeks of unemployment compensation would assist in reducing the number of individuals who are employed full time while claiming unemployment compensation and assist in identifying fraud and identity theft earlier during the benefit year.

Another alternative to address this issue may be to require individuals who do not have a return to work date and fail to file claims for benefits for three consecutive weeks to report to the UI agency as a condition of being paid unemployment compensation for the ensuing week. This would still provide a vehicle to identify fraud and identity theft while enabling individuals who continue to be unemployed to receive compensation.

12. Clarify Labor Dispute Disqualification Provisions

Individuals who participate in labor disputes in which they withhold their labor pending the outcome of a dispute with their employer are generally disqualified from unemployment compensation as they have voluntarily made themselves unavailable for work. The labor dispute disqualification typically is applied for any weeks for which the unemployment of the individual is due to the labor dispute.

Ohio is among a small number of states in which the statute and case law provide a constructive "lock out" exception. Case law in Ohio has created the theory of constructive lock out in which courts review the negotiations between employers and unions to determine which party took steps to effectively cause the unemployment. Did the employer insist on its final proposal and notify employees that they were permanently replaced? Did the union bargain in good faith and assure that bargaining unit members were at all times willing to return to work under the terms of employment pending final agreement?

The result of "constructive" lock out case law construing the statute has been that individuals participating in labor disputes that otherwise would be disqualified have been paid benefits. Statutory language that would more specifically define "lock out" to mean the physical denial of entry by an employer to a factory, establishment, or other premises would be helpful in clarifying when the labor dispute denial would not apply. It would also be helpful to adopt in statute the case law standard that a "lock out" does not include an employer taking reasonable steps to secure and protect a factory, establishment, or other premises from sabotage.

13. Provide Clarification of the Standard to Determine Just Cause for Termination

Ohio Supreme Court case law has established the precedent that if an individual is not suitable for a position because the individual did not perform the work required, the employer made known the employer's expectations at the time of hiring, and the expectations were reasonable and did not change since hiring, the individual is at fault and may be discharged for just cause and be disqualified from benefits. This standard is not well known, resulting in inconsistent application of the law.

A clear statement of this standard is needed. Also, a clear codification of policy is needed to state that it is just cause to terminate individuals from employment when they violate the terms of an employee handbook provided to them as part of the terms or conditions of employment.

An individual who is absent from work for a period of three consecutive work days without notifying the employer should be considered to have quit work without just cause. This is consistent with general policy concerning job abandonment. Codification of all of these provisions will be helpful in providing notice to employers and employees about the standards to be applied.

14. Clarify Work Search Requirements

Claimants are required to be actively seeking work as a condition of being eligible for unemployment compensation and they must accept work offered. However, federal law requires that an individual not be disqualified for refusal to accept new work if it is not in the local area.

The administration of this provision is difficult given the different travel expectations for jobs that are available to claimants. Specific authority to ODJFS to adopt rules to define "unreasonable distance" and "locality" would be helpful.

15. Avoid Paying More in Unemployment than an Individual Earned in Wages

Federal law and current state law require that there be a reduction in the weekly benefit amount payable to a claimant for periodic Social Security payments. Federal law also, however, permits states to limit the reduction if a claimant made a contribution to social security and is receiving a retirement payment.

The current law results in some individuals receiving nearly as much or more in the combined UI wage replacement and social security retirement benefits than their average weekly wage during the base period.

A review of Ohio's current provision which provides for no offset should be reviewed as part of the examination of measures to improve UI trust fund solvency.

16. Reduce the New Employer Tax Rate to Attract New Business

Federal law permits states to provide for a 1.0% new employer rate. A number of states have included this low new employer rate, other than for employers in the construction industry, as part of efforts to attract new employers to the state. A 1.0% new employer rate was recently adopted in North Carolina.

The average unemployment tax rate for employers in the construction industry is typically higher than the general average unemployment tax rate. Excluding the construction industry avoids the potential that out of state contractors who are new to the state may underbid existing construction contractors in the state due to the reduced new employer tax rate.

Although enacting this provision would reduce revenue to some degree from new employers, over the long term this provision may increase revenue if it enables the state to attract new employers who would otherwise not be operating in Ohio.

Coordination with HB 390

With the enactment of HB 390 to provide funding to pay off the remaining federal loan it was recognized that provisions in the Act would be amended with the enactment of longer term solvency legislation.

Section 4141.25 (B) (7) (a) should be amended to provide that the imposition of increased contribution rates in the event that the trust fund has a remaining balance due in Title XII loan amounts as of the computation are to be determined only for the following calendar year and that this review and determination should be made by the Director of ODJFS each year as of the computation date at a rate sufficient to pay off the balance prior to November 10th of the following year. The current language would require that the rate increase determination continue after the computation date until the earlier of the principal on any outstanding balance is eliminated or the director determining that the total credits allowable against the FUTA tax would be fully reduced for that calendar year. The amount of the rate increase and the timing of its imposition and termination should be amended to be more specific and consistent with the normal contribution rate determination and effective date processes.

Section 4141.25 (B) (8) should also be amended to provide that the additional contributions required by divisions (B) (6) and (B) (7), if any, should be credited to individual employer accounts instead of 50% to the mutualized account and 50% to individual employer accounts. The mutualized account balance is currently very high and additional credits are not needed for the account.

The new Section 4141.251 (D) should be amended to assure that in the event that an employer makes a payment that is insufficient to pay the amount of contributions due and the amount of the surcharge to pay interest that the partial payment be first applied to the employer's individual account, followed by the mutualized account and then to pay the surcharge. This amendment will assure that a federal issue is not raised with respect to amounts received being immediately deposited in the state unemployment trust fund.

Conclusion

There has been considerable testimony raising issues with various provisions of HB 394, and modifications to the language of that bill as introduced and in substitute form should be considered in finalizing legislation to address solvency. Amendments to address provisions in HB 390 should also be considered in finalizing the legislation. The need for comprehensive UI solvency now is greater than ever as we approach the likelihood of an economic downturn in the near term. Significant solvency measures are required with respect to benefit pay-out, contributions to be paid and integrity.

