Tax Committee
October 15, 2015

Table of Contents

Page #

Agenda 2

Guest bios 3

DSA presentation 5

OBM Monthly Financial Report 16

OMA Public Policy Report 42
- House Bill 64 memo 46
- Rainy day fund press release 50
- CAT advocacy letter 51
- Budget income tax cut error 53
- House Bill 326 advocacy letter 55
- Senate Bill 208 advocacy letter 56
- House Bill 343 memo 57
- House Bill 343 sponsor testimonies 58
- ODT direct pay permit 62

OMA Tax Counsel Report 63
- Navistar amicus decision 68

OMA News and Analysis 90

OMA Tax Legislation 95

OMA Tax Committee Meeting Sponsor:

McGladrey

OMA Tax Policy Committee

October 15, 2015

AGENDA

Welcome & Self-Introductions:	Michele Kuhrt, Chairman Lincoln Electric
OMA Public Policy Report	Rob Brundrett, OMA Staff
Guest Speakers	Christina Crooks, Director, Tax Policy National Association of Manufacturers
	Ryan Burgess, Assistant Director Ohio Development Services Agency
OMA Counsel's Report	Mark Engel, 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:

McGladrey

Christina Crooks is Director, Tax Policy for the National Association of Manufacturers, where she is responsible for providing NAM members with important updates on tax policy, pensions, and corporate finance and management issues and representing the NAM's position on these issues before Congress and the Administration. Within the NAM tax policy portfolio, Christina focuses on the R&D tax credit and tax extenders, and serves as the Executive Secretary for the R&D Credit Coalition and a leader in the Broad Tax Extenders Coalition.

Before joining the NAM, Crooks served as senior manager of government affairs for Financial Executives International, where she advocated on behalf of the association's membership of senior-level business executives on tax, corporate treasury, pension and benefit issues. Previously, she worked as a legislative assistant to Rep. Michael Castle (R-DE), a senior member of the House Committee on Financial Services. Christina handled financial services issues for the Congressman during consideration of the Dodd-Frank Act, and also worked on small business and judiciary issues. Christina earned a B.A. in Political Science from the University of Delaware and a M.A. in Political Science from American University.

Ryan Burgess, Assistant Director, Ohio Development Services Agency

Ryan Burgess, Assistant Director, comes to Development from Fifth Third Bank where he has worked for the last 20 years, most recently as Senior Vice President. His banking expertise will prove valuable in providing accountability for taxpayer dollars which support business, community and individual development. As Assistant Director, Ryan oversees Legal, Budget, Administrative and JobsOhio liaison sections of Development, as well as supports the staff in improving customer service, cutting government bureaucracy and growing jobs for Ohio.

Incentives for Manufacturers

October 15, 2015

Ryan Burgess, Assistant Director

Ohio | Development Services Agency

Job Creation Tax Credit

- Competitive against other states
- Marketed by JobsOhio and its regional partners
- Companies that bring jobs to Ohio
- Return on investment value calculated
  - New jobs
  - Capital investment
- Performance-based: no benefit until jobs are created and taxes paid.

Here's How it Works

- Approved January 1, 2014 - September, 2015
- Convert to payroll basis from withholding basis
- Net neutral result
- Projects after October 26, 2015
- Companies can control jobs & payroll
- Encourages increasing jobs; high paying jobs

Invest Ohio

- Keeps investment funds in Ohio businesses.
- Money can be used for payroll, new equipment and expansion possibilities.
- Encourages investments of up to $10 million in exchange for a 10% income tax credit.
- Accepting applications now.

InvestOhio

Energy Efficiency Program for Manufacturers

- Multi-phase energy efficiency program
- Helps reduce costs through efficiency improvements
- Provides financial assistance to diagnose, plan, and implement cost-effective energy improvements

Energy Loan Fund Program

- Low-cost loans for ***energy efficiency*** and ***renewable energy*** improvements
- Funding from the state **Advanced Energy Fund**, as well as federal funds
- Expected results include:
  - A minimum of 15% energy use reduction
  - A payback of 15 years or less
  - Economic impacts such as job creation or retention
  - Improvement in environmental quality

Energy Loan Fund Program

Moved to competitive rounds of funding

- Provides for more efficient processing and due diligence reviews as demand has grown
- Improves the quality of the applicant pool of projects
- Makes it more likely that the best projects are supported
- Better outcomes/impacts

Energy Loan Fund Applications

Latest round opened July 15, 2015

- Email sent to over 500 stakeholders and interested parties
- 29 Letters of Intent received totaling $25,706,567
- Bidders' Conference held on Aug. 16, 2015
  - 22 of 29 attended
- Round closed Sept. 30, 2015
- 10 full applications received totaling $7,788,866

FY 2016 Outlook

- Focus on funding projects that achieve greater energy efficiency and significant cost savings
- More emphasis on such projects that also achieve positive economic and community impacts
- Develop and implement a robust marketing campaign to promote our spectrum of energy efficiency programs

Career Exploration Internship Program

- Internship program for high school juniors and seniors
  - **At least 20 weeks and 200 hours of training**
- Develop work experience and training
- Helps determine a career path
- Businesses can receive reimbursement for half of the wages of a student exploring a future career

QUESTIONS

Ryan Burgess
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Ohio | Development Services Agency

OBM

October 13, 2015

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

FROM: Timothy S. Keen, Director TK

SUBJECT: Monthly Financial Report

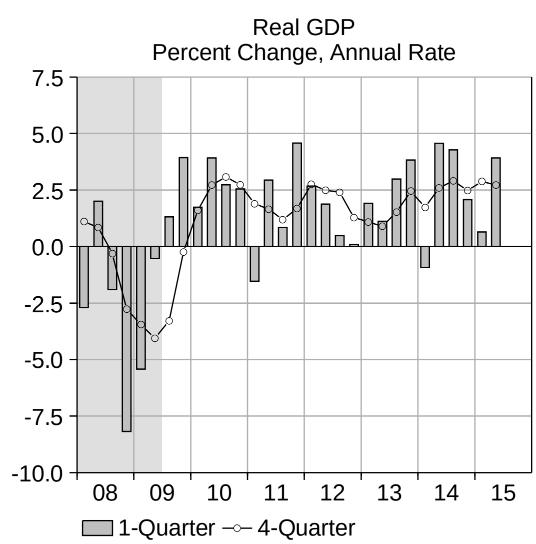
ECONOMIC SUMMARY

Economic Performance Overview

- The economy expanded by 3.9% in the second quarter, revised up from a previous estimate of 3.7%. This was significantly faster growth than the first-quarter gain of 0.6%.
- U.S. employment increased by 142,000 jobs in September, in line with the previous month but well below the average during the previous twelve months. The unemployment rate was unchanged at 5.1%.
- Ohio employment increased by 14,600 jobs in August and is up by 42,300 jobs year-to-date. The Ohio unemployment rate decreased by 0.3 percentage points to 4.7% – its lowest level since August 2001.
- Leading economic indicators continue to point toward uninterrupted economic expansion. Recent data indicate that growth continued in the third quarter, but at a slower pace. Forecasters project further growth in the fourth quarter.

Economic Growth

Real GDP growth for the second quarter was revised upward to 3.9% from the previous report of 3.7%. The economy has grown at an annual rate of 2.3% year-to-date, and is up by 2.7% from the second quarter of 2014. During the six years of economic expansion that began in the second quarter of 2009, real GDP has expanded at a compound annual rate of 2.2%, well below the rate during all previous expansions that lasted at least as long as the current expansion.



The increase in second-quarter real GDP primarily reflected increases in personal consumption expenditures, exports, nonresidential fixed investment, state and local government spending, and residential fixed investment. Imports, which are automatically included in these individual categories and then subtracted as a separate category, increased.

The acceleration from the first-quarter growth rate of 0.6% to the second-quarter growth rate of 3.9% reflected an upturn in exports, an acceleration in personal consumption expenditures, a deceleration in imports, an upturn in state and local government spending, and an acceleration in nonresidential fixed investment. Partially offsetting these positive effects was the deceleration in private inventory investment and in federal government spending.

Despite recent weakening, leading economic indicators on balance still point to modest growth in real GDP. The **Leading Economic Index** from the Conference Board increased 0.1% in August after no change in July. The July figure was revised up from the original report of a decrease of 0.2%. The year-over-year rate of change has slowed during the past year, but remains at 4.4%, which is consistent with continued economic expansion. In contrast, the rate of change in the index regularly has turned negative in advance of recessions in the past.

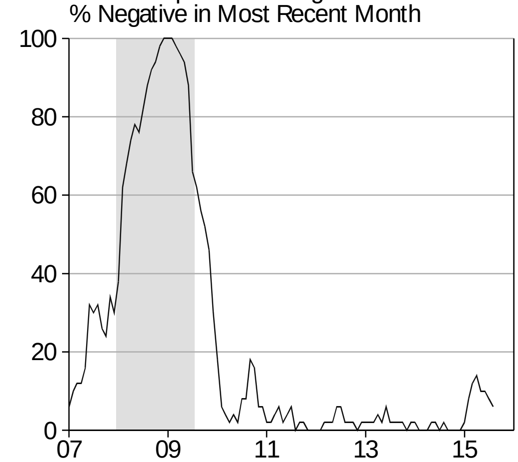
The Ohio economy appears to have picked up over the summer as the **Ohio Coincident Economic Index**, compiled by the Federal Reserve Bank of Philadelphia, accelerated to 0.6% in August. The July increase was revised up from 0.4% to 0.5%. Compared with a year ago, the index was up 4.7%. This is lower than the 6.6% growth in the index as of September 2014 but strong enough to be consistent with solid economic growth in the state. The index is comprised solely of labor market indicators, but historically has closely tracked major turning points in the overall Ohio economy.

The diffusion of changes in the **Coincident Economic Index** across the states – a leading indicator at past business cycle turning points – changed little again in August, after deteriorating notably earlier in the year. The index increased from the prior month for 41 states and from three months prior for 44 states, down from the highs reached about a year ago. The recent pattern is the weakest since 2010, but remains consistent with continued economic expansion. Further deterioration during the next few months, however, might begin to raise concerns about the state of the national economy.

After falling to below 1.0% in March and April, the **Ohio Leading Economic Index** from the Philadelphia Federal Reserve has turned up notably during the most recent four months, reaching 4.1% in July and 3.7% in August – the best 2-month showing since January 2012. The index, which is designed to predict the rate of increase in the coincident index during the next six months, is often revised significantly, but currently points to an impending upturn in the Ohio economy.

