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

Tax Committee
October 10, 2018

Table of Contents

2018 Tax Committee Calendar

Meetings will begin at 10:00 a.m.

Wednesday, October 10

OMA Tax Committee Meeting Sponsor:

CLARK SCHAEFER HACKETT
CPAs & ADVISORS

OMA Tax Policy Committee

October 10, 2018

AGENDA

Welcome & Self-Introductions:	Shay Music, Chairman The J.M. Smucker Company
InvestOhio	Holly Blume, Controller, Haviland Drainage Products
	Joe Stoller, CPA, Haviland Drainage Products
State Financial Update	Rob Brundrett, OMA Staff
Wayfair and Manufacturers	Stephen Palmer, CPA, Plante Moran
	Mike Merkel, CPA, Plante Moran
OMA Public Policy Report	Rob Brundrett, OMA Staff
OMA Counsel's Report	Justin Cook, Bricker & Eckler LLP

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:

CLARK SCHAEFER HACKETT
CPAs & ADVISORS

Stephen Palmer, CPA

State and Local Tax Expert

As a state and local tax consultant, I deal with a wide range of services in the state and local tax world including all states, tax types, and entity types. Some of the services I perform regularly for clients include: audit and controversy resolution, tax ruling requests, multistate nexus review and planning, voluntary disclosure and amnesty representation, apportionment review, unitary and group filing analysis, ASC 740-10 (FIN 48) analysis for income tax risks, sales and use tax determinations and refund studies, tax planning, tax structuring, and tax due diligence.

I spent more than six years at the Ohio Department of Taxation, primarily involved in auditing various Ohio taxes. At Plante Moran, I've focused on multi-state taxation and serving clients in the private sector, including those within the healthcare and service industries. I've also been a presenter at various tax conferences and have written tax alerts for internal and external use. I'm a member of the Ohio Society of CPAs and a member of the tax committees for the Ohio Chamber of Commerce and the Ohio Manufacturer's Association. I earned my B.A. in finance from Cedarville University.

Fun fact: Last year I bought my first motorcycle – a 2002 Honda Shadow 1100. It was the impetus for my dad to get one too….much to my mom's chagrin. She won't admit it yet, but she has started to enjoy riding too!

Mike Merkel, CPA, MST

Partner, State and Local Tax

As a leader in the firm’s state and local tax practice, I specialize in providing clients with multistate tax consulting services and implementing solutions to minimize sales and use, income and franchise, and property taxes. My clients also come to me for advice on state tax controversy issues related to audit defenses for various taxes.

I’m often asked to speak at the Praxity North American International Conference and the Michigan Tax Conference. Recent presentations covered topics such as indirect tax versus sales tax, sales and use tax audit procedures, and the top 10 state tax cases to watch, among others.

I’m a member of the MICPA, the Michigan Association of General Contractors’ tax and fiscal affairs committee, the Detroit Regional Chamber’s tax committee, and the State Treasurer's Communication Workgroup. For my participation with that group, the MICPA recognized me with the Outstanding Task Force award. I earned my B.S. in accounting from Michigan State University and my M.S.T. from Walsh College.

I love spending time with my wife and two daughters, whether we’re traveling to Costa Rica or the Canadian Rockies. I’ve also spent many weekends supporting my daughters at their sports tournaments. During the occasional “me time,” I'm always up for an outdoor game. If the weather is poor, I take my games inside with billiards, darts, or foosball. Win or lose, I enjoy the competition.

Fun fact: My parents purchased a bar/restaurant from my grandfather before I was born. They owned it for 46 years, and it’s essentially where I grew up. That’s where my fascination with all bar games began.

Ohio | Development Services Agency

Business | Entrepreneurship and Business Assistance Centers

InvestOhio Program

Overview

InvestOhio provides a non-refundable personal income tax credit to investors that provide new equity (cash) into Ohio small businesses to acquire an ownership interest in the company. The small business is required to reinvest that infusion of cash into one of five categories of allowable expenses within six months of its receipt. The investor must retain his or her ownership interest for a two year holding period before the tax credit may be claimed. The small business must similarly retain the property that it purchased from the cash infusion for the entire two year holding period.

Contact Information

Normy Fehrman
InvestOhio Program Manager
Office of Strategic Business Investments
(614) 466-4211
Normy.Fehrman@developmei

Eligibility/Uses

Individuals (or pass through entities with individuals as owners) who invest cash in a qualifying Ohio small business. Note that the qualifications include (1) investments must be made in a qualifying Ohio small business and (2) the investment must be held for 2 years

How much/What do you get

InvestOhio provides a small business investment certificate (InvestOhio tax credit), which represents a 10 percent personal income tax credit for the investor, based on the amount invested. The tax credit is limited to $1 million per person.

How you get it

In order to be awarded a small business investment certificate (an InvestOhio tax credit) there are several steps to follow. While more detailed information can be found below in our tutorials and FAQ, the process requires the following steps:

1. Both the investor and the small business must register for InvestOhio through the Ohio Business Gateway.
   At the end of registration, each registrant will receive an InvestOhio User ID. It is a unique number that prevents parties from having to share sensitive information with proposed business partners. This number will be required to complete Step 3, below.
2. The parties on a given transaction will decide who is responsible for applying to the InvestOhio program.
   Regardless of whether it is the investor or the small business, the party that applies must obtain the InvestOhio User ID of the other party on the transaction. They must also reach an agreement with that party about when the investment will take place and the amount of the investment.
3. The party that is responsible for applying will do so at the Ohio Business Gateway , starting July 1, 2017.
   The application will seek only the information described in Step 2, above. The timing of when an eligible investor or small business applies is critical, as credits are awarded on a first come, first served basis. Additionally, an application must be filed in the same state biennium as the investment (currently July 1, 2017-June 30, 2019). Once a party has completed an application, he or she will be given an InvestOhio Transaction ID number. This number will determine the priority for that transaction. Once the Director has accepted enough transactions to fulfill all of the available tax credits, the Director will inform applicants of where their transactions sits in the line of unfulfilled transactions so that they can estimate how close their transaction is to potentially being awarded a tax credit.
4. Regardless of whether a transaction has the necessary priority to be awarded an InvestOhio tax credit at the time of application, the investor must make the investment on or around the date described in the application.
   Some transactions that were initially eligible may be disqualified for failure to follow the program rules. If a disqualification takes place, the Director will simply move on to the next InvestOhio

Transaction ID that was not awarded a tax credit, so it is critical that those transactions that were not immediately eligible for a tax credit still complete the investment.

5. Those transactions that have the necessary priority at the time of application will be notified by email of their eligibility.
   The investor must make the investment on or around the date described in the application and provide evidence of the investment to the Director within 30 days.
6. The small business must then make allowed expenditures and provide evidence to the Director within 30 days of completing the expenditures or within seven months of the investment, whichever occurs first.
7. Both the investor and the small business must retain ownership interest (investor) and property (small business) for the duration of the holding period (two years).
   Both parties must provide evidence of continued ownership to the Director upon the completion of the holding period.
8. If the parties to the transaction have met the above steps, the investor may claim the tax credit.

OBM

September 10, 2018

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

FROM: Timothy S. Keen, Director TK

SUBJECT: Monthly Financial Report

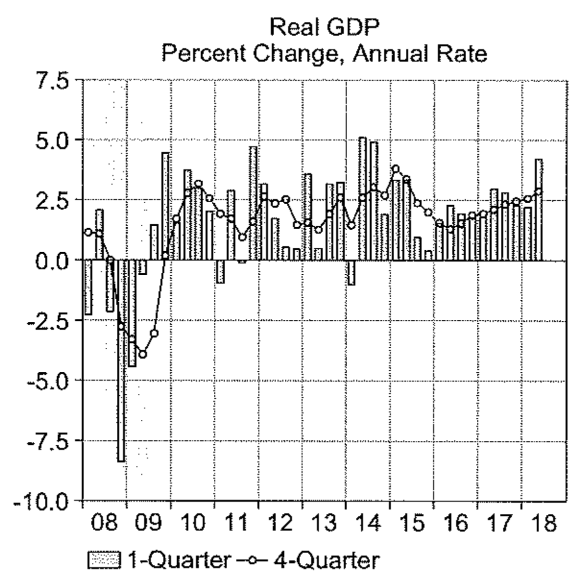
ECONOMIC SUMMARY

Economic Performance Overview

- The economy expanded at an annual rate of 4.2% in the second quarter and was 2.9% larger than a year earlier.
- U.S. employment increased by 201,000 jobs in August for a 3-month average of 185,000 jobs per month. The unemployment rate was steady at 3.9%, almost back to the expansion-low of 3.8% reached a few months ago.
- Ohio nonfarm payroll employment increased by 7,600 jobs in July and was up 82,200 from a year earlier. The unemployment rate increased to 4.6%, up from the expansion-low of 4.3% in the spring.
- Leading economic indicators remain consistent with uninterrupted economic growth into 2019.

Economic Growth

Second-quarter **real GDP** growth was revised slightly higher to 4.2%, lifting the year-over-year growth rate to 2.9%, which appears to represent an upward shift in the underlying trend. The upward revision to the second-quarter growth rate resulted from a positive adjustment to net exports that was only partially offset by a small downward adjustment to personal consumption expenditures.



Measures of inflation were unchanged, as the overall **GDP price index** increased 3.0%, and the change in the index for personal consumption expenditures, excluding food and energy, remained at 2.0%. Compared with a year ago, the overall index was up by 2.4%, which is the fastest pace since the fourth quarter of 2007, but still moderate.

In a sign of substantial momentum in the economy, **corporate profits** continued to rise at a rapid rate in the second quarter. Even before the direct effects of the corporate tax rate cut, economic profits – profits adjusted for inventory valuation and capital consumption – increased 14.0% at an annual rate to 7.7% above the year earlier level. After taxes, economic profits rose 10.0% annualized to 16.1% from a year ago. Profits not only provide funds for expansion, but more importantly promote expansion by signaling the existence of attractive business opportunities.

Sentiment among small businesses improved modestly in July to just shy of the highest-ever level recorded in July 1983, according to the **National Federation of Independent Business (NFIB)**. Six of the ten components of the Index of Small Business Optimism increased, two decreased, and two were unchanged. The largest increases were in plans to increase employment, expectations of higher real sales, and whether now is a good time to expand. Thirty percent of respondents plan capital outlays in the next few months, up one point from June. Plans to expand were most widespread in manufacturing.

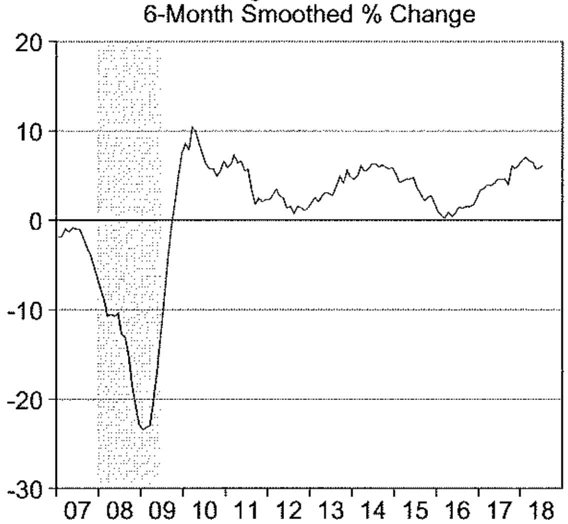
The Ohio economy expanded slowly in July, according to the **Ohio coincident economic index** from the Philadelphia Federal Reserve. The index increased 0.1% after a 0.1% decline in June – the first monthly retreat since late 2012 – that was originally reported as a decline of 0.2%. However, compared with a year ago, the index was higher by 3.0%.

The diffusion of **state-level coincident economic indexes** was little changed and squarely consistent with likely further growth in the national economy. The coincident index was lower than the month before in only five states, which was down from six states in June. The index for only two states was lower than three months prior, which was the same as in June.

The **Ohio leading index**, which is designed to predict growth in the coincident index during the next six months, was revised up from a small negative in June to +0.1%, where it remained in July. Initial negative readings for two months last summer were also subsequently revised into positive territory a few months later.

The number of negative readings among individual **state-level composite leading indexes** was revised down from four to three in June and was only one in July. Compiled by the Philadelphia Federal Reserve, the diffusion across these state leading indexes has been a leading indicator of turning points in the national economy in the past. These indexes are very sensitive to the state unemployment rates, which are subject to large annual benchmark revisions early each year.

Leading Economic Index
6-Month Smoothed % Change



Source: The Conference Board

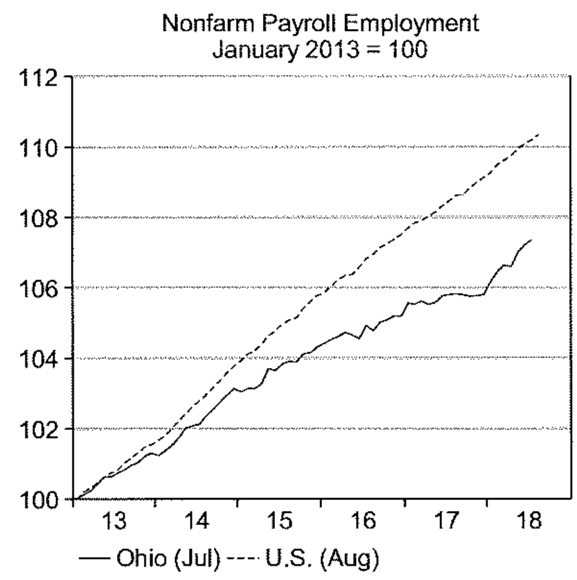
National leading indicators strengthened in July, as the Conference Board's composite **Leading Economic Index** increased 0.6%. Nine of the ten components of the index made positive contributions, led by average weekly initial unemployment claims. Only the average workweek of production workers, which was flat, failed to make a positive contribution. The leading index was 6.6% above the year earlier level, and points to economic growth through year-end.

As shown in the table below, the **consensus among forecasters** is that real GDP growth in the second-quarter of 4.2% was relatively high, and third-quarter growth is expected to return to the recent trend of near 3%. With an estimate of 4.4%, the Federal Reserve Bank of Atlanta is an outlier. Other projections are clustered from 2.0% to 3.1%.

Source	**Date**	**2018-Q3 GDP Forecast**
Atlanta FRB (GDPNow)	9/5/18	4.4%
New York FRB (Nowcast)	8/31/18	2.0%
Philadelphia FRB (SPF*)	8/10/18	3.0%
Blue Chip	8/30/18	3.1% (2.7%-3.5%)
IHS	9/6/18	3.0%
*Survey of Professional Forecasters (2nd month of each quarter)		

Employment

Nonfarm payrolls across the country increased by 201,000 jobs in August, matching expectations for a gain of about 198,000 jobs. Private nonfarm payrolls increased by 204,000 jobs, with the decrease of 3,000 jobs in public sector jobs concentrated in local education.



Job growth in each of the previous two months was revised down by a total of 50,000 jobs. The average gain during the most recent three months was 185,000, in line with, but a little lower than the average during the previous twelve months of 196,000. Nonfarm payroll employment has increased by 1.65 million jobs year-to-date, which is 9.4% ahead of the gain of 1.51 million jobs during the year-earlier period.

Job gains were mixed across sectors, though largely positive. The largest gains occurred in professional and business services (+53,000) and education and health services (+53,000), where health care contributed 33,200 jobs. Additionally, employment increased in trade, transportation and utilities by 37,000, although results were quite mixed within the category. Retail trade lost 5,900 jobs due to a 20,800 drop in jobs at clothing and clothing accessory stores, but transportation and warehousing added 20,200 jobs, and wholesale trade added 22,400 jobs. Construction added 23,000 jobs, while manufacturing lost 3,000 jobs, due mainly to a 4,900 job loss in the motor vehicle and parts industry.

The **unemployment rate** was flat at 3.9%, just 0.1 point above the very long-term low of 3.8% reached in May. The number of unemployed fell by 46,000 as the labor force declined by 469,000 people, and total employment fell by 423,000 workers (these results, which come from the household survey, are very different from those reported above from the establishment survey: the household survey can vary widely from the establishment survey on a monthly basis). Both the drop in employment and in the labor force seem to be the product of greater than expected changes associated with the return to school by younger workers, particularly those in the 16-19 and 20-24 age groups. The broadest measure of unemployment, the U-6 unemployment rate, decreased 0.1 point to 7.4% – the lowest level since March 2001. The U-6 unemployment rate includes those who say that they want to work but have stopped looking because they believe they cannot find a job and those working part-time who would prefer full-time work.

Average hourly earnings of all employees on private nonfarm payrolls increased 0.4% in August to 2.9% above the year earlier level. This is the fastest pace of wage increase on this basis during the current expansion and appears to resolve the question of whether the pace of wage gains had stabilized or was still increasing. Policymakers and investors are watching the rate of change in wages for signs that price inflation will pick up.

Ohio nonfarm payroll employment increased by 7,600 jobs in July after an upwardly revised increase of 11,700 jobs in June. Changes were mixed across sectors. Increases were concentrated in manufacturing (+4,700), construction (+2,200), education and health services (+1,500), and leisure and hospitality (+1,300). Decreases occurred mainly in professional and business services (-1,200) and government (-1,200), which occurred across federal, state, and local. Ohio employment is up by 81,800 jobs year-to-date to a new cycle-high of just over 5.6 million jobs. Employment is roughly 20,000 short of reaching its previous all-time high set in May of 2000.

During the twelve months ending in July, Ohio employment increased by 82,200 jobs. The largest gains were in leisure and hospitality (+17,200), manufacturing (+16,700), and trade, transportation and utilities (+14,200). Construction employment increased by 7,100 jobs. The only decline occurred in information (-700), which has not increased on a year-over-year basis since November 2016.

Among the **contiguous states**, employment increased on a year-over-year basis in Ohio and Michigan (1.5%), Pennsylvania (+1.2%), West Virginia (+1.0%), Kentucky (+0.8%), and Indiana (+0.6%). Manufacturing employment increased year-over-year in Michigan (2.7%), Ohio (2.4%), Kentucky (1.2%), Indiana (1.1%), and 0.8% in Pennsylvania (0.8%). It decreased 0.2% in West Virginia.

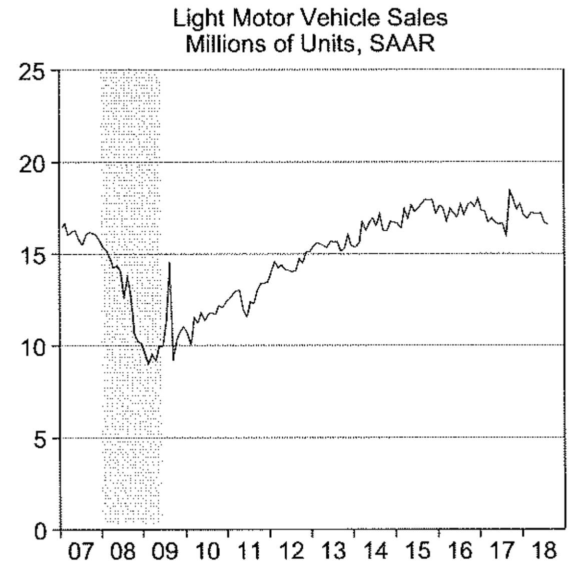
The **Ohio unemployment rate** increased in July to 4.6% – the highest level since January. The rate had reached a cycle-low of 4.3% in April and May. The 0.5 point decline in the year-over-year unemployment rate from 5.1% in July 2017 to the current 4.6% resulted from an increase of 37,600 workers, a 9,900 increase in the labor force, and a 27,800 person decline in the number of unemployed.

Across the country in July, the unemployment rate decreased notably from the month before in eleven states, led by declines of 0.2 points in Alaska, Georgia, New York, and South Carolina. Two states had meaningfully higher rates than the month before – Louisiana and Maine. Changes in the unemployment rate in the remaining 37 states and the District of Columbia were not statistically significant.

Consumer Income and Consumption

Personal income and personal consumption expenditures continued growing in July. **Personal income** increased 0.3%, driven by a 0.4% increase in wage and salary disbursements. Both measures increased by 0.4% in June and were up 4.7% from a year earlier.

Personal consumption expenditures growth was stable at 0.4% for the second-straight month in July. The gain came entirely from spending on non-durable goods and services, each of which increased by 0.4%. Durable goods spending fell 0.2% for the second monthly drop in a row. Spending for durable goods was held back by a 3.1% decrease in sales of light motor vehicles, which fell to the lowest level since August 2017. Motor vehicle sales declined an additional 0.6% in August. Unit sales might have peaked for this cycle, having been below the 12-month moving average in each of the most recent four months and six out of the last eight months.



Consumer confidence was mixed but generally robust again in August. The Conference Board Index of Consumer Confidence jumped 5.5 points to the highest level since late 2000, lifted by improvements in both assessments of current conditions and expectations. The overall index was 40.1% higher than the average during economic expansions since 1977. The University of Michigan Index of Consumer Sentiment deteriorated somewhat for the second-straight month, due mainly to less enthusiastic assessments of current conditions. The overall index was 10.0% above the historical expansion average.