We urge this committee to finalize its deliberations and proceed with solvency legislation.

Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 491 of the 131st G.A. **Date**: May 23, 2016

Status: As Introduced **Sponsor**: Rep. Anielski

Local Impact Statement Procedure Required: Yes

Contents: Authorizes a nonrefundable credit against the commercial activity tax for businesses that have facilities located in active foreign-trade zones

State Fiscal Highlights

- The bill authorizes a nonrefundable credit against the commercial activity tax (CAT) for expenditures incurred for specified purposes by businesses in Ohio foreign-trade zones.
- The bill reduces revenue from the CAT by an uncertain amount. The potential revenue loss would be dependent on the level of qualifying expenditures, and thus could be sizable.
- CAT revenue is deposited into the GRF and two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Under current law, the GRF receives 75% of CAT revenue. The School District Tangible Property Tax Replacement Fund (Fund 7047) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081) receive 20% and 5%, respectively.
- A loss of GRF revenue would reduce distributions to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), which will receive 1.66% and 1.70%, respectively, of GRF revenue in FY 2017. The PLF share reverts to 1.66% in FY 2018 and thereafter under current law.

Local Fiscal Highlights

- The bill reduces revenue from the CAT. A share of CAT revenue is deposited into two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Thus the bill reduces revenue to school districts and other local governments.
- A reduction in state distributions to the LGF and PLF would reduce revenues of units of local government and libraries.

Detailed Fiscal Analysis

The bill authorizes a nonrefundable credit against the commercial activity tax (CAT) for businesses that have one or more facilities located in active foreign-trade zones (FTZs) in Ohio.[1] FTZs are areas designated by the Foreign-Trade Zones Board (FTZ Board), pursuant to federal law, for the purpose of storing, exhibiting, assembling, manufacturing, and processing foreign and domestic goods. The credit equals expenditures incurred by the business during the tax period for any of the following purposes: (1) creating jobs at the FTZ facility, (2) providing training or continuing education to employees working at the FTZ facility, (3) making capital improvements to the FTZ facility including, specifically, installation of renewable energy resources, or (4) undertaking initiatives to increase exports to foreign nations of goods or services produced at the FTZ facility.

The credit would be claimed against the CAT due on the business's gross receipts derived from the FTZ facility, but expenditures exceeding the tax due cannot be claimed as a credit in future tax periods. The bill requires businesses claiming the credit to file records of the commitments and expenditures upon which the credit is based with the Tax Commissioner. If the Commissioner and the Director of Development Services determine that a business has failed to comply with the reporting requirement, the Commissioner may make an assessment against the business proportionate to the compliance failure. The assessment may include applicable penalty and interest.

LSC is unable to determine the commitments and expenditures of firms that may be used as the basis of the CAT credit. Therefore, LSC is unable to estimate the potential revenue loss from the bill. Though the revenue reduction is undetermined, it could be sizable depending on the level of qualifying expenditures incurred by firms in the FTZs and their current CAT payments, none of which can be ascertained by LSC.

CAT revenue is deposited into the GRF and two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Under current law, the GRF receives 75% of CAT revenue; the School District Tangible Property Tax Replacement Fund (Fund 7047) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081) are credited 20% and 5% of CAT receipts, respectively.

A portion of GRF tax revenue is distributed to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), with the balance retained by the GRF. The LGF and PLF shares are 1.66% each under permanent law, but the PLF instead receives 1.70% during the current biennium. Reduced distributions to these two state funds would lower revenues of units of local government and public libraries.

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[1] The U.S. Foreign-Trade Zone Board reports eight active foreign-trade zones in Ohio with merchandise received and shipments between $10 billion and $25 billion in 2014.

Medicaid tax change to cost Ohio, counties

Nearly 3 million Ohioans are enrolled in Medicaid, the government health insurance program for the poor and disabled. Debate over the next two-year state budget won't start for seven months, but state officials already are wrestling with a looming billion-dollar budget hole, plus a $400 million local funding hit that includes bus services.
Federal regulators are putting an end to a state sales tax structure that allowed Ohio to collect hundreds of millions of dollars per year in federal Medicaid matching funds. That has Gov. John Kasich and legislative leaders staring at a $1.1 billion state funding loss in the next two-year budget.

Plus, the average county is looking at a loss of 7.5 percent of its sales tax collections, based on 2015 state figures. A number of rural counties, including Pickaway, would see sales tax losses exceeding 10 percent.

Meanwhile, the Central Ohio Transit Authority stands to lose about $8 million a year.

“The dollar amounts are considerable,” said Suzanne Dulaney, executive director of the County Commissioners Association of Ohio, noting that 60 percent of county budgets are spent on criminal justice and safety.

“The (Kasich) administration told our members that they understand the impact on counties and plan to take that into account," she said. "We've also heard from lawmakers who have cautioned counties to budget conservatively because of this issue.”

Tim Keen, the state budget director, said the change essentially will wipe out half of the state's projected tax revenue growth and could mean significant county cuts that “we must take into account.”

“This is a significant budget issue for the state, counties and transit authorities that we have to try to work through,” he said.

Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

“People have been aware of the fact that it was at risk,” said John Corlett, Ohio’s former Medicaid director who is now executive director of the Center for Community Solutions, a policy research group based in Cleveland. “There are ways to address it. None of them will be universally popular or easy.”

Starting July 1, 2017, Ohio will no longer charge a Medicaid sales tax that is expected to net the state $558 million in fiscal year 2018. Over the two-year budget, the net state loss is projected at $1.1 billion, plus nearly $400 million in county and transit authority sales taxes.

Roughly 80 percent of the local funding loss hits counties — Franklin County would see a hit of about $20 million per year. Ohio's eight regional transit authorities would lose about $39 million per year, as critics note that the state already ranks 47th in public transportation funding, spending 63 cents per person on transit.

The annual loss for COTA would top 6 percent of its total sales tax revenue. Based on 2015 figures, the loss equates to more than 70,000 hours of service, said Marty Stutz, COTA spokesman.

“We would have to be proactive about budgeting to make sure the implications are considered,” he said. “It will be a challenge for us.”