After declining from 50 last December to 43 in April, the number of state leading indexes compiled by the Philadelphia Fed with positive readings increased to 47 in August. The number of positive readings remains well above the threshold that has coincided with the onset of recession in the past. For example, the number of states with positive readings fell to an average of 36 three months in advance of the most recent three recessions and to an average of 28 during the first month of those recessions.

State Composite Leading Indexes
% Negative in Most Recent Month



Source: Philadelphia Fed. Latest data August

Employment

U.S. employment increased again in September, and the unemployment rate and average hourly earnings were unchanged. **Nonfarm payrolls** increased by 142,000 jobs in September, below expectations of approximately 200,000, and not far above the downwardly revised gain of 136,000 in August. The average increase in employment during August and September is down notably from the average of 245,000 during the previous twelve months.

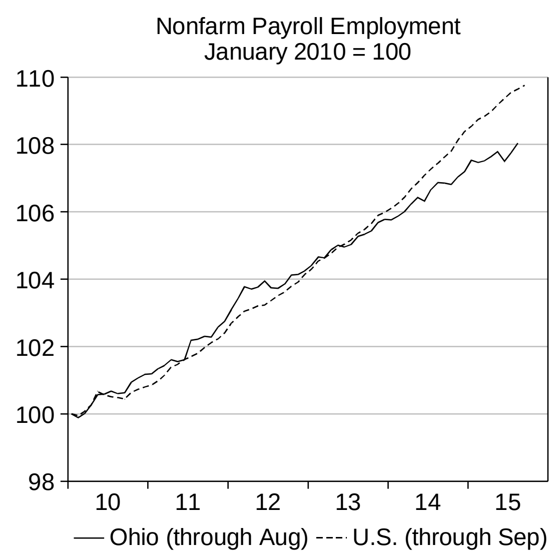
Employment gains were widespread **across industries**, led by leisure and hospitality (+35,000), health care (+34,400), professional and business services (+31,000), government (+24,000), and retail trade (+23,700). A number of sectors posted smaller increases. The only major sectors with decreases in employment were mining and logging (-12,000) and manufacturing (-9,000).

In addition to the monthly employment report, the recent pattern in weekly **initial claims** for unemployment compensation remains consistent with sound labor market fundamentals and an expanding overall economy. The 4-week average of initial claims was 270,500 in the week ending September 26th – not far above the 15-year low of 266,500 reached in the middle of May and the 27th straight week below 300,000.

The **unemployment rate** stayed at 5.1% for a second month as a decrease in the number of unemployed was offset by a decrease in the labor force. The broadest measure of unemployment – the U-6 unemployment rate – which includes people who want to work but have stopped looking because of poor perceived prospects, and those who are involuntarily working part-time rather than full-time, declined 0.3 percentage points to 10.0% – the lowest level since May 2008.

Ohio nonfarm payroll employment increased by 14,600 jobs in August, and is up by 42,300 jobs year-to-date. The month-over-month increase was led by professional and business services (+5,700), trade, transportation, and utilities (+5,300), leisure and hospitality (+2,900), and construction (+2,700). In contrast, nonfarm payroll employment declined meaningfully in manufacturing (-2,300) and government (-2,200).

Compared with a year earlier, Ohio employment was higher by 58,600 jobs. The largest employment gains during the year occurred in trade, transportation, and utilities (+21,300), local government (+13,900), leisure and hospitality (+12,400), and manufacturing (+11,100). The only employment declines during the year ending in August occurred in construction (-11,300), mining (-1,100), and professional and business services (-700).



Among the **contiguous states**, year-over-year employment growth was strongest in Indiana (+2.5%), followed by Michigan (+2.2%), Kentucky (+1.8%), Ohio (+1.1%), and Pennsylvania (+1.0%). Employment declined from a year earlier in West Virginia (-2.6%).

Year-over-year growth in manufacturing employment was 1.6% in Ohio. Among the contiguous states, manufacturing employment increased 3.5% in Michigan, 2.2% in Indiana, 1.9% in Kentucky, and 0.6% in West Virginia, and decreased 0.4% in Pennsylvania.

The **Ohio unemployment rate** decreased in August by 0.3 percentage points to 4.7% – the lowest level since August 2001. The number of unemployed people decreased by 20,581 in August, while the number of employed people increased by 2,346 (this number is from the household survey and differs from the employer survey number shown above), and the labor force decreased by 18,235 people. Compared with a year ago, unemployment is down by 45,232 people, the number of employed people is up by 19,280, and the labor force is down by 25,952 people. The unemployment rate is down 0.7 percentage points from a year ago, and is less than one-half its peak level of 11.0% reached in January 2010.

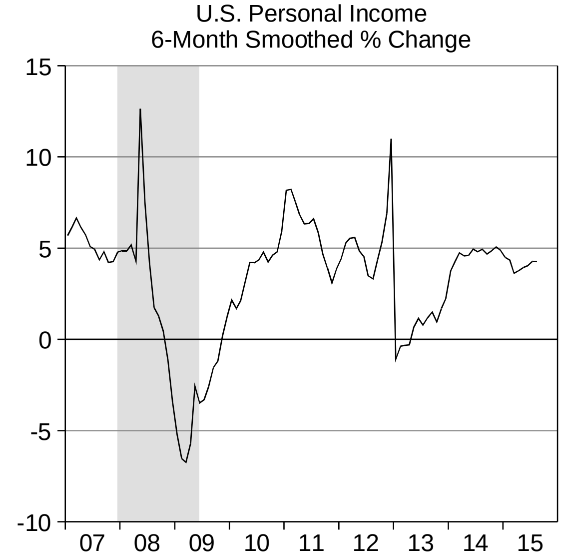
Across the country in August, the unemployment rate decreased by a statistically significant amount in eight states and increased by a significant margin in two states (New Mexico and Nebraska). The unemployment rate was lower than a year earlier by a statistically significant margin in 25 states and higher in only West Virginia.

Consumer Income and Consumption

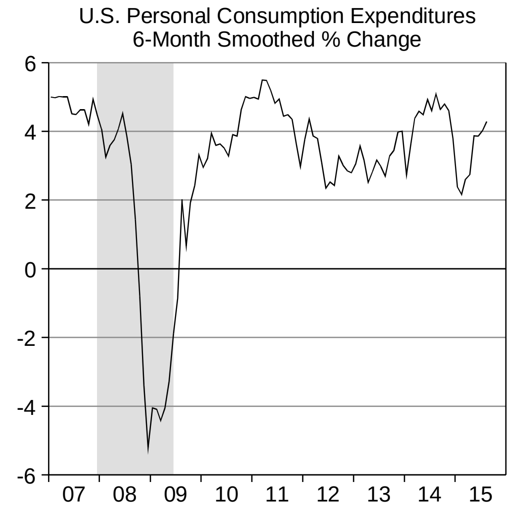
Consumer income and spending continued to expand in August and have accelerated during the most recent five to six months, reflecting the large decline in gasoline prices during the past year and sustained improvements in labor markets. At the end of September, the price of regular unleaded gasoline was down 38% from its mid-2014 peak across the country and was down almost 40% across Ohio. During the most recent twelve months, nonfarm payroll employment has increased by an average of 229,000 jobs per month and the unemployment rate has descended from 5.9% to 5.1%.

Personal income increased 0.3% in August, with monthly growth averaging 0.4% for the past five months. **Wage and salary disbursements** – the largest single component of personal income – increased 0.5% in August on top of a 0.6% increase in July. Income has accelerated during the most recent five months from the previous four-month period, with personal income growth rising from 2.6% to 5.0% at an annual rate and wage and salary disbursements rising from 1.3% to 4.6%.

Inflation remains low, which has supported consumer spending. The **Consumer Price Index** (CPI) edged down by 0.1% in August after rising only 0.1% in July, keeping the year-over-year rate at 0.2%. Excluding the volatile food and energy categories as a means of assessing the underlying trend, the index is up 1.8% from a year ago. The Median CPI from the Federal Reserve Bank of Cleveland – arguably a more sophisticated measure of the underlying trend – is up 2.3% from a year ago.



Personal consumption expenditures continued to respond to the recent improvement in income growth. Spending increased 0.4% in August for an annual rate of increase of 5.7% during the 6-month period February-August, up from 0.7% during the previous 4-month period. Consumption was 3.5% higher in August than a year earlier.



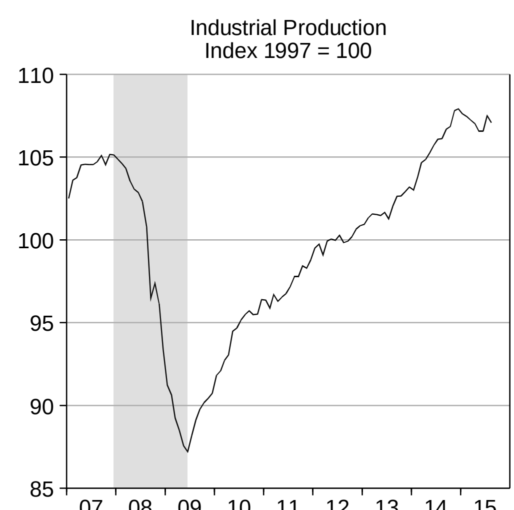
Spending on **durable goods** increased 0.9%, adding to a 1.1% increase in July, reflecting recent increases in auto sales. Unit **sales of light motor vehicles** increased 1.4% in August to an annual rate of 17.7 million units – the best since the second-highest monthly pace on record in July 2005 when automakers extended employee discounts to all buyers. The August increase came on top of a 3.0% increase in July and was followed by a 2.0% increase to 18.1 million units in September. Spending on **non-durable goods** decelerated to 0.2% growth in August, but the June and July increases were both revised up to 0.6%. Spending growth for **services** accelerated to 0.5% in August from 0.2% in July.

Consumer confidence was mixed in September, but generally solid and at a relatively high level. The Conference Board measure edged higher by 1.7% to 103.0, as a 4.6% increase in the assessment of present conditions more than outweighed a slight deterioration in expectations. The Reuters/University of Michigan gauge retreated with regard to both current assessments and expectations, with the composite index and both of its components down for the third straight month. Even so, in general these surveys indicate that confidence ranges from slightly below to well above historical averages during past economic expansions.

Looking forward, analysts expect moderate gains for the upcoming holiday season. Real personal consumption expenditures appear to have increased at an annual rate in excess of 3.0% during the third quarter and are projected to remain on that trajectory during the current quarter.

