Tax Committee
May 28, 2015

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2015 Tax Committee Calendar

Meetings will begin at 10:00 a.m.

Thursday, May 28, 2015
Thursday, October 15, 2015

OMA Tax Committee Meeting Sponsor:

OMA Tax Policy Committee

May 28, 2015

AGENDA

Welcome & Self-Introductions:	Michele Kuhrt, Chairman Lincoln Electric
Guest Speakers	Ohio Senator Bob Peterson Chairman, Ways and Means Committee Ohio Senator Bill Beagle Vice Chairman, Ways and Means Committee
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:

Taft/

Senator Bob Peterson

17th Senate District

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

A farmer by trade, Senator Peterson and his family are the 8th generation of Petersons to farm in the U.S. Peterson raises corn, soybeans, wheat and livestock on his family's farm. He also has been active in the Farm Bureau in a variety of leadership positions, culminating to his position as Ohio Farm Bureau President for nearly five years.

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

Peterson currently serves as the Chairman of the Ways and Means Committee and as a member of the Agriculture Committee, Finance Committee, Insurance Committee, Public Utilities Committee, State and Local Government Committee, Education Committee, and Finance General Government Subcommittee.

Senator Peterson has received numerous awards for his efforts in the Statehouse. Last General Assembly, he received the Watchdog of the Treasury award from the United Conservatives, and was also named an Ohio Farm Bureau Friend of Agriculture. Additionally, Peterson was named Legislator of the Year by the Ohio Pest Management Association for his work on House Bill 420 during the 129th General Assembly.

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

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

The Ohio Statehouse Columbus, Ohio 43215 (614) 466-8156 peterson@ohiosenate.gov

Senator Bill Beagle

5th Senate District

State Senator Bill Beagle is serving his second term in the Ohio Senate, representing all or part of Darke, Miami, Montgomery and Preble Counties. He serves as the Chairman of the Senate Finance Subcommittee on Workforce. Beagle's years of experience in both local government and small business have helped make him a leader in his community and an effective advocate for the people he represents.

Prior to joining the Ohio Senate, Senator Beagle served as a member of Tipp City Council, where he served as council president. Working with his fellow council members, Beagle navigated the construction of a new water plant and increased investment in the downtown area as well as local parks to encourage economic development. He also served as a member of the Tipp-Monroe Community Services Board, the Tipp City Power Plant Reuse Committee, the Tipp City Planning Board and the Tipp City Public Library Board of Trustees. He also worked for several years in the banking and finance industry.

As a champion of workforce and economic development, Beagle also represents the Ohio Senate on the Governor's Executive Workforce Board and on the Ohio Third Frontier Advisory Board. In addition to his Chairmanship, Senator Beagle serves as the Vice-Chair of the powerful Ways & Means Committee as well as a member of the Senate Agriculture Committee, Finance Committee, Insurance Committee, Financial Institutions Committee and Health & Human Services Committee.

In addition to his legislative duties, Beagle operates his own small business. Senator Beagle received his bachelor's degree in finance from Miami University and earned an MBA from Cleveland State University. He and his wife Karen live in Tipp City with their three children.

The Ohio Statehouse Columbus, Ohio 43215 (614) 466-6247 beagle@ohiosenate.gov

OBM

May 11, 2015

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

FROM: Timothy S. Keen, Director TK

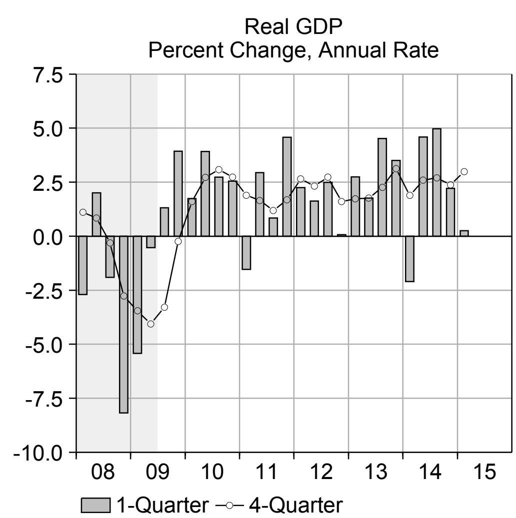
SUBJECT: Monthly Financial Report

ECONOMIC SUMMARY

Economic Performance Overview

- Economic growth almost came to a halt in the first quarter, as real GDP edged higher by only 0.2%. Forecasters still expect a pick-up in growth during the balance of the year.
- U.S. employment growth rebounded to 223,000 jobs in April from a revised growth of only 85,000 in March. April's increase was somewhat below the average of approximately 250,000 during the previous six months. The unemployment rate decreased to 5.4% – the lowest level of this expansion.
- Ohio employment increased by 1,500 jobs in March and the unemployment rate was unchanged at 5.1%.
- The recent weakening in many measures of economic activity is likely the result of temporary factors, including unusually severe winter weather, the large decrease in the price of oil, strengthening in the foreign exchange value of the U.S. dollar, and the work disruptions at West Coast ports. However, there are signs that the second quarter and 2015 as a whole will also produce weaker growth than originally expected.

Economic Growth



Economic growth slowed to just above a stall during the first quarter. **Real GDP** increased just 0.2%, following growth of 2.2% in the fourth quarter and approximately 5% during the middle two quarters of last year. Despite the weak quarter, real GDP growth accelerated to 3.0% when measured from the year ago quarter. This is because in the first quarter of 2014, real GDP contracted by 2.1%, so the year to year comparison is with a very weak 2014 quarter.

The year-over-year change of 3.0% was the third fastest of this expansion, behind the 3.1% increases in the third quarter of 2010 and the fourth quarter of 2013. In comparison, the year-over-year growth rate in real GDP peaked at 8.5% in the expansion of the 1980s, 5.3% in the expansion of the 1990s, and 4.4% in the expansion of the 2000s.

More than all of the growth during the first quarter occurred in personal consumption expenditures, which contributed 1.3 percentage points, and the accumulation of nonfarm business inventories, which contributed 0.7 percentage points. The source of growth in personal consumption expenditures was housing and utilities and health care. Other major categories of consumer spending were little changed.

Other factors were subtractions from growth, pulling the net down to 0.2%. Business fixed investment subtracted 0.4 percentage points, as a decline in investment in nonresidential structures more than offset a gain in intellectual property products. Oil rig construction was a significant source of weakness in business investment. A decrease in exports also subtracted 1.0 percentage points, due entirely to goods. Federal government spending was little changed, while state and local government spending subtracted modestly, reflecting a decline in investment.

The slowdown in growth from the fourth quarter to the first quarter reflected a deceleration in personal consumption expenditures and residential fixed investment and outright decreases in exports, nonresidential fixed investment, and state and local spending. The deceleration in imports (which are included in other categories and then subtracted as a separate category), the increase in inventory accumulation, and the slight uptick in federal government spending partially offset the factors that led to slower growth.

Despite some deterioration, leading economic indicators still point to continued expansion. The 6-month smoothed percent change in the **Leading Economic Index** from the Conference Board was 4.2% in March – down from its peak of 7.2% last July, but well above the zero level that would signal potential recession. The **Weekly Leading Index** from the Economic Cycle Research Institute weakened significantly from last May through February, but strengthened throughout March and April.

According to the **Ohio Coincident Economic Index**, compiled by the Federal Reserve Bank of Philadelphia, the Ohio economy expanded through March. The coincident index was 5.3% higher in March than a year earlier, up from a recent low of only a 2.7% year-over-year increase in June 2013. The index has been much closer to or below zero around the times recessions have begun in the past.

The diffusion of changes in the Coincident Economic Index across the states has deteriorated somewhat in recent months over both 1-month and 3-month spans. The index increased from the prior month for 41 states and from three months prior for 46 states, down notably from recent highs but still pointing to a very high likelihood of continued economic growth in the near-term.

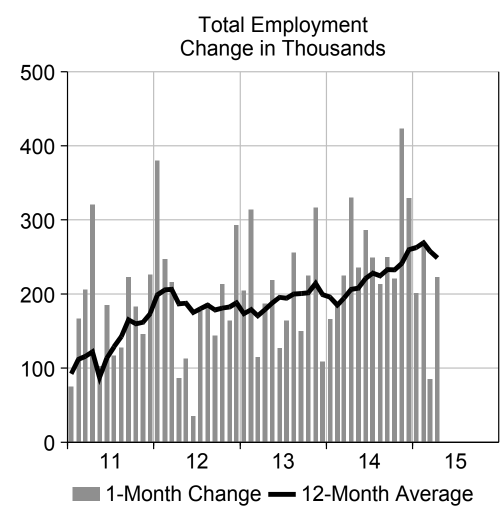
The companion **Ohio Leading Economic Index** has also weakened somewhat in recent months. The index slipped to 1.5% in March from 1.9% in February. The index has been as high as 2.9% in December and 3.4% last May. The index, which also is compiled by the Federal Reserve Bank of Philadelphia, is designed to predict the rate of increase in the coincident index during the next six months. It reached a recent low of 0.6% in May 2013. Index values have been revised significantly on occasion, but the recent pattern is consistent with ongoing expansion of the Ohio economy through the Spring and into the Summer.

The number of state leading indexes from the Philadelphia Fed with positive readings was little changed at 44 in March. All 50 states had positive index numbers in November and December. The recent pattern remains consistent with continued economic expansion, considering that, in contrast, the number of positive state leading indexes fell to an average of 34 three months in advance of the most recent three recessions and to an average of 23 during the first month.

The consensus among economic forecasters is that growth is picking up in the current quarter and will strengthen modestly through year end. The range of forecasts for second quarter growth is quite wide, though. The **Blue Chip Economic Indicators** consensus is for approximately 3.0% to 3.5% real GDP growth in the second quarter. On the other hand, The Atlanta Federal Reserve's evolving projection of real GDP for the second quarter based on monthly data as they are released is currently for approximately 0.5% to 1.0% growth. Global Insight is in between, with a forecast of second quarter GDP of about 2%. Global Insight has reduced its forecast of 2015 GDP growth from 3.1% down to 2.3% based on the weak first quarter and expected modest second quarter.

Factors expected to restrain activity are the high and rising foreign exchange value of the dollar and the ripple effects of cutbacks in investment and hiring in the oil industry. **Monetary policy** is still viewed as supportive of economic activity. The Federal Reserve removed all reference to the timing of a potential increase in its target interest rate following its latest policy setting meeting in April, moving one step closer to a change in policy. Analysts widely expect a small increase in the short-term interest rate between June and September. Since the move would be viewed as occurring in response to a stronger economy, it is not expected to undermine growth, although there is considerable uncertainty about the reaction of financial markets.

Employment



Labor markets across the country picked up strength in April. **Nonfarm payrolls** increased by 223,000 jobs in April. The January and February gains were revised lower by a total of 39,000 jobs, with March being revised down to a gain of 85,000 jobs. Monthly job gains have averaged approximately 250,000 per month during the past six and twelve month periods.

At the same time, however, the recent pattern in **initial claims** for unemployment compensation remains consistent with sound labor market fundamentals. The 4-week average was

279,500 at the beginning of May – the lowest level in fifteen years. The recent pattern remains consistent with a healthy and expanding labor market and overall economy.

The **U.S. unemployment rate** decreased 0.1 percentage points to 5.4% – the lowest level of this expansion. In addition, the broadest measure of unemployment – the so-called U-6 rate – which includes people who want to work but have stopped looking because of poor perceived prospects, decreased 0.1 percentage point to 10.8% –the lowest mark since July 2008.

Ohio nonfarm payroll employment increased by 1,500 jobs in March, and the February gain was revised down to 1,100 jobs. Ohio employment increased by 14,000 jobs in January, and is higher by 16,600 jobs year-to-date. Changes were mixed across sectors during the month. The largest increases occurred in educational and health services (+3,500), financial activities (+2,000), and government (+2,000). The largest decreases occurred in construction (-4,500), leisure and hospitality (-1,900), and professional and business services (-1,400).

Compared with a year earlier, Ohio employment is higher by 77,400 jobs. The largest employment gains occurred in leisure and hospitality (+25,100), trade, transportation and utilities (+17,800), manufacturing (+14,000), and education and health services (+11,400). The only employment declines during the year ending in March occurred in construction (-1,400), government (-1,200), and information (-700).

Among the **contiguous states**, year-over-year employment growth was strongest in Michigan (+2.1%), followed by Kentucky (+1.9%), Indiana (+1.7%), Ohio (+1.5%), and Pennsylvania (+0.9%). Employment declined from a year earlier in West Virginia (-0.5%). Year-over-year growth in manufacturing employment was 2.1% in Ohio. Among the contiguous states, manufacturing employment increased 3.1% in Michigan, 2.7% in Indiana, 1.9% in Kentucky and West Virginia, and 0.2% in Pennsylvania.

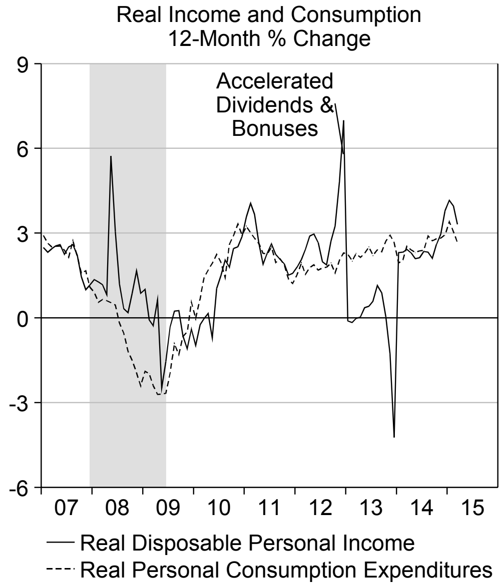
The **Ohio unemployment rate** remained at 5.1% in March for the fourth straight month. The number of unemployed people increased by 4,051 in March, while the number of employed people decreased by 1,621, and the labor force increased by 2,430 people. The unemployment rate is down 0.9 percentage points from a year ago, and is less than one-half its peak level of 11.0% reached in January 2010.

Across the country in March, the unemployment rate decreased by a statistically significant amount in 10 states and increased by a significant margin in only 4 states (Alaska, North Dakota, South Dakota, and West Virginia). The unemployment rate was lower than a year earlier by a statistically significant margin in 27 states and higher in only 2 states (Louisiana and North Dakota).

Consumer Income and Consumption

Personal income stalled in March after a long string of steady increases. **Wage and salary disbursement growth** continued to slow from 0.6% in January to 0.3% in February and 0.2% in March. Compared with a year earlier, both personal income and wage and salary disbursements were up 3.8%, down from recent peaks of 4.8% and 5.3%, respectively.

In comparison, the Consumer Price Index (CPI) was unchanged year-over-year in March. The core CPI was up 1.8% year-over-year, and the Median CPI from the Cleveland Federal Reserve was up 2.2% year-over-year. Both the core CPI and median CPI are used as measures of the underlying inflation rate, being less volatile than the "headline" rate, which includes food and energy prices.



Personal consumption expenditures increased 0.4% in March in the best showing since last August. Spending declined 0.2% in December and 0.3% in January before recovering by 0.2% in February. Spending on durable goods increased 1.8% in March, reflecting a 5.5% increase in unit sales of light motor vehicles. **Sales of light motor vehicles** fell 3.5% in April, however, back to an annual rate of 16.5 million units. Unit sales have now declined in four of the last five months. Spending on non-durable goods increased 0.6% in March and spending on services increased 0.2%.

The recent weakness in reported consumer spending despite continued growth in incomes reflects the sharply lower price of gasoline, the unusually harsh winter weather, the likely temporary pullback in spending on motor vehicles, and possibly a natural ebbing from the burst in spending last fall.

Income and spending are widely expected to pick up in coming months, reflecting continued gains in employment and earnings and the better level of **consumer confidence**. The Consumer Confidence Index from the Conference Board fell noticeably in April, yet remained at a relatively high level. Assessments of both current conditions and the future deteriorated during the month, but also remained relatively high in recent historical context. In contrast, the Index of Consumer Sentiment from the University of Michigan improved in April to its best level since January, as both expectations and assessments of current conditions brightened somewhat.

Manufacturing

Industrial production decreased 0.6% in March after increasing 0.1% in February, according to the Federal Reserve Board. Production has decreased in three of the last four months. For the quarter, production decreased 1.0% at an annual rate – the first quarterly decrease since the second quarter of 2009, which marked the end of the last recession.

Manufacturing production increased 0.1% during March, **mining** output decreased 0.7%, and **utility** output fell by 5.9%. Compared with a year earlier, production was higher by only 2.0% overall, 2.4% in manufacturing, and 3.7% in mining. Utility output was 3.6% below the year earlier level.

The increase in manufacturing production in March reflected a strong 3.2% gain in motor vehicles and parts production, which was mostly offset by a 17.7% decrease in oil and gas well drilling and a 3.2% decrease in primary metals production, along with mixed performances across other industries. Mining output decreased 0.7% for the third decrease in as many months. Utility output decreased 5.9%, as weather returned to normal in March from a colder-than-usual February.

Industrial activity has been hampered in recent months by:

- the combination of more-severe-than-usual **winter weather**, which was not picked up by normal seasonal adjustment factors,
- the cumulative effects of the strengthening of the foreign exchange **value of the U.S. dollar**, which has disadvantaged U.S.-produced goods and services overseas by making them more expensive in foreign currencies, adding to the negative effects of slower economic growth in many overseas markets,
- the unprecedented **drop in the price of oil**, which might have undercut capital investment and hiring by oil-related businesses before fully boosting other spending by consumers and businesses, and
- the labor dispute (resolved in February) at **West Coast ports** that disrupted imports and exports during the winter, thereby affecting production at a variety of businesses throughout the country, including at least four auto-related plants in Ohio.

The recent slower growth in manufacturing has been evident in surveys of activity, including the monthly **Manufacturing ISM *Report on Business***. The PMI® from the Institute for Supply Management stabilized at 51.5 in April, after decreasing on balance during the previous 7-month period. The index remains above the neutral level of 50, and the number of consecutive declines and size of the total decline from last August are well within the historical range of normal fluctuations during economic expansions since 1948, particularly in light of the special factors believed to be temporarily holding back activity currently.

Importantly, the sub-indexes for new orders and production rebounded in April to 53.5 and 56.0, respectively. Both remain well below recent highs, but are also comfortably in positive territory, indicating that increases in manufacturing activity remained broad-based. The sub-indexes for new export orders and imports also both increased, likely due in part to the resolution of delays at West Coast ports.