Since the Great Recession, not only have counties grown more reliant on sales tax revenue, but those sales tax receipts have increasingly been made up of Medicaid services. In 2013, counties got $81 million from Medicaid sales taxes, 4.9 percent of their total sales taxes. But with Kasich's expansion of Medicaid coverage and the push to increase managed care, that revenue rose to $148 million by 2015, 7.5 percent of the total, and would reach about $160 million by 2018.

While sales tax revenue has seen steady growth, other county revenue sources have been largely flat, adding to concerns about the looming cut.

The state has options to make up its money. Corlett pointed to the hospital franchise fee, which also draws down federal dollars.

“If you look around the state, I don’t think there’s a hospital that’s losing money,” he said.

Last year, Kasich’s initial two-year budget proposed increasing the hospital fee from 2.66 percent to 3 percent. House Republicans pushed it to 4 percent, which would have netted the state $1 billion over two years.

Senate Republicans later stripped out the fee increase, and the rate was left unchanged.

Keen would not comment on the hospital fee or other options, such as increasing the health-insuring corporation tax or expanding the sales tax to private managed-care operations.

“We’re assessing a range of potential solutions, but we’re very early in our analysis,” he said.

Ohio is not alone in its troubles. Pennsylvania, Michigan and California already have addressed how they tax Medicaid managed care in various ways over the past seven months.

Keen said his office is looking at those states, while counties keep an eye on Keen.

“Redistributing a new revenue stream back to 88 counties is more challenging than sending it into one state general fund,” Dulaney said.

jsiegel@dispatch.com

Site Selection’s 2016 Top State Business Climate Rankings

Overall Rank	State	Survey Rank	Comp. Rank	2015 NP Rank	2015 NP Rank PC	2016 NP Rank	2016 NP Rank PC	Mature Firm TI Rank	New Firm TI Rank	Final Total Points
1	Georgia	3	7	7	16	1	4	3	6	97
2	North Carolina	5	2	4	7	4	10	7	13	94
3	Ohio	11	8	2	3	8	13	5	3	90
T4	Tennessee	4	3	11	13	6	8	29	29	89
T4	Texas	1	1	1	11	15	34	12	42	89
6	Virginia	6	13	9	18	2	3	11	39	87
T7	Louisiana	13	11	13	6	5	2	10	2	84
T7	South Carolina	2	18	19	19	11	9	32	34	84
9	Alabama	8	16	15	10	19	20	13	19	83
10	Indiana	6	6	10	12	17	21	43	15	82
11	Florida	9	9	14	41	10	23	19	36	75
12	Oklahoma	14	28	23	15	20	18	16	5	74
13	Utah	10	24	32	30	29	22	6	10	73
14	Kentucky	28	5	5	1	7	6	18	7	69
T15	Illinois	24	14	3	4	3	11	45	24	68
T15	Iowa	19	10	21	8	12	7	40	41	68
T15	Michigan	27	4	6	14	8	12	25	25	68
T18	Arizona	15	22	25	33	14	19	14	31	67
T18	Mississippi	12	25	30	25	20	14	37	21	67
20	Nebraska	36	12	16	2	13	1	9	1	60
21	Nevada	18	15	28	21	38	36	4	38	59
22	South Dakota	26	21	36	9	46	46	2	11	54
23	Kansas	20	17	20	5	38	37	47	48	52
24	New York	17	29	18	43	24	41	42	37	49
25	Wisconsin	34	26	17	20	31	33	35	4	47

NP - New Plant, PC - Per Capita, TI - Tax Index, 2016 Figures from Jan. - Aug. 2016

Source: Conway Projects Database

PolicyGoal:
An Efficient, Competitive Ohio Tax System

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

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

Good tax policy also generates necessary revenues to support the essential functions of government. Good budgeting and spending restraint at all levels of government are vital to a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 and additional reforms in 2011 through 2015 have led to significant improvements to a tax system that was for many years widely regarded as uncompetitive and obsolete. These reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which provide more stable and predictable revenues, and simplify compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate, as well as the creation of a broad-based, low-rate commercial activity tax.

Going forward, these tax policy gains must be protected. Tax bases should be protected against erosion caused by granting credits and carve-outs to narrow special interests, in order to protect the productivity of the taxes. Where possible and reasonable, tax bases should be expanded, and tax rates reduced.

In addition, the state should continue work with Ohio municipalities to continue to streamline the collection of municipal income taxes making it administratively simpler and less costly to conduct business in Ohio.

The state's tax system would also benefit from a reduction of the number and type of taxing jurisdictions. Because of its complex layering of local and state taxes, Ohio's tax system is at a competitive disadvantage compared to other states.

5733.31 Credit for purchasing new manufacturing machinery or equipment - 18 month lookback.

(A) As used in this section:

(1) "Component member" has the same meaning as in section 1563(b) of the Internal Revenue Code.

(2) "Controlled group" has the same meaning as in section 179(d)(7) of the Internal Revenue Code.

(3) "Cost" has the same meaning as in section 179(d)(3) of the Internal Revenue Code.

(4) "Eighteen-month period" means the eighteen-month period that begins January 1, 1995, and ends June 30, 1996.

(5) "Manufacturer" has the same meaning as in section 5711.16 of the Revised Code.

(6) "Manufacturing machinery or equipment" has the same meaning as "engines and machinery, and tools and implements, of every kind used, or designed to be used, in refining and manufacturing" in section 5711.16 of the Revised Code.

(7) "New manufacturing machinery or equipment" means manufacturing machinery or equipment, the original use of which commences with the taxpayer or with a partnership of which the taxpayer is a partner.

(8) "Purchase" has the same meaning as in section 179(d)(2) of the Internal Revenue Code.