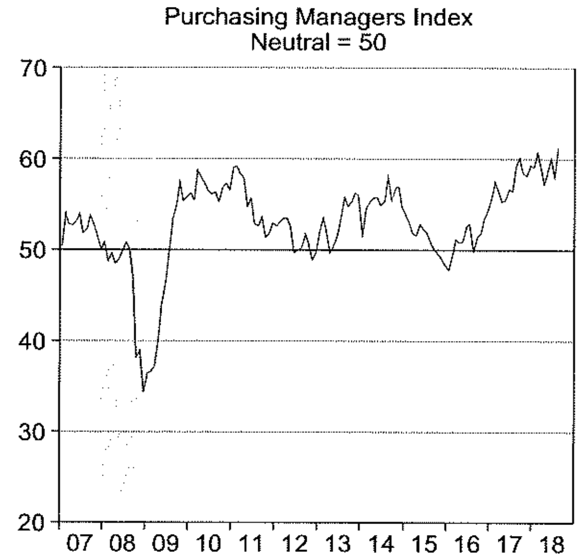
Industrial Activity

Industrial production increased by 0.1% in July, and the June gain was revised higher from 0.6% to 1.0%. Compared with a year earlier, production is up 4.2%. **Manufacturing** production jumped by 0.3%, on top of the 0.8% rise in June, to 2.8% above the year earlier level. **Mining** output decreased 0.3%, despite gains in oil and gas extraction. **Utilities** production decreased 0.5% for the third decline in a row.

Production across the country in some industries that are key employers in Ohio was largely positive. Motor vehicles and parts production increased 0.9%, machinery output and primary metal output each were up 0.6%, while fabricated metal output was flat. Compared with a year ago, production was higher by 8.8% in motor vehicles and parts, 5.9% in fabricated metal products, 4.3% in machinery, and 4.2% in primary metal.

Reports of improving conditions from **purchasing managers** in manufacturing during August were more widespread than at any time in the last fourteen years. The PMI®, which is a diffusion index that measures the extent to which respondents report increasing, unchanged, or decreasing activity, increased 3.2 points to 61.3

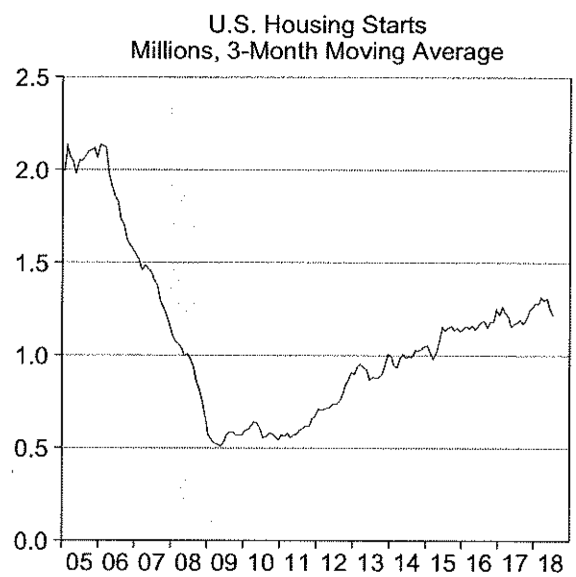
The key New Orders and Production sub-indexes both posted strong increases – New Orders from 60.2 to 65.2 and Production from 58.5 to 63.3. The Backlog of Orders index increased 2.8 points to 57.5, indicating that the pace of orders is outstripping production capabilities. The Supplier Deliveries sub-index, which is another measure of how quickly demand is being satisfied, increased 2.4 points to 64.5, indicating that deliveries have slowed. The New Export Orders sub-index was nearly flat, and the Imports Index declined but remained comfortably above 50.



Of the eighteen industries tracked by the Manufacturing ISM® *Report on Business*, sixteen reported growth in the latest month. Among the industries with a disproportionate effect on Ohio manufacturing employment, machinery, transportation equipment, and fabricated metal products reported expansion, with magnitudes in that order. Only primary metals reported a decrease.

Respondents across industries expressed ongoing concerns about tariffs. A contact in the fabricated metal products industry said that, "dealing with tariffs on steel purchases and not knowing if or when they will end makes planning difficult". A respondent in the machinery industry said that business is positive, but, "tariff impacts are still a concern". On a positive note, according to a contact in the transportation equipment industry, "generally high levels of demand continue, and [we are] planning for this elevated rate through the rest of the year".

Construction



Construction put-in-place was essentially unchanged in July, down 0.1%. The June decline was revised up from -1.1% to -0.8%. Private construction also declined by 0.1%, while public construction increased 0.7%. The main source of growth was the unreliably measured and prone-to-revision category of residential improvements. Otherwise, notable increases in activity were limited to public education and public conservation. Construction put-in-place in both the single-family and multi-family categories declined on the month, and private commercial posted a very large decline.

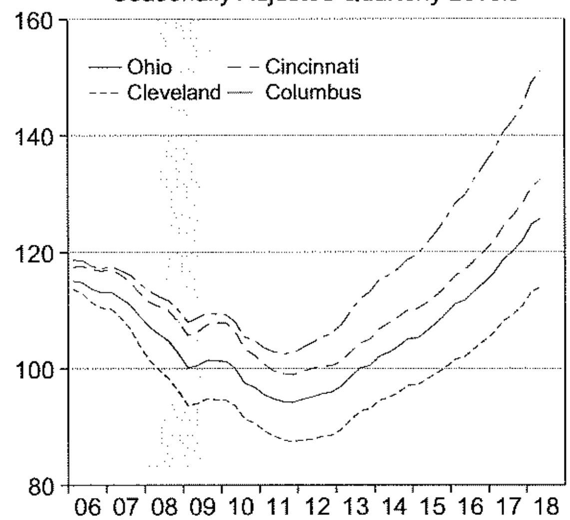
Housing activity remained weak in July. Total **housing starts** fell 2.9% on a 3-month moving average basis in July, as single-family starts declined 1.3% and multi-family starts decreased 6.7%. Midwest starts increased 2.3%, also on a 3-month moving average basis, reflecting an increase of 8.6% in single-family starts that outweighed the 10.6% drop in multi-family starts.

The more-forward-looking permits also were weak. Across the country, permits decreased 1.5% on a 3-month moving average basis as multi-family permits fell 5.1% and single-family permits only edged higher. The picture was similar in the Midwest, where permits fell 2.4%, as both single-family (-1.4%) and multi-family (-4.2%) declined.

Home sales also were down in June on a 3-month moving average basis, reflecting recent increases in home prices and mortgage rates and possibly tax law changes. Sales of existing homes decreased 0.7% nationally and by 1.0% in the Midwest. Both were down moderately from a year earlier. Sales of newly built homes slipped 0.3% across the country and 4.1% in the Midwest on a 3-month moving average basis. Compared with a year earlier, new home sales still were higher by 8.1% nationally and 20.1% in the Midwest.

Limited supply is raising prices and limiting sales. **Home prices** nationally posted their 76th straight monthly increase in June to 6.3% above the year earlier level, 48.0% above the cyclical low reached in February 2012, and 9.8% above the previous peak in February 2007, according to the Case-Shiller index.

Freddie Mac Home Price Indexes
Seasonally Adjusted Quarterly Levels



As reported by Freddie Mac, home prices increased 1.2% in the second quarter and by 7.1% year-over-year. In comparison, prices across Ohio increased 0.8% in the quarter and 5.9% from a year ago. In major metro areas in Ohio: prices increased 1.0% in the quarter and 6.5% from a year ago in Cincinnati; 0.7% in the quarter and 5.4% from a year ago in Cleveland; and 1.4% in the quarter and 7.6% from a year ago in Columbus – all after seasonal adjustment.

REVENUES

August **GRF receipts totaled $2,994.2 million** and were $24.8 million (0.8%) below estimate. However, as has often been the case over the past several years, non-federal revenues were above estimate, while federal revenues were below estimate due to Medicaid underspending. Non-federal revenues were above estimate by $12.6 million (0.6%). This variance was primarily attributable to tax revenues, which were above estimate by $16.2 million (0.8%). Federal revenues were below estimate by $37.3 million (3.9%), as GRF Medicaid spending was below estimate by $70.2 million (4.9%). These results are qualitatively the same as for July; an overage in tax revenues and a shortfall in federal revenues due to Medicaid underspending, therefore, the results for the fiscal year-to-date so far show the same pattern. Variances for the fiscal year-to-date by category are provided in the following table ($ 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	$27.8	0.7%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	($106.9)	-5.4%
Transfers	Budget stabilization, liquor transfers, capital reserve, other	($4.2)	-5.2%
TOTAL REVENUE VARIANCE:		**($83.2)**	**-1.4%**
Non-federal revenue variance		**$26.6**	**0.7%**
Federal grants variance		**($109.8)**	**-5.5%**

On a year-over-year basis, monthly receipts were $355.3 million (13.5%) higher than in August of the previous fiscal year, due to both a $101.0 million increase in tax revenues and a $258.6 million increase in federal grants. The increase in federal grants this August follows an even larger decline ($315.2 million) in federal grants in July. The issue is not that federal grants are showing month to month volatility this year – instead, it was last year that federal grants showed very large monthly swings early in the year.

The $101.0 million (5.1%) increase in tax revenues from last August was driven largely by the non-auto sales tax, whose revenues rose by $64.4 million (9.5%). Although results have varied sharply from month-to-month, non-auto sales tax revenues have been on an improving growth trend since last February. Income tax revenues also rose by $22.5 million (3.3%) from last August, and a number of other taxes also posted smaller increases.

GRF Revenue Sources Relative to Monthly Estimates – August 2018
($ in millions)

Individual Revenue Sources Above Estimate		Individual Revenue Sources Below Estimate	
Non-Auto Sales Tax	$27.3	Federal Grants	($37.3)
Cigarette and Other Tobacco Tax	$4.7	Personal Income Tax	($13.2)
Public Utility	$3.0	Commercial Activity Tax	($11.8)
Natural Gas Distribution	$2.1	Transfers In	($4.2)
Kilowatt Hour	$2.1	Other Sources Below Estimate	($1.0)
Other Sources Above Estimate	$3.6		
Total above	**$42.8**	**Total below**	**($67.5)**

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

Non-Auto Sales and Use Tax

August non-auto sales and use tax collections totaled $745.9 million and were $27.3 million (3.8%) above estimate. On a year-over-year basis, August receipts were $64.4 million (9.5%) above the same month last year. The point has finally been reached where revenues from the prior month do not need to be adjusted for the impact of the repealed sales tax on Medicaid Health Insuring Corporations (MHICs), since last July was the final month that the state received those revenues. From this point forward in fiscal year 2019, year-to-year comparisons of monthly revenue will be free of those adjustments, but the comparisons of year-to-date revenue will still be adjusted because of the July MHIC revenues in fiscal year 2018.

Monthly and year-to-date revenues, adjusted for MHIC collections, are shown in the table below. Note that the table shows not only GRF revenues, but also sales tax revenues distributed to the Public Library Fund (PLF) making the growth percentages slightly different than those for the GRF alone.

Non-Auto Sales Tax Revenue Growth Without MHIC– FY18 through August
($ in millions)

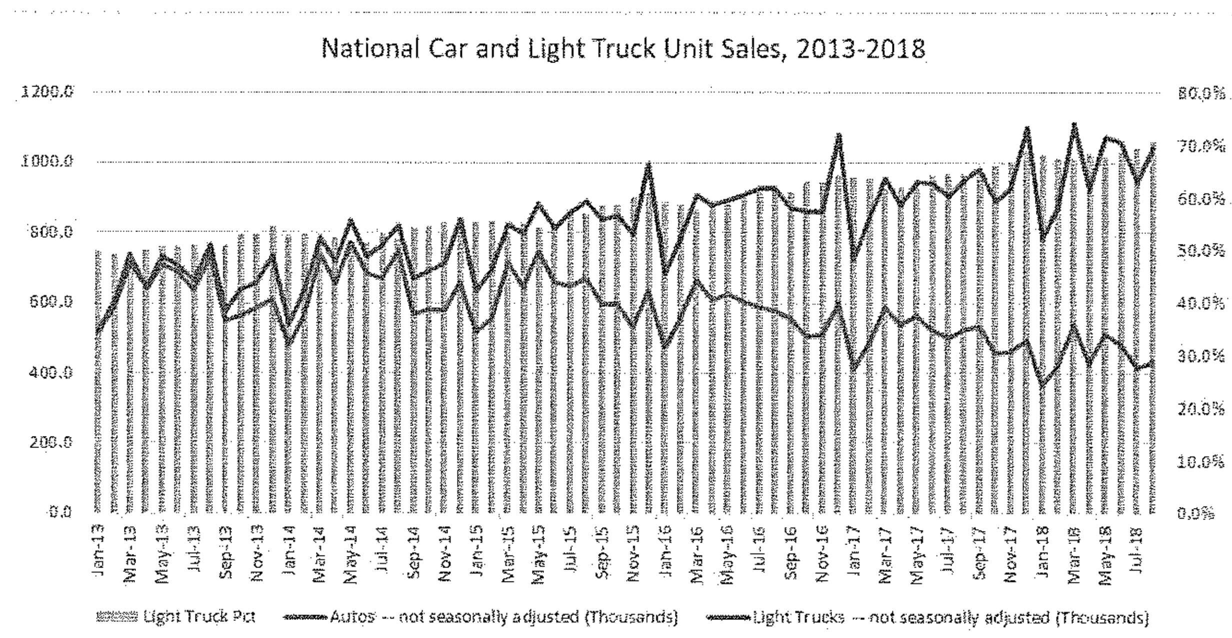
	Aug-17	Aug-18	FY 18 YTD	FY 19 YTD
Non-Auto sales tax GRF	681.5	745.9	$1,523.6	$1,532.4
Non-Auto sales tax PLF (Library Fund)	$19.0	$19.0	$14.6	$14.7
Non-Auto sales tax, all funds	$700.5	$765.0	$1,538.2	$1,547.1
MHIC revenues (state)	$0.0	$0.0	$71.7	$0.0
GRF and PLF revenues without MHIC	$700.5	$765.0	$1,466.5	$1,547.1
Change from prior year in non-MHIC collections		$64.5		$80.6
Pct. change from prior year in non-MHIC collections		9.2%		5.5%

The non-auto sales tax has shown substantial improvement in growth since its recent low-point last January. Growth has been inconsistent across months, with some months like July showing year-over-year growth around 2% or slightly lower, while other months like March and June, and now August, have exceeded 7%. Despite these fluctuations, overall non-auto revenue growth over the last 7 months has averaged 4.7%.

Auto Sales Tax

Despite a slowdown in total unit sales of new vehicles, the auto sales tax continues to meet or outperform estimates. Following July's $12.3 million overage, August revenues were essentially right at the estimate, falling short by $0.2 million. For the year, revenues are $12.1 million (4.7%) above estimate, and have grown by $22.9 million (9.2%) from last year.

National data shows that the shift in vehicle mix from lower-priced cars to higher-priced light trucks continues, helping to boost auto sales tax revenues. The light truck share of total unit sales has risen from just below 50% at the start of 2013 to over 70% in August.



For fiscal year 2019 as a whole, auto sales tax collections are expected to increase by only 1.0%, as OBM is cautious about how much larger the light truck share of sales can get.

Personal Income Tax

August GRF personal income tax receipts totaled $714.5 million and were $13.2 million (1.8%) below estimate. The underperformance of August is mostly due to a shortfall in withholding. The variance from estimate in each of the other categories (whether positive or negative) was less than $10 million.

Withholding fell short of the estimate by $14.6 million (1.9%) in August. However, the category was up 2.4% from the previous August, a result consistent with the sustained path of growth observed since fiscal year 2018. Furthermore, some of the shortfall was in what is called "annual withholding" which is actually withholding of tax against the income of pass-through entities (PTEs), rather than the more typical definition of withholding, which is tax withheld against employee compensation. Ordinary withholding – i.e. withholding other than annual – is up 5.3% for the first two months of fiscal year 2019, and total withholding is up 4.8%, consistent with the growth observed in fiscal year 2018.

Several smaller categories exhibited a positive variance from estimate in August. Annual return tax payments were $8.1 million (80.3%) above estimate and Trust tax revenues exceeded estimate by $0.1 million (21.5%).

The remaining payment categories were below estimate. Estimated payments fell short of the August estimate by $2.7 million (18.9%) and Other payments were $1.1 million (14.7%) below estimate.

Finally, August refunds were $2.9 million (7.8%) above estimate. This is 8.4% above the August 2017 refund amount. As mentioned in last month's report, it is too soon to know whether this outcome may be influenced by taxpayers that filed extensions for tax year 2017 and who may realize higher refunds that partially offset the increased estimated payments observed for that tax year. OBM continues to monitor this category because of this possibility and will especially focus on the October results, which is when annual returns for extension filers are primarily due.

On a year-over-year basis, August GRF income tax collections were $22.5 million (3.3%) above August 2017 collections. The increase in withholding was $17.4 million, accounting for the majority of this growth.

FY2019 PERSONAL INCOME TAX RECEIPTS BY COMPONENT ($ in millions)

	Estimate Aug	Actual Aug	$ Var	Actual Aug 2018	Actual Aug 2017	$ Var Y-0ver-Y
Withholding	$761.1	$746.5	($14.6)	$746.5	$729.1	$17.4
Quarterly Est.	$14.5	$11.8	($2.7)	$11.8	$11.0	$0.8
Trust Payments	$0.5	$0.6	$0.1	$0.6	$0.5	$0.1
Annual Returns & 40 P	$10.1	$18.2	$8.1	$18.2	$9.6	$8.6
Other	$7.2	$6.1	($1.1)	$6.1	$7.3	($1.2)
Less: Refunds	($36.8)	($39.7)	($2.9)	($39.7)	($36.6)	($3.1)
Local Distr.	($28.9)	($29.1)	($0.2)	($29.1)	($28.8)	($0.2)
Net to GRF	$727.7	$714.5	($13.2)	$714.5	$692.0	$22.5

Commercial Activity Tax

Commercial activity tax (CAT) August receipts deposited in the GRF totaled $293.0 million and were $11.8 million (3.9%) below estimate. Combined collections for July and August, which comprise the vast majority of collections for the first quarter, were $12.9 million (3.6%) below estimate.

GRF CAT receipts for the year-to-date are $1.2 million (0.4%) below last year. Unlike fiscal year 2018, year-to-year comparisons in fiscal year 2019 will not be affected by the H.B. 49 law change that dedicated a larger share of total CAT revenues to the GRF (85% rather than 75%). By the same logic, GRF and all funds collection trends should mirror each other in fiscal year 2019. This is in fact the case, as all funds have declined by $1.4 million from a year ago, a decline of 0.3%, very close to the same percentage decline as for GRF revenues.

Anecdotal evidence available at this time suggests that the shortfall relative to estimate and the small decline from last year are both driven primarily by an increase in credits rather than lower than expected growth in taxable receipts.

GRF Non-Tax Receipts

GRF non-tax revenues in August totaled $924.5 million and were $36.8 million (3.8%) below estimate. This variance was primarily attributable to Federal grants, which as explained earlier, were below estimate by $37.3 million (3.9%) due to underspending of $70.2 million in the GRF Medicaid category. This variance was minimally offset by revenues in the Other Income category, which were higher than estimated largely due to refunds of prior-year expenditures.

August transfers in were $4.2 million below estimate due to the timing of a transfer from the School Building Fund, which will occur later in the fiscal year instead of August as estimated.

What does the Wayfair decision mean to you?

"Substantial Nexus" is here

Presenters

Mike Merkel, State and Local Tax

Partner

As a leader in the firm's state and local tax practice, I specialize in providing clients with multistate tax consulting services and implementing solutions to minimize sales and use, income and franchise, and property taxes. My clients also come to me for advice on state tax controversy issues related to audit defenses for various taxes.

Stephen Palmer, State and Local Tax

Senior Manager

At Plante Moran, I focus on consulting within a wide range of state and local taxes to assist clients with the ever-changing requirements imposed by thousands of taxing jurisdictions in the United States.

Overview of today's discussion

- History
- South Dakota v. Wayfair – facts and decision
- Impact of Wayfair
- Frequently asked questions
- Technology and how it can help
- Next steps

History

National Bellas Hess and Quill

History

Court Cases and Nexus

- *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967)

- *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992)
  - Sold office supplies and equipment via mail order (and online) to customers in North Dakota, and lacked substantial physical presence

- States become aggressive with physical presence requirement
  - Affiliate Nexus
  - Click-through Nexus
  - Cookie Nexus

History

Commentary and South Dakota Law

- The "legal system should find an appropriate case for this Court to reexamine Quill…"

  -Justice Kennedy, concurring opinion in *Direct Marketing Association v. Brohl* (March 2015)

- Quill is "a precedential island []…surrounded by a sea of contrary law."