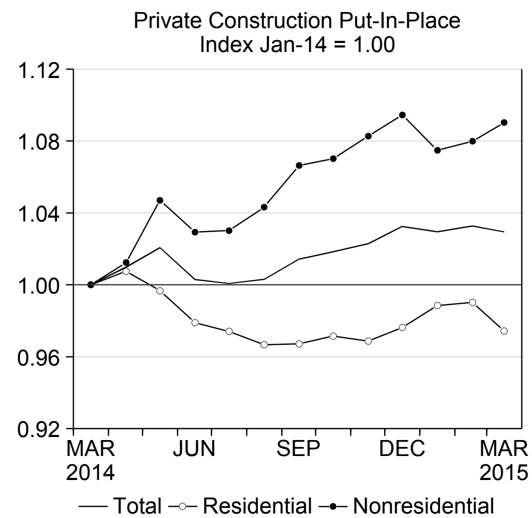
Factory orders and shipments stabilized in March. New orders for manufactured goods increased 2.1%, following a string of monthly declines. Changes across industries were mixed but generally positive. Excluding defense, aircraft, motor vehicles and oil, new orders increased 0.6%, compared with a 0.9% decrease in February. Shipments were also up in March, rising 0.5% on top of the 0.4% rise in February. Non-defense capital goods orders, excluding aircraft, which is a more stable measure of the underlying trend in activity, edged higher by 0.1%, after six consecutive monthly declines.

Consistent with weakness in other measures of industrial activity, manufacturing employment was relatively flat in April, marking a shift from a period of moderate gains and underscoring the weakness in manufacturing output during the month.

Activity in industries of particular importance to Ohio was weak during March. Production of **primary metal** decreased 3.2%, while production of **fabricated metal** and **machinery** increased 0.2% and was unchanged, respectively. Together with the motor vehicle industry, these three industries account for almost one-half of manufacturing jobs in Ohio and approximately one out of every thirteen private sector jobs in the state. The large decline in the price of oil is still expected to boost manufacturing production overall during 2015. Cheaper energy is expected to add more to demand for consumer-related goods than it subtracts from production of investment and energy-related goods, although cutbacks in oil and gas drilling have been especially swift.

Construction

Construction put-in-place decreased 0.6% in March after no change in Feburary – the third decline in five months. (The February change was originally reported as a decrease of 0.1%.) Compared with a year earlier, construction was higher by 2.0.



Private construction decreased 0.3%, but February was revised up from 0.2% to 0.3% and January was revised up from a decrease of 1.1% to a decrease of 0.3%. Private residential construction put-in-place decreased 1.6%, as both single family and multi-family construction decreased. Private nonresidential construction increased by 1.0%, primarily reflecting increases in the manufacturing, communication, office, and lodging categories, offset to a degree by decreases in construction of commercial and power facilities.

Weakness in private residential construction has partially offset gains in nonresidential construction during the past year. Private construction was higher than a year earlier by 2.9% in March, but residentail and nonresidential construction have varied greatly, as residential decreased by 2.6% while nonresidential increased 9.0%.

Public construction decreased by 1.5%, dragged down by declines in the highway, education, and conservation and development categories. Public residential construction decreased modestly in March, while the February increase was revised higher to 4.1%. The only notable increase occurred in water supply (+4.4%).

Housing starts fell 5.1% in March after a 3.4% decrease in February on a 3-month moving average basis. Single family starts decreased 5.3% and multi-family starts decreased 4.6%. In the Midwest, starts fell 10.7% on a 3-month moving average basis, as both single-family (-13.5%) and multi-family (-2.8%) starts decreased. March marked the second large decrease in Midwest housing starts in a row on a 3-month moving average basis.

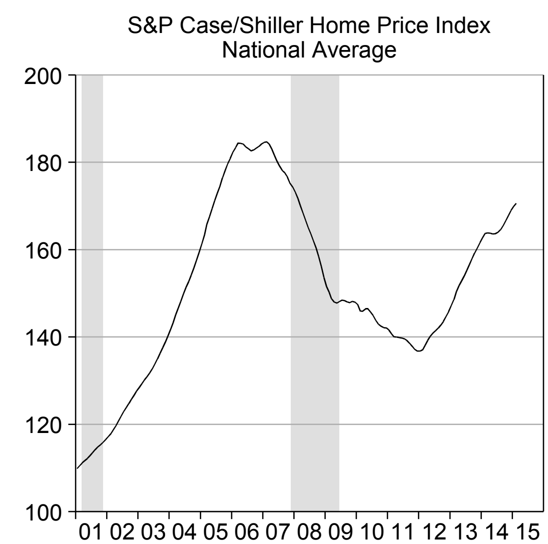
Adverse weather accounts for most of the first-quarter decrease, but probably not all of the weakness. Builders dealt with the lowest "temperatures seen in decades, tying the year 1904 as the seventh coldest February on record (1895-2015) for the Midwestern Region," according to the National Climatic Data Center. Temperatures in the Northeast were the second lowest on record. But weather should not have been much of a factor in the Midwest in March.

The generally more-forward-looking **housing permits** were not quite as weak as starts. Permits decreased 0.7% across the country on a 3-month moving average basis, while Midwest permits decreased 2.1%. Multi-family permits increased 1.4% nationally, offsetting some of the weakness in single family permits. Multi-family permits decreased in the Midwest.

Sales of existing houses increased both across the country (+0.8%) and in the Midwest (+2.7%) in March on a 3-month moving average basis. Inventories of existing homes for sale rose modestly in March but decreased relative to the current pace of sales. The **Pending Homes Sales Index**, which measures housing contract activity for single-family homes, condos, and co-ops and usually leads existing home sales by a month or two, increased 2.0% nationally and 2.4% in the Midwest during March on a 3-month moving average basis, pointing to stronger activity in April. Compared with a year earlier, the index was higher by 10.5% nationally and 9.6% in the Midwest.

Sales of newly built homes were mixed, decreasing 1.0% nationally and increasing 0.6% in the Midwest, again on a 3-month moving average basis. New home sales were 19.0% higher than a year earlier across the country. The Midwest increase in March snapped a 3-month string of decreases, but left the level only 1.8% above the year ago level. Inventories of new homes moved modestly higher in March both in absolute terms and relative to the current pace of sales, which was at a normal level.

Home prices continued their recent rebound in February, rising 0.4% across the country for the ninth straight monthly increase, according to the Case-Shiller national home price index. Home prices in Cleveland increased for the sixth straight month in February, rising by 0.4% during the month to 3.4% above the level of last June. Home prices increased 5.6% across the country from December 2013 to February 2015 to stand 24.7% above the cycle low reached in December 2011, but remained 3.9% below the all-time high set in February 2007.



REVENUES

NOTE: Estimates in the revenue tables are based on July 2014 OBM revisions and do not include or reflect updated fiscal year 2015 annual estimates contained in the Executive Budget for fiscal years 2016-2017.

April **GRF receipts totaled $3,106.4 million** and were $469.2 million (17.8%) above the estimate. Monthly tax receipts totaled $2,305.7 million and were $276.1 million (13.6%) above the estimate, while non-tax receipts totaled $798.8 million and were $191.3 million (31.5%) above the estimate. Variances for the fiscal year-to-date by category are provided in the following table ($ in millions).

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	$454.1 million	2.6%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	($33.2 million)	-0.4%
Transfers	Budget stabilization, liquor transfers, capital reserve, other	$17.3 million	246.7%
TOTAL REVENUE VARIANCE:		**$438.2 million**	**1.7%**

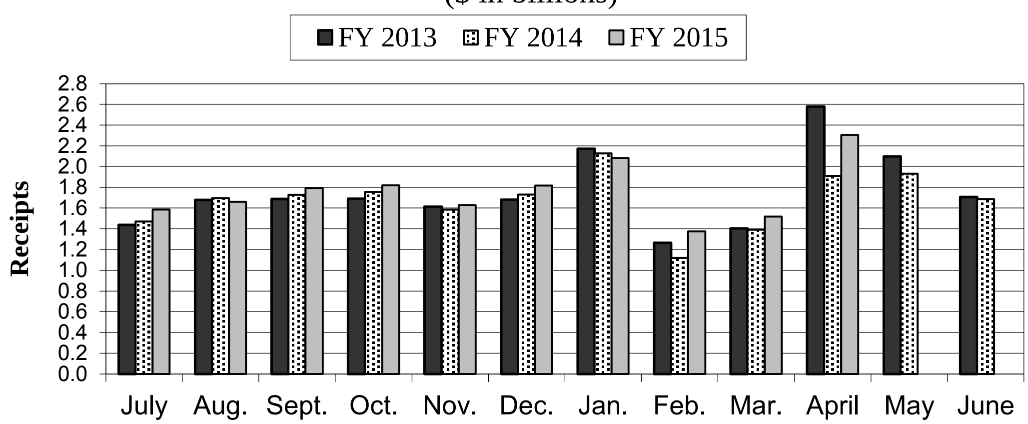
On a year-over-year basis, monthly receipts were $327.9 million (11.8%) higher than in April of the previous fiscal year, mainly due to growth in the personal income tax ($320.1 million, 35.5%), sales and use tax ($66.9 million, 7.9%), and the financial institutions tax ($7.9 million, 33.1%).

GRF Revenue Sources Relative to Monthly Estimates – April 2015
($ in millions)

Individual Revenue Sources Above Estimate		Individual Revenue Sources Below Estimate	
Personal Income Tax	$227.9	Auto Sales & Use Tax	($2.8)
Federal Grants	$192.4	Licenses and Fees	($2.5)
Non-Auto Sales & Use Tax	$35.0	Commercial Activity Tax	($1.5)
Financial Institutions Tax	$7.0		
Kilowatt-Hour Tax	$3.7		
Cigarette Tax	$2.8		
Earnings	$1.5		
Corporate Franchise Tax	$1.5		
Foreign Insurance Tax	$1.0		
Transfers In – Other	$1.8		
Other Sources Above Estimate	$1.9	Other Sources Below Estimate	($0.6)
Total above	**$476.5**	**Total below**	**($7.4)**

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

Tax Revenue Comparison by Month
($ in billions)



Non-Auto Sales and Use Tax

April non-auto sales and use tax collections totaled $782.4 million and were $35.0 million (4.7%) above estimate, which was a welcomed positive variance after several months of weak collections. As the first release of annualized GDP growth rates revealed an anemic 0.2% change for the first quarter, some of the explanations analysts have used for the meager growth in the economy, such as the extremely cold weather, most likely also explain why, despite improving economic conditions and consumer confidence in the nation and in Ohio, the growth trend for the non-auto sales tax has not accelerated from its pace earlier in the year. Following depressed collections in March, the year-to-date variance recovered in April and is now $33.9 million (0.5%) above the estimate.

Total year-to-date tax collections for the sales and use tax (including the auto sales tax) are above the estimate by $65.4 million (0.8%). With only two months left to report in the fiscal year, OBM's estimate for the combined sales tax is very close to the yearly forecast regardless of the variances in the two components. This could indicate some consumer substitution between automobile purchases and those other goods and services taxed under the non-auto sales tax.

On a year-over-year basis, April 2015 receipts were $70.8 million (9.9%) above collections in the same month of the previous fiscal. April comparisons are unaffected by the tax rate increase that took effect last fiscal year, although year-to-date comparisons are still influenced by the rate increase because of its impact on July through October results. Year-to-date collections were above the same point of the previous fiscal year by $615.4 million (9.4%).

Auto Sales Tax

April auto sales tax collections totaled $128.3 million and were $2.8 million (2.1%) below estimate, which was slightly disappointing considering national light-vehicle sales in March peaked at 17.05 million units (SAAR) and some of that revenue was expected to be realized in April. National demand for light-vehicles slipped slightly in April, reported at 16.5 million units, yet still showing noticeable growth of 4.7% compared to April 2014 levels. Though national sale levels remain strong, Ohio may be disproportionately vulnerable to a year-over-year decline in volume reported for Honda, which sold 1.8% less units than in April of the previous fiscal year. OBM will monitor the volatility in the light-vehicle sales market but does not expect any fundamental changes in the drivers behind demand to affect the overall forecast.

Year-to-date receipts were above the estimate by $31.5 million (3.0%). On a year-over-year basis, monthly receipts were $3.9 million (3.0%) below the amount collected in April of the previous fiscal year. As with the non-auto sales tax, April comparisons are unaffected by the tax rate increase that took effect last fiscal year, although year-to-date comparisons are still influenced by the rate increase because of its impact on July through October results. Year-to-date collections were above the same point of the previous fiscal year by $76.7 million (7.7%).

Personal Income Tax

April personal income tax receipts totaled $1,222.3 million and were $227.9 million (22.9%) above the estimate. More than the entirety of the excess was attributable to the annual returns component which totaled $734.5 million and exceeded the estimate by $241.0 million (48.8%) – an amount that combined with better than expected withholding and trust receipts, more than offset higher than estimated refunds along with shortfalls in the quarterly estimated payments.

Withholding collections totaled $727.4 million and were $24.9 million (3.5%) above estimate. As a result, withholding collections for the year-to-date were $29.3 million (0.4%) above the estimate. Trust payments totaled $24.3 million and were above the estimate by $6.6 million (37.0%). Quarterly estimated payments and the miscellaneous category were below estimate by $2.1 million and $6.2 million respectively and combined with higher than expected refunds to produce the total monthly overage of $227.9 million.

Year-to-date, GRF income tax collections were $342.2 million (5.0%) above the estimate. Payments associated with annual returns, withholding, quarterly estimated payments, and trust payments combine to account for $371.5 million worth of the overage, while all the other components showed small shortfalls and were collectively $29.3 million below the estimate.

On a year-over-year basis, April personal income tax receipts were $320.1 million (35.5%) above the April 2014 amount. Payments associated with annual returns accounted for the majority of this growth increasing by $215.0 million (41.4%) over the same month in the previous fiscal year. Lower refunds of $76.6 million (-16.9%) and higher withholding payments of $42.9 million (6.3%) also contributed to the growth. Partially offsetting these increases were lower collections in quarterly estimated payments ($2.1 million, 1.6%), trusts ($4.7 million, 16.3%) and the miscellaneous components ($5.3 million, 15.9%).

FY2015 PERSONAL INCOME TAX RECEIPTS BY COMPONENT ($ in millions)						
	ESTIMATE APR	ACTUAL APR	$ VAR APR	ESTIMATE Y-T-D	ACTUAL Y-T-D	$ VAR Y-T-D
Withholding	$702.5	$727.4	$24.9	$6,815.3	$6,844.5	$29.2
Quarterly Est.	$131.2	$129.1	($2.1)	$796.4	$879.6	$83.2
Trust Payments	$17.7	$24.2	$6.5	$46.4	$50.6	$4.2
Annual Returns & 40 P	$493.5	$734.5	$241.0	$687.8	$942.6	$254.8
Other	$16.5	$10.3	($6.2)	$108.7	$88.2	($20.5)
Less: Refunds	($340.4)	($377.2)	($36.8)	($1,347.4)	($1,355.1)	($7.7)
Local Distr.	($26.6)	($26.0)	$0.6	($290.5)	($291.7)	($1.2)
Net to GRF	**$994.4**	**$1,222.3**	**$227.9**	**$6,816.7**	**$7,158.7**	**$342.0**

Corporate Franchise Tax

As noted in previous months' reports, although the corporate franchise tax has been eliminated, prior year settlement activity continues. This results in some amount of monthly activity for this tax, whether settlement payments or refunds, which by definition create variances, since the estimate for this tax is now zero. Although these monthly variances have generally been small, readers of this report will recall that November was an exception due to considerable refund activity. April experienced additional heavy settlement activity as receipts totaled $1.5 million. Year-to-date, receipts were slightly above ($1.7 million) the estimate of zero.

Financial Institutions Tax

Correcting for the timing related shortfall in March, April receipts for the financial institutions tax totaled $31.6 million and were $7.0 million (28.4%) above the $24.6 million estimate. The March negative and April positive monthly variances were largely due to the timing of the payment due date for the tax (March 31st) and a larger portion of payments being received and processed in April as opposed to March as estimated.

For the year, revenues were $25.0 million (16.3%) below estimate with most of that variance due to after-the-fact adjustments to payments received in the previous fiscal year. Credits and deductions claimed on returns, after estimated payments were made, led to revenues being $22.8 million below estimate for the July-December period.

Commercial Activity Tax

April commercial activity tax (CAT) receipts deposited in the GRF totaled $25.7 million and were $1.5 million (5.4%) below the estimate of $27.2 million. Year-to-date, GRF CAT receipts totaled $673.1 million and were $67.9 million (11.2%) above estimate. Year-over-year growth in GRF CAT receipts through the first ten months of the fiscal year was $49.2 million (7.9%). The next quarterly due date for CAT payments is May 10th and while the tax was slightly below estimate for the month of April, this may be the result of a greater share of payments being made in early May than estimated. As a result, to assess the true performance of the tax, one must look at collections for the two months combined.

All-funds April CAT receipts (net of refunds, attorney general fees, and deposits to the motor fuel fund), meanwhile totaled $51.9 million and were $2.4 million (4.4%) below the estimate. Year-to-date, all funds receipts totaled $1,358.3 million and were $147.6 million (12.2%) above estimate. Year-over-year growth in all funds CAT receipts through the first ten months of the fiscal year were $37.3 million (2.8%) above the same period in the previous fiscal year. Once one adjusts fiscal year 2014 collections to remove $52.2 million in motor fuel deposit amounts (which are now subject to the petroleum activity tax) an apples-to-apples comparison of year-over-year performance results in an increase of $89.5 million (7.1%).

Kilowatt-Hour Tax

April kilowatt hour tax receipts totaled $30.2 million and were $3.7 million (14.1%) above the estimate. This variance further decreased the year-to-date shortfall to $2.7 million (1.0%) below estimate. Year-over-year collections were $0.7 million (2.1%) below collections in April of the previous fiscal year. Given the ease of access to natural gas and its declining cost, it is possible there is some consumer substitution reflected in tax collections for this source compared to other energy taxes, such as the natural gas distribution tax, which was ahead of the year-to-date estimate by $8.9 million (27.7%).

Cigarette and Other Tobacco Tax

The cigarette and other tobacco tax receipts rebounded in April exceeding the estimate after two consecutive monthly shortfalls. April receipts totaled $69.8 million and were $2.8 million (4.2%) above the estimate of $67.0 million. April 2015 cigarette tax receipts were $2.9 million (4.4%) above the level for the same month of the previous fiscal year. Year-to-date receipts were $8.3 million (1.4%) above the estimate, but $8.2 million (1.3%) below the collections in the first ten months of the previous fiscal year.