Manufacturing

The industrial sector remained sluggish in August, weighted down by the strong dollar, weakness in overseas economies, and continued adjustment in the oil patch at home. **Industrial production** decreased 0.4% in August, partly in response to the auto production calendar that boosted output in July at the expense of August. **Manufacturing** output decreased 0.5%, but excluding production of motor vehicles and parts, was unchanged. Manufacturing production was essentially unchanged from its level in October 2014. **Mining** output decreased 0.6% in August after a sizable gain in July, due to the ongoing adjustments to the drop in the price of oil. **Utility** output increased 0.6%. Compared with a year earlier, industrial production was up 0.9%, manufacturing output was up 1.4%, mining output was down 3.2%, and utility output was higher by 3.2%.



Purchasing managers at manufacturing firms reported that business expanded across the country for the 33rd consecutive month in September. The PMI® decreased 0.9 points to 50.2 – its lowest level since May 2013 and barely above the neutral level of 50. The New Orders Index fell 1.6 points to 50.1, and the Production Index decreased 1.8 points to 51.8.

The Backlog of Orders Index fell to 41.5, remaining below 50 for the fourth month in a row and at its lowest level since November 2012. The Supplier Deliveries Index edged down again to 50.2, just remaining in expansion territory. The New Export Orders Index was unchanged at 46.5 – also its fourth month in a row below 50 and its lowest level since May 2009.

Of the 18 industries tracked by the Manufacturing ISM *Report on Business*, seven reported growth in September, down from ten in August. Among the industries that are most important to Ohio in terms of employment share, Transportation Equipment, Primary Metals, Fabricated Metal Products, and Machinery, all reported contraction.

Construction

Overall construction activity picked up further in August. **Construction put-in-place** increased 0.7%, following a July gain of 0.4% that was revised downward from 0.7%. The August level was 13.7% higher than a year earlier – the best year-over-year gain since March 2006.

Private construction increased 0.7%, although the July change was revised down to 1.1% from an initial report of 1.3%. Private residential construction put-in-place increased 1.3%, while the July gain was revised down from 1.1% to 0.6%. Both single-family and multi-family construction increased, with multi-family accounting for the majority of the overall increase. Private nonresidential construction increased by 0.2% in August, and the July increase was revised slightly higher. The changes across industries were mixed, with Manufacturing, Lodging, and Health Care making the largest positive contributions and Commercial, Education, and Religious making the largest negative contributions.

Public construction increased 0.5% in August after a 1.3% decrease in July. Public residential construction increased 3.5% in August, more than reversing declines during the previous two months. Public nonresidential construction managed a gain of 0.4% after a 1.4% decline in July. More than all of the July decrease occurred in Power and Transportation.

The momentum in housing activity was sustained in August. **Housing starts** increased 1.6% in August on a 3-month moving average basis. Single-family starts increased 2.0% and multi-family starts increased 0.9%. Compared with a year earlier, housing starts were higher by 17.1%.

In the Midwest, starts rose 2.1% on a 3-month moving average basis, as single-family starts increased 1.2% and multi-family starts increased 4.1%. The increases in total housing starts across the Midwest during April-August followed weakness in the second half of 2014 and over the winter that leaves the level of activity still well below the year ago pace.

The generally more-forward-looking **housing permits** were a bit weaker in August. Total permits fell 2.2% on a 3-month moving average basis, as a 5.9% decline in multi-family permits outweighed a 0.9% increase in single-family permits. Housing permits in the Midwest increased by 0.8%, reflecting a 2.6% increase in multi-family permits that overshadowed a 0.3% decline in single-family permits.

Sales of existing houses were stable across the country (-0.1%) and higher in the Midwest (+0.3%) on a 3-month moving average basis. Inventories of existing homes for sale nationally edged slightly higher in August in absolute terms, lifting the months' supply at the current sales pace to 5.2 months. Compared with a year earlier, sales across the country were higher by 8.6%, and sales in the Midwest were higher by 8.9%.

Sales of newly built homes increased 2.6% in August across the country and were unchanged in the Midwest. The inventory of new homes for sale edged slightly higher in August to the highest absolute level since April 2010. Relative to the pace of sales, however, new home inventories dipped to a normal 4.7 months' supply. New home sales were 21.7% higher than a year earlier across the country and 16.4% higher than a year earlier in the Midwest.

Home prices posted their fourteenth straight monthly increase in July, rising by 0.4% – the largest monthly gain since February – according to the Case-Shiller national home price index. Home prices in Cleveland followed the same general pattern, rising 0.3% in August. Home prices increased 6.4% across the country from December 2013 to July 2015 to stand 25.6% above the cycle low reached in December 2011, but remained 7.0% below the all-time high set in February 2007.

REVENUES

September GRF receipts totaled $2,211.7 million and were $714.6 million (24.4%) below the estimate. Over 90% of that shortfall for the month was in one category, federal grants, where revenues were lower than estimate primarily due to accounting reasons. Monthly tax receipts totaled $1,795.6 million and were $33.8 million (1.8%) below the estimate, while non-tax receipts totaled $414.0 million and were $673.4 million (61.9%) below the estimate. All but $16 million of that non-tax shortfall was due to federal grants. Transfers were $7.4 million (78.8%) below estimate.

For the year-to-date, GRF revenues are $397.4 million, or 4.5%, below the estimate. Tax revenues account for only $19.5 million of that shortfall, and are 0.4% below estimate. Non-tax revenues are $365.7 million, or 11.0%, below estimate. All but $16.0 million of that shortfall is in federal grants. Finally, transfers are $12.2 million, or 6.9%, below estimate.

Variances for the fiscal year-to-date by category are provided in the following table ($ in millions).

Category	Includes:	YTD Variance	% Variance
Tax receipts	Sales & use, personal income, corporate franchise, financial institutions, commercial activity, MCF, public utility, kilowatt hour, foreign & domestic insurance, other business & property taxes, cigarette, alcoholic beverage, liquor gallonage, & estate	($19.5 million)	-0.4%
Non-tax receipts	Federal grants, earnings on investments, licenses & fees, other income, intrastate transfers	($365.7 million)	-11.0%
Transfers	Budget stabilization, liquor transfers, capital reserve, other	($12.2 million)	-6.9%
TOTAL REVENUE VARIANCE:		**$397.4 million**	**-4.5%**

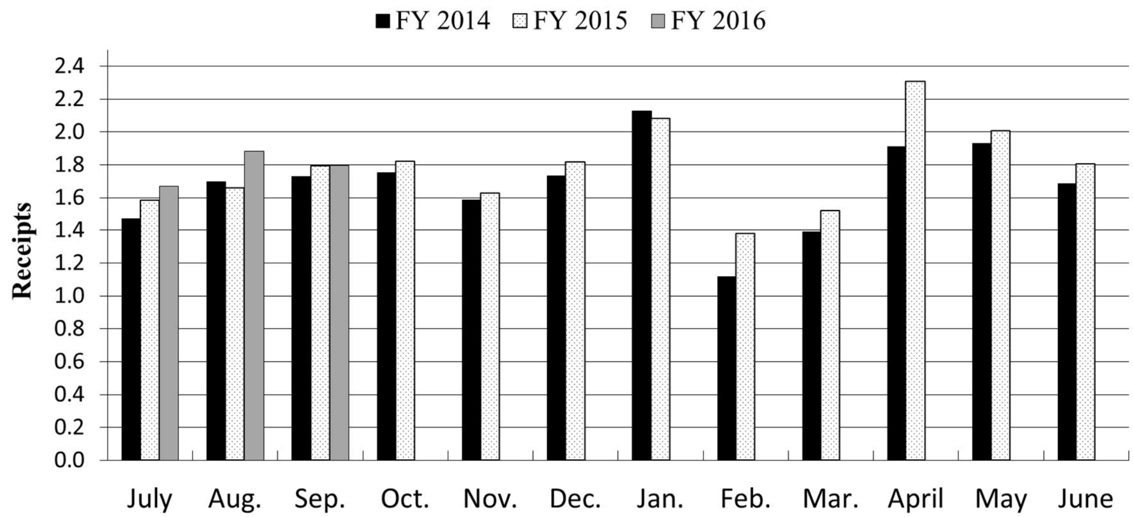
On a year-over-year basis, monthly receipts were $406.5 million (15.5%) lower than in September of the previous fiscal year, mainly due to a $390.8 million (48.7%) decline in federal grants revenue. More than $300.0 million in federal grant revenue that was deposited in the GRF in August was later determined to have been due to other state funds. In addition, about $250.0 million in grant revenue could not be shown as deposited into the GRF in September due to accounting system maintenance. This amount should instead show up as October revenue. All these temporary accounting issues aside, federal grants are expected to be significantly over the prior year amount in fiscal year 2016, since approximately $2.9 billion in additional federal Medicaid reimbursement is expected to be deposited into the GRF during the fiscal year, largely due to the costs and related federal reimbursements for persons enrolled under the "Group 8" Medicaid expansion program being shifted to the GRF, which results in federal reimbursement for "Group 8" Medicaid recipients being deposited into the GRF rather than into a non-GRF fund, as they were in fiscal year 2015. Beyond federal grants, there were large increases from the prior September in: the auto sales tax ($17.8 million, or 16.5%); the public utility excise tax ($15.8 million, or 99.6%); and the cigarette and other tobacco tax ($20.8 million, or 30.3%). The public utility tax change from last September is due to the fact that last September had a large refund attributable to several prior years' worth of activity. The cigarette tax change is due to the tax rate increase enacted in the biennial budget and the payment of "floor stocks tax" for cigarettes in inventory prior to the rate increase.

There were significant decreases from the prior September in the income tax ($44.2 million, or 5.0%) and in "other income" ($13.7 million, or 90.6%). The income tax decrease is due at least in part to the tax cuts enacted in the biennial budget. The decrease in other income is the result of a delayed payment associated with the lease of the state's liquor franchise.

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

Individual Revenue Sources Above Estimate		**Individual Revenue Sources Below Estimate**	
Auto Sales and Use Tax	$13.8	Non-Auto Sales and Use Tax	($1.8)
Corporate Franchise	$1.0	Personal Income Tax	($49.9)
Kilowatt Hour Tax	$1.5	Financial Institutions Tax	($1.1)
Foreign Insurance Tax	$2.5	Domestic Insurance	($2.1)
Cigarette and Other Tobacco Tax	$6.5	Alcoholic Beverage	($3.4)
		Federal Grants	($657.5)
		Other Income	($15.4)
		Transfers In - Other	($7.4)
Other Sources Above Estimate	$0.2	Other Sources Below Estimate	($1.5)
Total above	**$25.5**	**Total below**	**($740.0)**

Tax Revenue Comparison by Month
($ in billions)



Non-Auto Sales and Use Tax

September non-auto sales and use tax collections totaled $695.0 million and were $1.8 million (0.3%) below the estimate.