(B) A nonrefundable credit is allowed against the tax imposed by section 5733.06 of the Revised Code for a taxpayer that purchases new manufacturing machinery or equipment that the taxpayer locates in this state and uses as a manufacturer. The credit also is allowed for a taxpayer that is a direct or indirect partner in a partnership that purchases new manufacturing machinery or equipment that the partnership locates in this state and uses as a manufacturer. In either event, the credit is available only if both of the following conditions are met:

(1) The purchases are made during the eighteen-month period;

(2) In the case of such new manufacturing machinery or equipment purchased by the taxpayer, the cumulative cost of the new machinery or equipment, when added to the cumulative cost of any other such manufacturing machinery or equipment purchased by other component members of a controlled group of corporations of which the taxpayer is a component member, equals or exceeds twenty per cent of the aggregate cost of all tangible personal property located in the United States and owned by the taxpayer or other component members of a controlled group of corporations of which the taxpayer is a component member, at the close of the taxpayer's most recent taxable year ending before the eighteen-month period. In the case of such new manufacturing machinery or equipment purchased by a partnership of which the taxpayer is a direct or indirect partner, the cumulative cost of such property equals or exceeds twenty per cent of the aggregate cost of all tangible personal property located in the United States and owned by the partnership at the close of its most recent federal taxable year ending before the eighteen-month period, and the taxpayer's distributive share of such cumulative cost, when added to the cumulative cost of any other such new manufacturing machinery or equipment purchased by the taxpayer or other component members of a controlled group of corporations of which the taxpayer is a component member, equals or exceeds twenty per cent of the aggregate cost of all tangible personal property located in the United States and owned by the taxpayer or other component members of a controlled group of corporations of which the taxpayer is a component member, at the close of the taxpayer's most recent taxable year ending before the eighteen-month period.

(C) The amount of the credit equals twenty per cent of the cost of the new manufacturing machinery and equipment located and used in this state by the manufacturer. However, the aggregate credit allowed to any taxpayer, or if the taxpayer is a component member of a controlled group of corporations, to the controlled group, shall not exceed five hundred thousand dollars. If the manufacturing machinery and equipment is purchased by a partnership, the five-hundred-thousand-dollar limit applies both to the partnership and to the taxpayer or controlled group. The taxpayer shall be allowed its distributive share of any credit available through the partnership, and such share shall be aggregated with any other credit available to the taxpayer or controlled group under this section before applying the five-hundred-thousand-dollar limit to the taxpayer or controlled group. The taxpayer may allocate the amount of credit, as so limited, among any of its taxable years that end after the purchase is made and include any portion of the eighteen-month period. The taxpayer shall claim the credit in the order required under section 5733.98 of the Revised Code. Any credit amount in excess of the tax due under this chapter after allowing for any other credits that precede the credit under this section in that order may be carried forward for three taxable years after the last taxable year that includes any portion of the eighteen-month period, but the amount of the excess credit allowed in any such year shall be deducted from the balance carried forward to the next year.

(D) Nothing in this section shall be construed to limit or disallow pass-through treatment of a partnership's income, deductions, credits, or other amounts necessary to compute the tax imposed by section 5733.06 of the Revised Code and the credits allowed by this chapter.

Effective Date: 06-30-1997

Tax

New Tax Guides Offered

November 4, 2016

OMA Connections Partner, RSM US, has compiled 2016 Year-end Tax Considerations for Businesses to help companies make informed decisions related to year-end tax planning.

RSM has also published this 2016 Year-end State and Local Tax Considerations guide as well as this 2017 Tax Planning Guide. *11/1/2016*

Final and Temporary Section 385 Regulations Published

October 28, 2016

OMA Connections Partner, GBQ, writes that on October 21, 2016, final and temporary regulations under Section 385 were published which address related party financing instruments.

Per GBQ: "The regulations were much-anticipated and contain numerous changes from their original proposed form, addressing comments and concerns raised by practitioners. The initially proposed regulations, released April 4, 2016, were intended to address earnings stripping and the use of cross border debt to reduce U.S. income tax. But, it is important to note that the proposed regulations were not limited to these transactions and could also have an impact on related party debt transactions structured exclusively in the U.S. or solely outside of the U.S."

Here's more from GBQ.

And, this will be a topic of discussion when the OMA Tax Committee meets on Wednesday, November 9. Dorothy Coleman, Vice President of Tax and Domestic Economic Policy at the National Association of Manufacturers (NAM) will present. Register here for in-person or phone-in participation. *10/25/2016*

S Corp. vs. C Corp. – Time to Switch?

October 28, 2016

OMA Connections Partner, MCM CPAs & Advisors, writes that the Protecting Americans from Tax Hikes (PATH) Act of 2015 made some taxpayer-friendly provisions permanent — including the shortened recognition period for companies that convert from C Corporation to S Corporation status.

According to MCM, this change is causing many manufacturers and distributors to re-evaluate their corporate status, and many companies are electing Subchapter S status to gain enhanced flexibility in business decisions and to lower taxes.

MCM offers these important issues to consider before you convert. *10/25/2016*

IRS Issues New Regs for Partnerships

October 21, 2016

OMA Connections Partner, Clark Schaefer Hackett (CSH), posts that the IRS targets partnership transactions and liabilities with new regulations: "Under the new guidance, more property transactions between partners and partnerships are likely to be classified as disguised sales — and, therefore, subject to taxes — than under the previous IRS guidance. The guidance also curbs the use of so-called leveraged partnership transactions to avoid paying taxes."

Read more from CSH about the new regulations here. *10/19/2016*

OMA on the Record for Federal Corporate Tax Reform

October 14, 2016

This week the Cleveland Plain Dealer published a letter to the editor from OMA's Rob Brundrett, Director, Public Policy Services, urging the next president to undertake corporate federal tax reform.

He said: "Until we unshackle the nation's job creators from the costly, complex and outdated tax code, the U.S. will continue to lose out on new investment.

"The U.S. has the highest corporate tax rate among the industrialized world. Our businesses are burdened with a combined federal and state rate of 39.1 percent. Compare this to the global average rate of 24.1 percent and it's no surprise that American businesses are reducing investment at home and moving overseas for more favorable tax conditions."

Read the full letter here. *10/13/2016*

U.S. Supreme Court Declines Manufacturer's Appeal

October 14, 2016

This week, the U.S. Supreme Court declined to accept an appeal of a California Supreme Court decision brought by the Gillette Company. The case sought to resolve whether the State of California could retroactively revoke its participation in the multistate tax compact and deny taxpayers the choice of schemes to apportion income among the states in which they do business.