GRF non-tax receipts totaled $798.8 million in April and were $191.3 million (31.5%) above the estimate. Federal grants are by far the largest share of this category, accounting for more than all of the category overage, coming in $192.4 million (32.3%) above estimate. The federal revenue overage in April was roughly equal to the amount that Medicaid disbursements were over estimate for the month.

License and Fees revenues totaled $3.5 million and were $2.5 million (41.5%) below estimate. Transfers in totaled $2.0 million and were $1.8 million above estimate.

Table 1
GENERAL REVENUE FUND RECEIPTS
ACTUAL FY 2015 VS ESTIMATE FY 2015
($ in thousands)

REVENUE SOURCE	MONTH ACTUAL APRIL	MONTH ESTIMATE APRIL	MONTH $ VAR	MONTH % VAR	YEAR-TO-DATE ACTUAL Y-T-D	YEAR-TO-DATE ESTIMATE Y-T-D	YEAR-TO-DATE $ VAR	YEAR-TO-DATE % VAR
TAX RECEIPTS								
Non-Auto Sales & Use	782,414	747,400	35,014	4.7%	7,185,395	7,151,500	33,895	0.5%
Auto Sales & Use	128,295	131,100	(2,805)	-2.1%	1,071,082	1,039,600	31,482	3.0%
Subtotal Sales & Use	910,709	878,500	32,209	3.7%	8,256,477	8,191,100	65,377	0.8%
Personal Income	1,222,312	994,400	227,912	22.9%	7,158,873	6,816,700	342,173	5.0%
Corporate Franchise	1,503	0	1,503	N/A	1,721	0	1,721	N/A
Financial Institutions Tax	31,593	24,600	6,993	28.4%	128,661	153,700	(25,039)	-16.3%
Commercial Activity Tax	25,729	27,200	(1,471)	-5.4%	673,125	605,200	67,925	11.2%
Petroleum Activity Tax	0	500	(500)	N/A	4,436	14,000	(9,564)	-68.3%
Public Utility	21	0	21	N/A	62,760	73,200	(10,440)	-14.3%
Kilowatt Hour	30,236	26,500	3,736	14.1%	259,345	262,000	(2,655)	-1.0%
Natural Gas Distribution	4,453	3,700	753	20.4%	40,977	32,100	8,877	27.7%
Foreign Insurance	200	(800)	1,000	125.0%	299,421	303,800	(4,379)	-1.4%
Domestic Insurance	0	0	0	N/A	7,537	2,000	5,537	276.9%
Other Business & Property	33	0	33	N/A	113	0	113	N/A
Cigarette and Other Tobacco	69,791	67,000	2,791	4.2%	613,681	605,400	8,281	1.4%
Alcoholic Beverage	5,240	4,600	640	13.9%	46,561	45,100	1,461	3.2%
Liquor Gallonage	3,453	3,400	53	1.6%	35,993	34,100	1,893	5.5%
Estate	406	0	406	N/A	2,812	0	2,812	N/A
Total Tax Receipts	2,305,682	2,029,600	276,082	13.6%	17,592,491	17,138,400	454,091	2.6%
NON-TAX RECEIPTS								
Federal Grants	787,895	595,514	192,381	32.3%	7,955,248	7,985,201	(29,953)	-0.4%
Earnings on Investments	6,504	5,000	1,504	30.1%	17,897	14,500	3,397	23.4%
License & Fees	3,549	6,063	(2,513)	-41.5%	56,487	60,331	(3,843)	-6.4%
Other Income	826	907	(81)	-8.9%	24,615	18,574	6,041	32.5%
ISTV'S	0	0	0	N/A	828	9,622	(8,795)	-91.4%
Total Non-Tax Receipts	798,775	607,483	191,292	31.5%	8,055,075	8,088,228	(33,153)	-0.4%
TOTAL REVENUES	**3,104,457**	**2,637,083**	**467,373**	**17.7%**	**25,647,566**	**25,226,628**	**420,938**	**1.7%**
TRANSFERS								
Budget Stabilization	0	0	0	N/A	0	0	0	N/A
Liquor Transfers	0	0	0	N/A	0	0	0	N/A
Transfers In - Other	1,989	200	1,789	894.6%	24,272	7,000	17,272	246.7%
Temporary Transfers In	0	0	0	N/A	0	0	0	N/A
Total Transfers	1,989	200	1,789	894.6%	24,272	7,000	17,272	246.7%
TOTAL SOURCES	**3,106,446**	**2,637,283**	**469,162**	**17.8%**	**25,671,838**	**25,233,628**	**438,210**	**1.7%**

Table 2
GENERAL REVENUE FUND RECEIPTS
ACTUAL FY 2015 VS ACTUAL FY 2014
($ in thousands)

	MONTH				YEAR-TO-DATE			
REVENUE SOURCE	**APRIL FY 2015**	**APRIL FY 2014**	**$ VAR**	**% VAR**	**ACTUAL FY 2015**	**ACTUAL FY 2014**	**$ VAR**	**% VAR**
TAX RECEIPTS								
Non-Auto Sales & Use	782,414	711,629	70,786	9.9%	7,185,395	6,569,998	615,397	9.4%
Auto Sales & Use	128,295	132,218	(3,923)	-3.0%	1,071,082	994,334	76,749	7.7%
Subtotal Sales & Use	910,709	843,846	66,863	7.9%	8,256,477	7,564,331	692,146	9.2%
Personal Income	1,222,312	902,218	320,094	35.5%	7,158,873	6,769,169	389,705	5.8%
Corporate Franchise	1,503	(6,023)	7,526	125.0%	1,721	(11,827)	13,549	114.6%
Financial Institutions Tax	31,593	23,735	7,858	33.1%	128,661	148,347	(19,686)	-13.3%
Commercial Activity Tax	25,729	31,572	(5,843)	N/A	673,125	623,930	49,194	7.9%
Petroleum Activity Tax	0	0	0	N/A	4,436	0	4,436	N/A
Public Utility	21	0	21	N/A	62,760	72,370	(9,610)	-13.3%
Kilowatt Hour	30,236	30,897	(661)	-2.1%	259,345	267,066	(7,721)	-2.9%
Natural Gas Distribution	4,453	4,665	(212)	N/A	40,977	41,345	(368)	-0.9%
Foreign Insurance	200	(3,174)	3,375	106.3%	299,421	301,257	(1,836)	-0.6%
Domestic Insurance	0	0	(0)	N/A	7,537	153	7,384	4822.7%
Other Business & Property	33	18	15	85.2%	113	496	(383)	-77.2%
Cigarette and Other Tobacco	69,791	66,866	2,925	4.4%	613,681	621,855	(8,175)	-1.3%
Alcoholic Beverage	5,240	4,752	489	10.3%	46,561	46,008	553	1.2%
Liquor Gallonage	3,453	3,341	112	3.4%	35,993	34,674	1,319	3.8%
Estate	406	6,484	(6,078)	-93.7%	2,812	37,223	(34,411)	-92.4%
Total Tax Receipts	2,305,682	1,909,196	396,486	20.8%	17,592,491	16,516,395	1,076,095	6.5%
NON-TAX RECEIPTS								
Federal Grants	787,895	844,688	(56,792)	-6.7%	7,955,248	7,680,492	274,755	3.6%
Earnings on Investments	6,504	3,930	2,575	65.5%	17,897	12,350	5,548	44.9%
License & Fee	3,549	7,342	(3,793)	-51.7%	56,487	55,714	773	1.4%
Other Income	826	765	61	7.9%	24,615	15,667	8,948	57.1%
ISTV'S	0	9,619	(9,619)	N/A	828	17,364	(16,536)	-95.2%
Total Non-Tax Receipts	798,775	866,343	(67,569)	-7.8%	8,055,075	7,781,586	273,489	3.5%
TOTAL REVENUES	**3,104,457**	**2,775,540**	**328,917**	**11.9%**	**25,647,566**	**24,297,982**	**1,349,584**	**5.6%**
TRANSFERS								
Budget Stabilization	0	0	0	N/A	0	0	0	N/A
Liquor Transfers	0	0	0	N/A	0	0	0	N/A
Transfers In - Other	1,989	2,973	(984)	-33.1%	24,272	50,188	(25,916)	-51.6%
Temporary Transfers In	0	0	0	N/A	0	5,516	(5,516)	N/A
Total Transfers	1,989	2,973	(984)	-33.1%	24,272	55,704	(31,432)	-56.4%
TOTAL SOURCES	**3,106,446**	**2,778,513**	**327,933**	**11.8%**	**25,671,838**	**24,353,685**	**1,318,153**	**5.4%**

DISBURSEMENTS

April GRF disbursements, across all uses, totaled $2,524.9 million and were $173.0 million (7.4%) above estimate. This was primarily attributable to higher than estimated disbursements in the Medicaid and Property Tax Reimbursements categories being partially offset by lower than estimated disbursements in the Primary and Secondary Education and Health and Human Services categories. On a year-over-year basis, April total uses were $0.1 million (0.0%) lower than those of the same month in the previous fiscal year, with higher disbursements in the Property Tax Reimbursements category being partially offset by lower disbursements in the Medicaid and Health and Human Services categories. Year-to-date variances by category are provided in the table below.

Category	Description	YTD Variance	% Variance
Expenditures and transfers between agencies (ISTVs)	State agency operations, subsidies, tax relief, debt service payments, and pending payroll (if applicable)	($57.4 million)	-0.2%
Transfers	Temporary or permanent transfers out of the GRF that are not agency expenditures	($10.4 million)	-1.7%
TOTAL DISBURSEMENTS VARIANCE:		**($67.8 million)**	**-0.3%**

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

Primary and Secondary Education

This category contains GRF spending for the Ohio Department of Education, minus property tax reimbursements. April disbursements for this category totaled $574.4 million and were $70.0 million (10.9%) below estimate. Expenditures for the school foundation program totaled $521.4 million and were $57.7 million (10.0%) below estimate. This variance was primarily attributable to the recent availability of current year average daily membership (ADM) beginning with the second school foundation payment in March. The Department of Education adjusts foundation payments as current year ADM data becomes available. Districts with calculated increases in their foundation payments receive the increases immediately, whereas districts with calculated decreases will see a gradual reduction in their foundation payments through the end of the fiscal year. The below-estimate April foundation payments are a result of this downward ADM adjustment. The Department estimates that year-end total disbursements will be in line with the estimates.

Year-to-date disbursements were $6,225.8 million, which was $117.9 million (1.9%) above estimate. On a year-over-year basis, disbursements in this category were $10.4 million (1.8%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $377.1 million (6.4%) higher than at the same point in fiscal year 2014.

Higher Education

April disbursements for the Higher Education category, which includes non-debt service GRF spending by the Board of Regents, totaled $171.2 million and were $3.0 million (1.8%) above estimate for the month. The majority of the monthly variance was due to disbursements in the Ohio National Guard Scholarship Program being above estimate by $4.1 million as a result of higher than expected requests for reimbursement from higher education institutions, which was partially offset by disbursements in the Choose Ohio First and Ohio College Opportunity Grant Scholarship Programs being below estimate by $1.0 million.

Year-to-date disbursements were $1,790.0 million, which was $3.7 million (0.2%) above estimate. On a year-over-year basis, disbursements in this category were $2.9 million (1.7%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $43.6 million (2.5%) higher than at the same point in fiscal year 2014.

Other Education

This category includes non-debt service expenditures made by the Broadcast Education Media Commission, the Ohio Facilities Construction Commission, the Ohio State School for the Blind, the Ohio School for the Deaf, as well as disbursements made to libraries, cultural, and arts organizations.

April disbursements in this category totaled $2.9 million and were $3.6 million (55.8%) below estimate. This variance was primarily attributable to Ohio History Connection subsidy payments estimated for April being made in March instead. Year-to-date disbursements were $48.6 million, which was $3.0 million (5.8%) below estimate. On a year-over-year basis, disbursements in this category were $0.9 million (24.5%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $2.5 million (5.4%) higher than at the same point in fiscal year 2014.

Medicaid

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

Please note that the total GRF disbursement estimates in fiscal year 2015, which were established in July 2014, are lower than the original appropriations by $845.6 million. Budgeted transfers and other projected lapses account for $148.7 million. The remaining $697.0 million is due to an adjustment for lower than expected caseload. While enrollment steadily increased each month in fiscal year 2014, the rate of growth was lower than initially expected and was a key driver of the lower than expected spending. This spending trend is expected to continue in fiscal year 2015, and the disbursement estimates have been adjusted accordingly.

Expenditures
April GRF disbursements for the Medicaid Program totaled $1,215.1 million and were $201.3 million (19.9%) above the estimate, and $80.2 million (6.2%) below the same month in the previous fiscal year. Year-to-date GRF disbursements for the Medicaid Program totaled $12,935.6 million and were $158.1 million (1.2%) below the estimate, and $930.0 million (7.7%) above the same point in the previous fiscal year.

April all funds disbursements totaled $1,858.3 million and were $421.1 million (18.5%) below the estimate, and $175.6 million (10.4%) above disbursements in the same month of the previous fiscal year. Year-to-date all funds disbursements totaled $19,126.7 million and were $996.4 million (5.0%) below the estimate, and $2,380.6 million (14.2%) above disbursements in the same point of the previous fiscal year.

The April all funds variance was due primarily to a delay in the payment of expenses for two programs – Hospital Upper Payment Limits and Hospital Care Assurance. These payments are expected to be completed before the conclusion of the fiscal year. Other categories with lower than anticipated expenses in April include such fee-for-service categories as hospitals, physicians and prescription drugs, and three groups in the managed care program – Aged, Blind and Disabled (ABD)-Adults, ABD-Children, and MyCare Medicaid/Medicare dually-eligible. These lower than anticipated expenses were offset in part by greater than anticipated spending in the Managed Care-CFC spending category, resulting from enrollment, and in Nursing Facilities as the MyCare managed care program claims for this population have not yet shifted to managed care plans.

Year-to-date disbursements were below the estimate. This was due to lower-than-anticipated costs in the fee-for-service categories, along with lower-than-anticipated costs for the Health Homes program, and a managed care payment reconciliation that occurred in July 2014.

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

(in millions, totals may not add due to rounding)

	Apr. Projection	Apr. Actual	Variance	Variance %
GRF	$ 1,013.8	$ 1,215.1	$ 201.3	19.9%
Non-GRF	$ 1,265.6	$ 643.2	$ (622.4)	-49.2%
All Funds	$ 2,279.3	$ 1,858.3	$ (421.1)	-18.5%

Enrollment
Total April enrollment across all categories was 2.93 million. The most significant components are the Covered Families and Children (CFC) category, which decreased by 46,717 persons to an April total of 2.32 million persons, and the Aged, Blind and Disabled (ABD) category, which decreased by 3,602 persons to an April total of 412,550 covered lives. Individuals covered under Medicaid extension (eligibility group VIII) are included as part of the larger CFC category.

Total enrollment across all categories for the same period last year was 2.69 million covered persons, including 2.03 million persons in the CFC category and 434,793 people in the ABD category.

Please note that these data are subject to revision.

Health and Human Services

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

April disbursements in this category totaled $92.9 million and were $40.6 million (30.4%) below estimate for the month. Year-to-date disbursements were $1,121.2 million, which was $50.5 million (4.3%) below estimate. On a year-over-year basis, disbursements in this category were $17.1 million (15.6%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $50.4 million (4.7%) higher than at the same point in fiscal year 2014.

<u>Department of Job and Family Services</u>

April disbursements for the Department of Job and Family Services totaled $48.0 million and were $20.6 million (30.0%) below estimate. This variance was primarily attributable to several lines. First, TANF State/Maintenance of Effort disbursements were $12.6 million (54.5%) below estimate due to $10.0 million in administrative funding anticipated to be disbursed in April being pushed to future months instead, and increased federal share of Ohio Works First cash assistance payments. Second, Family and Children Services disbursements were $11.6 million (96.7%) below estimate due to county payments for the State Child Protective Allocation being made in March instead of April as originally estimated. Third, Information Technology Projects disbursements were $1.7 million (42.6%) below estimate due to invoices not being received in April as anticipated and lower than estimated payroll disbursements. Finally, Early Care and Education disbursements were $6.5 million (120.8%) above estimate due to a change in the child care disbursement schedule in order to meet the TANF MOE requirements.

<u>Department of Health</u>

April disbursements for the Department of Health totaled $6.5 million and were $1.2 million (23.2%) above estimate. This variance was primarily attributable to Federally Qualified Health Centers disbursements being $1.3 million above an estimate of $1,068 due to subsidy payments originally estimated for May being made in April instead.

<u>Department of Mental Health and Addiction Services</u>

April disbursements for the Department of Mental Health and Addiction Services totaled $19.3 million and were $19.8 million (50.6%) below estimate. This variance was primarily attributable to several lines. First, Community Behavioral Health disbursements were $2.4 million (46.4%) below estimate due to the timing of county draws on block grant supplement funds. Second, Criminal Justice Services disbursements were $1.1 million (88.6%) below estimate and Continuum of Care Services disbursements were $16.9 million (96.3%) below estimate both due to payments being sent out in May that were estimated to be released in April. Finally, Community Innovations disbursements were $1.2 million above an estimate of $0 due to payments estimated to be released in December and March being released in April instead.

Justice and Public Protection

This category includes non-debt service GRF expenditures by the Department of Rehabilitation & Correction, the Department of Youth Services, the Attorney General, judicial agencies, and other justice-related entities.

April disbursements in this category totaled $173.8 million and were $2.1 million (1.2%) above estimate for the month. Year-to-date disbursements were $1,594.8 million, which was $29.2 million (1.8%) below estimate. On a year-over-year basis, disbursements in this category were $6.6 million (3.7%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $16.8 million (1.1%) higher than at the same point in fiscal year 2014.

<u>Department of Rehabilitation and Correction</u>
April disbursements for the Department of Rehabilitation and Correction totaled $141.4 million and were $0.6 million (0.4%) above estimate. Disbursements for Community Nonresidential Programs were $1.3 million (15.3%) below estimate due to the timing of payments. This variance was largely offset by $1.0 million (18.1%) in higher than estimated disbursements for Parole and Community Operations due to the purchase of MARCS radios, as well as several other lines totaling $0.9 million. Year-to-date disbursements were $1,233.6 million and were $11.9 million (1.0%) below estimate.