In fact, as mentioned in last month's report, the estimate for September may be somewhat overstated, because some of the expected loss due to the new sales tax holiday likely should have been recognized in the September estimate. As a result, September collections might have been above an estimate that recognized some sales tax holiday loss.

Even taking the $1.8 million shortfall at face value, based on the information available now, it would seem that the September result can be characterized as a pause after two months of strong performance. Although job growth has slowed somewhat over the past two months, labor market fundamentals still seem strong, there is some acceleration in wage growth, and energy costs and overall inflation remain low (please refer to the economic section of this report). All these factors tend to support continued growth in consumer spending.

For the year, even with the September shortfall, the non-auto sales tax is $52.7 million (2.4%) above the estimate.

As mentioned in issues of this report from fiscal year 2015, there may be some shifting in household spending between vehicles and all other items. Light vehicle sales have been extremely strong, and households may be reducing spending in other areas to finance vehicle purchases. This may have created some drag on September non-auto sales tax, which could persist into October as well.

September non-auto sales tax revenues were actually somewhat lower than they were last year ($9.0 million, or -1.3%). This is primarily due to collections based on Medicaid health insuring corporation (MHIC) premium payments being artificially inflated last September due to a delay in collections of payments due in August. For the year, non-auto sales tax collections are up by $122.6 million (5.8%) from the year before.

Auto Sales Tax

September auto sales and uses tax collections totaled $125.6 million and were $13.8 million (12.4%) above the estimate, resuming the pattern of strong results seen in fiscal year 2015. Light vehicle sales nationally have been extremely strong: in fact the sales numbers are at record levels except for a couple of exceptional months such as October 2001 when in the aftermath of the 9/11 disaster almost all automakers offered zero percent financing, and July 2005 when automakers extended employee discounts to all buyers. The table below shows national light vehicle sales for the past seven months. Note that not only are total sales at very high levels, but that much of the gain is in the higher-priced light truck segment, which also works to boost auto sales tax revenues.

U.S. Vehicle Sales in Millions, Seasonally Adjusted Annual Rate							
	Sep 15	**Aug 15**	**Jul 15**	**Jun 15**	**May 15**	**Apr 15**	**Mar 15**
Total	18.2	17.8	17.5	17.0	17.7	16.8	17.1
Auto	7.9	7.7	7.8	7.6	8.0	7.5	7.8
Light trucks	10.3	10.1	9.7	9.4	9.7	9.2	9.4

Auto sales tax collections in September were up by $17.8 million (16.5%) from a year ago. For the fiscal year-to-date, collections have increased by $27.8 million (8.3%).

Personal Income Tax

September personal income tax receipts totaled $833.6 million and were $49.9 million or 5.6% below the estimate. Negative variances in all of the personal income tax components, and higher than expected refunds, resulted in the monthly shortfall. The bulk of the shortfall was in three components: employer withholding ($21.3 million or 3.3%); quarterly estimated payments ($11.9 million or 4.8%); and refunds ($12.0 million or 68.0%).

Year-to-date personal income tax collections totaled $2,081.2 million and are $52.9 million or 2.5% below the estimate. September's withholding shortfall followed an August overage of almost the same amount and so brought year-to-date withholding collections in line with the year-to-date estimate. Trust payments ($2.7 million or 27.4%) and payments associated with annual returns ($0.8 million or 1.8%) continue to be above the year-to-date estimate. These overages, however, are more than offset by shortfalls in quarterly estimated payments ($18.7 million or 6.7%) and the miscellaneous category ($7.6 million or 40.4%) in combination with higher refunds ($30.9 million or 36.5%), producing the total negative variance.

FY2016 PERSONAL INCOME TAX RECEIPTS BY COMPONENT ($ in millions)						
	ACTUAL SEP	ESTIMATE SEP	$ VAR SEP	ACTUAL Y-T-D	ESTIMATE Y-T-D	$ VAR Y-T-D
Withholding	$629.1	$650.4	($21.3)	$1,960.9	$1,961.1	($0.2)
Quarterly Est.	$233.5	$245.4	($11.9)	$261.3	$280.0	($18.7)
Trust Payments	$7.9	$8.7	($0.8)	$12.5	$9.8	$2.7
Annual Returns & 40 P	$19.8	$24.0	($4.2)	$42.5	$41.7	$0.8
Other	$4.5	$5.4	($0.9)	$11.3	$18.9	($7.6)
Less: Refunds	($29.7)	($17.7)	($12.0)	($115.8)	($84.9)	($30.9)
Local Distr.	($31.4)	($32.7)	$1.3	($91.3)	($92.5)	$1.2
Net to GRF	**$833.6**	**$883.5**	**($49.9)**	**$2,081.2**	**$2,134.1**	**($52.9)**

The -5.6% variance was unusually large for a month not in the income tax filing season in the second half of the fiscal year. At this point, OBM does not have any additional insight into what caused the estimated payment shortfall. There is little evidence on the overage in refunds as well, although it is possible that it is tied to larger than expected refunds connected with late filers claiming the small business deduction. October is the last month for filing state and federal returns with extensions, and about $56 million in annual return revenue is expected. OBM will be closely monitoring these payments, and the income tax as whole, in the months ahead.

On a year-over-year basis September 2015 GRF income tax collections were $44.2 million or 5.0% below September 2014 collections as a consequence of the lower collections in each component and higher refunds. This is at least partly attributable to the cuts in tax rates and withholding rates contained in the biennial budget bill (H.B. 64).

Through September, year-to-date personal income tax collections were $26.3 million or 1.3% above the same point of the previous fiscal year. Withholding collections ($45.1 million or 2.4%) account for the majority of this overage in combination with trust payments ($1.9 million or 17.8%), payments associated with annual returns ($1.5 million or 3.7%), and lower refunds ($4.0 million or 3.3%). This growth, however, was offset by lower year-to-date collections in quarterly estimated payments ($10.6 million or 3.9%) and the miscellaneous category ($8.4 million or 42.6%). Again, this relatively low growth for the year is attributable in part to the enacted tax cuts.

Commercial Activity Tax

Commercial activity tax (CAT) September receipts deposited in the GRF were $6.5 million, or $0.6 million (9.0%) below the estimate of $7.1 million. For the year-to-date, GRF CAT collections are $30.6 million (9.8%) below the estimate. Based on the limited information available at this point, the shortfall seems to be largely due to an unexpected surge in refundable credits, after the claims of those credits had fallen in fiscal year 2015.

Despite the shortfall compared to estimate, both September and year-to-date GRF CAT revenues have increased substantially from fiscal year 2015. September collections are up $1.8 million (37.2%) from the same month of the previous fiscal year, and year-to-date collections are up by

$74.1 million (35.4%) from the same point in the previous fiscal year. This increase is due to a law change in H.B. 64 (the biennial budget bill) that increased the GRF share of total CAT receipts from 50 to 75 percent.

Since the GRF now gets 75% of all CAT collections (after adjustments such as attorney general fee collections on delinquent taxes and any lingering diversions to the motor fuel fund) there should not be much difference between the variances in GRF and all funds CAT revenues. This was the case in September. All funds CAT collections through September (net of refunds, attorney general fees, and deposits to the motor fuel fund) totaled $381.5 million and were $41.0 million below the estimate. The 9.7% shortfall is almost exactly the same as the 9.8% GRF shortfall.

The year-over-year change in all funds CAT receipts was a decline of $41.5 million (9.8%). In general, throughout fiscal year 2016 the all funds variances from the estimate and the all funds change from fiscal year 2015 will be very similar, as the all funds estimate for fiscal year 2016 is almost exactly equal to the fiscal year 2015 actual collections.

Kilowatt Hour Tax

September kilowatt hour (KWH) tax GRF collections totaled $33.0 million and were $1.5 million (4.9%) above the estimate. For the year, collections are $94.8 million, or $1.0 million (1.0%) above the estimate.

Relative to last year, KWH tax collections were $6.6 million (25.2%) higher in September, and are $16.1 million higher (20.5%) for the year-to-date. This increase is attributable to allocation changes contained in H.B. 64 which increased the portion of kilowatt hour tax receipts deposited in the GRF (prior to any subtractions for the public library fund, or PLF) from 88 percent to 100 percent.

Cigarette and Other Tobacco Tax

The cigarette and other tobacco tax collections exceeded the September estimate by $6.5 million (7.8%). This partially made up for a significant August shortfall of $24.1 million. However, for the year-to-date, cigarette and other tobacco tax collections are still $5.7 million (2.7%) below estimate.

In just three months, cigarette and other tobacco product (OTP) collections have bounced around relative to the estimates, being over in July, far short in August, and now over again in September. This seems to be related to the timing of the “floor stocks” tax associated with the H.B. 64 $0.35 per pack increase in the cigarette tax rate differing from what was estimated.

OBM now believes that the last significant amounts of cigarette floor stocks tax revenue will not be deposited into the GRF until October, and those deposits may be enough to wipe out the year-to-date shortfall.

As with the CAT, despite shortfalls relative to the estimate, the cigarette and OTP revenues increased substantially from last year, for both the month of September and the year-to-date. This is due to the $0.35 per pack cigarette tax rate increase in H.B. 64. Cigarette and OTP tax collections increased by $20.8 million (30.3%) from September of the previous fiscal year, and are up by $40.6 million (25.4%) for the year-to-date.

GRF Non-Tax Receipts

GRF non-tax receipts totaled $414.0 million in August and were $673.4 million (61.9%) below the estimate. As noted earlier in this report, the variance is almost entirely due to federal grants, which were $657.5 million (61.5%) below estimate. To briefly recapitulate the explanation from prior sections, the shortfall in federal grants was so large in September due to two factors. First, $329.0 million in federal grants that were initially allocated to the GRF in August were later allocated to other state funds. This would have happened in August if not for changes to the computer accounting system that delayed the usual August processing of these allocations of federal money. Second, the same computer accounting system changes delayed the processing of about $250.0 million in federal grant revenues that otherwise would have been deposited in the GRF in September, delaying them until October. It is OBM's expectation that by the end of October, all these delays in processing will have been corrected and any remaining variances in federal grants will be primarily the result of variances in Medicaid spending.

The other variances in non-tax revenues were broadly variations on the same theme, delays in receiving expected revenue. The other income category of revenues was $15.4 million below estimate due to a delay in receiving a payment of liquor profits revenue associated with the lease of the state's liquor enterprise. Transfers in to the GRF were $7.4 million below estimate due to a delay in receiving casino and racetrack relocation payments. These payments have now been received and will appear in October non-tax revenues.