The OMA had prevailed upon Ohio Attorney General Mike DeWine to file an amicus brief with the high court in support of Gillette's request, which he did. The court's refusal to hear the case means that the California decision remains the law of that state.

This issue arises in several other states as taxpayers seek to take advantage of the apportionment method that most beneficially reduces their income in high-tax states. *10/13/2016*

"Pro Growth" vs. "Fair Tax"

October 14, 2016

OMA Connections Partner, GBQ Partners, summarizes highlights of Trump's and Clinton's tax policy proposals here. *10/11/2016*

You Can Get R&D Tax Credit Retrospectively

October 7, 2016

Manufacturers now know that developing new or improved products or processes can qualify them for the Research & Development Tax Credit, but did you know that eligible companies generally have at least 3 years from the date you filed your tax return to claim the credit via an amended return?

This means you may be able to regain funds paid from 2015, 2014, and 2013 to the federal government.

In addition, Ohio offers an R&D tax credit incentive. If your business qualifies for the federal credit, there is a chance you may also qualify for state tax savings.

Read more from OMA Connections Partner, Tax Credit Group. *10/3/2016*

Ohio 2020 Tax Policy Study Commission Holds Hearing

September 30, 2016

This week the Ohio 2020 Tax Policy Study Commission and its freshly appointed co-chairman, Rep. Tim Schaffer (R-Lancaster) held its first hearing since the spring. The commission, which was created in the last budget bill, continues to hear from groups and individuals regarding all matters of Ohio tax policy.

This week the commission heard from a variety of witnesses testifying on multiple aspects of Ohio's tax code including income tax, sales tax, business taxes, and tax credits. The witnesses included OMA friend and respected economist Dr. Ned Hill, who testified on (1) Ohio's fiscal system, (2) the quality of local government fiscal data, (3) tax revenue and future business cycles, and (4) tax credit programs.

Testimony was also provided by the Ohio Municipal League, Policy Matters Ohio, Council of State Taxation, and a coalition of Ohio mayors. Hearings are scheduled to continue through the remainder of the year. *9/29/2016*

Due Date Changes for 2016 Tax Returns

September 30, 2016

OMA Connections Partner, GBQ Partners, posts this: "As part of the short-term highway funding extension passed by the Senate in late July, tax return due dates for certain filers have changed for the 2017 filing season (2016 tax returns). The new law applies to returns for tax years beginning after December 31, 2015 with one exception: C-Corporations with fiscal years ending on June 30th have ten extra years to make the change."

Read more from GBQ here. *9/27/2016*

What? No lab coats?

September 30, 2016

Despite the value the R&D tax credit can offer, many businesses that have qualifying expenses incorrectly assume they don't qualify. You don't need sophisticated research facilities or PhDs in lab coats to be eligible. This overview from OMA Connections Partner, Clark Schaefer Hackett, can help you determine whether your company could be missing out on this profit boosting opportunity. *9/27/2016*

Members Give Tax Reform Input to Commissioner Testa

September 23, 2016

This week Ohio Tax Commissioner Joe Testa visited with OMA members to discuss how the state's tax policy impacts Ohio manufacturers.

The group advanced concepts for consideration in Ohio's operating budget which will be written next year as well as ways to improve the tax code to make Ohio more competitive for manufacturing.

Members reiterated the OMA tax principles and described how the 2005 tax reforms continue to benefit manufacturing in the state. *9/22/2015*

Tax Changes for Ohio Businesses and Individuals

September 9, 2016

OMA Connections Partner, Clark Schaefer Hackett, posted this item about tax changes that occurred in 2016 that affect Ohio businesses and individuals. Among them are municipal tax reforms and occasional entrant treatment. *9/6/2016*

New Deadlines for 2016 Wage Reports

September 9, 2016

The new Jan. 31, 2017, deadline for filing W-2s, W-3s and 1099-MISC (Box 7) reports with the Social Security Administration or the IRS may catch many companies unprepared this year. The new deadline was enacted as part of HR 2029, the Consolidated Appropriations Act of 2016, late last year.

The new filing deadline now matches the deadline for providing information to employees or independent contractors so that the IRS is armed with employer information to confirm individual income tax reporting.

Read more from OMA Connections Partner, RSM US, here. *9/6/2016*

8 Things You Need to Know about the New Lease Accounting Rules

September 2, 2016

After 10 years in the making, the Financial Accounting Standards Board (FASB) issued new rules regarding the financial reporting of leases. The amendments included in this guidance are intended to address criticisms of existing accounting and reporting rules and increase overall transparency and comparability of financial statements. OMA Connections Partner, Clark Schafer Hackett, discusses 8 things you need to know regarding the new rules. *9/1/2016*

IRS Addresses Procedural Issues for New R&D Tax Credit Provisions

August 26, 2016

OMA Connections Partner, Tax Credits Group, provides an update about forms and procedures for claiming the new research & development tax credit incentive that offsets payroll taxes: "… the IRS issued draft versions of the 2017 Form 941, Employer's Quarterly Tax Return and the 2016 Form 6765, Credit for Increasing Research Activities, reflecting the provision in the … (PATH Act) that allows a "qualified small business" to elect to claim a portion of its research credit as a tax credit against its employer FICA tax liability."

Read more here. *8/25/2016*

Getting Employees To Join The Fight Against Fraud

August 26, 2016

OMA Connections Partner, MCM, posts this: "… The manufacturing sector is especially vulnerable to fraud schemes involving billing, corruption and noncash assets, such as theft of inventory and equipment. Research suggests that businesses that provide a convenient and confidential way for employees to report unethical behavior are more likely to unearth embezzlement and other wrongdoing sooner and suffer smaller losses than those without established "whistleblower" policies."

And "… the Association of Certified Fraud Examiners (ACFE) has consistently found that tips are the most common method of detecting fraud by a significant margin. … the ACFE found that more than 42% of frauds were detected by tips. About half of these tips came from employees, and the rest were reported by vendors, customers and anonymous sources. The second most common method of detection was management review, which unearthed fraud in only 16% of the cases in the study."