<u>Department of Youth Services</u>
April disbursements for the Department of Youth Services totaled $11.7 million and were $1.8 million (13.6%) below estimate. This variance was primarily attributable to RECLAIM Ohio disbursements being $1.7 million (14.7%) below estimate due to lower than estimated payroll and operational expenditures, and invoices from three Community Correctional Facilities not being received during the month as anticipated. Year-to-date disbursements were $164.4 million and were $14.4 million (8.1%) below estimate.

General Government

This category includes non-debt service GRF expenditures by the Department of Natural Resources, Development Services Agency, Department of Agriculture, Department of Taxation, Office of Budget and Management, non-judicial statewide elected officials, legislative agencies, and others.

April disbursements in this category totaled $32.9 million and were $2.1 million (6.9%) above estimate. Year-to-date disbursements were $295.9 million, which was $12.1 million (3.9%)

below estimate. On a year-over-year basis, disbursements in this category were $1.1 million (3.4%) higher than for the same month in the previous fiscal year while year-to-date expenditures were $5.6 million (1.9%) lower than at the same point in fiscal year 2014.

Department of Taxation
April disbursements for Operating Expenses at the Department of Taxation totaled $6.3 million and were $1.3 million (25.5%) above estimate. This variance was primarily attributable to payment of approximately $1.0 million in postage expenses originally estimated in February. Year-to-date disbursements totaled $51.7 million and were $3.0 million (5.5%) below estimate.

Department of Administrative Services
April disbursements for the Department of Administrative Services (DAS) disbursements totaled $4.8 million, and were $2.9 million (158.5%) above the estimate. This variance was primarily attributable to rent payments for GRF-supported state agencies and vacant space in state buildings estimated for May being made in April instead.

Property Tax Reimbursements

Payments from the property tax reimbursement category are made to local governments and school districts to reimburse these entities for revenues foregone as a result of the 10.0 percent and 2.5 percent rollback, as well as the homestead exemption. Due to earlier than expected requests for payment, April disbursements of property tax reimbursements were $191.6 million and were $88.5 million (85.9%) above the estimate of $103.1 million. Year-to-date disbursements totaled $1,128.0 million and were $91.4 million (8.8%) above estimate. It is expected that May and June disbursements should be below the estimate.

Debt Service

April payments for debt service totaled $70.1 million and were $0.8 million (1.2%) below estimate. Year-to-date, debt service payments totaled $1,127.2 million and were $17.5 million (1.4%) below estimate.

Transfers Out

April transfers out of the GRF were less than $0.1 million and were $8.9 million (99.9%) below estimate. The monthly variance was due to a transfer from the GRF to support OAKS upgrades that occurred in March instead of April as originally estimated.

Table 3
GENERAL REVENUE FUND DISBURSEMENTS
ACTUAL FY 2015 VS ESTIMATE FY 2015
($ in thousands)

Functional Reporting Categories Description	MONTH ACTUAL APRIL	MONTH ESTIMATED APRIL	MONTH $ VAR	MONTH % VAR	YEAR-TO-DATE YTD ACTUAL	YEAR-TO-DATE YTD ESTIMATE	YEAR-TO-DATE $ VAR	YEAR-TO-DATE % VAR
Primary and Secondary Education	574,418	644,462	(70,044)	-10.9%	6,225,762	6,107,890	117,872	1.9%
Higher Education	171,181	168,209	2,972	1.8%	1,789,960	1,786,241	3,719	0.2%
Other Education	2,884	6,525	(3,641)	-55.8%	48,579	51,545	(2,966)	-5.8%
Medicaid	1,215,101	1,013,775	201,326	19.9%	12,935,620	13,093,742	(158,122)	-1.2%
Health and Human Services	92,922	133,480	(40,558)	-30.4%	1,121,172	1,171,718	(50,546)	-4.3%
Justice and Public Protection	173,847	171,793	2,054	1.2%	1,594,780	1,623,996	(29,216)	-1.8%
General Government	32,917	30,799	2,118	6.9%	295,944	308,052	(12,108)	-3.9%
Property Tax Reimbursements	191,551	103,053	88,498	85.9%	1,127,955	1,036,561	91,394	8.8%
Capital Outlay	0	0	0	N/A	0	0	0	N/A
Debt Service	70,062	70,906	(844)	-1.2%	1,227,179	1,244,646	(17,467)	-1.4%
Total Expenditures & ISTV's	**2,524,884**	**2,343,003**	**181,882**	**7.8%**	**26,366,951**	**26,424,391**	**(57,440)**	**-0.2%**
Transfers Out:								
BSF Transfer Out	0	0	0	N/A	0	0	0	N/A
Operating Transfer Out	11	8,863	(8,852)	-99.9%	587,846	598,243	(10,397)	-1.7%
Temporary Transfer Out	0	0	0	N/A	0	0	0	N/A
Total Transfers Out	**11**	**8,863**	**(8,852)**	**N/A**	**587,846**	**598,243**	**(10,397)**	**-1.7%**
Total Fund Uses	**2,524,896**	**2,351,866**	**173,030**	**7.4%**	**26,954,798**	**27,022,634**	**(67,836)**	**-0.3%**

Table 4
GENERAL REVENUE FUND DISBURSEMENTS
ACTUAL FY 2015 VS ACTUAL FY 2014
($ in thousands)

Functional Reporting Categories Description	MONTH APRIL FY 2015	MONTH APRIL FY 2014	MONTH $ VAR	MONTH % VAR	YEAR-TO-DATE ACTUAL FY 2015	YEAR-TO-DATE ACTUAL FY 2014	YEAR-TO-DATE $ VAR	YEAR-TO-DATE % VAR
Primary and Secondary Education	574,418	584,848	(10,430)	-1.8%	6,225,762	5,848,641	377,120	6.4%
Higher Education	171,181	174,084	(2,903)	-1.7%	1,789,960	1,746,376	43,584	2.5%
Other Education	2,884	3,823	(938)	-24.5%	48,579	46,071	2,508	5.4%
Medicaid	1,215,101	1,295,285	(80,183)	-6.2%	12,935,620	12,005,571	930,049	7.7%
Health and Human Services	92,922	110,039	(17,117)	-15.6%	1,121,172	1,070,792	50,380	4.7%
Justice and Public Protection	173,847	180,440	(6,593)	-3.7%	1,594,780	1,577,974	16,806	1.1%
General Government	32,917	31,846	1,071	3.4%	295,944	301,558	(5,614)	-1.9%
Property Tax Reimbursements	191,551	64,162	127,389	-198.5%	1,127,955	978,827	149,127	15.2%
Capital Outlay	0	0	0	N/A	0	0	0	N/A
Debt Service	70,062	58,171	11,891	20.4%	1,227,179	1,148,394	78,786	6.9%
Total Expenditures & ISTV's	**2,524,884**	**2,502,698**	**22,186**	**0.9%**	**26,366,951**	**24,724,205**	**1,642,746**	**6.6%**
Transfers Out:								
BSF Transfer	0	0	0	N/A	0	995,930	(995,930)	N/A
Operating Transfer Out	11	22,280	(22,269)	N/A	587,846	233,241	354,606	152.0%
Temporary Transfer Out	0	0	0	N/A	0	5,516	(5,516)	N/A
Total Transfers Out	**11**	**22,280**	**(22,269)**	**N/A**	**587,846**	**1,234,687**	**(646,840)**	**-52.4%**
Total Fund Uses	**2,524,896**	**2,524,978**	**(83)**	**0.0%**	**26,954,798**	**25,958,892**	**995,906**	**3.8%**

FUND BALANCE

Table 5 describes the estimated General Revenue Fund (GRF) unencumbered ending fund balance for FY 2015. Based on the estimated revenue sources for FY 2015 and the estimated FY 2015 disbursements, transfers, and encumbrances, the GRF unencumbered ending fund balance for FY 2015 is an estimated $631.6 million.

The GRF unencumbered ending fund balance should not be considered as a balance available for expenditure in FY 2015 nor should it be considered as equivalent to the FY 2015 surplus calculation as defined in Section 131.44 of the Ohio Revised Code.

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

Table 5
FUND BALANCE
GENERAL REVENUE FUND
FISCAL YEAR 2015
($ in thousands)

July 1, 2014 Beginning Cash Balance	**$ 1,700,065**
Plus FY 2015 Estimated Revenues	21,139,610
Plus FY 2015 Estimated Federal Revenues	8,990,764
Plus FY 2015 Estimated Transfers to GRF	648,386
Total Sources Available for Expenditure & Transfer	**32,478,825**
Less FY 2015 Estimated Disbursements	30,912,502
Less FY 2015 Estimated Total Encumbrances as of June 30, 2015	328,448
Less FY 2015 Estimated Transfers Out	606,390
Total Estimated Uses	**31,847,339**
FY 2015 UNENCUMBERED ENDING FUND BALANCE	**631,486**

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Ohio Manufacturers' Association

Tax Counsel Report
May 28, 2015

By Mark A. Engel
Bricker & Eckler LLP

Administrative Actions:

Nothing to report.

Legislative Actions:

House Bill 64, the budget bill for the upcoming biennium, was introduced. The tax provisions contained in the bill have received a great deal of coverage in the media. The House passed on to the Senate a substitute version that cut income tax rates 6.3 percent and made permanent the business deduction for 75 percent of the first $250,000 in income. A summary of the provisions and its changes from the bill as introduced is attached.

On May 6, 2015, OMA provided testimony as an interested party before the Senate Ways & Means Committee regarding state tax policy in general and the administration's provisions in the introduced version of H.B. 64.

Please see the legislative report from OMA staff for more details regarding pending bills.

Judicial Actions:

Ohio Supreme Court

In the companion cases of *Hillenmeyer v. Cleveland Bd. of Rev*., Slip Opinion No. 2015-Ohio-1623, and *Saturday v. Cleveland Bd. of Rev*., Slip Opinion No. 2015-Ohio-1625, the Court struck down efforts by the City of Cleveland to tax the compensation paid to professional football players on a per-game basis. In both cases, the Court held that compensation was paid for much more than the number of games played; as a result, attempting to tax the compensation on a games-played basis amounted to over-reaching by the City and denied the taxpayers due process. In addition, Saturday was injured and was not present with the team on the date it played in Cleveland.

Ohio Court of Appeals

In *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision*, 2015-Ohio-1780 (10th Dist.), the Court of Appeals reversed a decision of the BTA and remanded the case where the BTA failed to state the basis for its decision rejecting evidence introduced by the property owner and upon which the Board of Revision had reduced the value of the property.

Where a BOR has found evidence sufficiently credible to warrant a change in value, the BTA must state the reasons for finding that evidence is not credible.

In *2195 Riverside Drive LLC v. Franklin Cty. Bd. of Revision*, 2015-Ohio-252 (10th Dist.), the Court of Appeals upheld the conclusion of the BTA that a purchase was tainted because it was transacted under duress. While the seller took a difficult position, there was no showing that the buyer could not have acquired another location that was equally serviceable.

In *NDHMD, Inc. v. Cuyahoga Cty. Bd. of Revision*, 2015-Ohio-174 (8th Dist.) the Court of Appeals found that the auction sale of a property following a tax foreclosure was an arm's-length transaction that established the value of the property. The property was sold at an open auction and at least three parties bid on the property.

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

In two additional cases, the BTA has upheld CAT assessments based upon the statutory bright-line nexus test. *Mason Companies, Inc. v. Testa*, BTA Nos. 2012-1169, 2012-2806 (April 20, 2015) and *Crutchfield, Inc. v. Testa*, BTA Nos. 2012-926, 2012-3068 & 2013-2021 (February 26, 2015). In both cases, the BTA declined to address issues whether the statutory provision comported with federal constitutional concerns.

In *Nationwide Mutual Ins. Co. v. City of Columbus Bd. of Tax Appeals*, BTA No. 2010-1590 (May 12, 2015), the BTA held that the taxpayer did not have to withhold city income tax on the nonqualified deferred compensation reported as qualifying wages due to the employee's separation from service, where actual payment of the compensation would not take place until later. Although the state statute contemplated a withholding obligation at the time the deferred compensation became qualifying wages (i.e., when no longer subject to a substantial risk of forfeiture), Columbus had not amended it income tax code and still conditioned the obligation to withhold upon actual payment of the wages.

In *The Kroger Co. v. Licking Cty. Bd. of Revision*, BTA No. 2013-199 (May 5, 2015), and *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2014-2953 (May 11, 2015), the BTA upheld decisions of the BOR where the taxpayer had submitted evidence to the BOR, the BOR reduced the value of the property (but not as requested by the taxpayer) and the BOE appealed but presented no evidence of value to the BTA. Where the BOR changes the value based in some part on evidence introduced by a party, the appealing party has an affirmative duty to present evidence of value to the contrary.

In *T. Ryan Legg Irrev. Trust v. Testa*, BTA No. 2013-1469 (May 5, 2015), the BTA held that shares of stock held by a trust and sold to another owner in liquidation of the nonresident owner's interest in the business constituted business income that could be apportioned to Ohio. The BTA (questionably) relied upon R.C. 5747.01(B), which provides that income from the liquidation of a business was business income.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2014-224 (April 13, 2015), the BTA ruled that a sale between related parties was not presumed to be at arm's-length absent evidence of value consistent with the price paid.

Tax Commissioner Opinion

No opinions to report.

Other

United States Supreme Court

The United States Supreme Court issued its much-anticipated decision in *Comptroller v. Wynne*, Case No. 13-485 (May 18, 2015). In the case, Maryland provided only a partial credit against the Maryland income tax for income tax paid to another state on income earned outside Maryland. The Court held the scheme violated the dormant commerce clause, which prohibits state action that places an undue burden on interstate commerce because it placed a heavier tax burden on income earned in interstate commerce than it did on income earned wholly in Maryland. The holding seems to indicate that a state of residence or domicile must somehow apportion its tax, perhaps by giving a full credit for all tax paid to another state, or run the risk of being declared invalid.

Navistar Amicus Brief

The OMA filed an amicus brief in support of the taxpayer in *Navistar, Inc. v. Levin*, Sup. Ct. No. 2014-0140. The case involves the credit against the CAT for net operating loss carryforwards contained in R.C. 5751.53. The statute provides a credit for deferred franchise tax assets net of any associated valuation reserve recorded on its books and records as of the last day of the taxpayer's taxable year ending in 2004 (the "amortizable amount"). Any taxpayer wishing to claim the credit had to file a report notifying the tax commissioner of its amortizable amount by June 30, 2006. The Tax Commissioner had until June 30, 2010, to audit the report any make any correction to it.

Navistar timely filed its report and claimed an amortizable amount based upon its books and records. However, in December 2007 it restated its financial statements for the years ending in 2003-2005. This restatement caused Navistar to increase its valuation reserve, causing its amortizable amount to be reduced to $0. Upon audit, the Tax Commissioner reduced Navistar's credit accordingly. The BTA upheld the action and Navistar appealed to the Supreme Court.

On appeal, Navistar and OMA argued there is no authority for the Tax Commissioner to alter an otherwise correct amortizable amount due to events occurring after the date the report was due in 2006. Rather, that official's authority is limited to correcting mistakes existing as of the date of the report was filed. The Tax Commissioner argued that because the records were restated for FYE 2004, he could reduce the amortizable amount accordingly.

Oral argument was held on May 6. We were permitted to participate in oral argument, but due to the number of questions asked of Navistar's counsel, our time was limited. A decision may be expected in early fall 2015.

Ohio House Substitute Budget Bill Proposes Significant Changes to Tax Provisions of House Bill 64

Mark A. Engel
Bricker & Eckler LLP

The Ohio House made significant changes to the tax provisions contained in House Bill 64, which contains the provisions of Ohio Governor John Kasich's proposed budget for the 2016-2017 fiscal years. In the face of persistent opposition to the many tax changes contained in the original bill, the House's substitute bill has dropped many of the provisions that would increase taxes, while still providing for reductions in the personal income tax. Over-all, the changes provide an estimated $1.2 billion in income tax reductions over the two years of the budget.

Substitute Bill

As introduced, House Bill 64 generated significant opposition, especially from business interests that would have borne the brunt of the tax increase provisions and enjoyed the benefit of very little of the income tax reductions.

The House's substitute bill provides for a 6.3 percent across-the-board reduction in income tax rates, reducing the top marginal rate to 4.997 percent. The proposal also makes permanent the small business tax deduction for 75 percent of the first $250,000 of business income earned by sole proprietors and the owners of pass-through entities. The substitute bill proposes to retain the provisions of House Bill 64 that imposed a means-test for some deductions and credits. This provision applies to the deduction for social security and railroad retirement benefits; the $50 senior credit; and the lump sum retirement credit. Taxpayers with annual income in excess of $100,000 would no longer be able to claim these deductions and credits.

The increases and other adjustments to the sales, commercial activity, severance and tobacco taxes are dropped from the substitute bill.

In addition to some other minor tax revisions, the substitute bill also:

- Continues to allow the historic preservation tax credit against the CAT;
- Provides a nonrefundable credit against the Petroleum Activities Tax for tax paid by another;
- Extends the enterprise zone program for two years, to October 15, 2017;
- Removes language creating the tax expenditure review House to review tax expenditures over the next several years; and
- Makes technical changes to the jobs retention and jobs creation tax credit.

Overall Reduction in Taxes

The proposal is expected to result in a net reduction in taxes of approximately $1.2 billion over the two fiscal years in the biennium.

Tax Policy Study Commission

The substitute bill calls for the creation of yet another body to study Ohio's tax structure. The Ohio 2020 Tax Policy Study Commission is charged with taking a larger, more comprehensive look at Ohio's tax structure in comparison with other states. The Commission is to report its findings and recommendations by October 1, 2017, at which time it shall cease to exist. It is to use "dynamic analytical tools" in making its findings and recommendations.

House Bill 64 As Proposed

As proposed in House Bill 64, personal income tax rates would have been reduced 23 percent over two years. The top marginal rate would have been reduced from 5.3 percent to 4.1 percent of Ohio taxable income. The bill also proposed to exclude from the income tax small business income from any business with gross receipts up to $2 million.