  -Justice Gorsuch, concurring opinion in *DMA*

- South Dakota, Senate Bill 106 (applies to sales made on or after May 1, 2016)

Impact of Wayfair

Notification and reporting statutes

- Self reporting and notification requirements
  - Approximately 10 states have imposed reporting and notification requirements, or an election to collect tax <u>or</u> comply with reporting requirements:

- Notification
  - Customers at time of sale
  - Customers at end of year
  - Department shortly thereafter
  - Only some impose penalties for non-compliance

South Dakota v. Wayfair

– Facts and decision

South Dakota v. Wayfair

Law leading to case

- South Dakota, Senate Bill 106 (applies to sales made on or after May 1, 2016)
  - A remote seller has nexus if its annual in-state gross revenue exceeds $100,000, or if the seller has 200 or more separate sales ("transactions") into the state
- *South Dakota v. Wayfair, Inc.,* U.S. S.CT., Dkt. No 17-494 (June 21, 2018)

South Dakota v. Wayfair

Points of view

- South Dakota's arguments
  - States are losing money
  - Brick-and-mortar stores are at a disadvantage
  - There is no burden on vendors because software makes compliance easy
  - The physical presence test is archaic

South Dakota v. Wayfair

Points of view

- Wayfair's arguments
  - States are already receiving 75% to 80% of sales tax on remote sales and the uncollected amount is declining; 19 of the top 20 internet retailers collect tax in most, if not all, states
  - Compliance will be a nightmare
  - Retroactive liability will cripple many businesses
  - States need to simplify first

South Dakota v. Wayfair

U.S. Supreme Court decision

- On June 21, 2018, the Court ruled in a 5-4 decision in favor of South Dakota
- Justice Anthony Kennedy delivered the majority opinion joined by Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito, and Neil Gorsuch
- Dissenting opinion by Chief Justice John Roberts joined by Stephen Breyer, Sonia Sotomayor, and Elena Kagan
- Court overrules Quill's physical presence test saying it was "unsound and incorrect" even when decided in 1992
- Quill doesn't work in today's economy

South Dakota v. Wayfair

U.S. Supreme Court decision

- Court comments favorably on the fact that South Dakota's law:
  - provides a safe harbor threshold
  - is not retroactive
  - provides simplification through streamlined sales tax
    - Single, state-level tax
    - Uniform definitions of products and services

- The nexus arguments used to be over what constitutes physical presence

- Now the arguments are going to be over what constitutes "substantial nexus"

Impact of Wayfair

From nexus to compliance

Impact of Wayfair

Impact

- South Dakota
  - Do I need to start collecting in South Dakota?
  - When do I start collecting in South Dakota?

- Other States Similar to South Dakota
  - Colorado, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Nebraska, New Jersey, North Carolina, North Dakota, Rhode Island, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming have all adopted the South Dakota standard of $100,000 in sales or 200 transactions

- Other states with differing thresholds include
  - Alabama, Arizona, Connecticut, Georgia, Massachusetts, Minnesota, Mississippi, Oklahoma, Pennsylvania, South Carolina, and Tennessee

Impact of Wayfair

Impact

- Nexus can still be created by
  - In-state employees
  - In-state property
  - Sporadic employee visits
  - Independent contractors in the state acting on your behalf
  - Attending trade shows
  - Making deliveries in one's own truck
  - Click-through nexus

- State taxes on interstate commerce will be sustained if they apply to an activity with "substantial nexus" with the state

Impact of Wayfair

Impact

- A flurry of legislative action has already occurred with more expected from other states over the next 12 to 18 months.
- It is clear that increased filing and/or documentation obligations will exist for a large number of businesses.
  - Remote sellers
    - E-commerce
    - Mail order
  - Foreign companies with inbound sales
  - Companies with a limited physical presence footprint
  - Manufacturers/Wholesalers

States with Updated Nexus Threshold

Effective dates

- Massachusetts (9/22/17)
- Pennsylvania (2/1/18)
- North Dakota (6/21/18)
- Hawaii (7/1/18)
- Maine (7/1/18)
- Oklahoma (7/1/18)
- Vermont (7/1/18)
- Mississippi (9/1/18)

States with Updated Nexus Threshold

Effective Dates 10/1/2018

- Alabama
- Illinois
- Indiana
- Kentucky
- Maryland
- Michigan
- Minnesota
- New Jersey
- Rhode Island
- Washington
- Wisconsin

States with Updated Nexus Threshold

Effective Dates

- North Carolina (11/1/18)
- South Carolina (11/1/18)
- South Dakota (11/1/18)
- Colorado (12/1/18)
- Connecticut (12/1/18)
- Wyoming and Tennessee (TBD)

Effective 1/1/2019

- Georgia
- Iowa
- Louisiana
- Nebraska
- Utah
- West Virginia

Frequently asked questions

What does it mean to me?

Frequently asked questions

- What is the test for “substantial nexus?”
- Is it 200 taxable transactions or total transactions?
- Can it be applied retroactively?
  - “Thirty-eight other states have indicated their laws would prevent retroactivity”

    - S.D. Attorney General, Jackley – Oral arguments
- What are the implications for cities, counties, and Colorado’s home-rule cities?

Frequently asked questions

- Will the *Wayfair* ruling apply to income tax nexus?
- Do we now have the same standard for sales and income tax nexus?
- Does *Wayfair* supersede P.L. 86-272?
- Will Congress act?

Summary

Wrap-up

Summary

What now?

- The nexus landscape – Physical presence not required
  - Economic Presence is the new standard
  - Need to monitor legislation in other states
- Use tax reporting statutes exist in a number of states with significant non-compliance penalties.
- A large number of companies will be affected
  - Remote mail order
  - E-commerce
  - Foreign companies with inbound sales
  - Companies with significant nationwide sales having a limited physical presence footprint .

Summary

What should I do

- Review your current nexus profile vs. historical filings
  - Re-examine in light of economic presence threshold
- Evaluate results of updated nexus review
- Evaluate your existing system and infrastructure
  - Do you have a system in place to keep up to date with changing tax rates?
  - Does the system have the ability to make accurate taxability determinations?

If exposure exists:

- Register and remit prospectively?
- Do voluntary disclosure agreements make sense?

Summary

How we can help

With over 10,000 taxing jurisdictions, it is almost impossible to keep up. We can help through in several ways. Consider the following potential services that we can provide:

- Sales tax engine
- Sales tax return preparation
- Sales tax electronic filing and payment functions
- Exemption certificate management
- Full outsourced compliance (all items above)

Q&A

Thank you for attending

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To view a complete calendar of upcoming Plante Moran webinars and on-demand webinars including the full version of this presentation, **visit webinars.plantemoran.com**

TO: OMA Tax and Finance Committee
FROM: Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: October 10, 2018

Overview

Summer recess has slowed down policy making at the Statehouse. Ohio legislators are back in their home districts campaigning until November election day. Tax policy has been put on the back burner until a possible hectic lame duck session commences post-election. The OMA and members continue to be engaged on the manufacturing sales and use tax exemption rule that is being reviewed by the Department along with looking for ways to make Ohio manufacturing even more competitive in regards to tax and economic development policy.

Tax Legislation

Senate Bill 114 / House Bill 155 – Vehicle Training Tax Credit

Senate Bill 114 and House Bill 155 are companion bills that authorize tax credits for expense incurred by employers to train a commercial vehicle operator. These bills would allow businesses to take credits against the CAT. The bills had one hearing in the House and Senate. OMA met with both proponents of the bills and sponsors of the bills. Proponent and sponsors followed the advice of the OMA and removed the CAT from the list of taxes that could be credited.

Senate Bill 132 – Foreign Trade Zone CAT Credit

The bill would establish a five-year pilot program whereby taxpayers with facilities in Ohio with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation and renewable energy resources. OMA participated in an interested party and expressed serious concern over the proposal.

House Bill 185 – Political Contributions Tax Credit

The bill expands the scope of political contributions that qualify for the income tax credit for contributions to political campaigns to candidates for any state, county, municipal, or district office. It had its first hearing last June.

Senate Bill 203 – Throw-Back Rule Reinstatement

The bill would reinstate the municipal income tax "throw-back rule" used in apportioning business income among municipalities. The throw-back rule was eliminated with OMA backing during the budget bill process.

House Bill 216 – Used Vehicle Trade-In Credit

The bill authorizes a sales and use tax trade-in credit for purchases of used motor vehicles from a licensed dealer. The bill had two hearings prior to the summer break last year.

House Bill 262 – Independent Budget Process
The bill would provide for the preparation of a state biennial budget independent of that submitted by the Governor and to authorize the Legislative Service Commission, upon the request of the Speaker of the House of Representatives or the President of the Senate, to arrange for an independent actuarial review of a proposed bill, specified analyses of economic policy initiatives and state benchmarking data, and a study of the state's long-range financial outlook. The bill was introduced and referred to committee last June.

Senate Bill 309 – Megaproject Business Tax Credits
The bill lengthens the maximum term of the job creation tax credit for businesses making substantial fixed asset and employment investments and for their suppliers. The bill also authorizes commercial activity tax exclusions for receipts of those suppliers from sales to such businesses, and to authorize local governments to grant longer term property tax exemptions for such businesses or suppliers. The bill is in response to large projects going out to bid like Foxconn and Amazon H2Q.

House Bill 320 – Long-Range Financial Outlook Council
The bill creates the Long-Range Financial Outlook Council for the purpose of informing the public and the General Assembly about the financial status of the state by studying financial and other conditions and issuing an annual long-range financial outlook report. The bill had its second hearing in November.

House Bill 525 – Film Tax Credit-Live Theater
House Bill 525 would expand the current motion picture tax credit to live stage theater productions and increase the maximum amount of credits from $40 million to $100 million per fiscal year. The bill again is sponsored by Speaker Pro Tem Schuring which makes House passage a real possibility. The OMA testified questioning why Ohio would more than double the credit against the CAT. The House Finance Committee passed the bill last month. However instead of expanding the current amount from $40 million to $100 million, they instead only expanded the current amount to also cover live stage theater productions.

House Bill 641 – Forklift Tax Exemption
House Bill 641 would exempt from the sales and use tax things purchased by an interstate logistics business and used primarily to move completed manufactured products to the point from which they are shipped from a manufacturing facility and related power sources. The bill had two hearings prior to the summer recess. It could be in play in the winter.

Capital Expenditure Investment Tax Credit
OMA tax committee members have been working on a capital expenditure tax credit bill that manufacturers could take advantage of in Ohio. OMA staff has been working with legislators for potential introduction this fall.

Tax News
Tax Foundation Trashes Ohio Tax Code (Again)
The Tax Foundation has recently published its annual ratings of states for tax competitiveness, ranking Ohio among the 10 worst states at 42nd.

Some may question the low ranking since Ohio has made great strides in state tax competitiveness over the past 15 years by abolishing the state estate tax, zeroing out tangible personal property tax, eliminating corporate income tax and lowering personal income taxes.

The Tax Foundation has taken a dim view of gross receipts-based taxes such as the Ohio commercial activities tax (CAT) which applies a low-rate, broad-based tax on all in-state sales (only).

Landmark Decision Overturns 51-Year Physical Presence Standard for State Sales Tax Collection

The U.S. Supreme Court this summer ruled in South Dakota v. Wayfair that states can require out-of-state online sellers to collect sales taxes, overturning precedent that held otherwise.

Brick and mortar retailers have sought for years to even the playing field with online merchants. The ramifications of the decision are far reaching. The decision should be mostly good for state governments also which have been shortchanged by online commerce transactions.

The controversial decision is still being reviewed.

Updates on Ohio's Business Gateway

According to a recent Gateway post, from the time the modernized Gateway went live on July 2 through August 29, users have successfully filed more than 1 million transactions, with a total value of nearly $4 billion. This represents an increase of more than 115,000 transactions and $660 million flowing through the Gateway over the same time period in 2017.

Some users have experienced issues, a majority of which are related to accounts of existing users who file on behalf of multiple businesses and who may share log in credentials.

In the modernized Gateway, each username and password is associated with an individual user, not a company or business account, and should not be shared. This aligns with the latest in security best practices and allows for verification of the individual who is filing a transaction on behalf of the business account.

Kasich Floats New Tax Plan

At a press conference earlier this summer, Governor John Kasich announced that his administration was considering a plan that would take $147 million from the projected state surplus to fund the cost of a one-time reduction in the state tax withholding tables.

According to the administration, even after funding the withholding tax table reduction, there would be $68 million in surplus to divert to the 'rainy day' fund, pushing that fund to its maximum legal limit.

This is the governor's second attempt at driving down the withholding tables. In his 2016 State of the State speech he introduced the same idea, which was not acted upon by the legislature. The governor said he would be having conversations with state lawmakers in the near future regarding the proposal.

Two years ago the Kasich administration said that this change would give a person making $60,000 a year, and claiming one dependent, an additional $1.10 per week.

Early reactions from the House and Senate were noncommittal.

State Surplus Deposited in Rainy Day Fund

June 30 marked the end of the state's 2018 fiscal year. This summer Governor Kasich's administration deposited $657 million of excess funds into the state's budget stabilization fund.

The balance in the state's savings account now sits at $2.7 billion. Ohio lawmakers are constitutionally required to run a balanced budget and Senate President Larry Obhof issued a statement touting the benefits of responsible budgeting and conservative policies.

Budget Director Tim Keen said in a press release, "The fiscal condition of the state is strong. We finished the year with a larger ending balance than planned due to state spending that came in below projections and income tax revenues that came in above projections. This makes it possible … to make a deposit into the Budget Stabilization Fund."

The budget director also noted that when the Kasich administration came to office in 2011, it inherited a depleted reserve fund of only 89 cents.

OMA Testifies on "Tax Expenditures"

Testifying before a special Tax Expenditure Review Committee, OMA's Rob Brundrett, Director, Public Policy Services, urged the committee to protect the sales and use tax manufacturing exemption.

"The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final consumption of goods and now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed," Brundrett said.

He recommended expansion of the exemption to: 1) temporary workers; 2) industrial janitorial and maintenance services; and 3) certain equipment and supplies used to clean food processing equipment.

The Tax Expenditure Review Committee met three times this spring reviewing a variety to tax exemptions.

U.S. Supreme Court Revisits Quill and Physical Presence

OMA Connections Partner, Clark, Schaefer, Hackett (CSH), posts: "On April 17th, the U.S. Supreme Court revisited Quill Corp. v. North Dakota, which held that in order for a state to impose sales tax on an out-of-state seller, the seller must have physical presence in the state. The case is being reviewed again because the recent South Dakota v. Wayfair, Inc. suit is asking that the Quill decision be repealed.

"… The Quill standard has enabled online sellers to forego collecting and remitting sales tax in states where the seller has no physical presence. The potential revenue loss for the states in uncollected sales tax is enormous – in the billions of dollars. …

"It is difficult to predict which way the Court will decide this case. But no matter their decision, it will be binding precedent across the country. Either the physical presence standard will continue to be the law and Quill will be upheld, or the Court will overturn Quill and set forth new nexus standards. A decision is expected sometime in June …"

Muni Tax Collection System Found to be Constitutional

A Franklin County Common Pleas Court judge dismissed a muni tax collection lawsuit brought by about 160 Ohio municipalities that challenged a new law that allows the State of Ohio to collect local business taxes.

House Bill 49, which was Gov. John Kasich's two-year budget bill, allowed business owners the option to file municipal net profit tax returns directly with the Ohio Department of Taxation, instead of with the municipality in which the business operates.

OMA backed this law change because it streamlines the filing process for businesses, which often operate in multiple municipalities.

Tax Dept. Accepts OMA Request to Improve Mfg. Sales/Use Exemption

The Ohio Department of Taxation (ODT) released its latest draft of the Manufacturing Sales and Use Exemption rule review.

Reacting to the previous draft, the OMA working group had advocated for removing this language (4th paragraph, division (B)(1)): "However, the maintain (sic) materials in the same state or form as they are received or measuring raw materials to verify quantities received, does not constitute commitment," thus arguing for a complete definition of tax exempt materials committed to the manufacturing process.

Responding to the OMA's comments, ODT agreed to remove the objectionable provision from the draft rule. Keeping that language out of the rule would be a major win for manufacturers.

S.B. 309

132nd General Assembly

(As Introduced)

Sens. Peterson and Kunze, Beagle, Uecker, Bacon, Oelslager

BILL SUMMARY

- Authorizes the following tax incentives for the operators and certain suppliers of a "megaproject," i.e., a development project that includes $1 billion in investment or creates at least $50 million in Ohio payroll:
  - Lengthening the maximum term of the refundable Job Creation Tax Credit (JCTC) from the current 15 years to 30 years.
  - Assignment of all or a portion of a megaproject supplier's JCTC to the megaproject's operator.
  - A commercial activity tax exclusion for gross receipts of a megaproject supplier from sales to a megaproject operator.
  - Lengthening the maximum term of local community reinvestment area or enterprise zone property tax exemptions to 30 years.
- Requires or authorizes forfeiture of those incentives if the project ceases to qualify as a megaproject.

CONTENT AND OPERATION

Megaproject tax incentives

The bill authorizes several special tax incentives for operators and certain suppliers of a "megaproject," i.e., a large-scale development that meets certain investment or payroll thresholds. Specifically, the bill (1) increases the maximum number of years, from 15 to 30, over which the operator or supplier may receive a Job Creation Tax Credit (JCTC), (2) authorizes a megaproject supplier's JCTC to be wholly or partially allocated to the megaproject's operator, (3) authorizes a megaproject supplier, in calculating its commercial activity tax, to exclude its gross receipts from sales to a megaproject operator, and (4) authorizes local governments to grant a 30-year commercial reinvestment area or enterprise zone property tax exemption to a megaproject or property owned by a megaproject supplier.

Qualifying projects and suppliers

Before a business may qualify for any of these enhanced incentives, it must either operate a "megaproject" or sell tangible personal property to one. A megaproject is a development project that satisfies all of the following conditions:

(1) The operator must compensate the project's employees at 300% of the federal minimum wage or more. (The federal minimum wage is currently $7.25 per hour for nonexempt employees, so this income threshold would equal $21.75 per hour.) This wage threshold is calculated exclusive of employee benefits and must be met at the time the project is approved for a JCTC (see below).

(2) The operator must either make at least $1 billion in fixed-asset investments in the project or create at the project at least $50 million in annual Ohio employee payroll, i.e., payroll subject to Ohio income tax.

(3) If the project qualifies on the basis of Ohio employee payroll, the operator must maintain at least $50 million in annual payroll at the project throughout the term of the JCTC (see below).

(4) The project requires "unique sites, extremely robust utility service, and a technically skilled workforce."[1]

In addition to the megaproject's operator, certain suppliers of a megaproject are eligible for the bill's incentives (referred to in this analysis as a "qualifying megaproject supplier"). Specifically, any business that sells tangible personal property may qualify for the incentives if it satisfies both of the following requirements:

(1) The business makes at least $100 million in fixed-asset investments in Ohio;

(2) The business creates at least $10 million in annual Ohio employee payroll and maintains that level of payroll throughout the term of the JCTC (see below).[2]

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[1] R.C. 122.17(A)(10) and (11).

[2] R.C. 122.17(A)(12).

Job Creation Tax Credit

A megaproject operator or qualifying megaproject supplier must be approved by the Ohio Tax Credit Authority (OTCA) to receive a JCTC before the operator or supplier may qualify for the bill's other incentives. A JCTC is a refundable tax credit that may be taken against the state's income tax, commercial activity tax, or financial institutions tax. The credit equals a percentage of additional annual Ohio employee payroll that a business generates at an Ohio-based project above a baseline amount of payroll generated at the site in the 12 months before the site was approved for the credit. Currently, the credit may be awarded for up to 15 years.

To obtain a JCTC, a business is required to apply to and enter into an agreement with OTCA, a five-member board that includes the Director of Development Services. The agreement sets out specific terms and conditions a project is required to meet as a condition of receiving the credit. The Director annually evaluates a project's compliance with the agreement and, if compliant, issues a certificate with the credit amount the business may claim for the year (referred to in this analysis as an "annual compliance certificate").

Maximum term

The bill increases the maximum number of years that a JCTC may be awarded from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier.[3] As a condition of continuing to receive annual compliance certificates during the term of the JCTC, the bill specifically requires the operator or supplier to meet the megaproject qualifications described above.[4] If those qualifications are not met, the Director of Development Services is required to notify the Tax Commissioner, presumably to assist the Commissioner in determining whether a megaproject supplier is eligible for the bill's commercial activity tax exclusion (see below).[5] As with other noncompliant projects, OTCA may reduce the term or amount of a noncompliant megaproject operator's or supplier's JCTC or may require the operator or supplier to repay credits already claimed.[6]

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[3] R.C. 122.17(D)(2)(c).

[4] R.C. 122.17(D)(11).

[5] R.C. 122.17(T).

[6] R.C. 122.17(E) and (K).

Allocation of supplier's JCTC

If a megaproject supplier is awarded a JCTC, the bill authorizes the JCTC agreement to allocate all or a portion of the supplier's credit to the operator of the megaproject to which the supplier sells tangible personal property. The Director of Development Services is required to issue annual compliance certificates to any operator allocated a portion of a supplier's credit in this manner, though the operator's compliance is based on the supplier's performance.[7]

Commercial activity tax exclusion

Continuing law imposes the commercial activity tax (CAT) based on a business's taxable gross receipts from sales in Ohio. CAT is remitted on an annual or quarterly basis (referred to as a "tax period") depending on the amount of taxable gross receipts. The bill authorizes a qualifying megaproject supplier to exclude, in calculating the supplier's taxable gross receipts, any gross receipts from the sale of tangible personal property to a megaproject operator that has been awarded a JCTC.[8] However, before claiming the exclusion, the supplier must (1) have been awarded a JCTC and (2) appear on a list that the megaproject operator certifies to the Tax Commissioner (see below).

Supplier list and certificate

In connection with the bill's CAT exclusion, each megaproject operator that has been awarded a JCTC is required to annually furnish to the Tax Commissioner a list of its qualifying megaproject suppliers and to update that list in the interim as needed. The Commissioner in turn is required to issue a certificate to the operator and each listed supplier containing the names of the operator and each such supplier. A supplier may qualify for the bill's CAT exclusion only if the supplier is listed on that certificate. Operators and suppliers must retain a copy of these certificates for four years after their issuance.[9]

Clawback

The bill requires a supplier to repay an amount equivalent to CAT not remitted in a tax period as a result of taking the bill's exclusion if, during that period, the supplier does not actually qualify for the exclusion. Specifically, the amount to be repaid equals the supplier's gross receipts from sales to the operator in that tax period multiplied by the general 0.26% CAT rate applicable to annual gross receipts in excess

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[7] R.C. 122.17(D)(7) and (10).

[8] R.C. 5751.01(F)(2)(ll).