Read more from MCM here. *8/24/2016*

Come Hear Congressman Renacci Discuss Federal Tax Reform

August 12, 2016

Congressman Jim Renacci (R-16th Congressional District) will discuss concepts for federal tax reform at the OMA Government Affairs Committee meeting on Wednesday, August 31.

The meeting will be held at Eaton Corporation, 1000 Eaton Blvd., Cleveland, OH 44122 from 9:30 a.m. until 1:00 p.m.; includes lunch.

Additional topics on the agenda include:

- 2016 election updates
- Ohio energy issues: 1) Utility proposals for unjustified subsidies; 2) Potential utility re-regulation legislation
- Pending state legislation, including:
    - Unemployment compensation system reform
    - Elimination of tax on temporary employment services & employees
    - Preview of 2017 state budget concerns – will business tax increases be on the table?

Register here.

IRS Proposed Regulations Target Gift and Estate Tax Planning Strategies

August 12, 2016

According to OMA Connections Partner, Clark Schafer Hackett, the IRS has recently released proposed regulations that would eliminate valuation discounts for gifts of family-controlled, closely held business interests to family members. Read more here.

Business Tax Giveaway to Hollywood Hits State Revenue

July 29, 2016

This week the Ohio Office of Budget and Management (OBM) made another deposit to the state's rainy day fund, now topping $2 billion, a little more than 6% of the biennial state budget held in reserve.

With the deposit, the OBM director Tim Keen issued a revised revenue estimate including revising commercial activity tax (CAT) collections downward by more than $10 million due to the recently approved state legislation that extends a CAT credit to movie making enterprises.

Hailed for job creation and economic development, an amendment to SB 390 to exempt movie production enterprises from the state's business was approved earlier this year by lawmakers. The OMA opposed the credit that erodes the tax base and puts pressure on remaining taxpayers including manufacturers. Aren't you glad to be subsidizing Hollywood producers like George Clooney?

Ohio Attorney General Defends Manufacturers

July 15, 2016

Just prior to the Independence Day holiday, Ohio Attorney General Mike DeWine filed an amicus brief requesting certiorari from the U. S. Supreme Court in the case of *Gillette Co. v. Franchise Tax Board*. The case involves whether member states may ignore provisions of the Multistate Tax Compact, in this case to the detriment of taxpayers.

The Attorney General focuses the state's arguments on the compact/contract issue and its importance to states in general. The precedent the case could set for other state compacts could be detrimental to both manufacturers and states.

OMA appreciates the Attorney General's willingness to engage the U.S. Supreme Court on this critical matter.

State Ends Fiscal Year in Good Shape

July 8, 2016

Unlike some other states that are experiencing budget shortfalls (look east to Pennsylvania and west to Illinois), Ohio ended FY16 in good shape. Revenues were a little down for the fiscal year ending June 30, but so were expenditures, by a lot more.

Revenues fell just 1 percent below estimates: a total of $21.8 billion came in compared to the $22.0 billion predicted. Compared to FY15, the state brought in $415.7 million more in FY16.

Spending was below estimates for FY16 by about $1.2 billion. Medicaid accounted for nearly $925.9 million of that amount. Primary and second education spending was below estimates by $74.5 million while health and human services spending is down $59.7 million.

Medicaid spending was up $2.1 billion in state and federal funds from FY15. Through June of 2015, nearly $14.9 billion was spent on Medicaid; through June 2016, a total of nearly $17.0 billion was spent.

Overview of Presidential Candidates' Tax Plans

July 1, 2016

From OMA Connections Partner, GBQ Partners: "Now that the races are down to a manageable number of candidates, we want to provide some information on their tax proposals (as of May 17th). No political commentary, just an overview to help keep you informed. Although many of these proposals may never become law, they nonetheless provide valuable insight into the underlying principles that will guide tax reform efforts from the next president."

New Tax Filing Deadlines for Business

June 17, 2016

OMA Connections Partner, Clark Schaefer Hackett (CSH), posted this: "While your individual tax return is still due on April 15th, many other filing deadlines were just changed by Congress that businesses need to be aware of. The IRS recently issued new tax filing deadlines for C corporations, S corporations and partnerships."

To help you stay in compliance, CSH provides this summary of due dates and extended due dates.

More Good News for the R&D Tax Credit

June 10, 2016

OMA Connections Partner, Tax Credits Group, posted that: "The recent wave of favorable developments for the R&D tax credit continued earlier this month as a new bill, H.R. 5187, was introduced and referred to the Committee on Ways and Means to increase the Alternative Simplified Credit (ASC) rate from 14% to 20%.

"This bill follows on the heels of the PATH Act of 2015 which granted the R&D tax credit permanent status, after thirty-plus years as a temporary incentive, and introduced several other changes allowing small to mid-size businesses to utilize the credit against Alternative Minimum Tax (AMT) or payroll taxes."

Read more from Tax Credits Group about the ASC method.

Legislature Expands CAT Credit

June 3, 2016

Among a flurry of legislative activity last week before summer recess, the General Assembly okayed an amendment to House Bill 390 which expanded Ohio's current motion picture tax credit. The action, originally included in House Bill 475, would have increased the total amount of credits that may be awarded from $20 million per fiscal year to $75 million per fiscal year. The vast majority of the claimed credits are taken against the commercial activity tax (CAT).

The legislature scaled back the proposal, opposed by the OMA, by almost half by reducing the amount of allowable credits to $40 million per fiscal year and disallowing any carryover of credits if less than $40 million is awarded in any year.

OMA opposes carve outs and credits to the CAT as they threaten its broad-base and low rate

HB9 **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.

Current Status: 5/25/2016 - **PASSED BY SENATE**; Vote 33-0

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9

HB12 **TIF-INCENTIVE DISTRICTS** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before creating the district.

Current Status: 9/28/2016 - Referred to Committee Senate Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12

HB19 **INTERNAL REVENUE CODE** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013 into Ohio law and to declare an emergency.

Current Status: 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/15

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19

HB26 **COIN SALES-USE TAX EXEMPTION** (MAAG R, HAGAN C) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.