As introduced, the bill also proposed to:

- Increase the commercial activity tax rate by 23 percent, from 0.26 percent of taxable gross receipts to 0.32 percent;
- Increase the state sales tax rate from 5.75 percent to 6.25 percent;
- Extend the sales tax to a number of services, including services such as public relations, lobbying, management consulting, research and public opinion polling, and debt collection;
- Increase the severance tax rate on oil, natural gas, and natural gas liquids produced through horizontal wells from the current levels of $0.20 cents per barrel of oil and $0.03 per MCF of natural gas (including liquids), to a rate of 4.5 percent or 6.5 percent of the average value of the oil, natural gas, or natural gas liquids produced; and
- Increase and equalize the various taxes imposed upon tobacco products, including e-cigarettes.

As introduced, it was estimated that House Bill 64 would have reduced income taxes by a little over $5.7 billion, while increasing other taxes by about $5.2 billion, resulting in a net tax reduction of about $500 million for Ohio taxpayers.

Summary

The substitute bill provides for a reduction in personal income taxes for many taxpayers, albeit the reduction is reduced in comparison with that contained in the original bill. The many provisions that would increase other taxes, however, have been removed. The result is a greater total tax decrease across all taxpayers in the state.

The substitute bill now moves to the Senate for its consideration. Early signals are that the Senate does not feel constrained by the tax provisions contained in the bill either as introduced on behalf of the Administration, or as passed by the House.

A budget bill must be enacted and signed before the beginning of the next fiscal year on July 1, 2015.

IN THE SUPREME COURT OF OHIO

NAVISTAR, INC.	:	
	:	
Appellant,	:	
	:	Case No. 14-0140
v.	:	
	:	Appeal from the
RICHARD A. LEVIN [JOSEPH W. TESTA],	:	Ohio Board of Tax Appeals
Tax Commissioner of Ohio,	:	Case No. 2010-575
	:	
Appellee.	:	

MERIT BRIEF OF AMICI CURIAE,
OHIO MANUFACTURERS' ASSOCIATION AND
OHIO CHAMBER OF COMMERCE,
IN SUPPORT OF APPELLANT
NAVISTAR, INC.

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STATEMENT OF INTEREST OF AMICI CURIAE

In June 2005, the Ohio General Assembly adopted a tax reform package—House Bill 66 ("H.B. 66")—designed to address the economic malaise that had afflicted Ohio for many years. In adopting H.B. 66, the General Assembly sought to replace Ohio's antiquated tax system that "kills jobs and hinders economic growth" with one that promotes investment in the equipment and technology Ohio workers need to be efficient, productive, and competitive in the global economy.[1]

A critical component of this tax reform bill was a multi-year phase out of Ohio's tangible personal property tax and the corporation franchise tax. Every major study of Ohio's tax system over the past 40 years acknowledged the anti-competitive nature of the tangible personal property tax and called for adjustments to or wholesale elimination of this tax. See, generally, Bahl, *Taxation & Economic Development: A Blueprint for Reform in Ohio* (1996) (hereinafter *Bahl*). With its many loopholes, the corporation franchise tax was largely ineffective in generating revenue. Its net worth component also placed undue burden on capital-intensive and start-up businesses. *Bahl*, at 54. H.B. 66 replaced both the tangible personal property tax and the corporation franchise tax with a new commercial activity tax (the "CAT"). The CAT is a broad-based, low rate tax that applies to virtually all business activity in Ohio with annual gross receipts of $150,000 or more. Business in general, and manufacturers specifically, have consistently supported the tax reform changes made by H.B. 66. Included in the CAT scheme was a credit based on unused Ohio net operating loss carryforwards incurred under the franchise tax.

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[1] *H.B. 66 Biennial Budget: Hearing Before the Fin. and Appropriations Comm. of the Ohio House of Representatives*, 126th Gen. Assembly (March 8, 2005) (testimony of David W. Johnson, President and CEO, Summitville Tiles, Inc. and Chairman of the Ohio Manufacturers' Association) (attached as Exhibit A).

The Ohio Manufacturers' Association ("OMA") is a statewide nonprofit trade association whose membership consists of over 1,400 manufacturing companies. As the sole trade association advocating exclusively for manufacturing issues, the OMA effectively represents the interests of manufacturing businesses employing approximately 660,000 Ohioans. Although they make up only slightly more than 10% of all CAT payers, manufacturers pay over 27% of all CAT in the state.[2] Thus, manufacturers are keenly interested in the proper, consistent, and lawful administration of that tax.

Founded in 1893, the Ohio Chamber of Commerce ("Chamber") is Ohio's largest and most diverse statewide business advocacy organization. The Chamber works to promote and protect the interests of its more than 8,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Chamber is a respected participant in the public policy arena. Through its member-driven standing committees and the Ohio Small Business Council, the Chamber formulates policy positions on issues as diverse as education funding, taxation, public finance, health care, environmental regulation, workers' compensation and campaign finance. The advocacy efforts of the Chamber are dedicated to the creation of a strong pro-jobs environment – an Ohio business climate responsive to expansion and growth.

The decision of the Board of Tax Appeals ("BTA") that the Tax Commissioner may ignore the plain language of R.C. 5751.53(A)(6)(b) and substitute his judgment for that of the General Assembly in order to reduce the credit to which a taxpayer is entitled is

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[2] *See* Ohio Department of Taxation, *2013 Annual Report*, Table 1, page 35, http://www.tax.ohio.gov/Portals/0/communications/publications/annual_reports/2013_annual_report/2013_AR_internet.pdf accessed July 22, 2014.

important to all taxpayers in Ohio, but is especially so to manufacturers. The holding permits the Tax Commissioner to ignore the plain language of a statute that he is charged to implement and to substitute his preferences for that of the General Assembly. The decision also reduces certainty and clarity in the tax laws, leaving taxpayers to the whim of a bureaucrat responsive only to the need of the state's fisc as to the application and interpretation of an otherwise clear provision. Neither implication is acceptable. The decision of the BTA is both unreasonable and unlawful. For the sake of all taxpayers, it must be reversed.

STATEMENT OF CASE AND FACTS

Amici agree with the Statement of Case and Facts as set forth in the Brief of Appellant Navistar, Inc.

LAW AND ARGUMENT

PROPOSITION OF LAW:

Courts have no legislative authority and may not supply provisions omitted from an act by the General Assembly. There is no authority to add to, enlarge, supply, expand, extend or improve the terms of a statute to meet a situation for which there is no provision.

R.C. 5751.53 provides for a credit against a taxpayer's CAT liability based upon net operating loss ("NOL") carryforwards[3] previously generated, but not used, for Ohio franchise tax purposes. The single issue presented in this case is whether the Tax Commissioner may ignore the date specified by the General Assembly as the date on which the amount that serves as the basis for the credit under R.C. 5751.53(A)(6)(b) is calculated. That statute provides that the amount that serves as the basis for the credit, the taxpayer's

[3] The purpose of recognizing NOL carryforwards is to "ameliorate the unduly drastic consequences [to taxpayers] of taxing income strictly on an annual basis." *Libson Shops, Inc. v. Koehler*, 353 U.S. 382, 386 (1957).

"applicable Ohio net operating loss carryforward" must be based upon the taxpayer's deferred tax asset, net of any related valuation allowance amount, both as reflected on the taxpayer's books and records on the last day of its taxable year ending in 2004.

The taxpayer, Navistar, Inc., took the statute at its word and computed its applicable Ohio NOL carryforward based on those books and records as they existed by the filing deadline of June 30, 2006. Upon audit, however, and in contravention of the express terms of the statute, the Tax Commissioner determined that he had the authority to reduce Navistar's applicable Ohio NOL carryforward to reflect subsequent changes to Navistar's accounting books and records that occurred after the specified filing date. Inexplicably, the Board of Tax Appeals affirmed the Tax Commissioner's unlawful action.

A. Temporary Tax Differences: Deferred Tax Assets and Valuation Allowances

Because there are differences between tax accounting rules and standard accounting practices, there often arise temporary differences between a taxpayer's tax bill and what its financial statements suggest. Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 109*, "Accounting for Income Taxes" (February 1992) (hereafter, *FAS 109*); testimony of Mr. Pinney, a CPA and accounting expert on FAS 109, at II Tr. 392-400. These temporary differences may result in either a future tax liability (that is, current taxes were lower that the financial accounting records might have suggested), or a future tax benefit (that is, current taxes were higher than financial accounting records might have suggested). An example of a future tax liability is presented when a depreciation method used for tax purposes depletes the value of an asset more quickly than might be permitted by financial accounting standards. The current tax benefit will have to be repaid in the future. An example of a future tax benefit is presented by a NOL; because net income for tax purposes may not be reduced below zero, the excess NOL may be used against future tax liability. These differences are known as "temporary differences." *FAS 109,* ¶13.

A deferred tax asset is recognized for a temporary difference that will result in amounts deductible in future years and for carryforwards. The deferred tax asset represents a tax deduction in future years. In addition, a valuation allowance (a contra-account or liability) is established if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax asset will not be realized. *FAS 109,* ¶ 17.e. For example, if a taxpayer has a deferred tax benefit of $100, but it is more likely than not that only $60 will be used, the taxpayer enters a deferred tax asset of $100 on its balance sheet, and a corresponding valuation allowance of $40.

In establishing a valuation allowance, both positive and negative evidence must be considered and a judgment is made based upon that information. *FAS 109*, ¶ 20. Although past performance weighs heavily in the judgment, a subjective forecast of the future performance of the taxpayer is also required. And, as noted by Mr. Pinney at II Tr. 428, 449-450, and Ms. Garnant, a CPA and Navistar's vice president of tax, at II Tr. 289-290, as time goes by, additional information becomes available that may cause a change in the judgment regarding the amount, if any, of a valuation allowance. *FAS 109*, ¶ 26.

B. R.C. 5751.53 - The Credit for Disallowed Ohio Net Operating Loss Carryforward

In the waning days before the enactment of H.B. 66, a small group of manufacturers approached the Department of Taxation regarding an issue presenting a serious financial statement issue for them. Manufacturing is inherently cyclical in nature and the years prior to 2005 were difficult years for manufacturers in general, and for Ohio manufacturers specifically. During many of those years, many manufacturers (and other businesses as well) suffered significant NOLs for franchise tax purposes. These losses created NOL carryforwards which, pursuant to *FAS 109*, resulted in deferred tax assets being created on their balance sheets.

However, H.B. 66 proposed to eliminate the corporation franchise tax, which is the tax under which these NOL carryforwards were incurred. If there were no longer a tax against which to apply a deferred tax asset, then it became more likely than not that none of the deferred tax asset would be used; as a result, *FAS 109* would require those taxpayers to create a valuation allowance that would totally eliminate those assets. The result would be a significant impact to the financial statements of those taxpayers.

Consequently, the manufacturers, the Department of Taxation, and the General Assembly devised a credit that would soften the blow and permit the affected taxpayers to retain some of the benefit of their deferred tax assets against the CAT. *See generally* the testimony of Messrs. Hall and Church, both deputy tax commissioners, at III Tr. 473-511. The result was the credit for NOL carryforwards that was enacted as R.C. 5751.53.

R.C. 5751.53 provides for a credit against the CAT equal to a taxpayer's "amortizable amount." The "amortizable amount" equals the sum of a taxpayer's "disallowed Ohio net operating loss carryforward" and other net deferred tax items apportioned to Ohio, multiplied by 0.08. R.C. 5751.53(A)(6) defines the "disallowed Ohio net operating loss carryforward:"

> (6) "Disallowed Ohio net operating loss carryforward" means the lesser of the amounts described in division (A)(6)(a) or (b) of this section, but the amounts described in divisions (A)(6)(a) and (b) of this section shall each be reduced by the qualifying amount.

(a) * * * *

(b) The Ohio net operating loss carryforward amount that the qualifying taxpayer used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2004, adjusted for return to accrual, but this amount shall be reduced by the qualifying related valuation allowance amount. For the purposes of this section, the "qualifying related valuation allowance amount" is the amount of Ohio net operating loss reflected in the qualifying taxpayer's computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2004, with respect to the deferred tax asset relating to its Ohio net operating loss carryforward amount.

The qualifying amount is $50,000,000. R.C. 5751.53(A)(11)(a).

This credit was included in the law when the CAT was first enacted. Thus, its impact was included in the revenue projections associated with the CAT. Evidence presented at the hearing indicated that Amortizable Amount Reports were timely filed on behalf of approximately 54 different taxpayers by the deadline of June 30, 2006. Of those 54, at the time of the BTA's hearing:

- 45 had been denied in part or totally for various reasons;
- one was granted that made up approximately 2/3 of the total amount claimed by all taxpayers; and
- 8 remain unresolved.

C. Navistar Complied With R.C. 5751.53 and Is Entitled to the Credit Claimed

R.C. 5751.53(A)(6)(b) provides that the disallowed Ohio NOL carryforward is based on the "books and records on the last day of [the] taxable year ending in 2004," reduced by the related qualifying related valuation allowance amount measured from the same documents on the same date. Thus, the statute bases the amount of the credit, if any, upon a snapshot of the taxpayer's financial books and records as of a specific date. As Mr. Church testified at III Tr. 507, it was important to pick a specific date because the Department of Taxation needed a date certain for audit purposes.

In this case, that is exactly what Navistar did. It reported the figures that were calculated according to the numbers reflected on its financial books of accounting. It reported the figures on the last day of its taxable year ending in 2004: October 31, 2004. It filed the Amortizable Amount Report before June 30, 2006. There is absolutely no evidence in the record that Navistar reported incorrect figures, or used an incorrect date or taxable year. There is no evidence that Navistar did not file the necessary information sheet by the deadline. Indeed, Mr. Pottorf, the executive administrator of the Department of Taxation's audit division, testified at II Tr. 219 that Navistar in fact complied with all the various requirements with respect to timing and notice necessary in order to claim the credit.

In applying statutory provisions, the statute is to be applied as enacted. "Courts have no legislative authority and should not make their office of expounding statutes a cloak for supplying something omitted from an act by the Ohio General Assembly." *Storer Communications, Inc. v. Limbach*, 37 Ohio St. 3d 193, 194, 525 N.E. 2d 466 (1988), quoting *State ex rel. Foster v. Evatt*, 144 Ohio St 65, 56 N.E.2d 265 (1944), paragraph seven of the syllabus . Words that are used are not to be ignored, nor are words to be added that are not included in the statute. *Columbus Suburban Coach Lines, Inc. v. PUCO*, 20 Ohio St. 2d 125, 254 N.E. 2d 8 (1969). As a result, when a statute is clear on its face, there is no need to resort to any rule of statutory construction. The statute is to be applied as enacted. *Lancaster Colony Corp. v. Limbach*, 37 Ohio St. 3d 198, 199, 524 N.E.2d 1389 (1988).

This principle was recently affirmed and applied by this Court in resolving another tax case. *Cincinnati Community Kollel v. Testa*, 135 Ohio St. 3d 219, 2013-Ohio-396, 985 N.E.2d 1236. In *Cincinnati Community Kollel*, a taxpayer claimed a real property tax exemption pursuant to R.C. 5709.12 and 5709.121(A)(2) for property that was owned by an educational institution and used as a residence by students, who in turn also used the property to pursue their studies. Despite the absence of any language relating to the primary use of the property, the Tax Commissioner denied the exemption on the basis that the property was primarily used as a private residence, rather than for educational purposes. On appeal, the BTA affirmed that determination. This Court reversed the decision of the BTA on the basis that the particular statute in question, R.C. 5709.121(A)(2), did not contain a requirement relating to the primary use of the property, and neither the Tax Commissioner, nor the BTA could impose such a requirement. *Cincinnati Community Kollel*, at ¶¶ 26, 27.

A similar situation is presented here. The language of the statute is straight-forward in providing that the amount of the credit available to a taxpayer is based upon the contents of its books and records as of the last day of its taxable year ending in 2004 as reflected in the Amortizable Amount Report that was due June 30, 2006. Navistar followed that language. In its timely-filed Amortizable Amount Report filed prior to June 30, 2006, it based its amortizable amount upon the Ohio NOL carryforward and related valuation allowance as reflected on its financial books of accounting on October 31, 2004. Subject to review for accuracy, it was entitled to the credit as set forth in the notice that it filed with the Department of Taxation.

D. The Decision of the BTA is Unlawful

The BTA, however, failed to apply the statute as enacted. Instead, it was seduced by the Tax Commissioner's argument that the authority to audit the credit to "correct any errors" provided by R.C. 5751.53(D) extended to disregarding the deadline specified as to the calculation of the amortizable amount. BTA Decision and Order at 7-8.

The legal flaw in this decision is that there is no authority for the Tax Commissioner to consider subsequent revisions to a taxpayer's financial statements. R.C. 5751.53(A)(6)(b) is clear: the amount of the credit is based upon the amounts reflected in the taxpayer's books and records as of the last day of its taxable year ending in 2004, and as set forth on the notice filed with the Tax Commissioner pursuant to R.C. 5751.53(D). At the time the Amortizable Amount Report was submitted, there were no errors in that report to be corrected on audit. There is nothing in the statute to indicate that the Tax Commissioner may consider events of any sort subsequent to the deadline contained in R.C. 5751.53(D). No rule was promulgated to address this issue. Even the information release issued by the Tax Commissioner explaining the credit contains no reference to the authority of the Tax Commissioner to consider events subsequent to the filing deadline. *Information Release CAT 2006-06 – Commercial Activity Tax Credit for Unused Franchise Tax Net Operating Losses* – Issued April, 2006. To paraphrase Dr. Seuss, the General Assembly meant what it said, and it said what it meant. The proposition is that simple: There is no authority for the Tax Commissioner to consider information as of any other date.

To the extent there is any tension between the provisions of R.C. 5751.53(A)(6)(b) and 5751.53(D), and within the latter provision itself, the resolution of that tension is straight-forward. The authority to audit granted by R.C. 5751.53(D) refers to the accuracy and timeliness of the various amounts and reports as of the date the Amortizable Amount Report was due, but does not serve to extend to the Tax Commissioner the authority to disregard the deadlines imposed by the statute to consider subsequent events.

The authority for the Tax Commissioner to audit the matter as provided in R.C. 5751.53(D) is not limitless, nor is it toothless. As noted by Mr. Pottorf at II Tr. 245-250, there are a number of things that would need to be reviewed before the credit would be approved. For example, the Tax Commissioner might want to check the accuracy of the NOL carryforward and its allocation to Ohio, even going back to 1990 to do so. He could check to make sure that the figures set forth on the notice accurately reflect the figures contained in the taxpayer's books and records as of the specified date. These are not meaningless exercises.

It is ironic that the very party that insisted upon a firm date with respect to the credit when it was enacted, the Tax Commissioner, now is the party that wishes to ignore that same deadline.