Table 1

GENERAL REVENUE FUND RECEIPTS
ACTUAL FY 2016 VS ESTIMATE FY 2016
($ in thousands)

	MONTH				YEAR-TO-DATE			
REVENUE SOURCE	ACTUAL SEPTEMBER	ESTIMATE SEPTEMBER	$ VAR	% VAR	ACTUAL Y-T-D	ESTIMATE Y-T-D	$ VAR	% VAR
TAX RECEIPTS								
Non-Auto Sales & Use	694,961	696,800	(1,839)	-0.3%	2,249,638	2,196,900	52,738	2.4%
Auto Sales & Use	125,638	111,800	13,838	12.4%	364,629	347,300	17,329	5.0%
Subtotal Sales & Use	820,599	808,600	11,999	1.5%	2,614,267	2,544,200	70,067	2.8%
Personal Income	833,602	883,500	(49,898)	-5.6%	2,081,152	2,134,100	(52,948)	-2.5%
Corporate Franchise	1,044	0	1,044	N/A	2,364	0	2,364	N/A
Financial Institutions Tax	(638)	500	(1,138)	-227.6%	(459)	300	(759)	-253.1%
Commercial Activity Tax	6,459	7,100	(641)	-9.0%	283,565	314,200	(30,635)	-9.8%
Petroleum Activity Tax	1,350	1,500	(150)	-10.0%	1,350	1,500	(150)	-10.0%
Public Utility	(65)	(200)	135	67.7%	28,194	25,200	2,994	11.9%
Kilowatt Hour	33,037	31,500	1,537	4.9%	94,779	93,800	979	1.0%
Natural Gas Distribution	(41)	0	(41)	N/A	12,060	12,100	(40)	-0.3%
Foreign Insurance	5,560	3,100	2,460	79.3%	5,522	4,100	1,422	34.7%
Domestic Insurance	0	2,100	(2,100)	-100.0%	6	4,900	(4,894)	-99.9%
Other Business & Property	7	0	7	N/A	28	0	28	N/A
Cigarette and Other Tobacco	89,359	82,900	6,459	7.8%	200,635	206,300	(5,665)	-2.7%
Alcoholic Beverage	1,621	5,000	(3,379)	-67.6%	12,041	14,600	(2,559)	-17.5%
Liquor Gallonage	3,673	3,800	(127)	-3.3%	11,333	11,200	133	1.2%
Estate	76	0	76	N/A	148	0	148	N/A
Total Tax Receipts	1,795,643	1,829,400	(33,757)	-1.8%	5,346,984	5,366,500	(19,516)	-0.4%
NON-TAX RECEIPTS								
Federal Grants	410,840	1,068,328	(657,488)	-61.5%	2,951,060	3,300,720	(349,661)	-10.6%
Earnings on Investments	0	0	0	N/A	0	0	0	N/A
License & Fees	1,765	2,271	(506)	-22.3%	7,911	8,643	(731)	-8.5%
Other Income	1,419	16,844	(15,425)	-91.6%	3,322	19,180	(15,858)	-82.7%
ISTV'S	0	0	0	N/A	573	0	573	N/A
Total Non-Tax Receipts	414,025	1,087,443	(673,418)	-61.9%	2,962,866	3,328,543	(365,677)	-11.0%
TOTAL REVENUES	2,209,668	2,916,843	(707,175)	-24.2%	8,309,850	8,695,043	(385,194)	-4.4%
TRANSFERS								
Budget Stabilization	0	0	0	N/A	0	0	0	N/A
Liquor Transfers	0	0	0	N/A	0	0	0	N/A
Transfers In - Other	1,991	9,400	(7,409)	-78.8%	165,064	177,300	(12,236)	-6.9%
Temporary Transfers In	0	0	0	N/A	0	0	0	N/A
Total Transfers	1,991	9,400	(7,409)	-78.8%	165,064	177,300	(12,236)	-6.9%
TOTAL SOURCES	2,211,659	2,926,243	(714,584)	-24.4%	8,474,914	8,872,343	(397,429)	-4.5%

Table 2

GENERAL REVENUE FUND RECEIPTS
ACTUAL FY 2016 VS ACTUAL FY 2015
($ in thousands)

REVENUE SOURCE	MONTH				YEAR-TO-DATE			
	SEPTEMBER FY 2016	SEPTEMBER FY 2015	$ VAR	% VAR	ACTUAL FY 2016	ACTUAL FY 2015	$ VAR	% VAR
TAX RECEIPTS								
Non-Auto Sales & Use	694,961	703,924	(8,963)	-1.3%	2,249,638	2,127,038	122,599	5.8%
Auto Sales & Use	125,638	107,856	17,782	16.5%	364,629	336,827	27,802	8.3%
Subtotal Sales & Use	820,599	811,780	8,819	1.1%	2,614,267	2,463,866	150,401	6.1%
Personal Income	833,602	877,781	(44,180)	-5.0%	2,081,152	2,054,879	26,273	1.3%
Corporate Franchise	1,044	5,622	(4,578)	-81.4%	2,364	7,058	(4,694)	-66.5%
Financial Institutions Tax	(638)	532	(1,170)	-219.9%	(459)	422	(882)	-208.8%
Commercial Activity Tax	6,459	4,707	1,752	37.2%	283,565	209,496	74,068	35.4%
Petroleum Activity Tax	1,350	0	1,350	N/A	1,350	0	1,350	N/A
Public Utility	(65)	(15,863)	15,798	99.6%	28,194	12,536	15,657	124.9%
Kilowatt Hour	33,037	26,390	6,647	25.2%	94,779	78,652	16,127	20.5%
Natural Gas Distribution	(41)	9	(50)	-552.7%	12,060	13,221	(1,161)	-8.8%
Foreign Insurance	5,560	2,777	2,782	100.2%	5,522	2,906	2,616	90.0%
Domestic Insurance	0	209	(208)	-99.9%	6	7,665	(7,660)	-99.9%
Other Business & Property	7	0	7	N/A	28	11	17	161.5%
Cigarette and Other Tobacco	89,359	68,588	20,771	30.3%	200,635	160,020	40,615	25.4%
Alcoholic Beverage	1,621	6,949	(5,328)	-76.7%	12,041	15,364	(3,323)	-21.6%
Liquor Gallonage	3,673	3,749	(77)	-2.0%	11,333	10,989	344	3.1%
Estate	76	15	61	397.5%	148	1,168	(1,020)	-87.3%
Total Tax Receipts	1,795,643	1,793,246	2,397	0.1%	5,346,984	5,038,255	308,729	6.1%
NON-TAX RECEIPTS								
Federal Grants	410,840	801,622	(390,781)	-48.7%	2,951,060	2,471,100	479,960	19.4%
Earnings on Investments	0	0	0	N/A	0	0	0	N/A
License & Fee	1,765	2,639	(874)	-33.1%	7,911	7,549	363	4.8%
Other Income	1,419	15,094	(13,674)	-90.6%	3,322	16,980	(13,657)	-80.4%
ISTV'S	0	10	(10)	-98.3%	573	12	561	4866.5%
Total Non-Tax Receipts	414,025	819,364	(405,339)	-49.5%	2,962,866	2,495,640	467,226	18.7%
TOTAL REVENUES	2,209,668	2,612,610	(402,942)	-15.4%	8,309,850	7,533,895	775,955	10.3%
TRANSFERS								
Budget Stabilization	0	0	0	N/A	0	0	0	N/A
Liquor Transfers	0	0	0	N/A	0	0	0	N/A
Transfers In - Other	1,991	5,501	(3,509)	-63.8%	165,064	10,503	154,561	1471.6%
Temporary Transfers In	0	0	0	N/A	0	0	0	N/A
Total Transfers	1,991	5,501	(3,509)	-63.8%	165,064	10,503	154,561	1471.6%
TOTAL SOURCES	2,211,659	2,618,111	(406,452)	-15.5%	8,474,914	7,544,398	930,516	12.3%

DISBURSEMENTS

September GRF disbursements, across all uses, totaled $2,631.0 million and were $281.8 million (9.7%) below estimate. This was primarily attributable to lower than estimated disbursements in the Debt Service and Medicaid categories being partially offset by higher than estimated disbursements in the Property Tax Reimbursements category. On a year-over-year basis, September total uses were $1,017.3 million (27.9%) lower than those of the same month in the previous fiscal year, with the Operating Transfer Out, Primary and Secondary Education, and Debt Service categories largely responsible for the decrease. Year-to-date variances by category are provided in the table below.

Category	**Description**	**YTD Variance**	**% Variance**
Expenditures and transfers between agencies (ISTVs)	State agency operations, subsidies, tax relief, debt service payments, and pending payroll (if applicable)	($208.0 million)	-2.2%
Transfers	Temporary or permanent transfers out of the GRF that are not agency expenditures	($0.9 million)	-0.1%
TOTAL DISBURSEMENTS VARIANCE:		**($208.8 million)**	**-2.0%**

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

Primary and Secondary Education

This category contains GRF spending for the Ohio Department of Education, minus property tax reimbursements. September disbursements for this category totaled $206.0 million and were $27.9 million (11.9%) below estimate. Expenditures for the school foundation program totaled $201.0 million and were $17.5 million (8.0%) below estimate. This variance was primarily attributable to the timing of payments for school choice programs within the foundation funding line. Year-to-date disbursements were $1,790.4 million, which was $53.3 million (2.9%) below the estimate.

On a year-over-year basis, disbursements in this category were $272.3 million (56.9%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $82.4 million (4.4%) lower than at the same point in fiscal year 2015.

Higher Education

September disbursements for the Higher Education category, which includes non-debt service GRF spending by the Department of Higher Education, totaled $194.3 million and were $7.1 million (3.5%) below estimate for the month. This variance was primarily attributable to $4.1 million in disbursements planned for September that were not made due to the implementation of a more robust subsidy distribution and monitoring process in fiscal year 2016 resulting in a temporary delay in the disbursement of subsidy line items and $2.1 million in lower than estimated requests for reimbursement from higher education institutions for the Ohio College

Opportunity Grant Scholarship Program, War Orphans Scholarship, and Choose Ohio First. Year-to-date disbursements were $546.6 million, which was $7.1 million (1.3%) below estimate.

On a year-over-year basis, disbursements in this category were $12.0 million (6.6%) higher than for the same month in the previous fiscal year while year-to-date expenditures were $16.3 million (3.1%) higher than at the same point in fiscal year 2015.