Current Status: 11/18/2015 - Senate Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26

HB32 **AIRCRAFT-MOTOR FUEL EXCISE TAX** (PERALES R) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.

Current Status: 2/10/2015 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32

HB64 **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.

Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64

HB65 **TAX-EXPENDITURE APPRAISAL** (DRIEHAUS D) To provide for the periodic appraisal of the effectiveness of tax expenditures.

Current Status: 3/24/2015 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65

HB84 **MUNICIPAL TAX-CIVIL ACTIONS** (SPRAGUE R, SWEENEY M) To require civil actions by taxpayers related to municipal income taxes be brought against the municipal corporation imposing the tax rather than the municipal corporation's tax administrator.

Current Status: 3/24/2015 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-84

HB99 **INCOME TAX-SCHOOL FUNDING** (CURTIN M) To require that an amount equal to state income tax collections, less amounts contributed to the Ohio political party fund via the income tax checkoff, be distributed for the support of elementary, secondary, vocational, and special education programs.

Current Status: 5/5/2015 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-99

HB102 **VETERAN-OWNED BUSINESSES** (CRAIG H, ANTANI N) To provide a bid preference for state contracts to a veteran-owned business and to authorize a personal income and commercial activity tax credit for a business that hires and employs a veteran for at least one year.

Current Status: 4/28/2015 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-102

HB162 **SEVERANCE TAX RATES** (CERA J) To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.

Current Status: 5/12/2015 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162

HB176 **GAS-FUEL CONVERSION PROGRAM** (HALL D, O'BRIEN S) To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to $500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.

Current Status: 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176

HB232 **SELLER-USE TAX COLLECTION** (GROSSMAN C, SCHERER G) To prescribe new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax, to allow sellers presumed to have substantial nexus to rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.

Current Status: 6/2/2015 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-232

HB269 **INCOME TAX-SOUND RECORDING** (SMITH K, LATOURETTE S) To authorize a refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.

Current Status: 2/16/2016 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-269

HB280 **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.

Current Status: 6/30/2015 - Introduced

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280

HB308 **TEXTBOOKS-TAX EXEMPTION** (DUFFEY M, STINZIANO M) To exempt from sales and use tax textbooks purchased by post-secondary students.

Current Status: 10/21/2015 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-308

HB326 **TAX LAW-JOINT FILING** (AMSTUTZ R, MCCLAIN J) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit, and to provide that, for the 2015 taxable year, any taxable business income under $125,000 for married taxpayers filing separately or $250,000 for other taxpayers is subject to the graduated tax rates applicable to nonbusiness income, while business income in excess of those amounts remains subject to the existing 3% flat tax.

Current Status: 10/26/2015 - House Ways and Means, (Fifth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-326

HB343 **EMPLOYMENT SERVICES-TAX EXEMPT** (YOUNG R, ROMANCHUK M) To exempt employment services and employment placement services from sales and use tax.

Current Status: 4/27/2016 - **REPORTED OUT**, House Economic and Workforce Development, (Eighth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-343

HB358 **TAX DEDUCTION-SAVINGS ACCOUNTS** (DEVER J, CONDITT M) To allow an income tax deduction for contributions to ABLE savings accounts.

Current Status: 4/19/2016 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-358

HB369 **BALANCED BUDGET COMPACT** (KOEHLER K, HAMBLEY S) To adopt the Compact for a

Balanced Budget and to declare an emergency.

Current Status: 5/24/2016 - House Government Accountability and Oversight, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-369

HB390 **NATURAL GAS-ET AL** (SCHAFFER T, RETHERFORD W) To provide authorization and conditions for the operation of state programs and to make appropriations.

Current Status: 6/28/2016 - **SIGNED BY GOVERNOR**; eff. 9/28/16; certain provisions effective on other dates

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390

HB398 **CAUV COMPUTATION** (HILL B) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 5/3/2016 - House Government Accountability and Oversight, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-398

HB454 **SALES TAX HOLIDAY-PERMANENT** (PATTERSON J) To provide for a permanent three-day sales tax "holiday" each August during which sales of back-to-school clothing and school supplies are exempt from sales and use taxes.

Current Status: 2/23/2016 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-454

HB466 **TAX-EXEMPT-DIGITAL ADVERTISING** (SMITH R) To specifically exempt digital advertising services from sales and use tax.

Current Status: 7/12/2016 - **SIGNED BY GOVERNOR**; eff. 10/12/16

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-466

HB467 **UNEMPLOYMENT COMPENSATION FUND** (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.

Current Status: 4/13/2016 - Referred to Committee House Insurance

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467

HB473 **UTILITY SERVICE TAX-LEVY** (AMSTUTZ R) To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.

Current Status: 5/17/2016 - House Ways and Means, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473

HB475 **MOTION PICTURE-TAX CREDIT** (SCHURING K) To authorize motion picture companies to transfer the authority to claim refundable motion picture tax credits to other persons, to adjust how the credit is calculated, to increase the total amount of credits that may be awarded per year, to remove the limit on the maximum credit amount that may be awarded to a motion picture, and to create a job training program for resident film crew members.

Current Status: 5/24/2016 - **REPORTED OUT AS AMENDED**, House Finance, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-475

HB484 **TAX-EXEMPT PRODUCTS** (SYKES E, CERA J) To exempt from sales and use tax the sale of nonprescription human drugs, feminine hygiene products associated with menstruation, and disposable baby diapers, to reimburse the Local Government Fund and Public Library Fund and county and transit sales and use tax collections for any revenue lost due to those exemptions, and to create the Legislative Commission on Middle Class Economic Strength to study proposed income, sales, or use tax legislation that changes the proportionate tax burden among income classes or other classes.

Current Status: 4/13/2016 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-484

HB485 **INCOME TAX DEDUCTION-TUITION** (RAMOS D) To reinstate the state income tax deduction for qualified higher education tuition and fee payments that expired December 31, 2005.