The Tax Commissioner simply went beyond the terms of the statute. In adjusting the amount of the credit for events that occurred after the due date for the Amortizable Amount Report on June 30, 2006, he took action for which provision is not made in the statute, just as he did in *Cincinnati Community Kollel*. That action is unlawful.

The concept of a restatement of financial statements is not new; *FAS 109* was issued in 1992. If there were a concern with subsequent changes to a taxpayer's books and records or financial statements that required adjustment of the credit, the authority to accommodate those changes could have been included in the statute. The General Assembly did not see fit to include such authority within the statute. The Tax Commissioner has no authority to do that which the General Assembly did not authorize that official to do. If there is a perceived gap in the statute, the proper action is to go back to the General Assembly and propose a fix. The Tax Commissioner cannot be allowed to close that perceived gap at his whim as to what suits the state's financial interests.

The action of the Tax Commissioner that was sustained by the decision of the BTA not only is unlawful as a general rule, but it is poor policy as well. There is no notice to taxpayers in the statute, an administrative rule, or an information release, that subsequent events could be considered. There are no guidelines as to the instances when this can occur or any time limits that may apply to it. There are no instructions as to what happens when, as happened here, multiple changes occur. Consider the selective manner in which the Tax Commissioner took action in this case. There is a superficial attraction to the idea that if a taxpayer subsequently changes figures that reduce the amount of a credit, the credit should be reduced. But, those changes could have had the opposite effect. They could have resulted in an increase in the amortizable amount. In fact, in 2011 Navistar was able to eliminate the valuation allowance, which would have increased the credit available to it. However, have no doubt about this: Had the subsequent changes reduced the valuation allowance, thereby increasing the amount of the amortizable amount and the credit, the Tax Commissioner would not have made the change. Instead, that official would be taking the exact position that Navistar is taking in this case.

This latter point also illustrates the vagaries inherent in permitting the Tax Commissioner the unfettered discretion to ignore the deadline and plain language of R.C. 5751.53(D) and 5751.53(A)(6)(b). If he is able to ignore the statutory deadline, then there is no guidance as to which subsequent events are to be considered, and which are not. This increases the opportunities for abuse of, and unequal treatment among, taxpayers. For example, if the Tax Commissioner can go back to 1990 to recalculate a net operating loss to determine the amount of the NOL that is available during 2007 or another open year, then future events should likewise be considered when an open year is audited. That would require the Tax Commissioner to recognize that the valuation allowance was eliminated in 2011 and the entire deferred tax asset should have been available to Navistar for the credit. Amici do not suggest this should be permitted. However, if the deadline imposed by R.C. 5751.53(D) is to be ignored in any context, it must be ignored in the context of all subsequent events. That renders the deadline meaningless.

Neither taxpayers, nor the tax authority, may ignore the express language of a statute when it suits their purposes to do so. This statute is clear. The figures reflected on the books and records as of the specified date determine the amount of the credit and subsequent changes are not considered. Considerations of notice, clarity, and fairness all compel this result.

This does not result in a windfall to taxpayers. The fact a valuation allowance is established does not mean that a taxpayer is not entitled to claim the full benefit of a deferred tax asset. The full amount remains available to the taxpayer should future events occur so that it can be claimed. Indeed, in 2011 subsequent events caused Navistar to eliminate the valuation allowance and recognize the full value of the deferred tax asset for balance sheet purposes.

This case illustrates the wisdom in imposing a deadline by which the amount of the credit would be determined. It is a deadline that the Department, itself, wanted placed into the statute. It is a deadline that the General Assembly placed in the statute. It is a deadline that is imposed without deference to taxpayers, or the Tax Commissioner. Most important, it is a deadline without exceptions. The Tax Commissioner cannot now argue that the deadline should be ignored because to do so favors his position. The decision of the BTA holding that the deadline does not apply goes beyond the clear terms of R.C. 5751.53. That decision introduces uncertainty, reduces clarity, and is manifestly unfair. It is, therefore, unlawful and must be reversed.

CONCLUSION

R.C. 5751.53(D) clearly provides for the date by which the amortizable amount is to be calculated and claimed. This deadline is clear and provides notice to all parties, taxpayers and tax collectors alike, of the requirements of the statute. The language is plain and admits of no confusion. It should be applied as enacted.

The action of the Tax Commissioner that was upheld by the BTA disregards the clear language of the statute. The position goes beyond the clear language of the statute and provides discretion to the Tax Commissioner where no such authority is indicated. It permits the Tax Commissioner arbitrarily to consider events that favor that official's position, and to disregard those events that do not. This renders the statute unclear and arbitrary. Taxpayers have a right to expect more. Not only is this action unwise and unfair, but it is also unlawful. For those reasons, the decision of the BTA must be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing Brief of Amici Curiae Ohio Manufacturers' Association and Ohio Chamber of Commerce were mailed by first-class U.S. Mail this 4th day of September 2014, to Maryann B. Gall, 230 West Street, Suite 700, Columbus, OH 43215, attorney for Navistar, Inc., Appellant, and to Michael DeWine, Attorney General, and Barton A. Hubbard, Assistant Attorney General, Taxation Section, 30 East Broad Street, 25th Floor, Columbus, OH 43215, attorneys for Richard A. Levin [Joseph W. Testa], Tax Commissioner of Ohio, Appellee.

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BEFORE THE FINANCE & APPROPRIATIONS COMMITTEE
OF THE
OHIO HOUSE OF REPRESENTATIVES

CHARLES CALVERT, CHAIR

TESTIMONY
OF
DAVID W. JOHNSON

PRESIDENT AND CEO, SUMMITVILLE TILES, INC.
&
CHAIRMAN, THE OHIO MANUFACTURERS' ASSOCIATION

MARCH 8, 2005

EXHIBIT
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Chairman Calvert . . . members of the House Finance & Appropriations Committee . . . Good afternoon. And thank you for the opportunity to testify today.

My name is David Johnson. I am President and CEO of Summitville Tiles, Inc. in Columbiana County. Summitville Tiles is a 93-year-old, family-owned ceramic tile and brick manufacturer located in northeast Ohio . . . and is one of the last remaining such manufacturers in the United States thanks to low-cost foreign imports and the high costs of manufacturing in America.

Our products can be found everywhere from the roof deck of the White House to the floors of McDonald's restaurants worldwide.

Despite the debilitating effects of imports on the U.S. ceramic tile business, the quality of our product are such that today we are exporting millions of square feet of tiles to China of all places.

I also serve as Chairman of The Ohio Manufacturers' Association. As you may know, the OMA is Ohio's leading public policy advocacy organization strictly for manufacturing. The OMA, which is the voice of the manufacturing industry at the state house, represents approximately 2,000 Ohio manufacturers ranging in size from small- to medium-sized companies all the way up to the state's largest manufacturers.

Representing these perspectives, I am here today to testify in support of House Bill 1 and Governor Taft's tax reform proposal.

Let me say at the start: I believe the tax reforms outlined in House Bill 1 will do more to create and protect jobs . . . and to spur investment and economic growth in Ohio . . . than any single public policy action in the last several decades.

Legislative testimony often contains "doom and gloom" warnings of this potential loss, or that potential risk. I certainly am concerned about the future of manufacturing . . . and the future of our state. But the scenario I want to paint for you today begins with a look backward in time, not forward.

The cold, hard reality is that Ohio has lost more than 200,000 manufacturing jobs in the last five years. That's about 20 percent of the total manufacturing jobs in the state. This job loss has hit companies large and small all across Ohio, in every corner of the state.

During this time frame, my own company . . . that for years upon years had prided itself on never having a layoff . . . had to close two of its four manufacturing facilities, close eleven distribution centers, and lay off some 450 employees. Talk about *feeling* pain!

Job loss of the magnitude that has hit Ohio's manufacturing sector, in particular, has affected the state, its citizens, its communities, and its tax base in a very palpable way.

Yet, manufacturing still generates about 25 percent of Ohio's Gross State Product – far more than any other sector of the economy. According to a Cleveland State University economist, Ohio's manufacturing workers contribute 68 percent more, per worker, to the Gross State Product than non-manufacturing workers.

So, a 20 percent job loss in manufacturing represents a major blow to the state's economic output, income growth, and consumer buying power . . . with negative effects that cascade down through all layers of our interconnected economy.

Let me be clear: State tax policy is not the only reason for the loss of 200,000 manufacturing jobs . . . but it is a big reason, with its huge negative impact on investment and productivity.

More importantly, it's one factor we have the ability to do something about . . . if we choose.

Simply tinkering at the edges of Ohio's antiquated business tax system will not fix the problem. Instead, we need a bold overhaul of the philosophy, the structure and the imposition of business taxation.

The tax reforms outlined in House Bill 1 will give us exactly that.

Now, does every single manufacturer in the state think the proposed tax changes are a good idea? No. But I can tell you this: The vast majority of our member companies will benefit from long-awaited relief on the oppressive tax deterrents to capital investment.

For that reason, and because we believe the proposed tax reforms clearly are good for Ohio . . . and in the best interests of the state's broad and diverse economy . . . the OMA Board of Directors unanimously endorses the tax reform proposal in House Bill 1.

We are grateful to Governor Taft for his courage and leadership in tackling head-on a challenge that has defied reform efforts for years. And we appreciate the commitment of Speaker Husted to make tax reform a legislative priority this session.

We understand that the debilitating impact of Ohio's current tax structure on investment and job creation did not happen intentionally or maliciously. We are being hindered by a decades-old system that is the by-product of a dramatically different world and time.

But the fact remains, the system is outdated – and a liability.

Every major study of Ohio's tax system in the last 40 years has noted the anti-competitive nature of the tangible personal property tax . . . and has called for adjustments or elimination of the tax.

The current tax system kills jobs and hinders economic growth in two major ways:

First, it discourages companies from making the capital investments in machinery and equipment that are needed to improve productivity and enhance competitiveness . . . which in turn are key factors in attracting, creating and retaining good jobs.

<u>Second</u>, it is structured in a way that results in manufacturers shouldering a disproportionately large share of the business tax burden in our state.

Let me comment in more detail on each of these two problems.

In the world of manufacturing, the keys to staying competitive in tough domestic and foreign markets are innovation and productivity. To become <u>more</u> efficient and <u>more</u> productive, we must continually invest in state-of-the-art machinery, equipment and technology.

Unfortunately, at a time when other states . . . and countries like China . . . are doing everything they can to protect and attract manufacturing jobs, Ohio's archaic tax system punishes companies for making the capital investments we need to stay competitive. This is particularly true for Ohio's tangible personal property tax on machines and equipment. Instead of <u>promoting</u> investment in the tools our workers need to be efficient and productive, our state tax policy <u>discourages</u> those investments by increasing our tax burden whenever we buy a new machine or piece of equipment.

As illogical as it sounds, Ohio actually taxes the tools our workers need to compete.

Ohio's tax code hinders manufacturing investment in other ways. Corporate franchise tax rates in Ohio are higher than those of neighboring states, which means less money available for capital investments . . . and also discourages companies that might otherwise consider Ohio as a place to locate new operations and new jobs.

And, for smaller manufacturers especially, Ohio's high personal income tax rates make it more difficult to invest in new machinery and equipment.

Bear in mind, most of Ohio's small- to mid-sized private companies . . . which employ most of the people in the state . . . are sub-chapter S corporations. This means that the shareholders of these corporations pay taxes on the earnings of the corporation as they would their personal income . . . even though such earnings are not necessarily distributed out to the shareholders.

In essence, sub-chapter S shareholders are paying taxes on the working capital of their respective companies.

That's why the reduction in personal income taxes, as proposed in House Bill 1, is so critical.

There are some people who say Ohio workers can't compete in the global economy. But I'm here to tell you that is patently untrue.

Ohio's manufacturing workers can compete with workers from anywhere in their world if they're given the tools to do the job. Right now, however, we are running in a hotly contested global race for jobs and economic security . . . handicapped by a state tax policy that is as helpful as a pair of lead shoes.

In the case of Summitville Tiles, we are more than just running a foot race to compete; we are waging a titanic battle for *survival*.

As one of the last producers of ceramic tile left in America, we recognize that the only way for us to survive is to invest in new technology to improve our productivity and to lower our costs of operation. Just this past year, we have invested over a million dollars in doing just this. We ought not be penalized for making such a vital investment . . . but that is exactly what Ohio's tangible personal property tax does. These are the kinds of investments, after all, that save companies, save jobs, and ultimately save Ohio's tax base.

Manufacturing is a highly capital-intensive business. So manufacturers feel the brunt of the negative impact of the Ohio's tangible personal property tax. In fact, for decades, manufacturers have shouldered a disproportionately large share of the Ohio's business tax burden.

I refer you to the table entitled "State and Local Taxes," which is attached to your printed copy of my testimony. This table graphically and dramatically illustrates the inequity of the state and local tax burden as allocated among different business sectors in Ohio. If you consider the combined amount the tangible personal property tax and corporate franchise tax . . . as a percentage of contribution to Gross State Product . . . you'll find that manufacturers pay a disproportionately higher share of Ohio's business tax burden than other sectors of the state's economy. In some cases, we pay as much as 500 percent higher.

So, even though manufacturing has been, and continues to be, the well-documented strength of the state's economy . . . the state "rewards" manufacturers with a disproportionately large share of the business tax burden . . . on top of penalizing them for making the investments they need to remain competitive.

Clearly, we have a huge disconnect between tax policy and economic reality. Just as clearly, the tax reforms in House Bill 1 represent a rational, logical and fair way to fix the problem.

Before I conclude my remarks, I want to address two additional issues that have arisen during the tax reform debate.

The first has to do with what some people refer to as "pyramiding." The question is, "Won't the new Commercial Activity Tax, which is based on Ohio sales, result in every supplier in a company's supply chain passing on the cost of its own CAT . . . and driving up the cost of the final product?"

The fact is, suppliers already pass on the cost of the taxes they currently pay. So, because the CAT replaces two taxes that currently create pyramiding . . . with a single, lower-rate tax . . . it's possible in some cases that the proposed reforms will actually reduce the effect of pyramiding.

Finally, I want to speak candidly on an issue that has drawn some media attention.

To the extent that manufacturers have been disadvantaged by the current tax system, some other sectors of the state's economy have benefited by paying a disproportionately small share of the business tax burden . . so it should come as no surprise that a few segments within the business community are opposed to the tax reform proposal as outlined in House Bill 1.

I respectively suggest that preserving a status quo where not all companies pay their fair share is not in the state's best interest.

In the final analysis, I submit that there are two bottom-line questions to ask:

First, "Will the proposed reforms fix the major identified problems with the current system?" The answer is a resounding "Yes."

The Governor's plan will promote, instead of penalize, investment in the machinery and equipment manufacturers need to stay competitive, and to protect manufacturing job security.

Second, "Will the proposed reforms be fair to the broad spectrum of businesses in the state?" Again the answer clearly is "Yes."

The reforms will even out business taxes so all sectors of the economy will share more equitably in the business tax burden. Just as important, it will be more difficult for companies to avoid their fair share through sophisticated tax planning and accounting, as currently happens with the Corporate Franchise Tax.

We will be replacing an outdated system that discourages investment. . . and counterproductively penalizes the bedrock sector of the state's economy . . . with a low-rate, broad-based, difficult-to-avoid tax that encourages investment, strengthens competitiveness, and spurs job growth.

In closing, let me remind everyone that a strong manufacturing sector is vital to Ohio's overall economic health. The purchasing power of Ohio's 823,000 manufacturing workers supports all other sectors of our economy, in particular the service and retail sectors.

In 2003, the average annual wage for a manufacturing worker in Ohio was $45,908. To put that in context, consider that the average annual wage of a retail worker was less than half that -- $22,503.

When manufacturing suffers, the entire state economy suffers. When manufacturing facilities close up shop and people lose their jobs, the ripple effects are terrible and far-reaching: hardship for families . . . gutted local communities . . . reduced tax revenues for the state . . . and a wave of economic fallout that stretches across a wide network of economically-linked communities and industries.

The tax reform package contained in House Bill 1 will be good for Ohio's manufacturing sector. Just as importantly, it also will be good for every other sector of the state's economy – which makes it very desirable public policy.

Speaking on behalf of the OMA's nearly 2,000 member companies . . . I will tell you that these reforms – and the many benefits they will yield – cannot come soon enough.

Chairman Calvert . . . members of the committee . . thank you for your kind attention.

On behalf of the OMA, I want to say that we look forward to assisting you in your deliberations in any way we can. And, of course, I will be happy to answer any questions you may have about my testimony.

TO: OMA Tax and Finance Committee
FROM: Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: May 28, 2015

Overview

The state operating budget bill, House Bill 64, continues to dominate debate at the Statehouse. The House passed their version of the budget bill in early April. The chamber removed many of the Governor's proposed tax reform pieces. The Senate began having hearings immediately and is planning to unveil a new substitute version of the bill in the next couple of weeks. The bill must be signed by June 30, the beginning of a new fiscal year.

State Financial Condition

Economic growth slowed and almost came to a halt in the first quarter to a 0.2% pace. Forecasters are still expecting a pickup in growth during the remainder of the year.

U.S. employment rebounded to 223,000 jobs in April from a revised growth of only 85,000 in March. April's increase was somewhat below the average of approximately 250,000 during the previous six months. The unemployment rate decreased to 5.4% - the lowest level of this expansion.

Ohio employment increased by 1,500 jobs in March and the unemployment rate was unchanged at 5.1%.

The recent weakening in many measures of economic activity is likely the result of temporary factors, including unusually severe winter weather, the large decrease in the price of oil, strengthening in the foreign exchange value of the U.S. dollar, and the work disruptions on west coast ports. However, there are signs that the second quarter and 2015 as a whole will also produce weaker growth than originally expected.

Special Committees

Senate Tax Expenditure Review Committee

President Faber announced that the Senate Ways and Means Committee would be reviewing existing Ohio tax expenditures prior to the state budget bill moving to the House. The OMA testified on March 11, on the manufacturing inputs sales tax exemption. The Governor has also included a review of tax expenditures in his budget proposal.

The OMA followed up its sales tax exemption testimony, with testimony regarding the commercial activity tax. It was stressed in testimony that no new carve outs or exclusions should be added to the tax.

Tax Legislation

House Bill 9 – Tax expenditure review committee

One of the House priority bills is to create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures. The Governor included this in his budget proposal and the Senate is reviewing expenditures currently. The House reported the bill out of committee this week.