Other Education

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

September disbursements in this category totaled $8.1 million and were $0.1 million (0.9%) above estimate. Year-to-date disbursements were $24.6 million, which was $1.8 million (8.0%) above estimate. On a year-over-year basis, disbursements in this category were $1.0 million (10.8%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $3.5 million (16.5%) higher than at the same point in fiscal year 2015.

Medicaid

This category includes all Medicaid spending on services and program support by the following six agencies: the Department of Medicaid, the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Health, the Department of Job and Family Services, and the Department of Aging.

Please note that beginning in fiscal year 2016 Medicaid GRF disbursements include expenditures related to persons enrolled under the "Group 8" expansion program, which were previously funded from non-GRF sources. Although these persons will be 100% federally-funded during fiscal year 2016, during the last six months of the biennium the state will be required to assume five percent of their costs. For this reason the costs and related federal reimbursements for these persons was shifted into the GRF for the biennium.

<u>Expenditures</u>
September GRF disbursements for the Medicaid Program totaled $1,444.5 million and were $45.7 million (3.1%) below the estimate, and $58.1 million (4.2%) above disbursements for the same month in the previous fiscal year. Year-to-date GRF disbursements totaled $4,746.4 million and were $155.9 million (3.2%) below the estimate, and $603.4 million (14.6%) above disbursements for the same point in the previous fiscal year. This increase is attributed to the shifting of expenditures for persons enrolled under the "Group 8" expansion program to the GRF.

September all funds disbursements for the Medicaid Program totaled $1,890.5 million and were $116.5 million (5.8%) below the estimate, and $176.6 million (8.5%) below disbursements for the same month in the previous fiscal year. Year-to-date all funds disbursements totaled $6,408.6

million and were $258.9 million (3.9%) below the estimate, and $813.1 million (14.5%) above disbursements for the same point in the previous fiscal year.

The September all funds variance was due primarily to lower than anticipated costs in the fee-for-service categories and program administration. Below estimate spending in the fee-for-service categories, which includes inpatient and outpatient hospital, behavioral health, developmental disability services, and nursing facilities, was driven by enrollment in these programs being 11.9 percent below estimate for the month. This savings is offset in part by managed care enrollment being 1.5 percent above estimate for the month. Finally, prior year encumbrances for program administration, primarily related to an information technology improvement project, were disbursed in an amount below that which was estimated for the month.

The year-to-date all funds variance results from the fee-for-service and administrative variances described above.

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

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

		September Projection		September Actual		Variance	Variance %
GRF	$	1,490.2	$	1,444.5	$	(45.7)	-3.1%
Non-GRF	$	516.8	$	446.0	$	(70.9)	-13.7%
All Funds	$	2,007.0	$	1,890.5	$	(116.5)	-5.8%

Enrollment

Total September enrollment across all categories was 3.02 million. The most significant components are the Covered Families and Children (CFC) category, which increased by 3,356 persons to a September total of 2.45 million persons, and the Aged, Blind and Disabled (ABD) category, which decreased by 3,514 persons to a September total of 396,289 covered lives.

Total enrollment across all categories for the same period last year was 2.86 million covered persons, including 2.22 million persons in the CFC category and 431,529 people in the ABD category.

Please note that these data are subject to revision.

Health and Human Services

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

September disbursements in this category totaled $77.5 million and were $3.3 million (4.1%) below estimate for the month. Year-to-date disbursements were $324.1 million, which was $26.2 million (7.5%) below estimate. On a year-over-year basis, disbursements in this category were $15.7 million (16.8%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $24.4 million (7.0%) lower than at the same point in fiscal year 2015.

Department of Health
September disbursements for the Department of Health totaled $3.0 million and were $4.7 million (60.9%) below estimate. This variance was primarily attributable to Medically Handicapped Children disbursements being $1.5 million (100.1%) below estimate due to subsidy payments planned for September being moved to October instead.

Department of Job and Family Services
September disbursements for the Department of Job and Family Services totaled $48.3 million and were $2.3 million (4.9%) above estimate. This variance was primarily attributable to Family and Children Services disbursements being $10.3 million (833.2%) above estimate due to county disbursements of the State Child Protective Allocation being made in September instead of October as anticipated. This variance was partially offset by Family Assistance-Local disbursements being $3.3 million (49.8%) below estimate, Early Care and Education disbursements being $2.5 million (64.9%) below estimate, and Child, Family, and Community Protective Services disbursements being $1.0 million (52.1%) below estimate all due to county subsidy payments estimated for September being moved to future months instead.

Department of Mental Health and Addiction Services
September disbursements for the Department of Mental Health and Addiction Services totaled $22.3 million and were $0.5 million (2.4%) above estimate. This variance was primarily attributable to Continuum of Care Services disbursements being $1.4 million above an estimate of zero due to local allocations estimated to be disbursed in August being disbursed in September instead.

Justice and Public Protection

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

September disbursements in this category totaled $133.0 million and were $6.8 million (4.9%) below estimate for the month. Year-to-date disbursements were $550.1 million, which was $9.4 million (1.7%) below estimate. On a year-over-year basis, disbursements in this category were $4.5 million (3.3%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $52.5 million (10.5%) higher than at the same point in fiscal year 2015.

Department of Rehabilitation and Correction
September disbursements for the Department of Rehabilitation and Correction totaled $103.7 million and were $5.9 million (5.4%) below estimate. This variance was primarily due to several lines. Disbursements for Institutional Operations were $1.5 million (1.9%) below estimate and disbursements for Institutional Medical Services were $5.7 million (26.1%) below estimate both due to payments for prior year encumbrances not being disbursed in September as anticipated. These variances were partially offset by $1.7 million (290.2%) in above-estimated disbursements for Community Nonresidential Programs due to the timing of grant payments.

Department of Youth Services
September disbursements for the Department of Youth Services totaled $10.5 million and were $1.0 million (10.7%) above estimate. This variance was primarily attributable to the timing of payments to Community Corrections Facilities planned for October being disbursed in September instead.

General Government

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

September disbursements in this category totaled $21.4 million and were $6.4 million (22.9%) below estimate for the month. Year-to-date disbursements were $102.9 million, which was $2.4 million (2.3%) below estimate. On a year-over-year basis, disbursements in this category were $5.2 million (19.4%) lower than for the same month in the previous fiscal year while year-to-date expenditures were $12.8 million (14.3%) higher than at the same point in fiscal year 2015.

Development Services Agency
September disbursements for Development Services Agency totaled $1.9 million and were $1.9 million (49.6%) below estimate. The variance was primarily attributable to lower than estimated disbursements for Technology Programs and Grants and the timing of a grant payment for Travel and Tourism.

Property Tax Reimbursements

Payments from the property tax reimbursement category are made to local governments and school districts to reimburse these entities for revenues foregone as a result of the 10.0 percent and 2.5 percent rollback, as well as the homestead exemption. September property tax reimbursements totaled $371.1 million and were $50.5 million (15.8%) above estimate. Year-to-date disbursements totaled $463.6 million and were $46.2 million (11.1%) above estimate.

Debt Service

September payments for debt service totaled $174.7 million and were $232.8 million (57.1%) below estimate. This variance was primarily attributable to payments on Common Schools General Obligation Debt Service that totaled $231.1 million and were estimated to occur in September but instead occurred in August. Year-to-date debt service payments were $768.0 million, which was $1.7 million (0.2%) below estimate.

Transfers Out

September transfers out totaled $0.5 million and were $2.5 million (84.2%) below estimate. September transfers were comprised primarily of a $0.5 million transfer to the Statewide Ballot Advertising Fund. Year-to-date transfers out were $772.0 million, which was $0.9 million (0.1%) below estimate.

Table 3

GENERAL REVENUE FUND DISBURSEMENTS

ACTUAL FY 2016 VS ESTIMATE FY 2016

($ in thousands)

	MONTH				YEAR-TO-DATE			
Functional Reporting Categories Description	ACTUAL SEPTEMBER	ESTIMATED SEPTEMBER	$ VAR	% VAR	YTD ACTUAL	YTD ESTIMATE	$ VAR	% VAR
Primary and Secondary Education	205,985	233,861	(27,876)	-11.9%	1,790,404	1,843,666	(53,262)	-2.9%
Higher Education	194,326	201,382	(7,056)	-3.5%	546,609	553,729	(7,120)	-1.3%
Other Education	8,091	8,019	72	0.9%	24,556	22,729	1,827	8.0%
Medicaid	1,444,511	1,490,161	(45,650)	-3.1%	4,746,425	4,902,343	(155,918)	-3.2%
Health and Human Services	77,486	80,804	(3,318)	-4.1%	324,131	350,286	(26,155)	-7.5%
Justice and Public Protection	132,983	139,794	(6,812)	-4.9%	550,137	559,581	(9,444)	-1.7%
General Government	21,421	27,776	(6,354)	-22.9%	102,919	105,325	(2,406)	-2.3%
Property Tax Reimbursements	371,086	320,567	50,520	15.8%	463,572	417,351	46,221	11.1%
Capital Outlay	0	0	0	N/A	0	0	0	N/A
Debt Service	174,678	407,441	(232,763)	-57.1%	768,013	769,721	(1,708)	-0.2%
Total Expenditures & ISTV's	2,630,567	2,909,805	(279,238)	-9.6%	9,316,766	9,524,732	(207,966)	-2.2%
Transfers Out:								
BSF Transfer Out	0	0	0	N/A	425,500	425,500	0	0.0%
Operating Transfer Out	475	3,000	(2,525)	-84.2%	346,475	347,331	(856)	-0.2%
Temporary Transfer Out	0	0	0	N/A	0	0	0	N/A
Total Transfers Out	475	3,000	(2,525)	-84.2%	771,975	772,831	(856)	-0.1%
Total Fund Uses	2,631,042	2,912,805	(281,763)	-9.7%	10,088,741	10,297,563	(208,822)	-2.0%

Table 4

GENERAL REVENUE FUND DISBURSEMENTS
ACTUAL FY 2016 VS ACTUAL FY 2015
($ in thousands)