Current Status: 4/13/2016 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-485

HB489 **MINE FUNDS** (CERA J) To credit a portion of the money derived from the Kilowatt-Hour Tax Receipts Fund to the Abandoned Mine Reclamation Fund, the Acid Mine Drainage Abatement and Treatment Fund, and the Mine Safety Fund and to make other changes to those funds.

Current Status: 5/10/2016 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-489

HB491 **TAX CREDIT-PILOT PROGRAM** (ANIELSKI M) To establish a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.

Current Status: 5/24/2016 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-491

HB492 **CAPITAL IMPROVEMENT-PILOT** (ROGERS J, DRIEHAUS D) To create the Supplemental State Capital Improvements Pilot Program funded by a temporary transfer from the Budget

Stabilization Fund and to make an appropriation.

Current Status: 4/13/2016 - Referred to Committee House Finance

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-492

HB515 **HEATING FUELS-SALES TAX** (PATTERSON J, CERA J) To exempt from sales and use taxation the bulk sale of firewood and certain other heating fuels, and to reimburse the Local Government Fund and Public Library Fund and county and transit sales tax collections for the resulting revenue losses.

Current Status: 4/26/2016 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-515

HB547 **MBR-OBM** (SMITH R) To provide authorization and conditions for the operation of state programs and to make appropriations.

Current Status: 5/24/2016 - **SUBSTITUTE BILL ACCEPTED**, House Finance, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-547

HB563 **INCOME TAX-LAYOFFS** (RAMOS D) To provide for payments to municipalities or school districts for their lost income tax revenue after a business lays off 50 or more employees within their jurisdiction.

Current Status: 5/12/2016 - Introduced

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-563

HB565 **TAX CREDIT-STUDENT LOANS** (RAMOS D) To allow a credit against the income tax or commercial activity tax for graduates or employers who make payments on student loans obtained by the graduate to earn a degree from an Ohio college or university.

Current Status: 5/12/2016 - Introduced

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-565

HB599 **FINANCIAL INSTITUTIONS-TAX RATE** (AMSTUTZ R) To repeal the financial institutions tax rate adjustment mechanism scheduled for tax year 2017 and to declare an emergency.

Current Status: 9/26/2016 - Introduced

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-599

HB600 **FINANCIAL INSTITUTIONS-ADJUSTMENT** (AMSTUTZ R) To make a technical correction to the financial institutions tax rate adjustment mechanism for tax year 2017 and to declare an emergency.

Current Status: 9/26/2016 - Introduced

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-600

SB2 **INTERNAL REVENUE SERVICE-INCORPORATE CHANGES** (PETERSON B) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013, into Ohio law, and to declare an emergency.

Current Status: 2/14/2016 - **SIGNED BY GOVERNOR**; eff. 2/14/16
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-2

SB12 **INCOME TAX CREDIT-SCIENCE RELATED DEGREE** (HOTTINGER J) To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.
Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12

SB18 **TAX CREDIT-NATIONAL GUARD EMPLOYMENT** (GENTILE L) To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.
Current Status: 4/27/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18

SB21 **EARNED INCOME TAX CREDIT RESTRICTION** (SKINDELL M) To remove the income restriction on the earned income tax credit and to make the credit refundable beginning in 2015.
Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-21

SB40 **ECONOMIC DEVELOPMENT TAX CREDIT** (BEAGLE B) To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.
Current Status: 6/10/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-40

SB41 **NEW MARKETS TAX CREDIT QUALIFICATIONS** (BEAGLE B, TAVARES C) To modify the qualifications for the New Markets Tax Credit and the schedule for receiving the credit.
Current Status: 6/3/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-41

SB52 **AIRCRAFT FUEL EXCISE TAX** (BEAGLE B) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.
Current Status: 2/18/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-52

SB88 **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.
Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-

summary?id=GA131-SB-88

SB100 **SALES TAX HOLIDAY-ENERGY STAR** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.

Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100

SB198 **NON-RESIDENT MUNICIPAL INCOME TAX** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.

Current Status: 9/29/2015 - Senate State and Local Government, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-198

SB208 **STATE INCOME TAX** (BEAGLE B) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit.

Current Status: 11/15/2015 - **SIGNED BY GOVERNOR**; Eff. 2/15/16; certain provisions effective 11/15/15

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-208

SB209 **OHIO RURAL JOBS ACT** (HITE C) To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.

Current Status: 12/8/2015 - House Agriculture and Rural Development, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-209

SB235 **INCREASED VALUE-PROPERTY TAX** (BEAGLE B, COLEY W) To exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences.

Current Status: 5/4/2016 - **PASSED BY SENATE**; Vote 22-11

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-235

SB246 **CAUV COMPUTATION-CAPITALIZATION RATE** (HITE C) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 4/27/2016 - Senate Ways and Means, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-246

SB260 **CAPITAL REAPPROPRIATIONS** (COLEY W) To make capital reappropriations for the biennium ending June 30, 2018.

Current Status: 2/21/2016 - **SIGNED BY GOVERNOR**; eff. 5/23/2016

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-260

SB288 **INCOME TAX-PASS THROUGH ENTITIES** (EKLUND J) To revise the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors.

Current Status: 9/28/2016 - **SUBSTITUTE BILL ACCEPTED**, Senate Ways and Means, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-288

SB289 **MOTION PICTURE TAX CREDIT** (PATTON T) To increase the overall cap on the motion picture tax credit from $40 million per fiscal biennium to $100 million for the current fiscal biennium and $160 million for all subsequent biennia.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-289

SB302 **PROPERTY TAX EXEMPTION-MILITARY VETERANS-DISABLED** (SCHIAVONI J, GENTILE L) To exempt from property taxation the primary residence of military veterans who are disabled.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-302

SB305 **TAX CERTIFICATES-SALE PROHIBITION** (WILLIAMS S) To prohibit the sale of tax certificates for parcels owned by a person sixty-five years of age or older and that include the primary residence of the owner.

Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-305

SB310 **CAPITAL APPROPRIATIONS** (OELSLAGER S) To make capital appropriations and changes to the law governing capital projects for the biennium ending June 30, 2018.

Current Status: 5/17/2016 - **SIGNED BY GOVERNOR**; eff. 8/16/16, certain provisions effective 7/1/16

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-310