[9] R.C. 5751.052.

of $1 million.[10] (CAT on the first $1 million in annual gross receipt is a flat amount that varies depending upon the business' taxable gross receipts.) Additionally, the bill permanently disqualifies a supplier from qualifying for the exclusion if the supplier has taken, but failed to qualify for, the exclusion for three consecutive years.[11]

Property tax exemptions

The bill authorizes counties and municipal corporations to grant up to a 30-year enterprise zone (EZ) or community reinvestment area (CRA) property tax exemption to the site of a megaproject or a site owned and operated by a qualifying megaproject supplier ("qualifying site"), provided the megaproject operator or supplier, respectively, has been awarded a JCTC.[12] Under current law, EZ and CRA exemptions are generally limited to no more than a 15-year term. If either exemption is granted to a qualifying site, the property owner is required to annually certify to the county or municipal corporation that the megaproject operator or supplier holds a JCTC annual compliance certificate. If the operator or supplier does not hold such a certificate, the county or municipal corporation may terminate the exemption beginning with the tax year in which the termination decision is made.[13]

Summary of enterprise zone law

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After the EZ designation is approved by the Director of Development Services, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for tax exemptions for the development's increased property value and other incentives. In general, a school board of the district in which an EZ is located is required to approve any exemption in excess of 75% of the property's increased value or an exemption for a period of years in excess of 10.

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[10] R.C. 5751.091(A).

[11] R.C. 5751.091(B).

[12] R.C. 3735.67(D)(2), 5709.61, 5709.62(C)(4), 5709.63(B)(3), and 5709.632(C).

[13] R.C. 3735.671(C)(11) and 5709.631(B)(13).

Summary of community reinvestment area law

Ohio's CRA law authorizes counties and municipal corporations to designate certain areas as "community reinvestment areas" to encourage new construction or the remodeling of existing structures. Similar to an EZ, after a CRA is approved by the Director of Development Services, the county or municipal corporation may enter into an agreement with a business exempting the increased value of new construction or remodeling of a commercial or industrial structure in the CRA in exchange for the creation or retention of jobs at the structure. (Unlike an EZ, residential construction and remodeling may also qualify for a CRA exemption, but no agreement is required for residential exemptions.) Before commercial or industrial property may receive a CRA exemption, the exemption must be approved by the school board of the district in which the property is located, unless the exemption is for less than 50% of the property's increased value.

HISTORY

ACTION	DATE
Introduced	06-07-18

S0309-I-132.docx/ks

Senator Bob Peterson
17th Ohio Senate District

Senate Building
1 Capitol Square
Columbus, Ohio 43215
Phone: 614.466.8156
Peterson@ohiosenate.gov

Senator Stephanie Kunze
16th Ohio Senate District

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Senate Bill 309
Senate Ways and Means Committee, June 26, 2018
Sponsor Testimony

Chairman Eklund, Vice Chair Terhar, Ranking Member Williams and members of the Ohio Senate Ways and Means committee. Thank you for the opportunity to present sponsor testimony on Senate Bill 309.

Senate Bill 309 is modeled on the already existing Job Creation Tax Credit, but would expand the scope to be attractive to the very largest of large job creators. We are, in fact, calling this the MegaJobs bill. In the bill, the megaproject that brings Ohio those MegaJobs is defined as a one that: requires unique sites, extremely robust utility service, and a technically skilled workforce. The project must compensate its employees at an average hourly wage of at least three hundred per cent of the federal minimum wage, not including benefits, and the project's fixed-asset investments can equal at least one billion dollars or the project can create at least fifty million dollars in Ohio employee payroll. The term of the tax credit of the megaproject cannot exceed 30 years.

This legislation will lengthen the maximum term of the job creation tax credit for businesses making substantial fixed asset and employment investments and for their critical suppliers, authorize commercial activity tax exclusions for such businesses and suppliers, and authorize local governments to grant longer term property tax exemptions for such businesses or suppliers. In order for the company's suppliers to qualify for these tax credits, it must demonstrate that the parts provided by the supplier are a critical component of their operation and are needed to make the company operate.

To ensure that there is proper oversight, this legislation requires an annual review to ensure that the requirements are still being met in the signed agreement between the state and the project in order to qualify for the tax credits. If it is discovered that the agreement has not been met, the tax authority can cancel the terms of the agreement.

The competition between states for companies to make a massive multi-million dollar capital investment in new facilities and create thousands of new jobs is fierce. Senate Bill 309 will make Ohio more competitive for the MegaJobs that these companies bring. One of the greatest responsibilities we have in the Ohio General Assembly is to make Ohio more attractive than other states, to bring companies to set up shop, and to employ our citizens. When Ohio misses out on opportunities to create jobs, not only do our local governments miss out on new tax revenue, more importantly, Ohioans are not afforded the opportunity to be gainfully employed and provide for their families with well-paying jobs.

Chairman Eklund and members of the committee: thank you for the opportunity to present sponsor testimony on Senate Bill 309. We are happy to answer any questions that the committee might have.

CLEVELAND.COM

Cleveland's film industry could be an economic blockbuster

By Peter Krouse, cleveland.com | Posted October 04, 2018 at 01:56 PM | Updated October 05, 2018 at 11:01 AM

John Kuntz, cleveland.com

Northeast Ohio is becoming one giant movie set

CLEVELAND, Ohio - Cleveland.com is launching a series, *Steeplechase: Clearing hurdles to prosperity*, that will examine the obstacles that face promising sectors of our economy and the solutions experts think can help overcome those barriers.

We introduce the series today with a look at our burgeoning film industry and what would need to be done to make the region a hub for moviemakers and online entertainment producers. But that is just a beginning.

Our greater goal is to advance the community discussion that began this summer about boosting our economic stagnation and who needs to be included in the process to ensure that everyone benefits.

To accomplish that goal, we want to hear about other industries that could take off and become substantial job creators if given a leg up. Medical devices come to mind given Cleveland's extensive healthcare presence. Or perhaps food production in the form of urban gardens.

We want to know what growth-minded business people believe is possible and what's holding them back from realizing their dreams. So, let us know, and maybe next time we will write about your industry and its path to greater success.

John Kuntz, The Plain Dealer

Spiderman 3 being filmed in downtown Cleveland.

Why do we begin with the film industry?

Hollywood is in the business of make-believe, but its economic impact in Northeast Ohio is very real.

The film and television industry has brought more than 100 projects to town over the past decade, pumping more than $500 million into the local economy and creating the equivalent of 3,000 full-time jobs. Jobs like grips, electricians, caterers, accountants, insurance agents, drivers, medics and more.

The producers of two superhero movies from the Marvel franchise spent a combined $80 million on goods and services while on location in and around the city.

"The Avengers" was filmed here in 2011, blowing up 20-some cars along East Ninth Street in the process. And homegrown directors Joe and Anthony Russo used Cleveland to shoot "Captain America: The Winter Soldier" in 2013, which featured a memorable fight scene on the West Shoreway.

Yet advocates believe the industry could be so much more. Imagine the payoff if Hollywood's embrace of our region were to evolve into a deep and lasting relationship.

Lynn Ischay, The Plain Dealer

Make believe mayhem on East 9th Street.

The time to make our move is now.

The market for entertainment that can be streamed over the Internet is exploding and Northeast Ohio is primed to capitalize on it.

Cleveland has opened its own film school, with an experienced administrator at the helm. Graduates of that program soon will be looking to pursue well-paying jobs on the creative side of the industry.

But obstacles stand in the way of Northeast Ohio becoming the Hollywood of the Midwest and our film school grads starting their careers here rather than taking their talents to New York or Los Angeles.

A stuntman doing his thing along the West Shoreway.

One obstacle is our lack of self-promotion, according to Ivan Schwarz, CEO of the Greater Cleveland Film Commission.

Cleveland and Cuyahoga County are accommodating when it comes to finding locations for production crews and providing the necessary permits, Schwarz said, but the region fails to market its connections to the silver screen.

He suggests offering visitors location tours that show where scenes from different movies were shot. The aforementioned East Ninth Street and West Shoreway, for example, or perhaps the gas station in the Flats that featured Kevin Costner on his cell phone in "Draft Day."

The tours, and the stories visitors will share when they return home, would help cement the regions image as a place where movies get made.

Other communities are doing this to great success, Schwarz said. "You can take a 'Breaking Bad' tour in Albuquerque, New Mexico."

Ursula Coyote/Â©AMC/courtesy Everett Collection Â©AMC/courtesy Everett Collection

Bob Odenkirk (left) and Bryan Cranston in a scene from "Breaking Bad."

Who could make tours happen here? David Gilbert, president of the region's tourism bureau, known as Destination Cleveland, for one.

Gilbert told cleveland.com that he has had a conversation with Schwarz about film tourism in Cleveland, and while the idea is intriguing, he wants to research it thoroughly before making any commitment.

Gilbert said his agency does play up the "Christmas Story" house in Tremont, which equates to the "Breaking Bad" tour in New Mexico.

But Schwarz notes that very little of "A Christmas Story" was filmed in Cleveland. He would like to see more emphasis on films that were shot here extensively.

Movies such as "The Avengers," "Captain America: The Winter Soldier," and "Fast & Furious Eight" should resonate with the public, he said.

Scott Shaw

The "Christmas Story" house in Tremont.

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Manufacturing Investment Tax Credit

Background:

According to the most recent available data (2015), Ohio manufacturing is responsible for 18%, - $108 billion – of Ohio's Gross Domestic product. This is by far the largest economic segment in the state. Ohio manufacturers continually invest in new technology in order to maintain competitiveness. Often, this investment does not result in increased employment. Nevertheless, it is essential in order for Ohio's manufacturers to remain a competitive force in today's global market.

Many of Ohio's economic development efforts are directed at attracting new business or promoting job creation. While these policies are important, they ignore an important segment of manufacturing: Those existing businesses, many of them small, which continue to drive Ohio's economy. Ohio needs policies that encourage those businesses and assist them in driving investment to remain competitive.

Proposal:

The proposed manufacturing investment credit is designed to assist Ohio manufacturers, especially smaller entities that may not qualify for other existing programs such as the jobs creation or retention tax credits, as they make investment in new and more efficient technologies. Highlights of the credit include:

- For each manufacturing facility, investment is measured over a two-year period (the "Credit Period") based on purchases of new manufacturing machinery or equipment (used machinery and equipment also count when purchased from an unrelated party)
- The credit is calculated based on Eligible Purchases, defined as the amount of new manufacturing machinery or equipment that equals or exceeds five percent of the aggregate net book value of existing tangible personal property located at the facility where the purchases are to be installed as of the last day of the Credit Period
- The credit is equal to either 20 percent or 15 percent of Eligible Purchases made during the Credit Period, depending on the unemployment rate of the county in which the investment is made
- There is a $5 mm cap on the amount of the credit which applies separately to each manufacturing facility
- The credit is claimed during the two calendar years following the Credit Period
- The credit may be claimed against sales tax, use tax, or withholding tax, or any combination of the three
- The credit is not refundable

It is time to reward those persons who have persevered through adversity and who continue to invest in Ohio manufacturing. This credit does that.

October 1, 2018

VIA Electronic Mail

Ms. Laura Stanley
Ohio Department of Taxation
30 E. Broad St.
Columbus, OH 43216

Re: **OMA Written Comments to Manufacturing Rule; OAC 5703-9-21: Ohio Department of Taxation Draft Revisions**

Dear Ms. Stanley:

Pursuant to Ohio Department of Taxation's (ODT) notice issued on September 9, 2018, The Ohio Manufacturers' Association (OMA) is hereby providing ODT with written comments to Ohio's Manufacturing Sales and Use tax rule 5703-9-21.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported a reasonable, necessary and transparent state tax system that encourages investment and growth.

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 the final personal 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.

The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final personal consumption of goods and, now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed.

Ohio, like many states, continues to provide an exemption from the sales tax for purchases of tangible personal property used in the process by which tangible personal property is produced for sale by manufacturing. In Ohio this exemption was for a long time the subject of much litigation as to its application and scope.

In 1989 the legislature enacted a sweeping revision to the manufacturing exemption in an effort to clarify and reduce the amount of litigation. At the same time ODT promulgated rule 5703-9-21 which provided guidance, including examples, relating to the application of the new rule.

In the spring of 2017 ODT proposed revisions to the rule. This process represents the first time since the rule was promulgated in 1989 that changes have been proposed.

The OMA appreciates the inclusive, transparent process that the ODT created in order to work through this rule revision process. OMA offered several rounds of comments and has been pleased with the consideration given by ODT to those comments. At this time OMA has no further comments but reserves the right to comment in the future.

The OMA appreciates the opportunity to comment on this draft to Rule 5703-9-21. We look forward to working with ODT as the rule review moves forward. If ODT has any questions regarding the foregoing, please do not hesitate to contact me or OMA's tax counsel, Justin Cook at Bricker & Eckler LLP (614-227-4836).

Sincerely,

Rob Brundrett
Director, Public Policy Services

CC: Matt Chafin
CSI

5703-9-21 Sales and use tax; manufacturing.

(A) For purposes of this rule, all purchases of tangible personal property are taxable, except those in which the purpose of the consumer is to incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining or to use the thing transferred, as described in section 5739.011 of the Revised Code and this rule, primarily in a manufacturing operation to produce tangible personal property for sale.

This means that a person who buys tangible personal property and will make it a part or constituent of something that ~~he~~ is being ~~manufacturing~~manufactured for sale, or buys something that is used in a manufacturing operation, does not have to pay sales or use tax on the thing purchased.

Tangible personal property purchased by a manufacturer as a component or constituent of a product to be manufactured for sale is excepted from sales and use tax. The purchase of all such tangible personal property is not taxable, even though a portion will be lost or removed as waste or for testing. The manufacturer must pay use tax on the price, as defined in division (G) of section 5741.01 of the Revised Code, of any completed product not sold and stored or used by the manufacturer in a taxable manner, except such product that is consumed in testing or is disposed of because it is defective or otherwise unsalable.

(B)

(1) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

Tangible personal property purchased by a manufacturer for use in packaging is taxable unless exempted pursuant to division (B)(15) of section 5739.02 of the Revised Code.

Any business whose sole activity is a process that does not include conversion or alteration of tangible personal property into a different state or form is not a manufacturer and is not covered by this rule.

The manufacturing operation begins when the raw materials or parts are committed to the manufacturing process. If the raw materials or parts are stored after being received at the manufacturing facility, the raw materials or parts are not committed until after they are removed from such initial storage. The point of commitment is where the materials handling from such initial storage has ceased or the point where the materials or parts have been mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process, whichever first occurs. If the raw materials or parts are not stored, they are committed at the point where materials handling from the place of receipt ceases or where they are mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process, whichever first occurs. The commitment of the materials or parts need not be irrevocable, but they must have reached the point, after materials handling from initial storage has ceased, where they normally will be utilized within a short period of time. The point of commitment frequently will be different for particular materials and parts, since they are introduced at different times in the manufacturing operation.

Things used in any activity, including movement or storage of the materials or parts before they are committed are taxable.

See examples 1, 2, 3, 4, 6, 9, 40, 61, 63, and 64.

(2) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

This definition of "refining" describes a type of manufacturing process and is not limited to the petroleum industry. A business whose sole activity is sorting material by size or other physical characteristic, or washing dirt or other contaminates from the surface of parts or other materials is not engaged in refining.

See examples 4, 5, and 63.

(3) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

Assembly generally refers to the process whereby previously manufactured parts or components are brought together and attached to create a complete, or more complete, item.

See example 15.

(4) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale <u>and, solely for the purposes of division (B)(12) of section 5739.011, a person who meets all the qualifications of that division</u>.

(5) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.

The manufacturer does not have to own or lease the property, but must have the legal right to use it. If the property under the control of the manufacturer is not contiguous, it is not a single manufacturing facility.

See examples 21, 23, and 57.

(6) "Materials handling" means the movement of the product being or to be manufactured, during which movement <u>of</u> the product is not undergoing any substantial change or alteration in its state or form.

(7) "Testing" means a process or procedure to identify the properties or assure the quality of a material or part.

(8) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

A product may be completed, as far as a particular manufacturer is concerned, even though it is not in the form in which it will be sold to the ultimate consumer because it will be further manufactured by another manufacturer. If the product will be further manufactured by the same manufacturer at a different manufacturing facility, the product is still in-process and is not completed.

See examples 8, 13, and 64.

(9) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or pre-production storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

The continuous manufacturing operation begins at the point where the raw materials or parts are committed and ends at the point where the product is completed.

There may be several continuous manufacturing operations at the same manufacturing facility, each producing a different product.

The things used in the continuous manufacturing operation include all production machinery, the materials handling equipment that moves the product between the production machines, and any equipment, such as tanks, shelves, or racks, that temporarily store or hold the product in between production machines. Even though testing equipment used to test in-process product is not taxable under this rule, no testing procedure is part of the continuous manufacturing operation unless it is physically and functionally integrated between steps on the production line.

See examples 1, 6, 8, 11, 19, and 63.

(C) Things transferred for use in a manufacturing operation include, but are not limited to, any of the following:

(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation.

Production machinery is the equipment that actually changes the state or form of the product, that is, the tangible personal property being manufactured for sale. Also included is the equipment that treats the product by blending, mixing, measuring, washing, agitating, filtering, heating, cooling, or similar processes after the material or parts have been committed to the manufacturing operation and before the product is completed.

See examples 1, 4, 7, 8, 18, 24, 27, 32, 35, 56, 60, 61 and 63.

(2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation; or, excluding motor vehicles licensed to operate on public highways, equipment used in intraplant or interplant transfers of work in process where the plant or plants between which transfers occur are manufacturing facilities operated by the same person.

Any equipment, except motor vehicles registered for highway operation, used to move or transport the in-process product between manufacturing facilities of the same manufacturer, is considered to be used in the manufacturing operation.

See examples 1, 8, 9, 10, 11, 57, 59, 60, 63, and 64.

(3) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and that are an integral part of the manufacturing operation.

This describes those substances that do not appreciably become a component part of the product, but which usually come in contact with the product during the manufacturing process.

See examples 1, 13, 14, 28, 35, and 62.

(4) Machinery, equipment, and other tangible personal property used during the manufacturing operation that control, physically support, produce power for, lubricate, or are otherwise necessary for the functioning of production machinery and equipment and the continuation of the manufacturing operation.

Materials which are used to make foundations, supports, and other things which are incorporated into a building or structure and become accessions to the real estate may not be purchased without payment of tax under this rule. Foundations, structural steel, and similar items which provide physical support and which retain their status as personal property must be treated for purposes of taxation separately from the equipment which they support.

Foundations and supports for production machinery, materials handling equipment, and other equipment used in a continuous manufacturing operation are not taxable. Similarly, foundations and supports for tangible personal property used to manufacture tangible personal property used in the manufacturing operation, as described in paragraph (C)(5) of this rule; for testing equipment, as described in paragraph (C)(6) of this rule; and for equipment used to handle or store scrap for recycling at the same facility, as described in paragraph (C)(7) of this rule, are deemed necessary for the continuation of the manufacturing operation and are not taxable.

Tangible personal property that monitors in-process product or that lubricates, cools, monitors, or controls production machinery, materials handling equipment, and other equipment used in a continuous manufacturing operation is not taxable. Similarly, tangible personal property that lubricates, cools, monitors, or controls equipment used to manufacture tangible personal property used in the manufacturing operation, as described in paragraph (C)(5) of this rule; testing equipment, as described in paragraph (C)(6) of this rule; and equipment used to handle or store scrap for recycling at the same facility, as described in paragraph (C)(7) of this rule, is deemed necessary for the continuation of the manufacturing operation and is not taxable. However, all equipment that makes or stores records of monitoring is taxable.

See examples 1, 15, 16, 17, 18, 25, 29, 52, 55, 57, and 59.

(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale.

If a manufacturer makes an item that is used in the manufacturing operation as described in this rule, such as tools, tooling, replacement parts for machinery, or consumable substances, such as acid or solvents, the raw materials and components that go into that item are not taxable.

Certain things used by the manufacturer to make the item that will be used in the manufacturing operation are also not taxable. These things include the machinery which manufactures the item by changing the state or form of the raw materials or components, the materials handling equipment which moves the item between such machinery, and any fuel or power used to operate the machinery or materials handling equipment.

After the item is in the form in which it will be used in the manufacturing operation, any equipment that stores it or moves it to or from the manufacturing operation is taxable.

See example 18.

(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product.

The equipment and supplies that the manufacturer uses to perform testing, and tangible personal property used to physically support, control, lubricate, cool, or monitor such equipment are not taxable. Those things that are merely used in the lab or other area where testing occurs, but play no part in the actual testing procedures, such as furniture, storage equipment, and computers that record or store the test results, are taxable. The testing activity is not part of the continuous manufacturing operation unless it is physically and functionally integrated between steps on the production line. Materials handling equipment used to transport test samples is taxable. Equipment and supplies used to test fuel, consumables, equipment, or anything else that is not a raw material, the product being manufactured, or a completed product are taxable.

See examples 3, 4, 19, and 60.

(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility.

In this context, scrap is any portion or component of the product being manufactured that is removed, intentionally or unintentionally, from the manufacturing process or that is residual after the process is completed. If the manufacturer recycles the scrap back into the manufacturing operation at the same facility, the equipment which moves or stores the scrap is not taxable.

Scrap which is to be sold or to be reused as a raw material by the manufacturer at another facility, is considered to be processed in a manufacturing operation if the state or form of the scrap is changed or altered. In such a case, the scrap, as it is removed from the manufacturing operation, is a raw material and the equipment which transports or stores it before it is committed to the operation where it undergoes manufacturing is taxable. After such manufacturing is over, the processed scrap is a completed product.