Functional Reporting Categories Description	MONTH SEPTEMBER FY 2016	SEPTEMBER FY 2015	$ VAR	% VAR	YEAR-TO-DATE ACTUAL FY 2016	ACTUAL FY 2015	$ VAR	% VAR
Primary and Secondary Education	205,985	478,323	(272,337)	-56.9%	1,790,404	1,872,801	(82,398)	-4.4%
Higher Education	194,326	182,297	12,028	6.6%	546,609	530,312	16,298	3.1%
Other Education	8,091	9,071	(981)	-10.8%	24,556	21,086	3,469	16.5%
Medicaid	1,444,511	1,386,461	58,050	4.2%	4,746,425	4,143,018	603,407	14.6%
Health and Human Services	77,486	93,145	(15,659)	-16.8%	324,131	348,516	(24,385)	-7.0%
Justice and Public Protection	132,983	137,466	(4,483)	-3.3%	550,137	497,670	52,467	10.5%
General Government	21,421	26,585	(5,164)	-19.4%	102,919	90,080	12,839	14.3%
Property Tax Reimbursements	371,086	412,313	(41,226)	-10.0%	463,572	431,652	31,920	7.4%
Capital Outlay	0	0	0	N/A	0	0	0	N/A
Debt Service	174,678	393,697	(219,020)	-55.6%	768,013	733,919	34,095	4.6%
Total Expenditures & ISTV's	2,630,567	3,119,359	(488,792)	-15.7%	9,316,766	8,669,054	647,712	7.5%
Transfers Out:								
BSF Transfer	0	0	0	N/A	425,500	0	425,500	N/A
Operating Transfer Out	475	529,000	(528,525)	-99.9%	346,475	563,007	(216,531)	-38.5%
Temporary Transfer Out	0	0	0	N/A	0	0	0	N/A
Total Transfers Out	475	529,000	(528,525)	-99.9%	771,975	563,007	208,969	37.1%
Total Fund Uses	2,631,042	3,648,359	(1,017,317)	-27.9%	10,088,741	9,232,060	856,681	9.3%

FUND BALANCE

Table 5 describes the estimated General Revenue Fund (GRF) unencumbered ending fund balance for FY 2016. Based on the estimated revenue sources for FY 2016 and the estimated FY 2016 disbursements, transfers, and encumbrances, the GRF unencumbered ending fund balance for FY 2016 is an estimated $540.2 million.

The GRF unencumbered ending fund balance should not be considered as a balance available for expenditure in FY 2016 nor should it be considered as equivalent to the FY 2016 surplus calculation as defined in Section 131.44 of the Ohio Revised Code.

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

Table 5
FUND BALANCE
GENERAL REVENUE FUND
FISCAL YEAR 2016
($ in thousands)

July 1, 2015 Beginning Cash Balance*	**$ 1,711,679**
Plus FY 2016 Estimated Revenues	22,223,600
Plus FY 2016 Estimated Federal Revenues	12,232,485
Plus FY 2016 Estimated Transfers to GRF	334,000
Total Sources Available for Expenditures & Transfers	**36,501,764**
Less FY 2016 Estimated Disbursements**	34,811,540
Less FY 2016 Estimated Total Encumbrances as of June 30, 2016	339,059
Less FY 2016 Estimated Transfers Out	810,931
Total Estimated Uses	**35,961,530**
FY 2016 ESTIMATED UNENCUMBERED ENDING FUND BALANCE	**540,234**

* Includes reservations of $425.2 million for prior year encumbrances and $736.1 million for transfers from the fiscal year 2015 ending balance executed during fiscal year 2016. After accounting for these amounts, the estimated unencumbered beginning fund balance for fiscal year 2016 is $550.4 million.

** Disbursements include estimated spending against current year appropriations and prior year encumbrances.

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

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TO: OMA Tax Policy Committee
FROM: Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: October 15, 2015

Overview

The state budget process wrapped up at the end of June. Manufacturers led the effort in removing the administration's proposals of raising the CAT rate and expanding the sales tax to cover new services. Both the House and Senate have begun hearings for the fall session. There are several bill that will directly impact manufacturers.

State Financial Condition

The economy expanded by 3.9% in the second quarter, revised up from a previous estimate of 3.7%. This was significantly faster growth than the first-quarter gain of 0.6%.

U.S. employment increased by 142,000 jobs in September, in line with the previous month but well below the average during the previous twelve months. The unemployment rate was unchanged at 5.1%.

Ohio employment increased by 14,600 jobs in August and is up by 42,300 jobs year-to-date. The Ohio unemployment rate decreased by 0.3 percentage points to 4.7% – its lowest level since August 2001.

Leading economic indicators continue to point toward uninterrupted economic expansion. Recent data indicate that growth continued in the third quarter, but at a slower pace. Forecasters project further growth in the fourth quarter.

Tax Legislation

House Bill 9 – tax expenditure review committee

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The Senate had a watered down verision of this committee operate during the budget process. The OMA testified several times in front of the committee to discuss why certain tax expenditures were important and why others should be removed from Ohio's tax code. This bill has passed the House and has had several hearings in the Senate.

House Bill 64 – state budget bill

The House Bill 64 conference committee crafted the final compromise version of the state budget in late June.

The centerpiece of the as-introduced budget was a tax overhaul that included lower income taxes on individuals and small business owners paid for – in part – by increased sales, commercial activity, tobacco, and severance taxes.

Through active advocacy by OMA members and a united business community, the House and Senate agreed to a tax package that eliminated the proposed commercial activity tax rate increase and the proposed sales tax expansion and rate, while still lowering taxes on individuals and small businesses.

This is a big win for manufacturing.

Senate Bill 88 – CAT credit
Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings.

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

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

House Bill 182 – JEDDs reorganization
House Bill 182 sponsored by Representative Schuring (R-Canton) would revise the law governing the creation and operation of joint economic development districts (JEDDs) and enterprise zones. Amongst the changes the bill establishes a procedure permitting the owner of a business operating in the unincorporated territory of a JEDD to apply for exemption from the JEDD income tax on behalf of the business and its employees. The bill has had three hearings in the House.

Senate Bill 198 – non-resident municipal income tax
SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident. This bill has opposition from Ohio's cities and villages. It had its first hearing two weeks ago in the Senate.

Senate Bill 208 / House Bill 326 – budget income tax correction bills
The House and Senate were hoping to have finished bills at this point in October that would repair an error in the business tax deduction passed in the state budget bill earlier this year.

The intent was to help small businesses reduce their taxes by creating a 75% income tax deduction on the first $250,000 of pass-through business income, then charge a 3% flat tax on income greater than $250,000. But the budget bill language did not match the intent and would actually cause a tax increase for some businesses.

Companion bills SB 208 and HB 326 were drafted to correct the error. The OMA submitted letters to both the House and Senate encouraging passage of the bills to fix the problem.

However, the fix is in need of a fix itself. The two new bills create their own unintended consequences and fail to address all possible tax increases. Both chambers are aware of the issue and are working to correct the errors. A memo by Mark Engel OMA tax counsel discusses the original error (attached).

<u>House Bill 232 – seller use tax collection</u>
HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville. The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.

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

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

<u>Tax News</u>
<u>Needed Tax Fix</u>
Legislative leaders have indicated that it is likely the General Assembly will take action later this fall to fix the error in the recently passed state budget that would leave certain Ohio business owners facing a tax increase this year.

The budget was supposed to reduce the tax on business income above $250,000 to a flat 3% rate. However the final version of the bill reads that the 3% rate applies to all taxable business income, not just income above $250,000. For some taxpayers, this 3% is higher than the current graduated tax rate.

Lawmakers have noted this was an error and that a fix could be in the works. The legislature needs to remedy this by the end of the year in order for the hike on some businesses not to take effect.

<u>CAT Amicus</u>
The OMA is working with allies in filing an amicus brief on behalf of the state. The issue revolves around three online/catalogue retailers who have failed to pay CAT although they do business in the state of Ohio. The coalition is producing a brief outlining the

importance of the CAT to Ohio and Ohio businesses. A real threat exists if these types of companies are excluded from the CAT; the base erodes and more pressure is put on the low rate, resulting in a possible rate increase.

Navistar Amicus

Earlier this summer the Ohio Supreme Court issued a decision favorable to businesses, (Navistar v. Testa), finding that the deadline for notifying the Tax Commissioner of the amount a taxpayer intended to claim as a credit against the commercial activity tax (CAT) for net operating losses (NOLs) accrued under the former franchise tax, did not preclude the tax commissioner from adjusting the amounts reflected in the notice.

However the Board of Tax Appeals must consider all the evidence, including that submitted by the taxpayer, in determining whether an error was made.

The OMA filed an amicus brief with the court. The court used much of the OMA's analysis set forth in its amicus brief in its written decision, which signals a win ultimately for manufacturers.

This was an important case regarding the CAT, and the OMA's involvement factored into the outcome.

Tax Department Updates Direct Pay Permit

The Ohio Department of Taxation announced it will be sending staff to meet with businesses that hold direct pay permits for sales and use tax. The department reviewed the permit pay program and determined many companies were overpaying their liabilities.

The department will be working with permit holders to set bookkeeping benchmarks that allow for more accurate assessments of tax liabilities. All permit holders will be contacted by letter and a follow-up phone call to arrange a meeting to review their direct pay program.

If you have questions, contact the Department of Taxation at (614) 466-8099.

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2016-2017 Budget Bill Contains Major Income Tax Reductions

By Mark A. Engel, Esq.
Bricker & Eckler LLP

Following the adoption of competing budget bill provisions by the Ohio House and Senate, a conference committee worked out the differences and issued its recommendations. Like the versions proposed by Governor Kasich and approved by the Ohio House and Senate, the conference version of the bill results in a significant tax cut for Ohio taxpayers. The difference lies in the road traveled to achieve the reductions. The bill was signed by Governor Kasich on June 30, 2015.

Conference Committee Provisions

Like the Senate and the House, the final bill provides for a significant income tax cut to Ohio taxpayers. It, too, proposes a 6.3 percent reduction in personal income tax rates. Like the Senate version of the bill, the final version also eliminates entirely the state income tax on the first $250,000 in net income from small businesses and imposes a new flat tax at a rate of three percent on such income in excess of $250,000. These changes are be effective for taxable years beginning on and after January 1, 2015; however, for calendar year 2015, only 75 percent of the first $250,000 in net income will escape taxation.

The bill specifies that personal and dependent exemptions may be used only to reduce nonbusiness income. It applies a means test to the retirement income credit, the lump-sum retirement credit, the lump-sum distribution credit and the senior citizen credit. Beginning in 2015, only taxpayers with Ohio taxable income less than $100,000 will be able to claim these items. It also creates a new refund contribution check-off to fund a program operated by a nonprofit entity that grants wishes to individuals under the age of 18 who are residents and have been diagnosed with a life-threatening medical condition.

The bill increased the tax on cigarettes by $0.35 per pack. There are no changes in the taxes on other tobacco products. This increase is effective July 1, 2015.