House Bill 64 – state budget bill

The House made significant changes to the Governor's proposed tax plans in the budget. The House bill removes the proposed rate increases for the commercial activity tax and sales tax. It also removes the proposed expansion of the sales tax base to services and intercompany transactions.

Meanwhile the bill follows the governor's push to continue lowering the state personal income tax rate by: providing a 6.3% across the board income tax rate cut; lowering the top income tax rate to just below 5%; producing an aggregate $1.2 billion in tax relief to Ohioans over the next two years; making permanent the 75% small business tax deduction that the governor created last session; and, retaining the proposed means testing of retirement income credits.

House leadership also would establish an "Ohio 2020 Tax Policy Study Commission," which would take a longer range look at Ohio's tax competitiveness.

House Bill 64 was origninally introduced in February. The House removed the tax portions of the bill for separate hearings in the Ways and Means Committee. The bill raised the CAT rate from .26% to .32%, increased the state sales tax by one-half cent, from 5.75 percent to 6.25 percent. It also expanded sales tax to a number of services, including cable TV subscription services and parking. There was also a possibility the new language might pick up legal, accounting, and intercompany transactions.

The severance tax and the tobacco tax were also proposed for rate changes.

The plan used the new revenues generated to finance a small business and personal income tax deduction. Current law contains a deduction for one-half of the first $250,000 for an individual's net business income; this deduction applies to sole proprietors as well as to the owners of pass-through entities such as partnerships, S corporations, and limited liability companies. The budget retained that provision for businesses with income in excess of $2 million. In addition, the bill proposed to exclude small business income from any business with gross receipts up to $2 million.

Personal income tax rates were reduced 15 percent during the first year of the budget, with an additional 8 percent reduction for the second year. The top personal income tax rate would have been reduced from the current 5.33 percent to 4.1 percent over the two years.

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.

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.

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 last year, but stalled in the legislative process.

Unemployment Compensation Debt

The Ohio House is working on a bill create solvency within the Ohio Unemployment Compensation Trust Fund. The projected bill would revise the current system to ensure stability going forward.

Tax News

Ohio 2nd in 2014 Site Selection Ranking

For the second year in a row, Ohio finished second in Site Selection magazine's "Governor's Cup," awarded for the number of new plant projects in the year. Ohio finished second both in the aggregate number of projects and in the per capita category.

Texas led the nation in total projects. Kentucky took the per capita crown.

BEFORE THE WAYS AND MEANS COMMITTEE
OF THE OHIO SENATE
SENATOR BOB PETERSON, CHAIRMAN

TESTIMONY
OF
MARK ENGEL
BRICKER & ECKLER LLP
OMA TAX COUNSEL

MARCH 25, 2015

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Mr. Chairman and members of the Committee, my name is Mark Engel. I'm the Partner in charge of Bricker & Eckler's Cincinnati-Dayton office; my practice is focused on taxation issues, with concentrated experience in all aspects of state and local taxation, including tax planning, compliance, and litigation in sales and use, income, commercial activity, public utility, and property taxation as well as economic development. I also serve as tax counsel for The Ohio Manufacturers' Association (OMA). I'm testifying today on behalf of OMA regarding tax expenditures and the Commercial Activity Tax (CAT). The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

Background:

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

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

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

Calls for Reform

During the 1960s, calls for reform in Ohio's tax structure began. Over the years, various band-aids were applied to Ohio's tax structure in order to attempt to reduce its inequalities. At the same time, Ohio continued to enact exemptions from, or exceptions to, the various taxes, thereby creating increasing disparity and complexity.

With the dawn of a new millennium, calls for tax reform increased. Dr. Ned Hill of Cleveland State University independently conducted a study that examined the impact of state tax policy on Ohio's economy and called for the elimination of the tangible personal property tax and existing dual-based franchise tax, to be replaced with a broad-based, low-rate tax based on payroll. The study demonstrated how capital-intensive segments of the economy, such as manufacturing, construction, and mining, paid anywhere from three to 11 times more state taxes than did members of many service industries.

Tax Reform Enacted

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

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

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

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

H.B. 66 became law in June 2005. Although generally opposed to gross receipts taxes because of their compounding nature, the broad base due to limited exclusions and the low rate caused many skeptical taxpayers to warm to the tax as the net savings over the former franchise and personal property taxes became clear. In addition, compliance costs were slashed as taxpayers no longer had to undertake the arduous process of preparing personal property tax returns or corporation franchise tax reports.

CAT Facts:

According to Ohio Department of Taxation Fiscal Year 2014 Commercial Activity Tax Returns data, manufacturers made up the second-largest group of CAT taxpayers, representing 10.2% of all taxpayers (retail trade is the largest).

And, manufacturers pay 26.8% of the state's total – far more than any other group (in terms of CAT revenues based only on the 0.26% CAT rate for gross receipts in excess of $1 million).

In addition, CAT filers with taxable gross receipts of $1 million or less accounted for 66.7% of all filers in fiscal year 2014, but only 0.7% of the total liability for that period.

Tax Expenditures:

As noted above, some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions.

When it was first enacted, there were few exclusions from the CAT and only four credits. The tax expenditure associated with those exclusions in 2009, the first year the tax was fully phased in, was approximately $300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2014 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures is over $600 million! Thus, in just 10 years, additional credits and exclusions were added to the tax that doubled the amount of the tax expenditure.

The CAT is a stable tax. Although it is a gross receipts tax that pyramids along the economic chain, it is acceptable because of its broad base and low, low rate. However, in less than 10 years, tax expenditures associated with the tax have doubled. One wonders how much longer chipping away at the base can continue before the calls to increase the rate become too loud to ignore. Ohio traveled down this path before with the franchise and personal property taxes. The trip was a disaster. Ohio should not venture down that path again with the CAT.

The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands that they all remain subject to the tax.

Summary:

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

Everybody has a story; everybody has a reason why one tax or another is not fair to them. However, one cannot have an efficient and fair tax system that is different for every taxpayer. Nor is it fair to tax some segments of the economy at levels that are 10 times higher than those imposed on other segments. The 2005 tax reform legislation was directed at trying to reduce that inequity. Every time an exclusion or exemption from the CAT is created, that increases the tax burden on everybody else. The solution isn't a tax system made of Swiss cheese; we tried that already, and it didn't work. Hold fast to a broad-based, low-rate tax that is simple to enforce and simple to follow, and that treats all taxpayers the same.

Thank you very much for the opportunity to appear here today. I'd be pleased to answer any questions that any of you might have.

BEFORE THE WAYS AND MEANS COMMITTEE
OF THE OHIO SENATE
SENATOR BOB PETERSON, CHAIRMAN

TESTIMONY
OF
MARK ENGEL
BRICKER & ECKLER LLP
OMA TAX COUNSEL

May 6, 2015

Mr. Chairman and members of the Committee, my name is Mark Engel. I'm the Partner in charge of Bricker & Eckler's Cincinnati-Dayton office; my practice is taxation, with concentrated experience in all aspects of state and local taxation, including tax planning, compliance, and litigation in sales and use, income, commercial activity, public utility, and property taxation as well as economic development. I also serve as tax counsel for The Ohio Manufacturers' Association (OMA). I'm testifying today on behalf of OMA regarding the business tax proposals incorporated in House Bill 64, including both the House changes and the governor's proposals, as well as tax policy in general. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

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

The OMA identified specific issues of concern in the as introduced version of House Bill 64's tax proposal that are critical to business in general and to manufacturing in particular. They are interrelated and in many ways spill over into each other. My testimony will address the greatest concerns with the as introduced version. Before I turn to the bill, however, I would like to provide a bit of context with Ohio's current business tax structure.

Ohio's Previous Tax Structure

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

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

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

Calls for Reform

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

With the dawn of a new millennium, calls for tax reform increased. Dr. Ned Hill of Cleveland State University independently conducted a study that examined the impact of state tax policy on Ohio's economy and called for the elimination of the tangible personal property tax and existing dual-based franchise tax, to be replaced with a broad-based, low-rate tax based on payroll. The study also showed how capital-intensive segments of the economy, such as manufacturing, construction, and mining, paid anywhere from 3 to 11 times more state taxes than did members of many service industries.

Tax Reform Enacted

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

- Eliminate tax on investment and shift to a greater reliance on the taxation of consumption, consistent with the second and third bullets, below;
- Broaden the over-all business tax base;
- Reduce over-all business tax rates;
- Provide a more stable and predictable flow of revenue; and
- Simplify compliance.

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

- Eliminated the tangible personal property tax on new investment in manufacturing and phased out the tax on all general business property over 4 years;

- Phased out the corporation franchise tax for most corporations over 5 years;
- Phased in a 21% reduction in personal income tax rates ratably over 5 years (the last reduction was delayed 2 years in 2009 in an effort to balance the state budget, but was implemented in 2011), a reduction enjoyed by the owners of pass-through entities; and
- Enactment of the commercial activity tax (“CAT”), a broad-based, low-rate tax measured by gross receipts from virtually all business activities and entities.

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

Results of Tax Reform

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

- In 2009, Ohio won Site Selection magazine’s “Governor’s Cup” for an unprecedented fourth consecutive year. The Governor’s Cup is awarded annually to the state having the most major business expansions in the nation.
- Following other years of strong showings, Ohio finished second in Site Selection magazine’s “Governor’s Cup” in both the total number of economic development projects, as well as the number of projects per capita, in both 2013 and 2014.
- A January 2009 Ernst & Young study indicated that Ohio’s business tax burden rated between 18th and 23rd best on 3 different scales of comparison. Another

Ernst & Young study conducted for the Ohio Business Development Coalition showed that Ohio had the lowest effective tax rates on new capital investment in the Midwest.

- The Small Business & Entrepreneurship Council's Business Tax Index in 2008 rated Ohio's state tax system as 14th best nationally.
- In March 2010 the Federation of Tax Administrations released an analysis of new data from the U.S. Census Bureau showing that for FY 2009, Ohio's per capita state tax burden was the 16th lowest; as a percentage of personal income, the burden was the 18th lowest.
- In April 2011, Ernst & Young and the Council on State Taxation issued a report entitled "Competitiveness of State and Local Business Taxes on New Investment" in which they concluded that Ohio had the third lowest rate of state and local taxation on new business investment. The report laid this result directly at the feet of the 2005 tax reform law.
- In early 2013, Site Selection Magazine honored Ohio as having the 5th most favorable tax climate for mature firms and the 3rd most favorable tax climate for new firms for fiscal year 2012.
- Finally, according to the Ohio Department of Taxation, Ohio is one of only 6 states that do not tax corporate profits, and one of 10 that do not tax business personal property.

Commercial Activity Tax

The major tax reforms approved by the Ohio General Assembly in 2005 led to significant improvements to a tax system that was for many years widely regarded as obsolete. As previously mentioned these reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which have provided more stable and predictable revenues, simplified compliance and provided fairness among business segments.

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 the broad-based, low-rate commercial activity tax (CAT).

The most competitive aspects of the CAT are its broad base, its low rate, and its broad application to business entities. House Bill 64, as introduced, proposed that the rate at which the CAT is imposed be raised by 23% from 0.26 percent to 0.32 percent in order to help finance a personal income tax deduction. As a gross receipts tax, the CAT applies to every transaction in the chain of commerce. Thus, the tax is paid multiple times in the economic chain and is included in the price that the final consumer pays for a good or service. The distortive effect of taxing intermediate transactions is minimized when the tax rate is kept low, but it remains. By raising the rate, this distortive effect is greatly magnified. It renders Ohio tax structure less transparent and its businesses less competitive. The success stories related earlier in this testimony could not have happened with a higher rate. The rate must remain low for the CAT to work effectively. OMA members appreciate the House changes which removed the increase in the CAT rate as proposed.

It has been suggested that perhaps the CAT should be bifurcated, with different rates applicable to different taxpayers. Such a step is not good policy for several reasons. First, it involves government selecting winners and losers and reduces horizontal equity within the tax. Part of the purpose of the CAT was to reduce inequities in the level of taxation between economic segments; this proposal increases those inequities. Second, it ignores the over-all tax structure on particular taxpayers and continues the band-aid approach that has plagued Ohio taxation for years. Third, it renders the CAT more complicated both for taxpayers and the department of taxation in terms of who qualifies for what rate of taxation. For these reasons, we are not in favor of such an approach.

CAT Facts

According to Ohio Department of Taxation Fiscal Year 2014 Commercial Activity Tax Returns data, manufacturers made up the second-largest group of CAT taxpayers, representing 10.2% of all taxpayers (retail trade is the largest).

In terms of CAT revenues based only on the 0.26% CAT rate for gross receipts in excess of $1 million, manufacturers pay 26.8% of the state's total – far more than any other group. If the CAT rate is increased from 0.26% to 0.32%, as in the proposed version of House Bill 64, manufacturers as a group will be required to pay roughly $111M in additional CAT per year, a 23% tax increase.

In addition, CAT filers with taxable gross receipts of $1 million or less accounted for 66.7% of all filers in fiscal year 2014, but only 0.7% of the total liability for that period. Clearly, small business benefits from the CAT, as well as the 21% reduction in personal income tax rates that was also part of the 2005 tax reform, the 10% reduction enacted in the last budget, and the additional proposed reductions included as part of the state's current budget bill.

CAT Tax Expenditures

When it was first enacted, there were few exclusions from the CAT and only four credits. The tax expenditure associated with those exclusions in 2009, the first year the tax was fully phased in, was according to the Ohio Department of Taxation approximately $300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2014 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures is over $600 million! Thus, in just 10 years, additional credits and exclusions were added to the tax that doubled the amount of the tax expenditure.

The CAT is a stable tax. Although it is a gross receipts tax that pyramids along the economic chain, it is acceptable because of its broad base and low, low rate. However, in less than 10 years, tax expenditures associated with the tax have doubled. Ohio traveled down this path before with the franchise and personal property taxes. The trip was a disaster. Ohio should not venture down that path again with the CAT. Rather than raise the rate, consideration must be given to reducing the number of exemptions and exclusions that have been added since its original enactment in 2005.

The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands that they all remain subject to the tax.

Ohio's Sales and Use Taxes

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final *household* consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was added. Similar exclusions were made for other activities that, similarly, resulted in the production of goods that would be subject to the tax upon final sale.

Similar to prior proposals made by the Administration to broaden the sales tax base to many business services and raise the tax rate, House Bill 64, as introduced, proposed to do both. The bill proposed to increase the state sales tax rate by 8.7% and add a number of business services to the tax base. The rationale offered for both is the belief that in order to spur economic growth, consumption, rather than income, should be taxed. That is simply wrong.

A sales tax acts to tax *personal household* consumption. The Administration implicitly recognizes this in its testimony when it refers to Attachment E, which outlines the increase in *household* consumption in recent years. *However, the tax is not intended to* *tax business inputs* such as raw materials, machinery and equipment that are used to produce other outputs that are ultimately taxed.[1] Any expansion of the sales tax base should not be directed at commercial enterprises. And, if the base was to be expanded, good tax policy would dictate that the rate would be lowered, not increased. From a policy standpoint, the proposal is flawed in both these respects.

Manufacturers were very concerned about the provisions in the as introduced version of House Bill 64 that would seemingly extend the sales tax to certain currently exempt services such as legal and accounting services. Among the concerns are (1) extension of the tax to transactions between members of an affiliated group of entities, (2) uncertainty surrounding sourcing rules, (3) failure to afford to services the benefit of existing exemptions for tangible property for purposes of resale or for business inputs, and (4) uncertainty of the breadth of taxable services under the plain language of the statute.

Affiliated Entities

Existing law excludes from the state sales tax certain taxable services (e.g., electronic information services and employment services) that are provided to other members within a related group of businesses.

However, under House Bill 64 as introduced, transactions among affiliated entities were taxable “regardless of the identity of the service provider.” Thus, the members of affiliated businesses that use a common service center to provide accounting, credit and collections, legal, management or other centralized services, will all have to pay sales tax on those transactions within the group if there is any sort of cost allocation or charge-back. OMA members appreciate the administration’s recent testimony stating that is was never their intent to tax these affiliated entities. However, this provision’s plain language in the as introduced House Bill 64 concerned manufacturers for several reasons:

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[1] See John Due, “Sales Tax Exemptions – The Erosion of the Tax Base: *Revenue Administration, 1982; Proceedings of the Fiftieth Annual meeting of the National Association of Tax Administrators* (Washington: National Association of Tax Administrators): 200.

1. Such business structures are typically used to reduce costs or for liability reasons; they do not represent any meaningful economic activity of the business. Recognition of this fact has led to the exclusion of transactions between affiliated entities for income or commercial activity tax purposes.

2. Any economies an enterprise might realize from an affiliated entities business structure can be lost through the taxation of those services. Businesses employing this structure often allocate costs as simply as possible to minimize their administrative burden. If all transactions are taxed, businesses will need to track those allocations more closely in order to tax them properly. The cost of such changes for businesses not currently set up to do so (in time, money and human capital) could be enormous.

3. It has become a best practice among large, global companies (and many smaller ones, as well) to consolidate shared business services as a corporate headquarter function. These functions employ highly compensated managers. If the transactions of these global business service centers were to become taxed, such companies would be discouraged from locating these shared services business centers in Ohio, as the Ohio tax cost under the bill would be high.

4. It violates the proscription against the taxation of business inputs.

5. This situation is made worse by the uncertainty of determining the location where the benefit of services provided to affiliated entities is received, as we discuss next.

Location of the Sale

In addition to the statewide sales tax, counties and transit authorities also may impose local sales tax at various rates. It is critical, therefore, to determine where a sale takes place for both state and local tax purposes so that the correct tax can be collected and paid.

Existing law provides some general guidelines regarding where a sale takes place. Generally, a sale is taxed at the location where the tangible property is located, or where the benefit of the service is received. Given the nature of the limited number of services that currently are taxed and the limitation of taxing services to those consumed by individuals, this rule, although inexact, generally works. However, as introduced House Bill 64's ambiguous definitions which appeared to include nearly all business services in the sales tax base will make it increasingly more difficult to determine where a sale takes place and the correct tax, if any, to apply to the transaction.

Previously the Department of Taxation proposed to allow taxpayers to use any reasonable method to apportion their sales or purchases, and has indicated it intends to promulgate rules that will provide guidance in this area. Unfortunately, such vagueness only increases uncertainty and speculation.

This sort of vague provision, such as that contained in House Bill 64, as introduced, could become extremely complex with respect to compliance and auditing.