See examples 22 to 24, 47, and 61.

(8) Electricity, coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; and machinery, equipment, and other tangible personal property used to treat, filter, pump, alter voltage, or otherwise make the substance suitable for use in the manufacturing operation.

Anything that is a fuel or a source of power for machinery used in the manufacturing operation, or that provides energy for the manufacturing process itself, is not taxable. Similarly, substances which transmit energy, such as steam or cooling water which transmits heat to or from the process or machinery, are not taxable. Any equipment that the manufacturer uses to generate, produce, or extract these substances, as well as fuel used to power such generation or extraction, is not taxable.

Tangible personal property which treats the fuel or power is not taxable. Such things may include coal crushers, electrical transformers, fuel or water filters, and water treatment chemicals.

See examples 22 to 32, 59, and 64.

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation.

Such equipment includes wires, conduit, pipes, larry cars, and conveyors.

See examples 12, 22 to 32.

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility.

See examples 1, 20, 33, 34, 35, 36, 37, and 64.

(11) Parts, components, and repair and installation services for items used in the manufacturing operation as described in paragraph (C) of this rule.

Replacement parts for nontaxable equipment are not taxable. Any repair service or installation service purchased from an independent contractor for repairing or installing nontaxable equipment is not taxable.

See examples 38, 44, 55, and 56.

(12) Machinery and equipment, detergents, supplies, solvents, and any other tangible personal property located at a manufacturing facility that are used in the process of removing soil, dirt, or other contaminants from, or otherwise preparing in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads, or other similar items, to be supplied to a consumer as part of laundry and dry cleaning services as defined in division (BB) of section 5739.01 of the Revised Code, only when the towels, linens, articles of clothing, floor mats, mop heads, or other similar items belong to the provider of the services.

(13) Equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce milk, ice cream, yogurt, cheese, and similar dairy products for human consumption.

See examples 63 and 64.

(D) Things transferred for use in a manufacturing operation do not include:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record keeping, ordering, billing, or similar functions.

Those things that are used in the "non-manufacturing" aspects of the manufacturer's business are generally taxable. This includes what is broadly known as office equipment, furniture, and supplies. Anything, including computers and software, used for communication, ordering, billing, inventory control, or record keeping, including testing or production records, is taxable.

Things used in providing security include devices to monitor or observe personnel or detect intruders.

See examples 7, 15, 16, 19, 39, and 55.

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form.

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility.

(4) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation.

All types of storage, be it of raw materials or parts, product (except in-process product), completed product, consumables, fuel, waste, scrap, equipment, tools, supplies, repair parts, etc., is taxable.

Similarly, anything used to handle, move, or transport people or personal property in the manufacturing facility is taxable, except for materials handling during a continuous manufacturing operation or during the manufacture of an item which will be used in the manufacturing operation, as described in paragraph (C)(5) of this rule, or the transmission of fuel, power, and similar substances as described in paragraph (C)(9) of this rule.

See examples 1, 2, 3, 4, 6, 9, 11, 20, 37, 40, 41, 42, 43, 44, 47, 59, 60, 61, and 64.

(5) Tangible personal property that is or is to be incorporated into realty.

Any tangible personal property that will become part of the real estate is taxable under this rule.

See examples 32, 45, and 46.

(6) Machinery, equipment, and other tangible personal property used for ventilation, dust, or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur.

All equipment and supplies that monitor, regulate, or improve the environmental conditions in the manufacturing facility are taxable. This includes all lighting, heaters, air conditioning equipment, fans, heat exhaust equipment, air make up equipment, dust control or collection equipment, and gas detection, collection, and exhaust equipment. This should not be read to change the traditional classification of real and personal property.

The only exception to the taxing of these items is equipment which totally regulates the environment in a special and limited area of the facility, such as a clean room or paint booth, where such total regulation is essential for production to occur. Even in such a special area, things that do not provide essential environmental regulation, such as safety or communication equipment, are taxable.

See examples 7, 47, 48, ~~and~~ 49, and 54.

(7) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation.

Protective clothing and devices, such as safety shoes, gloves, earplugs, hard hats, respirators, first aid supplies, etc. are taxable. Similarly, equipment installed to protect workers or shield them from harm is taxable, unless it is made a part of machinery or equipment used in a continuous manufacturing operation.

Equipment and supplies used to detect, extinguish, prevent, cure, or mitigate fire, explosion, flood, or other calamity in the manufacturing facility are taxable.

See examples 9, 43, 50, 51, 52, ~~and~~ 53, and 54.

(8) ~~Machinery, equipment, and other tangible personal property used for research and development.~~

~~See examples 18 and 54.~~

~~(9)~~ Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility.

Tools, equipment, and supplies made or purchased by the manufacturer for use in maintaining, installing, repairing, or cleaning its property, real or personal, are taxable. This includes any such items used on nontaxable equipment. This does not apply to repair or replacement parts or supplies which are taxable or not, depending on the taxability of the equipment into which they are installed.

See examples 32, 55, 56, and 58.

~~(10)~~(9) Motor vehicles registered for operation on the public highways.

See examples 21, 57, and 63.

(E) For purposes of this rule, any tangible personal property used by a manufacturer in both a taxable and a nontaxable manner shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the tangible personal property consists of fungibles, they shall be taxed upon the proportion of the fungibles used in a taxable manner.

See examples 19, 25, 59 and 64.

(F) Persons whose only activity is printing and whose product produced for sale consists wholly of printed matter are not manufacturers under this rule. The taxability of things used by printers must be determined pursuant to division (E)(8) of section 5739.01 of the Revised Code.

If a portion of a manufacturer's manufacturing process involves printing, the taxability of the tangible personal property primarily devoted to the printing operation shall be determined pursuant to division (E)(8) of section 5739.01 of the Revised Code.

(G) Nothing in this rule restricts or denies any exception or exemption that may be available to a manufacturer under other provisions of the sales tax statutes or rules of the tax commissioner.

EXAMPLES

Example 1

A steel manufacturer galvanizes its flatroll steel to provide its customers with a corrosion resistant product. Through electrolysis and a recirculating zinc solution, zinc is chemically bonded to the steel. Recirculation of the zinc solution involves an intricately-woven system of fibrecast pipes, pumps, dissolution tanks, and electrolytic recirculating tanks, all of which are controlled by computers. As with many other types of manufacturing-related equipment, the size, weight, and configuration of these items require special foundations and supports. The entire system provides the necessary recipe and volume of solution for precise applications of zinc in a high velocity rolling mill.

* The zinc solution is a raw material which becomes a component of the completed product.

* The solution in which the zinc is dissolved is a consumable that interacts with the product and is not taxable.

* The piping system, dissolution tank, pumps, and electrolytic holding tanks are all used in a continuous manufacturing operation and are not taxable.

* The computers are used to control production machinery and in-process materials handling. The foundations and structural supports similarly are used in connection with production machinery. Therefore, these items are all not taxable.

Example 2

A manufacturer of concrete owns a ready-mix batch plant. Cement and aggregate are purchased from and delivered by outside suppliers. Cement is removed from delivery trailers by a vacuum system, which deposits the cement in a storage silo. Aggregate of particular sizes is delivered by dump trucks. The aggregate is stored in piles, segregated by size. As needed, cement is removed from the silo by screw conveyor and batched into a mixing drum. Aggregate is moved from the proper pile(s) by a front loader, which deposits the aggregate on a belt conveyor which lifts the stone up and into the mixing drum.

Water is added into the drum and mixing commences. After a short time, concrete is discharged into mixer trucks. The mixing drums on the trucks operate via power take off from the truck engines. The concrete continues to be mixed as the trucks deliver it to the customer. One hundred per cent of this batch plant's output is sold to others by the manufacturer.

* The cement and water are committed to the manufacturing operation at the mixing drum. The cement vacuum system, storage silo, and screw conveyor are taxable.

* The aggregate is committed to the manufacturing operation when materials handling (via the front loader) from initial storage ceases and the aggregate is deposited on the conveyor which deposits it into the mixing drum.

* The aggregate conveyor and mixing drum are not taxable.

* The manufacturing operation continues in the mixer truck and is not completed until the concrete is discharged from the truck's mixer. Because the truck's mixer operates by power take off from the truck engine, the entire vehicle is production machinery and is not taxable.

Example 3

A secondary smelter of aluminum uses a scale as part of an automated process which measures out quantities of purchased aluminum scrap for use in the casting process in the foundry. The aluminum is delivered to the scale by a crane which removes the material from storage and puts it into a hopper which feeds the scale.

* The aluminum scrap is a purchased material, not scrap which is generated at this manufacturing facility; therefore, the equipment for its storage and handling are taxable. This includes whatever storage facility is set up for it and the crane.

* Because the raw material is committed to the manufacturing process at the hopper, neither the hopper nor the scale is taxable.

Example 4

An oil refinery obtains supplies of raw crude from numerous sources. It stores this crude in various tanks, withdrawing samples from each so that, in a laboratory in another part of the plant, it can conduct tests to determine the composition of each lot. Subsequently, various crude is metered and piped to another tank for blending to meet process specifications. Thereafter, the blended crude is desalted to remove impurities such as bottom sediments and water, and then is pumped to a preheat furnace to commence the distillation process.

* The storage tanks in which the raw crude is placed upon receipt are taxable. The fact that the tanks store the crude while laboratory tests are being conducted upon the samples makes no difference to the status of these tanks.

* The meters and piping used to transport the raw crude to the blending tank are not taxable from the point of metering. The crude is committed to the manufacturing process when it is metered after initial storage.

* The equipment used to blend the crude is not taxable as the crude has been committed to the manufacturing process.

* The storage and handling equipment used after the blending tank is not taxable.

* The desalting equipment and preheat furnace treat the crude in preparation for the manufacturing operation after ~~is~~it has been committed to the process and are thus not taxable.

* The equipment used to test the raw crude is not taxable.

Example 5

A cement manufacturer purchases limestone which is stored in piles at its facility. Prior to committing the limestone to the process, the manufacturer periodically hoses down the limestone to keep down the dust.

* This activity does not constitute refining. Consequently, the hose and other equipment used to hose down the pile would be taxable.

Example 6

A manufacturer makes roofing shingles. It first makes a paper felt. This is passed through a saturator tank which contains asphalt that has been heated with steam to a very high temperature. This saturates the felt with the asphalt. The saturated felt is coated with granite dust; colored granules are then applied to one side and talc to the other. The material is then cooled and either cut to size or rolled up for shipment.

The colored granules are placed in storage when they are purchased. When they are to be used, they are transported to the blending box, where different colors are mixed together and applied to the roofing material. The purchased talc is also placed in a storage tank and then is transported to the manufacturing line by a series of pneumatic handling devices, which deposit it into a hopper over the production line. It then falls onto the shingle material passing underneath the hopper.

* The storage facilities for the granules and talc are taxable as they are storing raw materials which will be incorporated into the product.

* The handling devices for both the granules and talc are also taxable as they are handling raw materials from their initial storage and before they are committed to the manufacturing process.

* The blending box is the point at which the processing involving the colored granules begins, as the granules are mixed and applied to the roofing material at that point. It is therefore not taxable.

* The talc hopper is also not taxable as it is the point where handling from initial storage has ceased and the material is committed to the manufacturing process.

Example 7

A paper manufacturer makes special paper for use in full color photocopying. The process to apply the paper coating must be done in a dust and pollution free environment. Rolls of paper are passed through a machine where the coating is applied and dried. This process occurs in a clean room, which is separated from the rest of the plant by airtight partitions and ceiling coated with an easily cleaned plastic. Three of the walls and the ceiling are free standing and not part of the walls and ceiling of the building itself; the fourth wall, however, is a section of a wall of the larger structure. Employees can only enter the clean room through two airlocks, which prevent dirty air from entering. All air is filtered and regulated as to temperature and humidity by heat pumps, electric heaters, dehumidifiers, and exhaust fans that serve only the clean room and maintain a positive air pressure in the room. This equipment is automatically controlled by a small computer using data from air monitoring sensors in the room. Employees must wear disposable paper coveralls, overshoes, and caps. The room has an intercom to minimize personnel traffic in and out of the room. Lighting in the room is by normal fluorescent fixtures attached to the ceiling.

* The paper coater is production machinery and is not taxable.

* The clean room, including the heaters, heat pumps, light fixtures, etc., remains tangible personal property, since its special use primarily serves the business rather than the real estate.

* Since the clean room provides environmental regulation in a special and limited area, and such regulation is essential for the manufacturing to occur, it is not taxable. This includes the partitions and ceiling, airlocks, heat pumps, heaters, dehumidifiers, exhaust fans, ductwork, air monitors, lights, regulating computer, and the special clothing used by the workers to prevent product contamination within the room.

* The intercom is taxable.

Example 8

In manufacturing glassware, molten glass is dropped into molds in a forming machine, where it is spun into the desired form. The formed glassware is released from the molds onto a conveyor where it gradually cools. The conveyor enters and annealing lehr which tempers the glass. From annealing, the glassware moves on a long conveyor which again allows it to cool. The glassware is then sprayed with silicone which makes it scratch resistant.

* The manufacturing operation ends with the silicon sprayer.

Example 9

A manufacturer purchases castings which will be a component part of the manufacturer's product. The castings are received on trucks in metal boxes on pallets. The pallets are unloaded by forklift and placed in racks in the receiving area of the warehouse. As they are needed, a pallet is removed from storage by a different forklift and moved to a cleaning process. A worker removes the castings from the box by hand, placing them in a wire basket that is attached to a counterweighted arm which allows the worker to lower the basket into a tank containing chemicals which remove dirt, grease, and similar contaminants. After dipping, the worker, who wears rubber gloves ~~to protect her hands~~for hand protection from the strong chemicals, places the castings on a conveyor which moves them to a grinding operation.

* The holding of the castings after receipt is initial storage. Both forklifts and the storage racks are taxable.

* The castings have been committed to the manufacturing operation when deposited by the second forklift at the washing operation. The chemicals, dip tank, basket, and arm are not taxable, since they treat a component part after materials handling from initial storage has ended.

* The conveyor that moves the castings to the first production machine (the grinder) is not taxable because the continuous manufacturing operation began at the dip tank.

* The rubber gloves used to protect the worker are taxable.

Example 10

A manufacturer of clay pipe uses forklift tractors to transport the pipe from the machine in which it is formed to the kiln.

* The forklift tractors are used to handle an in-process product and are are not taxable.

Example 11

A petroleum refinery produces an intermediate feed, such as naphtha, which is temporarily stored. It eventually will be further processed into a completed product which will be sold.

* The equipment used to transport the feed to and from the storage tank, as well as the storage tank, are used to handle an in-process material and are not taxable.

Example 12

Water purchased from a public utility is used by a refiner to quench (cool) a gaseous product stream flowing from a distillation tower so as to lower its temperature or convert it to a liquid for further processing. Since the water does not touch the product directly, it does not need any treatment to make it suitable for use in the manufacturing operation.

* The water is used in the manufacturing operation. Any equipment used to handle it from the point where it enters the manufacturing facility is not taxable. Any piping from the utility supply line is therefore not taxable.

Example 13

A steel fabricator purchases coil steel. After the steel is committed to the manufacturing operation, it is dipped in solvent to remove dirt, oil, and grease. It is then further cleaned by dipping in an acid bath. After fabrication is completed, the steel is sprayed with oil to prevent formation of rust on the surface of the product. After the oil spray, the steel is transported to the truck dock for loading and shipping.

* The solvent and acid are consumables used to prepare the product during the manufacturing operation and are not taxable.

* The spraying of the protective oil on the completed product constitutes the end of the manufacturing operation.

* The oil is a consumable which interacts with the product and is therefore not taxable.

Example 14

A catalyst is used by a chemical manufacturer to facilitate or cause a reaction between other chemicals during the processing operation.

* The catalyst interacts with the product, is an integral part of the manufacturing operation, and is therefore not taxable.

Example 15

At a motor vehicle assembly plant, the manufacturer uses a bar code system to track the flow of components. As components are received from other manufacturing facilities or outside suppliers, a bar code label is attached and then scanned with a wand to record it in the plant mainframe computer, along with pertinent data keyed in by the employee to identify the part. This computer is also used for various administrative functions. It does not control the assembly line. Particular components are assigned to particular vehicles, in order to assemble vehicles conforming to those ordered by dealers, etc. After the vehicle is fully assembled, an employee scans all labels. A printout is made that permits a comparison between what components were supposed to be included in each vehicle and which components actually were assembled. The label on the emissions equipment is also scanned prior to emissions testing, in order to record the component in the emissions test data base. Purchases include labels, label printers, scanners, printers, computer terminals, and equipment to interface with the plant mainframe.

* This bar code system is primarily used to monitor the progress of the product in the continuous manufacturing operation. The labels and scanning wands are not taxable, except for first scanner and the scanner used prior to emissions testing. The first scanner is used to record a part in inventory and is therefore taxable. The scanner prior to emissions testing is taxable because the vehicle is completed before it is used. The scanner is not testing equipment.

* Since the bar code labels are used in the manufacturing operation, the label printers are not taxable.

* The computer terminals allow employees to monitor the progress of the scanned parts and are not taxable.

* The equipment that interfaces with the mainframe computer is taxable. The computer printers, similarly, produce records of the information and are taxable.

Example 16

The functioning of the melt furnace in a glass manufacturing facility is monitored and controlled from an operator's booth, which is on a raised platform about fifty feet from the furnace. Heat sensors in the furnace are wired to the control booth, where the temperature data is drawn on a continuous graph. The operator watches the graph and can adjust the furnace by altering the flow of fuel (natural gas) or oxygen, batch material proportions, or by adjusting the flue in the furnace stack.

* The sensors in the furnace monitor production and are not taxable.

* The control booth and the equipment and controls in it are not taxable.

* The temperature graphing device which records the temperature data is taxable since it functions as a recordkeeping device.

* The platform that supports the control booth is not taxable, since it supports the operator of production machinery.

* The furnace stack and flue assembly within the stack are not taxable, since they provide regulation of the furnace temperature.

Example 17

A manufacturer of high technology electronic equipment provides its workers with microscopes which enable them to manipulate the components as they are assembled into the product.

* The microscopes are not taxable because they are necessary for the continuation of the manufacturing operation.

Example 18

A castings manufacturer upgrades its foundry by installing a new computer controlled mold maker and an automatic caster. Because of their size and weight, both machines require special concrete foundations. Casting sand is blended to proper consistency with water and certain chemicals in a muller. An auger moves the sand to a feed bin attached to the mold maker. Molds are made automatically in accordance with computer instructions. The instructions for each job are developed in the engineering shop using a microcomputer and software which was purchased from the manufacturer of the mold making equipment. The instructions are placed on a computer disk which an employee carries to the computer that controls the mold maker. The completed molds leave the molder on a conveyor which moves them to the caster.

* The mold maker and its foundation are not taxable, since the molds are used in manufacturing the product for sale. The nontaxable equipment includes everything from the sand muller to the exit of the molds from the mold maker.

* The computer that controls the molder is not taxable.

* The purchased software and the computer in the engineering shop are taxable, since they do not actually control the machinery.

* The conveyor that moves the molds from the mold making process is taxable, since the molds do not enter the manufacturing operation until they reach the caster.

* The caster is production machinery. The caster and its foundation are not taxable.

Example 19

A paint manufacturer makes paint pursuant to customer specifications. After a batch is finished, a sample is ladled into a quart jar and taken to the lab for testing to assure adherence to the customer's specs. In the lab, twenty cubic centimeters are placed in a beaker which is then placed in a centrifuge. After centrifuging, the separated components of the paint are examined under a microscope for content. The test results are manually entered into a computer. The computer generates a printed report and a label, both listing the test results and other information about the particular paint batch, e.g., name of customer and date of manufacture. The label is attached to the quart jar which contains the remainder of the paint sample. The jar is placed in a storage cabinet where it is retained for five years.

* The testing procedure assures the quality of the completed product and the equipment which is used in conducting the testing is not taxable. This includes the centrifuge, beaker, and microscope.

* The ladle, quart jar, and the storage cabinet are not used in testing nor in any other aspect of the manufacturing operation and are taxable. In addition, the quart jar and storage cabinet are used primarily in a function related to storage, record-keeping, and therefore are taxable.

* The computer, computer printer, and jar label are used only to record the test results and are taxable.

Example 20

A manufacturer operates a job shop foundry where it melts ingots of raw pot metal in an electric furnace. The molten metal is poured into jacketed molds, through which water is circulated to speed up the cooling and solidification of the metal. The water is pumped from a tank, chemically treated, and conveyed by pipes to the molds. The heated water is filtered and pumped from the molds to an outside cooling tower and then returned to the same tank. Make-up water is pumped from a well on premises into the tank. The treatment chemicals are stored in liquid form in a tank, from which they are pumped and metered.

* The furnace and molds are part of the continuous manufacturing operation and are not taxable.

* The water is an energy transmitting substance since it removes heat from the manufacturing operation. The water treatment chemicals, water pumps, pipes, well and cooling tower are not taxable. Since the water tank is part of the recirculation system, it also is not taxable.

* The chemical storage tank, meter, and pump are taxable, since they are merely storing or handling consumables prior to their initial use in the manufacturing operation.

* Since the trucks are registered for highway use, they are taxable.

Example 21

A large manufacturing facility is located on three hundred fifty acres of land on the outskirts of a large metropolitan area. The production machinery and equipment is spread over several miles. The plant property is divided at various points by a river, a railroad, and a public highway. Work in process is moved from one production phase to another by large licensed trailer trucks. A private bridge was constructed to cross the river, a tunnel was constructed under the railroad, and the trucks cross the public highway.

* This property is contiguous since the separations are only public or private rights of way and not land used for other public or private interests.

* Since the trucks are registered for highway operation, they are taxable.

Example 22

A plastics manufacturer uses injection molds to form the product. Excess plastic trim is knocked off the molds and collected on a conveyor. The conveyor moves the trim to a grinder where it is reduced in size. Another conveyor moves the plastic to a regrind bin where it is stored until needed. The reground trim is manually removed from the storage bin in hoppers and added, in certain proportions, to the purchased plastic pellets in the feed bins for the mold injection presses.

* Since the trim is recycled back into the manufacturing operation, the entire process of collecting, transporting, regrinding, and reintroducing the trim is part of the manufacturing operation and not taxable. The regrind storage bin is holding in-process product between stages of production and is not taxable.

Example 23

A steel manufacturer operates two plants. Plant A produces basic steel in a BOF furnace and has bar and hot rolled strip steel producing lines. Plant B, located several miles away, produces cold rolled strip coils. All production lines produce steel scrap in the form of trimmings or defective product. At plant A, scrap from both lines is chopped to size and taken to a storage area. When needed it is added back to the furnace to be again used in steel production. The scrap from plant B is chopped to size and taken to plant A where it also is used to make new steel.

* Since plants A and B are not contiguous, they are separate manufacturing facilities.

* Since the scrap at plant A is returned to the furnace, all items of property used to handle and store the scrap are not taxable.

* The equipment used to handle and transport scrap produced at plant B is taxable since the scrap is transported to plant A for reuse.

* Since the choppers at both plants change the form of the scrap, they are not taxable.

Example 24

During paper manufacturing, the fibers that will comprise the finished paper product are put into a water solution. The water is drawn by an intake pipe and pump from a river that flows next to the manufacturing facility. The water is filtered and chemically treated and pumped into the hydropulper where it is combined with wood chips and other fiber source material. The resulting slurry is pumped to a fourdrinier which removes most of the water by means of vacuum pumps. The water so removed, as well as slurry that otherwise escapes the process is collected, since it contains usable fibers. This slurry is returned to the hydropulper by pumps and pipes.

* The water is a consumable that is used in the manufacturing operation. The river intake, pumps, filter, and chemicals are not taxable since they either treat the water or transport the water from the point of extraction at the river.

* The hydropulper and fourdrinier are production machinery and not taxable.

* The slurry recovery and recirculating is part of the manufacturing operation, since it recycles the product back into the manufacturing operation at the same manufacturing facility. The pumps and piping are not taxable.

Example 25

A plastics manufacturer generates steam in coal-fired boilers. Eighty-five per cent of the steam is used to heat reactor tanks, in which the first step in the manufacturing operation takes place. An insulated steam line carries the steam from the boiler to the reactor vessels. Fifteen per cent of the steam is diverted from the main steam line to heat the buildings in the manufacturing facility.

The coal purchased to fire the boilers is received at a river dock. The coal is unloaded from barges by a crane and is moved from the dock by a conveyor belt to a conical storage tower. As needed, the coal is pushed by a small bulldozer into a feed bin, which dumps the coal onto another conveyor belt which moves it to a coal pulverizer. A screw conveyor moves the pulverized coal from the pulverizer to a storage bin. Another screw conveyor removes the pulverized coal from the bin and a forced air system injects it into the boiler combustion chamber. The rate of injection is computer controlled.

Water for the boiler is pumped from the river, filtered, chemically treated, and stored in a water tank outside the boiler building. As the water is pumped from the storage tank, additional chemicals are added. Both the water and the air used to inject the pulverized coal are preheated by means of a heat exchanger in the boiler exhaust stack.

* Eighty-five per cent of the coal and boiler water chemicals are not taxable, since eighty-five per cent of the resulting steam is used in the manufacturing operation.

* The boiler and main steam line, including the latter's insulation, are not taxable, since a majority of the steam is consumed in the manufacturing operation. The line which carries steam for building heat is taxable.

* The coal unloading and handling equipment and the pulverizer are not taxable. The conical storage tower and the pulverized coal bin are taxable, since they merely store the coal.

* The forced air pulverized coal injection system is not taxable.

* The river water inlet, pumps, lines, filters, and treatment chemicals are not taxable. The water storage tank is taxable.

* The boiler exhaust heat exchanger is not taxable.

* The computer that controls the pulverized coal injection is taxable.

Example 26

A manufacturer of ready-mix concrete uses a steam generator to heat water which is used in mixing and warming component materials in the manufacture of ready-mix concrete. The concrete is sold to construction contractors and other consumers.

* The water is not taxable, as it transmits heat used in the manufacturing operation and becomes part of the product produced for sale.

* The generator is not taxable as it makes the water suitable for use in the manufacturing operation.

Example 27

A manufacturer of extruded rubber products uses injection molding machines to force rubber through dies in order to form the desired shapes. The molding machines are operated by compressed air. The air compressor is fed air from an air dryer. The dryer is necessary to keep moisture out of the air compressor lines and production machinery.

* The injection molding machines are not taxable as they are production machinery which act upon the product.

* The air dryer and compressor are not taxable because they make the air used to power the molding machines suitable for use in that function.

Example 28

A steel manufacturer uses coke in the production of iron. Coke is a fuel which provides some of the heat required for smelting and it is also the source of carbon, a necessary ingredient in the manufacture of steel, which dissolves into the hot metal.

Coke is manufactured from metallurgical grade coal in a coke plant. The coal is crushed, blended (high and low volatile coals are mixed) and transferred to the ovens by means of conveyor systems. The crushed, blended coal is placed in a larry car which runs across the top of the coke ovens and charges the coal into the ovens. The coke battery consists of a series of ovens lined with refractory brick which bake the coal to produce coke. The coke battery is built from the ground up and does not have a separate foundation.

* The coke battery and the coal crushing, blending, and charging systems, and larry cars are not taxable.

Example 29

A manufacturer buys a new coal pulverizer. The coal is fed to a boiler to produce steam to generate electricity to power equipment used to manufacture products.

* The pulverizer is used to make the coal suitable for use in the manufacturing operation and is not taxable.

Example 30

A boiler is used to produce steam which primarily operates machinery and equipment used in the manufacturing operation. Other equipment feeds water into the boiler. This includes items such as pumps and a piping system. There is also a system which filters and treats raw water drawn from a creek running through the manufacturing facility.

* The boiler is used to produce power for the manufacturing operation and is therefore not taxable.

* The water is used to transmit energy to the manufacturing operation and is not taxable.

* The piping, pumps, filters, and water treatment equipment are not taxable.

Example 31

A manufacturer installs an electrical distribution system, including generators, transformers, electrical switchgear, cable and related equipment. The electricity is used solely to produce and supply electricity to the manufacturing operation.

* The entire electrical generation and distribution system is not taxable.

Example 32

A manufacturer of specialty coil steel products uses natural gas to heat annealing furnaces. The furnaces heat treat the manufacturer's product and are part of the continuous manufacturing operation. In a field owned by the manufacturer and adjacent to the plant, the manufacturer drills two natural gas wells, using a drilling rig, trencher, and various other tools, and installs drips, pumps, and transmission lines to provide gas for these furnaces. The manufacturer also installs a gas line connected to the local utility company line through which purchased gas is piped for heating the buildings in the manufacturing facility. A branch line connects this purchased gas line to the line going from the wells to the annealing furnaces, in order to supplement, if necessary, the gas produced from the wells. One hundred per cent of the well-produced gas is burned in the annealing furnaces. No more than twenty per cent of the purchased gas is burned in the furnaces.

* The line connected to the utility's line is incorporated into the real estate, since it primarily carries gas to heat the buildings. The wells, pumps, transmission lines and associated equipment, and the branch line remain personalty, since they carry gas for use in the manufacturing operation only.

* The wells, pumps, transmission lines and associated equipment, and the branch line are part of the manufacturing operation and are not taxable since they are extracting and transporting fuel used in the manufacturing operation.

* The material for the line connected to the utility's line is taxable.

* The drilling rig, trencher, and other tools used to install the well and gas lines are taxable.

Example 33

A manufacturer purchases pumping and filtering equipment and related tanks and tubing to supply lubricating and coolant fluids to drilling and cutting machinery. This equipment is used to recirculate the fluids so that they may be reused in the manufacturing operation.

* As the fluids are being treated for reuse in the manufacturing operation, the equipment which moves and treats the fluid is not taxable.

Example 34

A manufacturing operation uses water as a coolant in its production operation. The water is continuously recirculated in a closed system. The recirculation system includes a cooling tower and related pumps and piping.

* As the water is a substance used in the manufacturing operation, the recirculation system equipment is not taxable.

Example 35

The production of flatroll metal products requires that an oil mixture, which serves as both a rolling lubricant and a coolant, be continuously sprayed on sheets in the rolling mill. Spent oil is simultaneously removed and passed through a filtering process which is interconnected with the rolling mill, after which the oil is resprayed onto the sheets.

* The rolling mill is a production machine and is not taxable.

* The oil filtration machinery treats the oil for reuse; therefore, this equipment is not taxable.

Example 36

A manufacturer of truck and tractor engines uses what are known as wet machines in its engine head and block assembly lines. These machines require the presence of a liquid coolant to operate. In the absence of such a coolant the machines would heat up rapidly, ultimately destroying the tool and the part being machined. Therefore, the interface between the tool and the block or head is flooded by spraying it with liquid coolant, a water soluble oil.

In order to save on the expense of the oil, the manufacturer devised a system to recapture the used liquid. After the coolant is sprayed on the component, it drops through a funnel-like chamber into an underground trough. The coolant collects in a u-shaped channel along with the scrap metal chips and dust produced by the machining operations. The coolant is conveyed through the underground trough by means of air pressure to a collecting tank outside the plant where a conveyor lifts the bigger chips from the coolant. These chips then enter a chipwringer which wrings out excess coolant. From the tank, the coolant is pumped back into the plant through a series of pipes. Along the way, it passes through a series of filters which removes any remaining metal particles. Thereafter the coolant is returned to the machining lines where the process begins anew.

* The entire recirculating system is not taxable. The oil is used in the manufacture of the engine heads and blocks. The recirculating system is used to filter this oil to make it reusable for the manufacturing operation. The substances are in fact intended for reuse and not for disposal or sale.

Example 37

A producer of alloy steel uses an acid solution to pickle its products. The pickling process removes scale. After pickling, the used acid is filtered to remove impurities. The filtered solution is then pumped into a tank where pure acid is added to the solution in order to raise the acid content. From this tank, the solution is pumped and piped into the pickling tanks. After the acid is reused a certain number of times it can no longer be purified and strengthened sufficiently to be economically useful. It is therefore transported through a series of pipes to an acid disposal plant, where the acid is neutralized by mixing it with lime in a tank designated the neutralizing tank. The mixture is then pumped into a sludge pond.

* The acid solution would not be taxable as it interacts with the product. The pickling tanks are production machinery and thus also not taxable.

* The pipes from the pickling tanks through the filtration system are not taxable, as this is a treatment system which makes a substance used in the manufacturing operation reusable, and the substance is in fact intended for reuse.

* The piping system used to transport the spent acid to the acid disposal plant, the pump into the neutralizing tank, the tank itself, the lime, and the pumps and pipes used to dispose of the neutralized solution are taxable under this rule as at this point the substance is not intended for reuse.

Example 38

An automobile manufacturer has a plant which stamps out steel to make automobile body parts. The manufacturer employs an engineering firm to procure and generally oversee the installation of a cold press machine which presses sheet metal into doors. The engineering firm contracts out the labor for installation of the piece of production machinery in the manufacturer's plant. The contractor which installs the machine bills the manufacturer directly.

* The charges from the contractor for the services to install the machine are not taxable as they involve the installation of an item used primarily in a manufacturing operation to produce tangible personal property for sale.

Example 39

A manufacturer builds and furnishes a new administration building. The building contains offices for executives and the personnel and accounting department. The manufacturer leases a computer to process personnel, payroll, accounting, and billing information.

* All office equipment and furnishings located in the administration building are taxable.

* The computer is taxable.

Example 40

A food processor has an automated batch system for dry ingredients. The ingredients are received from outside suppliers on pallets in bags, cartons, paper drums, etc. They are moved from the receiving warehouse area by forklift, which deposits the pallets near the dry batch mixer. Some ingredients are dumped by employees directly into the mixer. Some are dumped into feed bins which discharge directly onto a scale. The proper amount of ingredient per batch is programmed into the scale by an employee. The scale controls the feed bins, opening them in turn and shutting them when the proper weight is reached. The dry ingredients are mixed and discharged by a covered conveyor to the next stage, where water is added.

* The dry ingredients do not undergo a change in state or form until mixed with water; however, the manufacturing operation begins as to the dry ingredients when they are dumped into the feed bins or directly into the dry batch mixer, since they have been committed to the manufacturing operation when the materials handling (via the forklift) from the warehouse ceases. Thus, the bins, mixer, and scale are not taxable.

* The forklift is taxable.

Example 41

A manufacturer uses a forklift primarily to move finished goods from a storage warehouse and load them on trucks for shipment to customers.

* The tangible personal property in the warehouse and the forklift are taxable, since they are storing or handling a completed product.

Example 42

A manufacturer purchases storage equipment for the purpose of storing raw materials prior to commitment to the manufacturing operation includes tanks, racks, holding bins, and similar equipment.

* Such storage equipment is subject to tax.

Example 43

A fiberglass manufacturer generates fiberglass waste as part of its manufacturing process. The waste is collected in various ways, including a vacuum system with collection hoses that permit workers to clean up small particles. The vacuum system deposits the fiberglass into a holding bin. Larger pieces, including rejected material that fails quality assurance testing, is transported in skid boxes by lift truck. All waste fiberglass is baled and transported by the manufacturer's trucks to a landfill for disposal. All employees in the plant are required to wear masks to prevent them from inhaling glass fibers.

* Since the waste fiberglass is not sold or recycled by the manufacturer, the baler and all of the handling equipment, including the vacuum system, is taxable.

* The protective masks worn by the employees are taxable.

Example 44

Replacement parts for production machinery are kept in storage bins in the plant storeroom.

* While the parts are not taxable, the storage bins are taxable.

Example 45

A manufacturer has its employee parking lot repaved. It separately purchases the required materials and contracts the labor.

* The materials incorporated into the parking lot are taxable as the lot is real property. The labor is not taxable as it pertains to an improvement to realty. Had the manufacturer entered into an agreement whereby the contractor provided both material and labor, there would be no direct tax consequences to the manufacturer.

Example 46

A manufacturer purchases a heating system and other related parts to be incorporated into a manufacturing facility. The heating system will provide heat and serve solely for the building.

* The heating system and all related parts purchased will be taxable since it is used to produce heat for the building and not used in any manufacturing operation.

Example 47

A manufacturer of unassembled furniture has an extensive dust collection system throughout the manufacturing facility. Collecting units are located over the boring mills, saws, edgebanders, planes, and other places in the plant. Fans and ductwork exhaust the dusty air through a series of filters. The saw dust falls from the filters into movable hoppers. These hoppers are periodically dumped into a mixer, where the saw dust is blended with a small amount of liquid adhesive. The mixture is removed from the mixer by a screw conveyor to a press which forms it into briquettes which the manufacturer sells. The briquettes fall onto a conveyor belt which moves through a heat tunnel which causes rapid drying.

* The entire dust collection system is taxable, since it provides environmental control throughout the entire manufacturing facility.

* The portable dust hoppers are taxable, since they are handling a waste product.

* The adhesive, mixer, screw conveyor, press, belt conveyor, and heat tunnel are not taxable, since they are used to manufacture a product for sale.

Example 48

A manufacturer makes various kinds of candy canes. The process requires that temperature and humidity in the plant be maintained within certain narrow parameters.

* Since the temperature and humidity are regulated in the plant as a whole, rather than a special, limited area within the plant, all the equipment used to provide such regulation is taxable.

Example 49

A manufacturer of automotive parts paints the parts as part of its manufacturing process. The painting is done in paint booths, which are enclosures containing ventilation and other equipment that provide the booth with a controlled atmosphere so that paint is applied to each piece under nearly identical conditions, resulting in a uniform product. The paint is applied by a spraying system which results in a considerable amount of overspray. To flush this excess paint from the booth, a water spray flows through continuously. The water is drained from the booth into a treatment system which filters out the paint. Neither the paint nor the water is reusable in the process, so they are disposed of in accordance with pollution control regulations.

* The paint booth and its ventilation equipment are not taxable since they regulate the environment in a special and limited area of the manufacturing facility.

* The water spray equipment is also not taxable as it is necessary for the continuation of the manufacturing operation.

Example 50

An automotive parts manufacturer is ordered by a federal inspector to install guardrails along the sides of aisles traveled by forklifts and a floor sweeper in order to provide a barrier for the protection of employees operating nearby machinery. The inspector also requires the installation of flashing lights on the moving equipment. The forklifts are primarily used to move in-process product.

* The guardrails are taxable.

* The forklifts themselves are not taxable since they are used for materials handling during the continuous manufacturing operation, so the flashing lights attached to them are not taxable. The flashing lights attached to the floor sweeper are taxable.

Example 51

All of the manufacturer's employees must wear ear plugs, safety glasses, hard hats, and steel toed shoes when in production areas. Some employees must wear leather or rubber gloves and aprons, depending on their jobs. The manufacturer provides all of these protective articles to the employees without charge, except eyeglasses and shoes. Employees must provide their own eyeglasses. However, the manufacturer usually buys, by special order, safety shoes for the employees and sells them, with a minimum markup to cover administrative expenses.

* All of these protective articles and clothing are used in taxable functions. The manufacturer consumes everything except the eyeglasses and shoes and must therefore pay tax on its purchases of those items.

* Since the manufacturer is making retail sales of safety shoes, it must have a vendor's license and collect sales tax on such sales made to the employees.

* The employees must pay tax to the suppliers of their safety glasses.

Example 52

A manufacturer produces electronic equipment. Its process requires that static electricity be eliminated from the environment. If it is not, the static will destroy the electrical components. In order to ensure that the static electricity is properly discharged, the manufacturer has its production employees wear a wrist bracelet which attaches to a grounded object. The manufacturer also requires that the production employees wear contaminant-free overalls so that the production area remains free of dirt.

* The wrist bracelets are not taxable since they are equipment necessary to the production process.

* The overalls are taxable since they are clothing worn throughout the plant instead of in a special and limited portion of the manufacturing facility where the environment is totally regulated.

Example 53

A manufacturer has several safety concerns in the manufacturing plant for which it has taken various measures. It has attached guards to certain of the production machinery to protect the workers from injury and placed safety signs at various points throughout the plant. It also furnishes clothing and other equipment to workers primarily for the workers' safety and protection. Finally, the manufacturer hangs fire extinguishers on walls throughout the plant.

* Machinery guards are attached to the production machinery and are therefore not taxable.

* General safety items, unless actually attached to production machinery, are taxable. Therefore, the safety signs, clothing, and other equipment are taxable.

* The fire extinguishers are taxable.

Example 54

~~A manufacturer of household products purchases a computer and software for use in designing packaging for its products (a "CAD" system). The CAD equipment allows the manufacturer's design engineers to create and evaluate various package sizes and shapes and the effects of using different package materials. Similarly, the system can be used to design and layout different labeling. A plotter prints out the designs for review by management. When a new design is selected, the system generates detailed drawings which are sent to package manufacturers and printers who will produce the new items.~~

~~* The entire CAD system, including the software, is used in research and development and is taxable.~~

As part of the manufacturing process, welding robots are used throughout an assembly plant to weld the various components of the final product. Fumes created from the welding process contain harmful complex metal oxide compounds from consumables, base metals and the base metal coatings, creating safety concerns for employees throughout the manufacturing facility. Special ventilation and exhaust systems are installed in the direct vicinity of the welding operation to supply fresh air and exhaust the fumes containing the harmful components. The ventilation and exhaust equipment is not essential for purposes of continuing production, but merely is in place to help cleanse the environment of the manufacturing facility.

* The special ventilation and exhaust systems are neither incorporated into machinery or equipment used in a continuous manufacturing operation and do not qualify as excepted safety equipment, nor totally regulate the environment in a limited area of the facility where such total regulation is essential for production to occur. As such, the systems are taxable.

Example 55

A manufacturer installs probes on a grinding machine, in part by using a special tool that was purchased for that purpose. The grinder is production machinery. The probes measure vibrations in the bearings of the machine while it is operating. A chart recorder records the data from the probes. When vibrations exceed a certain tolerance, new bearings are ordered and installed, thus allowing the manufacturer to make the repair in a controlled fashion and avoid extended downtime and/or more extensive damage to the grinder.

* The probes are not taxable, since they monitor the functioning of equipment used in the continuous manufacturing operation.

* The chart recorder merely makes a record of the monitoring and is taxable.

* The tool purchased to install the probes is taxable.

* The replacement bearings are not taxable, since they are incorporated into equipment used in the manufacturing operation.

Example 56

A manufacturer shuts down a reactor, which is used in the manufacturing operation, for routine maintenance. During shutdown, a section of the reactor wall is cut out, removed by crane, and a new section is welded in. Thereafter, the reactor is cleaned and the lines are flushed in preparation for start-up. All work is done by employees of the manufacturer.

* The labor performed to remove the old section, install the new section, clean the reactor and flush the lines is not taxable.

* The new section of the reactor wall is not taxable as it is part of a production machine.