Exemptions for Resale and Business Inputs

Additionally, a number of tangible business inputs are presently excluded from the sales tax for a person creating tangible items that are ultimately sold and subject to the tax. (For example, manufacturers may acquire various tangible items used in the manufacturing activity without paying sales tax.) As we demonstrated in our testimony to this committee on March 11, 2015, this exclusion is based on sound tax and economic policy. However, this provision is limited to the acquisition of "things" or property.

House Bill 64, as introduced, failed to extend this basic policy to services to which the sales tax would be extended under the bill. There is no good reason to create a divergence in the treatment of one sort of purchase (tangible personal property) from another sort of purchase (service or intangible).

Transparency also is lost as the sales tax pyramids on *intermediate* transactions. In order to prevent the hidden pyramiding of the tax on intermediation transactions, the sales tax should be applied only to final consumption. That was good policy when the taxes were first enacted; it remains good policy today.

As introduced House Bill 64, like previous proposals from the administration, contained no parallel exclusion for services that may be used in the manufacturing. This is poor tax policy. Any existing violations of this principle should be addressed, and additional violations should not be considered.

This raises the matter of two specific cases in which the sales or use tax laws violate this principle and should be amended to exclude specific manufacturing service inputs. I'll briefly describe them:

One, Ohio does not impose sales or use taxes (or the CAT) on the wages paid to employees. Just as wages are not subject to such taxes; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities that are otherwise exempt from the tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.[2]

Two, Ohio also taxes industrial janitorial and maintenance services. Manufacturers' production facilities and the equipment components of their production processes require continuous repair and maintenance. Without the required cleaning, repairs and maintenance the machinery breaks down and fails to produce acceptable products for sale to customers. Cleaning industrial assets is absolutely critical to the manufacturing process. It is a necessary business input and sales tax should not apply.

[2] Note that we are limiting this suggestion to temporary employees that are employed in actual manufacturing operations. If the equipment being operated may be purchased without the payment of sales tax, there is no possible reason for taxing the labor that operates that equipment.

Transactions involving tangible property are excluded from the sales tax because it is a tax on ultimate consumption. The product being produced ultimately will be taxed, but inputs into the production of those goods should not be taxed. This basic premise of sales tax policy has existed since the inception of the tax in 1934 and applies to a number of activities where multiple steps may be taken that result in a tangible good that is sold for ultimate consumption and that is subject to sales tax. Reputable sales and use tax policy experts are unanimous on this point. As we noted in our testimony on March 11, imposing the sales tax on business inputs will lead to one of three outcomes: Either prices will increase; wages or employment will go down; or owners' return on capital will be reduced. None of these is conducive to economic development or job creation.

Manufacturers do not enjoy a sales-tax free ride. According to the department of taxation's annual report for fiscal year 2014, manufacturers paid over $410 million in sales and use tax on their purchases directly to the State of Ohio. That is one of the largest amounts paid by any industry segment that does not collect tax from customers on its taxable sales. In addition, they also paid millions in sales tax on taxable purchases to their vendors in Ohio.

Income Tax

House Bill 64, as introduced, called for cutting the state income tax by 23 percent and eliminating it entirely for small businesses with less than $2 million in annual gross receipts. This reduction was paid in large part by increasing the sales tax paid by business. The House reduced the rates by 6.3 percent, and made the 75% small business tax deduction permanent.

Ohio manufacturers understand that lowering the state's income tax rates and broadening its base are intended to increase the state's overall competitiveness with other states when attempting to attract new businesses and/or retain expanding businesses. We are troubled, however, by the number of credits and exclusions from the tax that remain, the selection of a single form of business for special relief, and the tax-shifting used to make the reduction possible. As remarked by one business owner at a meeting to discuss the administration's proposal, it doesn't matter whether the business pays a dollar of income tax or a dollar of sales tax; it is still paying a dollar of tax. Selecting a single form of business for tax relief at the expense of other forms of business and shifting the tax burden among taxpayers amounts to government picking winners and losers.

Conclusion

The OMA supports tax policy that supplies sufficient revenue for the execution of necessary state services in a manner that stimulates economic growth, investment and job creation. Tax policy should encourage growth of capital, and growth in jobs in Ohio. We believe that the changes made by the House will continue to promote Ohio as a place where businesses can grow.

Manufacturing is the largest contributor to the state's GDP, contributing fully 17 percent. The success of Ohio manufacturing – through its vast network of in-state customers and suppliers - large global firms and their local supply chains - enhances the economic vitality of all other Ohio industries and Ohioans' quality of life. Reducing tax rates in a manner that treats all taxpayers fairly should be encouraged. Funding the reductions by increasing the sales tax and CAT on business, the very taxpayers that reduced taxes are supposed to help to encouraging employment and job creation, just doesn't make good policy sense.

Thank you very much for the opportunity to comment and provide input into this proposed legislation. Ohio's manufacturers are prepared to help improve the business climate in the state. We look forward to continuing our partnership with the administration and the General Assembly.

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

April 21, 2015

Representative Ron Amstutz
Speaker Pro Tempore
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

Dear Representative Amstutz:

On behalf of our respective organizations and the more than 105,000 business members we serve, we are writing in strong support of the changes made by the Ohio House Finance Committee to the tax provisions of the introduced version of House Bill 64. We believe these revisions will encourage investment, job growth and retention, and entrepreneurship and will build upon recent efforts to improve the competitiveness of our tax climate undertaken over the past several years.

Amended Substitute House Bill 64 affords $1.2 billion in tax relief through a meaningful reduction in the personal income tax and the permanency of the small business investor deduction at a higher level. We especially agree with the Committee's approach of achieving these tax reductions while also maintaining predictability, avoiding added tax complexity, providing adequate funding for state operations and, most important, not increasing other taxes. Further, we applaud the establishment of the 2020 Tax Study Commission which creates an opportunity for a longer-term evaluation of Ohio's tax system to ensure our great state remains competitive. We look forward to participating in this process. We also applaud the creation of an Ohio Expenditure Committee, which wisely seeks to root out inefficiency in and improve upon state government operations.

Our organizations believe that Amended Substitute House Bill 64 is balanced on the whole. Your vote on the state operating budget is one of the most critical votes you will take during the 131st Ohio General Assembly as it appropriates money to provide for the ongoing operations of the state. Some of our organizations compile voting records through issuing of "key votes" on critical pieces of legislation, and it is possible your vote on House Bill 64 may become part of these voting records. Thank you for your consideration and support of House Bill 64.
Sincerely,

Eric Burkland
President, Ohio Manufacturers' Association

Andrew E. Doehrel
President, Ohio Chamber of Commerce

Jack Fisher
Executive Vice President, Ohio Farm Bureau

Roger R. Geiger
Vice President/Executive Director, NFIB/Ohio

Gordon Gough
President, Ohio Council of Retail Merchants

<u>FOR IMMEDIATE RELEASE</u>
April 16, 2015

Major Statewide Business Groups Praise House Budget Bill's Tax Policy Provisions

(Columbus, OH): Ohio's five major business groups – National Federation of Independent Business/Ohio, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Farm Bureau, and The Ohio Manufacturers' Association – jointly issued this statement commenting on the tax policy provisions contained in Substitute House Bill 64, the House version of the state budget bill introduced in the Ohio House of Representatives Tuesday:

> "Ohio's business community commends the Ohio House of Representatives for its forward-thinking approach to improving the tax environment in Ohio, as reflected in the House substitute budget bill. House Bill 64 sensibly builds on the efforts of recent General Assemblies to reform the state's tax structure with policies that encourage investment, attract and retain jobs, enhance competeveness for Ohio businesses and provide responsible funding for state government operations. Specifically, we're pleased with the continued reduction of personal income tax rates as well as the significant tax relief for small businesses. And, we welcome the opportunity to participate in the longer range review of our state's tax competitiveness envisioned in the proposed 2020 Tax Policy Study Commission.
>
> We applaud Speaker Cliff Rosenberger and House Finance Committee Chairman Ryan Smith for their leadership and vision, and we look forward to working closely with legislative leaders to advance the bill in the state budget process."

For more information, contact:

- Eric Burkland, President, The Ohio Manufacturers' Association, 614.224.5111
- Andy Doehrel, President, Ohio Chamber of Commerce, 614.228.4201
- Jack Fisher, President, Ohio Farm Bureau, 614.249.4400
- Roger Geiger, Executive Director, NFIB/Ohio, 614.221.4107
- Gordon Gough, President, Ohio Council of Retail Merchants, 614.221.7833

# # #

Tax

Heritage Foundation Supports Governor's Tax Plan

This week the Senate Ways and Means Committee heard testimony from Stephen Moore, Distinguished Visiting Fellow with The Heritage Foundation, a Washington D.C. based think tank.

Moore testified in support of the administration's introduced tax plan. He argued, "Mr. Kasich would cut this rate (income tax) by expanding the sales tax, increasing extraction taxes on the oil and gas industry, and raising other fees. On balance all of these tax shifts would be economically desirable and help create more growth in Ohio."

The Senate will release a substitute version of the budget in early June. The OMA, as well as other business groups, previously testified in the Senate articulating serious concerns with the tax plan as introduced. *5/21/2015*

Manufacturers Push Senate on State Budget & Taxes

Debate continues in the Ohio Senate on HB 64, the state operating budget and potential vehicle for proposed business tax increases.

OMA members have been communicating concerns about the tax increases and their economic consequences. If you haven't contacted your state senator on the issue, please do so. You'll be making a difference, now and into the future. Use the OMA Manufacturing Advocacy Center to easily connect.

The OMA Government Affairs Committee meets on June 3 at the OMA offices across the street from the Statehouse. It'll be a good time for you to come to the state capital, meet with peers and then visit with your senators and representatives. Contact Ryan Augsburger or Rob Brundrett for help with scheduling legislative visits. Register for the meeting here. *5/14/2015*

Tax Debate Continues

Debate over state tax policy continues in Columbus, as the Senate takes up the House-passed Am. Sub. HB 64, the state operating budget bill. The House eliminated all increases and expansions in business taxes from the budget as introduced.

The governor and his team are objecting to the House changes, and have asked the Senate to reinstate the tax provisions of the bill as introduced, in order to finance deeper personal income tax cuts.

The bill is undergoing hearings in the Senate Ways & Means Committee. Contact your Senator to urge opposition to business tax increases. *4/30/2015*

House Passes Tax Reducing Budget

On Wednesday, the full House passed Am. Sub. HB 64, the biennial state operating budget. The bill lowers the personal income tax rate by 6.3%, and eliminates proposed increases in the rates or bases of other taxes.

The OMA and the state's four other major business groups wrote to all House members, urging a "yes" vote, that the bill "affords $1.2 billion in tax relief through a meaningful reduction in the personal income tax and the permanency of the small business investor deduction at a higher level. We especially agree with the (Finance) Committee's approach of achieving these tax reductions while also maintaining predictability, avoiding added tax complexity, providing adequate funding for state operations and, most important, not increasing other taxes."

In a Key Vote Alert to House members, the OMA stated: "Am. Sub. H.B. 64 provides continued personal income tax relief to small businesses without proposed rate increases in the commercial activity tax or the sales tax. Inclusion of the 2020 Tax Policy Study Commission will afford an opportunity for more thorough review and consideration of structural tax reforms."

Read a summary of the tax issues in this budget, prepared by OMA tax counsel Mark Engle of Bricker & Eckler. *4/24/2015*

Tax Debate to Continue in the Senate

Ohio Senate leadership has indicated that it will start from scratch on the pending biennial budget bill, Am. Sub. HB 64, rather than using the House-passed provisions and numbers. This is unusual. Hearings start next week on the bill.

This week, Office of Budget and Management director Tim Keen gave the Senate Finance Committee a detailed summary of the governor's budget proposal. And, Tax Commissioner Joe Testa made his case for the administration's proposal to fund substantial personal income tax cuts through increases in other taxes before the committee. He called the 2005 tax reforms a "tax cut windfall for large businesses" and said that the proposed rate increase in the commercial activities tax would be less than the savings from the 2005 reforms. *4/23/2015*

The R&D Tax Credit - More Available Than You May Have Thought

According to OMA Connections Partner, Clark, Schaefer, Hackett, companies that design, develop, or improve products, processes, techniques, formulas, inventions, or software may be eligible for federal and state research and development (R&D) tax credits. If your company has invested time, money, and resources toward the advancement and improvement of its products and processes, your activities may qualify.

Often companies with qualifying expenditures fail to realize they could capture R&D credits. Under recently developed government regulations, more industries qualify than in the past. And IRS regulations allow eligible taxpayers to “look back” to all open tax years (typically three years plus the current year) for potential R&D credits that were never claimed. Read more *4/17/2015*

House Addresses Manufacturers' Tax Concerns

Ohio House leadership addressed all of the OMA concerns about some of the tax provisions within the state operating budget that is pending in the Finance Committee.

The House bill removes the proposed rate increases for the commercial activity tax and sales tax. It also removes the proposed expansion of the sales tax base to services and intercompany transactions.

Meanwhile the bill follows the governor's push to continue lowering the state personal income tax rate by: providing a 6.3% across the board income tax rate cut; lowering the top income tax rate to just below 5%; producing an aggregate $1.2 billion in tax relief to Ohioans over the next two years; making permanent the 75% small business tax deduction that the governor created last session; and, retaining the proposed means testing of retirement income credits.

House leadership also would establish an "Ohio 2020 Tax Policy Study Commission," which would take a longer range look at Ohio's tax competitiveness.

The OMA and the four other major Ohio business groups took the unusual step of issuing a joint press statement commending the House for the tax changes and applauding the leadership of Speaker Cliff Rosenberger and Finance Committee Chairman Ryan Smith. *4/16/201*

Today is "Tax Freedom Day" in Ohio

Each year the Tax Foundation calculates "Tax Freedom Day." Tax Freedom Day is the day when the nation as a whole, or an individual state, has earned enough money to pay its total tax bill for the year. Today, April 17, is it for Ohio.

The Tax Freedom Day for the nation is April 24. The earliest state is Mississippi (April 4); the latest states are Connecticut and New Jersey (May 13).

In 1900, Tax Freedom day for the country was January 22. *4/16/2015*

House Set to Unveil Budget Bill Changes

Next week the Ohio House Finance Committee is set to unveil a multitude of changes to HB 64, the state budget bill.

The budget as proposed by the governor would decrease personal income taxes while increasing the commercial activity tax (CAT), cigarette tax and severance tax rates, and also expand and increase the sales tax. OMA members expressed concerns with the tax increases and expansions proposed in the original bill.

The House of Representatives plans to finish work on the bill in the next few weeks and are targeting to send the amended bill to the Senate for its consideration on April 22. *4/9/2015*

OMA Testifies on CAT Expenditures

The OMA this week testified before the Senate Ways and Means Committee, which is studying "tax expenditures" (tax credits and exemptions in statute) with an eye to perhaps eliminating some.

Mark Engel, OMA tax counsel from Bricker & Eckler LLP, testified: "(S)ome of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions.

When it was first enacted, there were few exclusions from the CAT and only four credits. The tax expenditure associated with those exclusions in 2009, the first year the tax was fully phased in, was approximately $300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2014 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures is over $600 million! Thus, in just 10 years, additional credits and exclusions were added to the tax that doubled the amount of the tax expenditure."

Engel urged the senators to protect the tax base. He said: "Every time an exclusion or exemption from the CAT is created, that increases the tax burden on everybody else. The solution isn't a tax system made of Swiss cheese; we tried that already, and it didn't work."

He noted that manufacturers pay 26.8% of the CAT revenue, but are only 10.2% of the CAT payers. *3/26/2015*

The ABC's of an IC-DISC

An Interest Charge Domestic International Sales Corporation, or IC-DISC, is an exporting incentive for U.S. firms that can boost profitability, ROI and fiscal savings through federal tax savings. This incentive is available to companies that export their own goods, as well as companies that manufacture a good that is part of, or included in, a product that is exported by others – and this is where many businesses miss out.

Learning more about the IC-DISC might lead to more money in your pocket. Read more from OMA Connections Partner, Clark, Schaefer, Hackett. *3/26/2015*

Manufacturing Friendly Tax Climate Discussed

Reps. Jeff McClain (R-Upper Sandusky) and Gary Scherer (R-Circleville), chairman and vice chairman of the Ohio House Ways and Means Committee, visited with members of the OMA Tax Committee this week.

OMA Tax Committee Chair Michele Kuhrt of The Lincoln Electric Company led a vigorous discussion of committee members and the two legislators (both strong supporters of Ohio manufacturing) on ideas for creating an investment and job attracting tax climate.

Pictured: Rep. McClain, Michele Kuhrt, OMA Committee Chair and Director of Taxes & Financial Administration, The Lincoln Electric Company, Rep. Scherer, and OMA's Rob Brundrett, Director, Public Policy Services

Guidance on the Manufacturers' Sales & Use Tax Exemption

The Ohio Senate Ways and Means Committee has undertaken a review of state "tax expenditures," to review current tax exemptions and carve-outs.

While the spotlight is on the manufacturing sales and use tax exemption, OMA Connections Partner, Clark Schaefer, Hackett, has produced a series of articles that gives guidance on the proper use of this valuable manufacturers' exemption. Read on! *3/16/2015*

Manufacturers, Here's How the Final Tangible Property Regulations Impact You

The IRS's final tangible property (aka "repair") regulations clarify the treatment of tangible property expenses. The guidance directs businesses when they can deduct expenses in the current year, and, alternatively, when they have to capitalize those expenses and spread the deduction out over several years. These new regulations provide an opportunity for accelerated tax deductions in the short term and increased tax savings in the long term – making it a true profit booster for your business. Read more from OMA Connections Partner, Clark, Schaefer, Hackett. *3/19/2015*

Taxation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on May 27, 2015

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: 5/26/2015 - **REPORTED OUT AS AMENDED**, House Ways and Means, (Fourth Hearing)

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: 3/17/2015 - House Ways and Means, (First Hearing)

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**

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: 5/19/2015 - **REPORTED OUT**, House Ways and Means, (Fourth 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: 5/26/2015 - Senate Finance, (Fourth Hearing)

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: 5/5/2015 - Referred to Committee House Ways and Means

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

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: 2/18/2015 - Referred to Committee House Ways and Means

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: 2/4/2015 - Referred to Committee Senate Ways and Means

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: 2/11/2015 - Referred to Committee Senate Ways and Means

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: 2/11/2015 - Referred to Committee Senate Ways and Means

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: 3/4/2015 - Referred to Committee Senate Ways and Means

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.

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