* The welding torch, crane, equipment used to clean and flush the reactor, and related consumables, such as acetylene and cleaning compounds, are items used to clean, repair, install, or maintain personal property in the manufacturing facility and are therefore taxable.

Example 57

A manufacturer purchases two trucks to move work in process between buildings within the manufacturing facility. One truck is not registered for highway use since it is used solely on the manufacturer's private property. The second truck is registered, since it must travel a short distance on a public highway which passes through the manufacturing facility.

* The unregistered truck is not taxable, since it is used in materials handling of in-process product.

* The truck registered for highway operation is taxable.

Example 58

A manufacturer of paper products uses an extremely large and complex paper-making machine. The machine consists of many parts and requires constant servicing. Some parts themselves are massive and heavy. These parts must periodically be removed and replaced.

The manufacturer uses what it calls the wet end crane to lift, remove, and replace these heavy parts. The crane is sixty feet above the plant floor and it traverses the entire length of the paper-making machine by means of overhead rails.

* The wet end crane is taxable as it is machinery used to repair, install, or maintain real or personal property in the manufacturing facility.

Example 59

Concrete pipe is made in a forming kiln. The formed pipe is moved by lift truck to a steam room where it cures for one day. The steam curing speeds up the necessary chemical reaction to harden the pipe. Steam is produced by a propane fueled boiler. The propane is stored in six tanks, with lines going to a single vaporizer which converts the liquid into gas. The concrete pipe is removed from the steam room to an area where employees patch and smooth pits and flaws in the pipe. The pipe is then moved to an outside storage area where it remains for at least twenty days to allow final curing. When sold, the pipe is loaded onto flatbed trailers by a yard boom truck. Movement of the pipe in the facility is done by three interchangeable lift trucks. The lift trucks are used seventy-five per cent of the time moving the pipe to and from the steam room, twenty per cent of the time moving from the finishing area to the yard, and five per cent of the time in miscellaneous activities. The lift trucks are battery powered and share the use of a single battery charger.

* The propane, propane lines and vaporizer, boiler, and hand tools used in finishing are not taxable. The propane storage tanks are taxable.

* The lift trucks are primarily used for materials handling as part of the continuous manufacturing operation. The lift trucks and battery charger are not taxable.

* The boom truck is taxable.

Example 60

A manufacturer produces bottle caps and furnace air filters at its single facility. The bottle caps are die punched from coils of sheet steel strip. The bottle caps are then passed through an inspection device and any caps which are found unacceptable are carried by a conveyor to a bin where they are held for sale. Acceptable caps continue through additional steps which include printing and the insertion of a gasket. After the bottle caps are punched from the sheet steel strip, the remaining perforated strip is recoiled and moved by a lift truck to temporary storage racks, from which point it is further trimmed to length during its assembly into furnace air filters.

* This constitutes a single manufacturing operation that produces two different products at the same manufacturing facility.

* The punching, printing, and gasket insertion equipment are all used in the production of the bottle caps and are therefore not taxable.

* The recoiling equipment and trimming equipment are production machines and not taxable.

* The device for inspecting the bottle caps is not taxable since it is used for testing the product.

* The lift truck and storage racks are not taxable because they handle or temporarily store in-process product.

Example 61

A manufacturer purchases sheet metal for fabrication into various products. After initial storage, the sheet metal is transported to slitters by a propane powered lift truck. The slitters cut the sheet metal to length, after which it is transported to the stamping presses. As the steel goes through the stamping process, excess metal in the form of chips is produced. The metal chips are removed from the stamping area through a chute and conveyor system which transports the metal chips to a baler. The baler compresses the chips into bales which are then sold to industrial customers as scrap metal.

* The sheet metal is committed to the manufacturing operation when deposited at the slitters by the lift truck. The lift truck and the propane used to power it are taxable.

* The slitters and stamping presses are production machinery and are not taxable.

* The metal chips are scrap. Since the scrap is sold, rather than being reused in the manufacturing operation at the same facility, the chutes and conveyors which handle the scrap metal chips are taxable.

* Since the baler changes the form of the chips which are intended to be sold, the baler is production machinery and not taxable.

Example 62

A meat processor makes sausage, wieners, salami, bologna, and similar products. After grinding and mixing, the meat is extruded into casings of various types and sizes. The meat is then smoked and/or cooked. After cooking the casings are removed and discarded.

* The casings are consumables that physically interact with the product during the continuous manufacturing operation and are not taxable.

Example 63

A dairy purchases raw milk from farmers. The milk is picked up by trucks owned by the dairy. Upon arrival at the dairy facility, a pump removes the milk from the truck through a pipe and pumps it into a clarifier, which is a centrifuge that removes particle contaminants. From the clarifier, the raw milk is pumped into a storage silo where it is held for period of time. After the raw milk is removed from the silo, it proceeds through various processes, including separation (where cream is removed), blending (where cream is added back to reach proper butterfat content), standardization (where vitamin supplements are added), pasteurization, and homogenization. After homogenization, the milk is pumped to filling equipment which packages the milk in cartons or jugs.

* The trucks which deliver the milk from the farmers and the pump which removes the milk from the trucks are taxable.

* The clarifier actively refines the raw milk by centrifuging and is not taxable. The clarifier is the beginning of the manufacturing operation and the raw material (milk) is committed at that point.

* All equipment, pipes, pumps, and tanks (including the silo holding the raw milk), which process, move, or temporarily store the milk up to and including the homogenization process, are part of the continuous manufacturing operation and not taxable.

<u>* Any equipment or supplies used to clean the processing equipment, pipes, pumps, and tanks discussed above are not taxable because they are part of a continuous manufacturing operation to produce milk.</u>

Example 64

An ice cream manufacturer purchases cream, skim milk, sugar, and various flavorings and additives. The cream and milk are placed into refrigerated tanks when received. Any particular flavoring is placed into one of several storage tanks. All of these tanks are connected by piping to a mixing tank. In-line meters control the amount of cream, milk, and flavoring withdrawn from the tanks and batched in the mixing tank. After mixing, the ice cream is packaged into cartons and moved by conveyor through a freeze tunnel, where most of the ice cream becomes solid. After the freeze tunnel, the packaged product moves slowly through a hardening room on roller conveyors. The hardening room is a large freezer where the temperature is maintained at minus thirty degrees. The solidification of the ice cream is completed in the hardening room. On exit from the hardening room, the product is shrink-wrapped in appropriate quantities (e.g., four half gallons), palletized, and moved by lift truck into a large freezer to await shipment.

The tanks, freezers, and some in-process piping is cooled by a refrigeration system, which consists of compressors, condensers, piping, and an in-line tank for the coolant. Based upon an analysis of the refrigeration system piping used in the various areas of the facility, it has been determined that twenty per cent of the system is used to cool the cream and milk tanks, ten per cent for the mixing tank, in-process piping, and packaging operation, thirty per cent for the freeze tunnel and hardening room, and forty per cent for the freezer warehouse.

* The initial storage tanks for the cream, milk, and flavorings are taxable.

* The milk, cream, and flavoring are committed to the manufacturing operation at the point they are metered prior to entering the mixing tank. The meters and subsequent piping and the mixing tank are not taxable.

* The ice cream is not completed until it leaves the hardening room. The freeze tunnel, hardening room, and roller conveyors are not taxable.

<u>* Any equipment or supplies used to clean the freeze tunnel, processing equipment in the hardening room, and roller conveyors are not taxable because they are part of a continuous manufacturing operation to produce ice cream.</u>

* The forklift that moves the palletized product into the freezer warehouse is taxable.

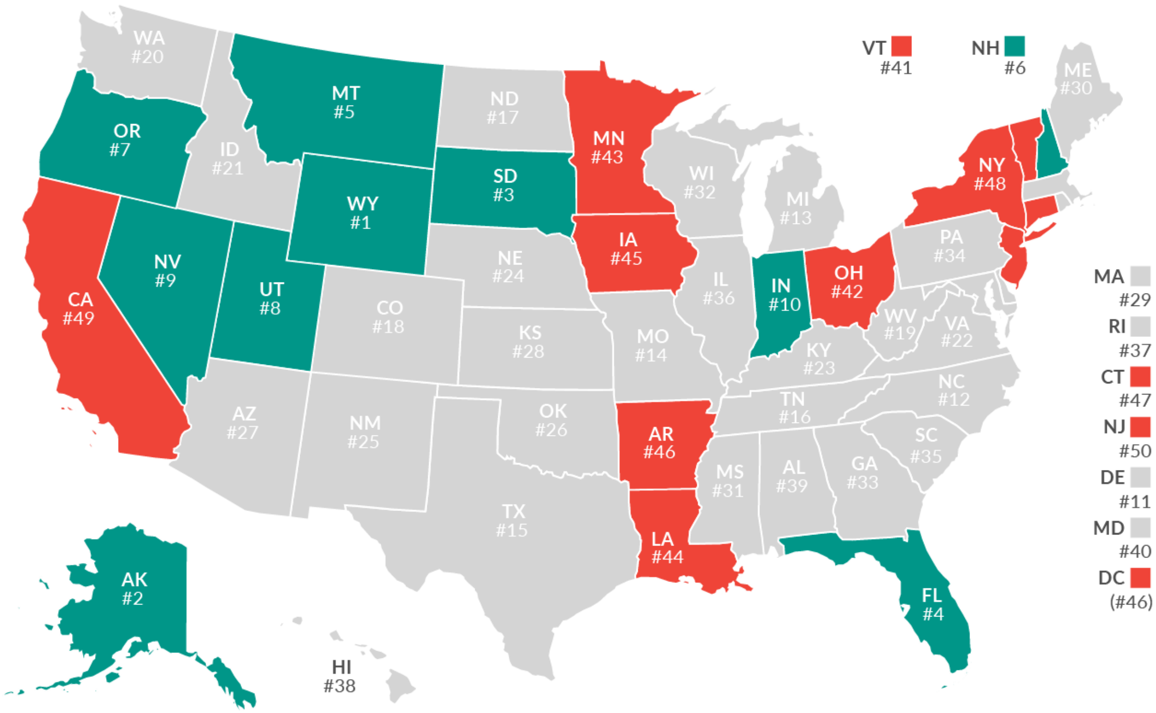
* The freezer warehouse is taxable, since it is storing a completed product.

* Sixty per cent of the coolant is taxable, since that is the proportion of this fungible used in a taxable manner.

* The condensers, compressors, and tank for the refrigeration system are taxable, since their quantified primary use (sixty per cent) is taxable.

* Since the refrigeration system piping is essentially identical, it is properly treated as fungible for sales tax purposes and is sixty per cent taxable.

2019 State Business Tax Climate Index



Note: A rank of 1 is best, 50 is worst. Rankings do not average to the total. States without a tax rank equally as 1. D.C.'s score and rank do not affect other states. The report shows tax systems as of July 1, 2018 (the beginning of Fiscal Year 2019).
Source: Tax Foundation.

10 Best Business Tax Climates

10 Worst Business Tax Climates

FOR IMMEDIATE RELEASE
July 11, 2018

OBM Deposits $657.5 Million in the Budget Stabilization Fund, Boosting Ohio's Rainy Day Reserves to $2.7 Billion

COLUMBUS – Reporting a stronger than anticipated ending balance at the close of the state's Fiscal Year 2018, Office of Budget and Management Director Timothy S. Keen today authorized a $657.5 million deposit in the Budget Stabilization Fund (BSF), Ohio's rainy day savings account.

"The fiscal condition of the state is strong," Keen said. "We finished the year with a larger ending balance than planned due to state spending that came in below projections and income tax revenues that came in above projections. This makes it possible – for the sixth time during this administration - to make a deposit into the Budget Stabilization Fund."

The deposit brings the balance to a record $2,691,554,191.27. The BSF was down to just 89 cents at the beginning of Governor John Kasich's administration in 2011.

Pursuant to Ohio Revised Code section 131.44, OBM made the deposit to the Budget Stabilization Fund (BSF) prior to the end of July after conducting its regular review of GRF revenues and expenditures at the close of the first year of the biennial operating budget. As a result of a legislative change in 2015, the authorized BSF target balance is 8.5 percent of the preceding fiscal year's GRF revenues. Following the deposit, the account now holds 8.3 percent of last year's GRF revenues.

A complete look at FY 2018 revenues and disbursements can be found in the OBM monthly financial report released today.

-30-

For more information, contact:
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Office of Budget and Management

John R. Kasich
Governor

Timothy S. Keen
Director

July 11, 2018

Recent History of Ohio's Budget Stabilization Fund

State Fiscal Year	BSF Deposit from Prior Year Surplus (millions)	Other Deposits (millions)	BSF Balance as of June 30	As a Percent of GRF Revenues
2005	$0	$0.0	$180,705,443.00	0.8
2006	$394.2	$41.7	$616,655,380.00	2.5
2007	$394.0	$1.6	$1,012,289.235.00	4.2
2008	$0.0	$0.0	$1,012,289,235.00	3.9
2009	$0.0	$0.0	$0.89	**
2010	$0.0	$0.0	$0.89	**
2011	$0.0	$0.89	$1.78	**
2012	$246.9	$3,867.00	$246,902,735.79	0.9
2013	$235.1	$4,640.00	$482,003,771.96	1.8
2014	$995.9	$387.00	$1,477,934,600.44	5.0 (target)
2015	$0.0	$0.0	$1,477,934,600.44	5.1
2016	$425.5	$101.1	$2,004,568,922.44	6.4 (new 8.5 target)
2017	$29.5	$0.0	$2,034,051,458.44	6.0
2018	$0.0	$0.0	$2,034,051,458.44	6.0
2019	$657.5	$0.0	$2,691,554,191.27	8.3

* Other deposits in FY 2011 to 2014 are in real dollars and were private donations.

** The Percent of GRF Revenues in FY 2009 to 2011 is less than a tenth of a percent.

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Ohio Manufacturers' Association

Tax Counsel Report
October of 2018
By Justin D. Cook
Bricker & Eckler LLP

Administrative Actions:

In July, the Ohio Department of Taxation (the "Department") issued an alert concerning the calculation of the interest penalty applicable to pass-through entities. Changes to R.C. 5747.43 were recently made retroactive, and the Department's alert sets forth guidance on how taxpayers may take advantage of the retroactive changes if previously assessed an interest penalty.

The Department released a new draft of proposed changes to O.A.C. 5703-9-21, Ohio's sales and use tax manufacturing regulation. Earlier drafts of the proposed changes narrowed the definition of when an item was "committed" to the manufacturing process. The OMA previously submitted comments opposing any change to the definition of "commitment." The Department removed its proposed changes to the definition of "commitment" in the new draft of the proposed rule revision.

New Legislation:

S.B. 430 amends R.C. 5739.02(B)(42), clarifying the scope of the sales and use tax exemption for property used or consumed in the production of oil and natural gas. The enacted legislation indicates that it applies retroactively to all cases pending on petition for reassessment or further appeal, or transactions subject to an audit by the Department, on or after, May 18, 2018. An analysis of this amendment prepared by the Ohio Legislative Service Commission is attached.

Proposed Legislation:

S.B. 309 (see Mr. Brundrett's report).

The OMA has worked for the last year to establish a tax credit (used against taxes other than the commercial activity tax) that would incentivize capital investment in Ohio's manufacturing sector. Based on feedback from legislators concerned with budgetary issues, the OMA is developing a way to cap its tax credit proposal.

<u>Judicial Actions:</u>

<u>Ohio Supreme Court</u>

E. Mfg. Corp. V. Testa, Tax Comm'r, 2018-Ohio-2923, 2018 Ohio LEXIS 1839, issued by the Ohio Supreme Court on July 26, 2018, is the most recent decision involving the manufacturing exemption from Ohio sales and use tax. In *East*, the taxpayer, a manufacturer of aluminum truck trailers, was issued a use tax assessment for its natural gas purchases for the period January 1, 2003 through December 31, 2006 (with only those portions of gas that were used by the taxpayer's painting and welding systems excluded). The remaining natural gas was deemed to have been used to heat *East's* six adjacent buildings in which the manufacturing processes took place. The Court held that because the use of the natural gas to heat the taxpayer's buildings constituted "temperature regulation," it fell within the items excluded from the definition of the "thing transferred" under R.C. 5739.011(C)(5), and therefore did not constitute an item purchased for use or consumption in a manufacturing operation under R.C. 5739.02(B)(42). The Tax Commissioners assessments were upheld.

Worthington Cty. Schs. Bd. of Educ. v. Franklin Cty. Bd. of Revision, 2018-Ohio-2909, 2018 Ohio LEXIS 1834 involves a property tax valuation dispute of a Kroger supermarket. The Kroger building at issue had a smaller parcel size than a typical retail store of its size, meaning the parcel did not have a parking lot owned by Kroger in fee simple (Kroger simply held an easement to use a nearby parcel for parking). The Ohio Supreme Court adopted a valuation that established an initial value through both the sales comparison and income capitalization methods. This base value was then discounted to reflect the uniquely small size of the parcel at issue. The court's ruling decreased the assessed value of the property by approximately $1.6 million.

<u>Ohio Court of Appeals</u>

Nothing to report.

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

Career Staffing v. Testa, BTA No. 2016-2617, 2018 Ohio Tax LEXIS 1677 (Aug. 2, 2018) involves R.C. 5739.01(JJ)(3), which excludes from taxable "employment services," the "supplying [of] personnel pursuant to a contract of at least one year … and … each employee is assigned to the purchaser on a permanent basis." The commissioner denied exclusion on the grounds that employees were not provided on a permanent basis, given that the contracts did not specify the number of positions to be filled and the fact that the number of employees actually provided fluctuated. The BTA reversed in part for those contracts where there was no indication that such fluctuation was due to seasonality or short-term workload needs – but instead to the physically demanding general labor positions (including working in severe cold and wet working conditions).

Derouchie v. Testa, BTA No. 2017-1264, 2018 Ohio Tax LEXIS 1812 (Sept. 5, 2018) involves the responsible party penalty for failure to collect or remit sales tax. In this case, Ms. Derouchie was the responsible party for a corporation that changed its name. The commissioner issued sales tax against the corporation under is former name and against Ms. Derouchie as a responsible party. Ms. Derouchie challenged the responsible party assessment, claiming the underlying assessments against the corporation were flawed. The Board rejected Ms. Derouchie's claims, holding that a responsible party cannot challenge the underlying corporate assessments if the corporation itself failed to make a timely challenge.

United States Supreme Court

On June 21, 2018, the United States Supreme Court issued its decision in *State of South Dakota v. Wayfair, Inc*. In doing so, the Court reshaped many notions of state and local taxation by abolishing the physical presence standard for sales and use tax collection.

In 1967, the Supreme Court held in *National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967) that states were prohibited from requiring sellers to collect and remit use tax on the sale of goods in states where the seller has no physical presence. This "physical presence" standard was affirmed in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

The Court's opinion in *Wayfair* noted that "[e]ach year, the physical presence rule becomes further removed from economic reality and results in significant revenue loss to the States." The Court further concluded that the physical presence standard "creates rather than resolves market distortions." Based on this reasoning, the Court held that *National Bellas Hess* and *Quill Corp*. "should be, and now are, overruled."

Abolishing the physical presence standard will allow states to enact laws which require remote sellers to collect and remit sales and use tax. While a representative from the Department recently made informal statements downplaying the importance of *Wayfair* for Ohio sales and use tax until the legislature takes further action, we are still awaiting written guidance or comments on the issue.

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MEMORANDUM

TO: Ohio Manufacturers' Association

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

DATE: June 21, 2018

RE: Supreme Court Decision – Remote Sellers and Use Tax

The United States Supreme Court issued its decision today in *State of South Dakota v. Wayfair, Inc*. In doing so, the Court reshaped many notions of state and local taxation by abolishing the physical presence standard for sales and use tax collection.

In 1967, the Supreme Court held in *National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967) that states were prohibited from requiring sellers to collect and remit use tax on the sale of goods in states where the seller has no physical presence. This "physical presence" standard was affirmed in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

The Court's opinion today in *Wayfair* noted that "[e]ach year, the physical presence rule becomes further removed from economic reality and results in significant revenue loss to the States." The Court further concluded that the physical presence standard "creates rather than resolves market distortions." Based on this reasoning, the Court held that *National Bellas Hess* and *Quill Corp*. "should be, and now are, overruled."

Today's decision, by abolishing the physical presence standard, will allow states to enact laws which require remote sellers to collect and remit sales and use tax.

Tax

OMA Comments on Manufacturing Sales and Use Tax Exemption Draft
October 5, 2018

This week the OMA **submitted comments** to the Ohio Department of Taxation in response to its **draft revisions** to the manufacturing sales and use tax exemption.
The draft looks to update the rule to reflect legislative changes over the years and clarify aspects of the rule with additional examples.

The OMA's working group on the issue actively participated in the review and drafting of the proposed changes. If you have questions or concerns please contact OMA's **Rob Brundrett**. *10/4/2018*

Tax Foundation Trashes Ohio Tax Code (Again)
September 28, 2018

The Tax Foundation has recently published its **annual ratings of states** for tax competitiveness, ranking Ohio among the 10 worst states at 42nd.
Some may question the low ranking since Ohio has made great strides in state tax competitiveness over the past 15 years by abolishing the state estate tax, zeroing out tangible personal property tax, eliminating corporate income tax and lowering personal income taxes.

The Tax Foundation has taken a dim view of gross receipts-based taxes such as the Ohio commercial activities tax (CAT) which applies a low-rate, broad-based tax on all in-state sales (only).

Interested in Ohio tax issues for manufacturers? **Register** for the upcoming OMA Tax Committee meeting on October 10. You can come in person or join by phone. *9/26/2018*

Manufacturing Sales and Use Rule Up for Public Comment
September 14, 2018

This week the Ohio Department of Taxation announced several proposed changes to the manufacturing sales and use tax rule OAC 5703-9-21. This rule has been under discussion for the past year.

The OMA's sales and use tax working group participated in stakeholder meetings with the department, and the final draft rule reflects many of the group's specific recommendations.

The proposed rule is **available here**. All comments regarding the proposed rule changes should be sent to this **public comment email address** and to **Laura Stanley**, Division Counsel, Sales and Use Taxes, by October 1, 2018. Please contact OMA's **Rob Brundrett** if you have questions or concerns regarding the updated rule. *9/12/2018*

Opportunity Zones Provide Attractive Investment Opportunity
September 14, 2018

From OMA Connections Partner Clark Schaefer Hackett (CSH): "… arguably one of the most exciting provisions (of the Tax Cuts and Jobs Act) has not received much attention. This is the ability to defer and even permanently exclude certain capital gains when properly invested in Qualified Opportunity Zones.

"… in the past such zones were a bundle of sometimes confusing tax credits and deductions. The new law is unique in a couple of ways: first, the scope is national, with qualified areas in every state (and Puerto Rico), and second, investment is more straightforward … for tax law.

"All that is needed to start is an investor with a capital gain. …"

Read **more about opportunity zones from CSH**. *9/12/2018*

Updates on Ohio's Business Gateway
September 7, 2018

According to a recent Gateway post, from the time the modernized Gateway went live on July 2 through August 29, users have successfully filed more than 1 million transactions, with a total value of nearly $4 billion. This represents an increase of more than 115,000 transactions and

$660 million flowing through the Gateway over the same time period in 2017.

Some users have experienced issues, a majority of which are related to accounts of existing users who file on behalf of multiple businesses and who may share log in credentials.

In the modernized Gateway, each username and password is associated with an individual user, not a company or business account, and should not be shared. This aligns with the latest in security best practices and allows for verification of the individual who is filing a transaction on behalf of the business account.

Here's **an FAQ**. You can call (866) 644-6468 to speak to a customer service representative. *9/5/2018*

RSM Recorded Webcast: Additional Guidance on Pass-Through Deductions
September 7, 2018

The Tax Cuts and Jobs Act includes a provision that allows a 20% deduction for certain pass-through owners. OMA Connections Partner RSM examines recently released guidance from the IRS on this new section of the tax code.

During this **recorded webcast**, RSM presenters discuss:

- Clarification on the types of businesses that will and won't qualify for the deduction
- A new "aggregation" regime that can impact the calculation of the allowable deduction
- Computational guidance on issues such as the wage and asset limitation, the treatment of losses, and several other items
- Implications for year-end planning

9/5/2018

Some Updates on Wayfair re. Sales & Use Tax Nexus
August 31, 2018

From OMA Connections Partner Clark Shaefer Hackett: "The impact of the *South Dakota v. Wayfair*case, which overturned the physical presence standard for sales and use tax nexus, continues to be felt. To help you stay up to date on the changes, we created an Interactive **Economic Nexus Policy Map**that shows which states have implemented economic nexus thresholds due to the *Wayfair* decision and the effective dates. "We also updated **our FAQ** that addresses the most common questions and answers about the case, and its repercussions." *8/27/2018*

Pass-through Entities Can Expect Higher Compliance Costs
August 24, 2018

From OMA Connections Partner Clark Schaefer Hackett: "The Tax Cuts and Jobs Act contains a provision under IRC Section 199A that provides a 20 percent Qualified Business Income Deduction to individuals (subject to limitations). But what does this mean at the entity level?

"On August 8, 2018, the IRS issued much-anticipated Proposed Regulations 1.199A-1 through 1.199A-6, clarifying some of the murkier issues in IRC Section 199A. Much of the guidance is meant for individuals subject to the deduction. However, Proposed Regulation 1.199A-6 also contains the provision that Relevant Passthrough Entities (RPEs) must report pertinent Section 199A information to owners on or within Schedule K-1. This information includes each owner's share of items, such as Specified Service Trade or Business (SSTB) status, Qualified Business Income (QBI), W-2 Wages, and the Unadjusted Basis Immediately after Acquisition (UBIA) of qualified property. **Let's look at each of the required items separately** for a few of the issues that can arise." *8/23/2018*

Kasich Floats New Tax Plan
August 10, 2018

At a press conference on Tuesday, Governor John Kasich announced that his administration was considering a plan that would take $147 million from the projected state surplus to fund the cost of a one-time reduction in the state tax withholding tables.

According to the administration, even after funding the withholding tax table reduction, there would be $68 million in surplus to divert to the 'rainy day' fund, pushing that fund to its maximum legal limit.

This is the governor's second attempt at driving down the withholding tables. In his 2016 State of the State speech he introduced the same idea, which was not acted upon by the legislature. The governor said he would be having conversations with state lawmakers in the near future regarding the proposal.

Two years ago the Kasich administration said that this change would give a person making $60,000 a year, and claiming one dependent, an additional $1.10 per week.

Early reactions from the House and Senate were noncommittal.

Here's a **summary** from Hannah News Service. *8/8/2018*

Guidance for Handling Meals and Entertainment Under 2017 Tax Cuts and Jobs Act
August 3, 2018

From OMA Connections Partner Clark Schaefer Hackeet (CSH): "The change from 50 percent deductibility of entertainment costs to those costs being completely non-deductible falls under Internal Revenue Code (IRC) Section 274. The confusion about the change in this section involves how it impacts the deductibility of business meals with clients, customers and business partners. …

"Pending guidance from the IRS, we would like to advise you to separate meals with customers, clients and other business partners where business is discussed during the meal, into a separate general ledger account. Do not include these meals with entertainment costs like hockey tickets, golf, or show tickets. Also, do not combine these types of meal expenditures with travel-related meals, or in-house employee meals or meals associated with conventions or trade associations. If the costs are tracked separately in your system, it will be easier to apply the correct deductibility rule once we obtain the clarity needed."

Read the **entire post from CSH here**. *7/30/2018*

Interactive Tax Reform Playbook
August 3, 2018

OMA Connections Partner Plante Moran has created an **interactive online tax reform playbook** that enables users to take a detailed look at the tax reform opportunities and challenges most likely to impact them.
Use the playbook to prepare your business for 2018 and beyond. *8/2/2018*

U.S. Chamber: State by State Impact of Tariffs
July 27, 2018

The U. S. Chamber has compiled **state by state impacts** of the recent wave of tariffs.
Here are its **calculated risks to Ohio**, labeled "very significant damage." *7/26/2018*

State Surplus Deposited in Rainy Day Fund
July 13, 2018

June 30 marked the end of the state's 2018 fiscal year. This week Governor Kasich's administration deposited $657 million of excess funds into the state's budget stabilization fund.

The balance in the state's savings account now sits at $2.7 billion. Ohio lawmakers are constitutionally required to run a balanced budget and Senate President Larry Obhof issued a **statement** touting the benefits of responsible budgeting and conservative policies. Budget Director Tim Keen said in a **press release**, "The fiscal condition of the state is strong. We finished the year with a larger ending balance than planned due to state spending that came in below projections and income tax revenues that came in above projections. This makes it possible … to make a deposit into the Budget Stabilization Fund."
The budget director also noted that when the Kasich administration came to office in 2011, it inherited a depleted reserve fund of only 89 cents. *7/12/2018*

South Dakota v. Wayfair, Inc. – Frequently Asked Questions
July 13, 2018

With the recent Supreme Court ruling that overturned the physical presence standard for sales and use tax, many businesses wonder how this will affect them, if at all.

In **this FAQ**, OMA Connections Partner, Clark Schaefer Hackett, addresses the most common questions and answers. *7/9/2018*

<u>Ohio's Modernized Business Gateway is Live</u>
July 9, 2018

Visit the **Gateway** to see Ohio's improved and modernized system. Check out **this video** for an orientation to the modernized Gateway's user interface and functionality.
The Gateway Modernization Project has transformed the Gateway into a more user-friendly, reliable, and secure portal.

Information around the site is consolidated, making the most important information easier to find.

Pre-populated information and fewer required clicks reduce the time it takes to complete a transaction in the Gateway, resulting in more efficient and simplified filing processes. The Gateway also houses PDF versions of transaction confirmations and receipts that are easy to access and print.

The modernized Gateway's Help Center houses hundreds of how-to articles, video tutorials and FAQs to assist users in completing their transactions on the Gateway. In addition, Gateway users now have the ability to request help or ask a question 24/7 by using the system's online help case functionality. *7/4/2018*

HB11 **INCORPORATING FEDERAL REVENUE CHANGES** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since February 14, 2016, into Ohio law.

Current Status: 3/30/2017 - **SIGNED BY GOVERNOR**; eff. 3/30/2017

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-11

HB49 **OPERATING BUDGET** (SMITH R) Creates FY 2018-2019 main operating budget.

Current Status: 8/22/2017 - Consideration of Governor's Veto

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-49

HB61 **TAX EXEMPTION-FEMININE PRODUCTS** (JOHNSON G, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.

Current Status: 10/10/2017 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-61

HB70 **FUEL TAX TRANSPARENCY** (MERRIN D) To enact the "Fuel Tax Transparency Act" requiring stickers to be placed on retail service station pumps displaying the rates of federal and state taxes applicable to gasoline and diesel fuel.

Current Status: 3/15/2017 - House Government Accountability and Oversight, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-70

HB86 **MINIMUM WAGE INCREASE** (SMITH K) To increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.

Current Status: 2/28/2017 - Referred to Committee House Economic Development, Commerce and Labor

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-86

HB89 **AUGUST SALES TAX HOLIDAY** (PATTERSON J, KELLY B) To provide for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.

Current Status: 2/28/2017 - Referred to Committee House Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-89

HB104 **TAX REFUND ON BAD DEBTS** (SCHAFFER T) To allow vendors to receive a refund of sales tax remitted for bad debts on private label credit accounts when the debt is charged off as uncollectible by the credit account lender.

Current Status: 4/17/2018 - Senate Finance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-104

HB133 **DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with respect to disaster work on critical infrastructure performed in this state during a declared disaster.

Current Status: 6/29/2018 - **SIGNED BY GOVERNOR**; eff. 9/28/18

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133

HB155 **VEHICLE TRAINING TAX CREDIT** (SPRAGUE R, HOWSE S) To authorize a tax credit for expenses incurred by an employer to train a commercial vehicle operator.

Current Status: 6/19/2018 - **REPORTED OUT**, House Ways and Means, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-155

HB162 **TAX CREDIT-SOUND RECORDING** (SMITH K, LATOURETTE S) To authorize a refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.

Current Status: 5/9/2017 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-162

HB173 **IN-HOME EMPLOYEES TAX CREDIT** (LATOURETTE S, PATTON T) To provide that compensation paid to certain home-based employees may be counted for purposes of an employer qualifying for and complying with the terms of a Job Creation Tax Credit.

Current Status: 5/9/2017 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-173

HB177 **TAX EXEMPTION-COMMUNITY GYMS** (WEST T) To exempt memberships to gyms or other recreational facilities operated by charitable organizations from sales and use taxation.

Current Status: 11/14/2017 - House Ways and Means, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-177

HB185 **POLITICAL CONTRIBUTIONS TAX CREDIT** (HAMBLEY S) To expand the scope of political contributions that qualify for the income tax credit for contributions to political campaigns to candidates for any state, county, municipal, or district office.

Current Status: 6/6/2017 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-185

HB216 **USED VEHICLE TRADE-IN CREDIT** (HAMBLEY S, BRINKMAN T) To authorize a sales and use tax trade-in credit for purchases of used motor vehicles from a licensed dealer.

Current Status: 6/6/2017 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-216

HB243 **FIREWOOD SALES TAX** (PATTERSON J, CERA J) To exempt from sales and use taxation the bulk sale of firewood and certain other heating fuels, and to reimburse the Local Government Fund and Public Library Fund and county and transit sales tax collections for the resulting revenue losses.

Current Status: 6/20/2017 - House Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-243

HB262 **INDEPENDENT BUDGET PROCESS** (BUTLER, JR. J, ROMANCHUK M) To provide for the preparation of a state biennial budget independent of that submitted by the Governor and to authorize the Legislative Service Commission, upon the request of the Speaker of the House of Representatives or the President of the Senate, to arrange for an independent actuarial review of a proposed bill, specified analyses of economic policy initiatives and state benchmarking data, and a study of the state's long-range financial outlook.

Current Status: 6/20/2017 - Referred to Committee House Government Accountability and Oversight

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-262

HB314 **LAW ENFORCEMENT TAX CREDIT** (SCHAFFER T) To allow an income tax credit for law enforcement officials who purchase safety or protective items to be used in the course of official law enforcement activities.

Current Status: 2/14/2018 - **REPORTED OUT AS AMENDED**, House State and Local Government, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-314

HB320 **LONG-RANGE FINANCIAL OUTLOOK COUNCIL** (HAGAN C, ROEGNER K) To create the Long-range Financial Outlook Council for the purpose of informing the public and the General Assembly about the financial status of the state by studying financial and other conditions and issuing an annual long-range financial outlook report.

Current Status: 11/28/2017 - House Financial Institutions, Housing and Urban Development, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-320

HB337 **TEXTBOOK SALES TAX EXEMPTION** (DUFFEY M) To exempt from sales and use tax textbooks purchased by post-secondary students.

Current Status: 2/20/2018 - **REPORTED OUT AS AMENDED**, House Ways and Means, (Fourth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-337

HB342 **LOCAL TAX ISSUES-ELECTION DATES** (MERRIN D) To modify the information conveyed in election notices and ballot language for property tax levies.

Current Status: 6/20/2018 - **PASSED BY HOUSE**; Vote 61-32

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-342

HB351 **NOAA AND PHS TAX EXEMPTION** (PERALES R, BUTLER, JR. J) To require municipal corporations to exempt from taxation the military pay of members of the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service.

Current Status: 6/6/2018 - **REPORTED OUT**, Senate Ways and Means, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-351

HB361 **PROPERTY TAX COMPLAINTS TIMEFRAME** (GREENSPAN D) To increase the time within which boards of revision must decide property tax complaints.

Current Status: 6/20/2018 - **PASSED BY HOUSE**; Vote 91-2

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-361

HB371 **TAXES ON UNSOLD PROPERTY** (MERRIN D) To exempt from property taxation the increased value of land subdivided for residential development until construction commences or the land is sold.

Current Status: 3/1/2018 - Re-Referred to Committee

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-371

HB441 **TAX RETURN-PREPAID CARD** (LANESE L, DEVER J) To allow the Department of Taxation to provide taxpayers who file electronic returns the option of receiving their income tax refund in the form of a prepaid card.

Current Status: 4/10/2018 - House Government Accountability and Oversight, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-441

HB460 **RIPARIAN BUFFERS-TAX EXEMPTION** (PATTERSON J, SHEEHY M) To exempt qualifying riparian buffers in the Western Basin of Lake Erie from property taxation, to reimburse local taxing units for resulting revenue losses, and to require soil and water conservation districts to assist landowners with the creation and maintenance of riparian buffers.

Current Status: 2/13/2018 - House Energy and Natural Resources, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-460

HB525 **FILM TAX CREDIT-LIVE THEATER** (SCHURING K) To extend eligibility for the motion picture tax credit to certain live stage theater productions, to increase the maximum amount of credits that may be awarded from $40 million to $100 million per fiscal year, and to make other revisions to the law governing administration of the credit.

Current Status: 5/22/2018 - **REPORTED OUT AS AMENDED**, House Government Accountability and Oversight, (Sixth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-525

HB529 **CAPITAL APPROPRIATIONS** (RYAN S) To make capital appropriations and changes to the law governing capital projects and to make reappropriations for the biennium ending June 30, 2020.

Current Status: 3/30/2018 - **SIGNED BY GOVERNOR**; eff. 6/29/18
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-529

HB545 **SALES TAX AFTER PURCHASE** (ARNDT S) To authorize small retailers to remit sales taxes when the retailer receives payment from the purchaser if the payment is received after the purchased item is delivered or the service is provided.
Current Status: 6/26/2018 - **REPORTED OUT AS AMENDED**, House Ways and Means, (Third Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-545

HB569 **SALES TAX-BUSINESS ELECTRONIC SERVICES** (LIPPS S, REINEKE W) To modify the standard for determining when the sales and use tax applies to business-related electronic services that are provided together with other services.
Current Status: 4/10/2018 - Referred to Committee House Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-569

HB575 **TAX CREDIT-VOLUNTEER FIREFIGHTER/EMS** (KELLER C, REZABEK J) To grant income tax credits to persons who serve as volunteer firefighters or emergency medical service technicians.
Current Status: 6/26/2018 - House Ways and Means, (Fourth Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-575

HB606 **TAX EXEMPTION-MAPLE SAP** (PATTERSON J, LATOURETTE S) To authorize a property tax exemption for land used for commercial maple sap extraction and to reimburse, up to $3 million per year, local governments for revenue lost from the exemption.
Current Status: 5/15/2018 - Referred to Committee House Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-606

HB641 **FORKLIFT TAX EXEMPTION** (ANTANI N) To exempt from sales and use tax things purchased by an interstate logistics business and used primarily to move completed manufactured products to the point from which they are shipped from a manufacturing facility and related power sources.
Current Status: 6/26/2018 - House Ways and Means, (Second Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-641

HB670 **MUNICIPAL TAX WITHHOLDING** (BARNES, JR. J) To enact the "Simplified Alternative Withholding Tax Compliance Act" authorizing an employer to enter into an agreement with a municipal tax administrator to prescribe, subject to certain parameters, the portion of nonresident employee wages that will be subject to the municipal corporation's income tax.
Current Status: 6/13/2018 - House State and Local Government, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-670

SB9 **AUGUST TAX HOLIDAY** (BACON K) To provide for a three-day sales tax "holiday" in

August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.

Current Status: 6/13/2017 - **SIGNED BY GOVERNOR**; eff. 6/13/17
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-9

SB36 **AGRICULTURAL COMPUTATION** (HITE C) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup and to stipulate that CAUV land used for a conservation practice or enrolled in a federal land retirement or conservation program for at least three years must be valued at the lowest of the values assigned on the basis of soil type.

Current Status: 5/16/2017 - Referred to Committee House Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-36

SB65 **ENERGY STAR TAX HOLIDAY** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.

Current Status: 3/22/2017 - Senate Ways and Means, (Second Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65

SB114 **CDL TRAINING TAX CREDIT** (HITE C) To authorize a tax credit for expenses incurred by an employer to train a commercial vehicle operator.

Current Status: 5/3/2017 - Senate Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-114

SB123 **PROPERTY TAX COMPLAINT PROCESS** (COLEY W) To limit the right to initiate most types of property tax complaints to the property owner and the county recorder of the county in which the property is located.

Current Status: 6/14/2017 - Senate Ways and Means, (Second Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-123

SB131 **EMPLOYEE COMPENSATION-TAX CREDITS** (DOLAN M) To provide that compensation paid to certain home-based employees may be counted for purposes of an employer qualifying for and complying with the terms of a Job Creation Tax Credit.

Current Status: 6/6/2017 - Referred to Committee House Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-131

SB132 **TAX CREDIT-FOREIGN TRADE** (DOLAN M, EKLUND J) To establish a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation and renewable energy resources.

Current Status: 4/26/2017 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-132

SB147 **OHIO RURAL JOBS ACT** (HITE C) To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.

Current Status: 9/27/2017 - Senate Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-147

SB176 **MUNICIPAL INCOME TAX RESTRICTIONS** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.

Current Status: 9/7/2017 - Referred to Committee Senate Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-176

SB187 **DELINQUENT MUNICIPAL INCOME TAXES** (EKLUND J, WILSON S) To allow municipal corporations to charge delinquent taxpayers the costs of collecting municipal income taxes regardless of whether the costs are incurred before or after a judgment is entered against the taxpayer.

Current Status: 11/7/2017 - Senate Finance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-187

SB203 **MUNICIPAL TAX RULE REINSTATEMENT** (DOLAN M) To reinstate the municipal income tax "throw-back rule" used in apportioning business income among municipalities.

Current Status: 11/15/2017 - Referred to Committee Senate Finance

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-203

SB209 **PROPERTY TAX EXEMPTIONS-TIF** (COLEY W, EKLUND J) To modify the conditions that determine the relative priority of property tax exemptions when a parcel subject to a tax increment financing arrangement concurrently qualifies for another exemption.

Current Status: 10/25/2017 - Referred to Committee Senate Ways and Means

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-209

SB224 **GOODS TAXATION-FOREIGN DELIVERY** (EKLUND J) To exempt from sales and use tax goods purchased by a foreign citizen or entity if the goods are in Ohio only temporarily for package consolidation before being delivered to a foreign address, and to declare an emergency.

Current Status: 4/17/2018 - **SUBSTITUTE BILL ACCEPTED**, Senate Finance, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-224

SB266 **CAPITAL BUDGET** (OELSLAGER S) To make capital appropriations and changes to the law governing capital projects and to make reappropriations for the biennium ending June 30, 2020.

Current Status: 3/6/2018 - Senate Finance, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-266

SB309 **BUSINESS TAX CREDITS** (PETERSON B, KUNZE S) To lengthen the maximum term of the job creation tax credit for businesses making substantial fixed asset and employment investments and for their suppliers, to authorize commercial activity tax exclusions for receipts of those suppliers from sales to such businesses, and to authorize local governments to grant longer term property tax exemptions for such businesses or suppliers.

Current Status: 6/26/2018 - Senate Ways and Means, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-309