The final bill does not raise the sales tax rate or expand its base. It also drops a proposal by the Senate to impose the sales tax on hotel intermediary services and proposes a new exemption for the provision of sanitation services to a meat slaughtering or processing operation necessary to comply with federal meat safety regulations, effective October 1, 2015. The final bill does retain provisions added by the Senate prescribing new criteria for determining whether an out-of-state seller has substantial nexus with Ohio for use tax collection purposes, expressing those criteria as creating presumption that may be rebutted by the seller, and adding other matters relating to the administration of these provisions.

Absent from the final bill is a revision to Ohio's severance tax for oil and natural gas produced through hydraulic fracking. However, talks continue between interested parties, and some provision could yet be added before final action by the Senate.

The bill retains a number of provisions added by the Senate, including the historic preservation tax credit and changes to the petroleum activity tax rate and tax computation. In another provision, production credit associations, which were originally subject to the financial institutions tax, and agricultural credit associations, which were not specifically addressed by that tax, are both specifically made subject to the CAT. This provision is retroactive to January 1, 2014, and is characterized as remedial in nature.

Finally, like the Senate version, the bill creates a new exemption from the CAT for gross receipts of a manufacturer, supplier or distributor of beauty, health, personal care or aromatic products, provided the vendor is part of an integrated supply chain and has a business location in Ohio within ten miles of another such vendor and provided the receipts are from sales of the products to another vendor or retailer in that supply chain. The provision specifies that the taxpayer claiming the exclusion must be located in a particular area of the state.

<u>House Bill 64 as proposed</u>

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

As introduced, the bill also proposed to:

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

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

Substitute Bill passed by the House

As introduced, House Bill 64 generated significant opposition, especially from business interests that would have borne the brunt of the tax increase provisions and enjoyed few of the income tax reduction benefits.

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

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

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

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

Senate version of the Bill

The Senate, like the House, wanted to provide for a significant income tax cut to Ohio taxpayers. It, too, proposes a 6.3 percent reduction in personal income tax rates. The bill also eliminates entirely the state income tax on the first $250,000 in net income from small businesses and imposes a new flat tax at a rate of 3 percent on such income in excess of $250,000. These changes would be effective for taxable years beginning on and after January 1, 2015.

The Senate version also removes a proposal by the House to means-test the exclusion of social security benefits from the Ohio tax base. Under the House-passed version, taxpayers with Ohio adjusted gross income greater than $100,000 would pay Ohio income tax on their social security benefits. That provision is absent from the Senate's version of the bill.

The Senate proposes to increase the tax on cigarettes by $0.40 per pack. The tax on other tobacco produced would be increased from 17 percent to 22.5 percent. These increases would become effective July 1, 2015. The tax is not extended to e-cigarettes.

The Senate considered raising the sales tax rate but, in the end, declined to do so. Under its proposal, the state rate remains at 5.75 percent. Also absent from the Senate version is a revision to Ohio's severance tax for oil and natural gas produced through hydraulic fracturing. However, talks continue between interested parties, and some provisions could yet be added before final action by the Senate.

A number of other relatively minor changes are offered by the Senate. Those provisions include a temporary tax amnesty for certain taxes for 45 days in early 2016; new definitions for whether a seller has "substantial nexus" with Ohio in order to register, collect and remit use tax for out-of-state purchases transacted by Ohio consumers; and a requirement on hotel intermediaries to charge, collect and remit sales tax on the full price of hotel rooms charged to their customers.

Other provisions of interest include:

- A sales tax exemption for forklifts used by logistics companies to transport completed manufactured property from the manufacturing facility to the point where they will be shipped;
- Restoration of the income tax credit for contributions to political campaigns;
- Placing the historic rehabilitation tax credit on a two-years hiatus, restarting the program as a grant program and eliminating the ability to claim the credit against the CAT;
- Changing the petroleum activity tax rate and tax computation in specific cases;
- Modifying the definition of Ohio payroll for purposes of computing the jobs creation and jobs retention tax credits to account for increases or decreases in the state income tax rate.

Also of note, the Senate's version of the bill creates a new exemption from the CAT for gross receipts of a manufacturer, supplier or distributor of beauty, health, personal care or aromatic products, provided the vendor is part of an integrated supply chain and has a business location in Ohio within ten miles of another such vendor and provided the receipts are from sales of the products to another vendor or retailer in that supply chain. In another provision, production credit associations, which were originally subject to the financial institutions tax, and agricultural credit associations, which were not specifically addressed by that tax, are both specifically made subject to the CAT. This provision is retroactive to January 1, 2014, and is characterized as remedial in nature.

Next Steps

The bill was signed by the governor on June 30. Although he vetoed a couple of minor tax provisions, the bulk of the changes in the bill were retained.

Office of Budget and Management
John R. Kasich
Governor
Timothy S. Keen
Director

NEWS RELEASE

FOR IMMEDIATE RELEASE
July 9, 2015

OBM Deposits $526.6 Million in the Budget Stabilization Fund, Boosting Ohio's Rainy Day Reserves to More Than $2 Billion

Ohio Begins Fiscal Year 2016 with a Record High Balance in Its Rainy Day Savings Account

COLUMBUS – Ohio's rainy day savings account swelled to a record-high balance of $2.005 billion today, the highest reserve level in state history, following a $526.6 million deposit authorized by Office of Budget and Management Director Timothy S. Keen. The state's rainy day account, held in the Budget Stabilization Fund (BSF), was down to just 89 cents at the beginning of Governor John Kasich's administration in 2011.

"Thanks to determined leadership from Governor Kasich and our partners in the General Assembly, the State of Ohio has finished the fiscal year in a strong fiscal condition, with a balanced budget and healthy reserves. FY 2015 ended, for a fourth consecutive year, with tax revenues above projection and spending below estimate," Keen said. "At a time when nearly half of the other states are experiencing budget challenges, this is a testament to Ohio's fiscal strategy of conservative revenue estimates, restrained public spending and jobs-friendly policies."

Today's transfer to the BSF was made pursuant to Ohio Revised Code section 131.44 and the provisions of Am. Sub. House Bill 64, the FY2016-2017 biennial budget bill signed by Governor Kasich on June 30. A provision in that bill increases the authorized BSF balance to 8.5 percent of the preceding fiscal year's GRF revenues. Previously, the maximum had been set at 5 percent of GRF revenues.

Budget Stabilization Fund (BSF)

Balance, end of Fiscal Year 2015 – 6/30/15	$ 1,477,934.600.
Deposit – 7/9/15	$ 526,634,332.
New Balance – 7/9/15	$ 2,004,568,932.

Final accounting totals and commentary for Fiscal Year 2015 will be available July 10 in OBM's Monthly Financial Report at www.obm.ohio.gov.

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June 23, 2015

The Honorable Ryan Smith
Ohio House of Representatives
77 S. High St., 13th Floor
Columbus, OH 43215

The Honorable Scott Oelslager
Ohio Senate
1 Capitol Square, 1st Floor
Columbus, OH 43215

Dear Chairman Smith and Chairman Oelslager:

Continuing our united support against diluting the commercial activity tax (CAT) base, The Ohio Manufacturers' Association, The Ohio Society of CPAs, Ohio State Bar Association, Ohio Chemistry Technology Council, Ohio Dental Association and Ohio State Medical Association have joined together to express continued opposition to the new exclusion to the CAT contained in House Bill 64.

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

Recently the General Assembly proposed a new exclusion to the CAT; it is contained in the state budget bill. This exclusion which applies retrospectively would exclude certain taxable gross receipts of a manufacturer, supplier, or distributor of beauty, health, personal care, or aromatic products which meet a certain criteria. We continue to have concerns about the long-term impact of continued CAT exclusions on what is now a low rate.

We are aware of no economic analysis that supports the need for exclusion, or shows that it will accomplish its intended goals. And there is no mechanism to measure whether it will in fact promote the desired economic activity.

The CAT was created to fix an archaic business taxing system in Ohio that was riddled with exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries. Because of these considerations we strongly urge the removal of the exclusion from House Bill 64.

Thank you for considering our position. Please do not hesitate to contact us if you would like to discuss these items further or if we can be of any assistance.

Sincerely:

Robert A. Brundrett
Ohio Manufacturers' Association

Greg Saul
The Ohio Society of CPAs

Todd Book
Ohio State Bar Association

Jennifer Klein
Chemistry Technology Council

David J. Owsiany
Ohio Dental Association

Tim Maglione
Ohio State Medical Association

cc: Conference Committee Members
Tax Commissioner Joe Testa
Eric Poklar

Ohio Income Tax Changes for Business Income May Increase Taxes For Some Taxpayers

By Mark A. Engel
Bricker & Eckler LLP

Much has been made about the income tax cut that is the center piece of the tax provisions contained in Am. Sub. H.B. 64, the budget bill for the 2016-2017 period. Behind all the noise, however, lurks a tax increase for the 2015 tax year for many taxpayers taking advantage of the so-called small business tax deduction. It won't affect all small businesses, just those with taxable income (after deducting their small business deduction) less than about $40,000. It happens because the new tax rate on that income is a flat 3 percent, while currently net income under $40,000 is taxed at a lower graduated rate.

Under the budget bill, Ohio's income tax is a graduated tax, ranging from 0.495 percent for persons with taxable income of $5,000 or less, to 4.997 percent for persons with taxable income in excess of $200,000. For taxable years beginning in 2014, taxpayers with "Ohio small business investor income" and filing joint returns were able to deduct three-fourths of the first $250,000. "Ohio small business investor income" is business income of an individual (typically from a sole proprietor or from a pass-through entity) apportioned or allocated to Ohio.

For taxable years beginning in 2015, however, taxpayers may exclude three-fourths of the first $250,000 of their taxable business income, and the excess is taxed at a flat rate of three percent. For taxable years beginning in 2016, taxpayers may exclude the entire first $250,000 of taxable business income from taxation. Taxable business income in excess of $250,000 is subject to the flat three percent tax rate.

What appears to have been overlooked is that for taxable years beginning in 2015, some taxpayers with taxable business income in excess of the excluded amount will actually pay more income tax in 2015 than they would have had the law not been changed. That is caused by the graduated nature of Ohio's income tax rate structure. Taxpayers with nonbusiness taxable income below $40,000 are taxed at a top marginal rate of 2.969 percent. However, taxpayers with business taxable income in excess of the excluded amount are taxed at the flat rate of three percent. Because that rate is higher than the graduated rates to which nonbusiness taxable income is subject, taxpayers with taxable business income will actually pay more income tax in 2015 than if the law had not been changed.

The following table illustrates the situation:

	2014		2015		2016		
Total Business Income	**Taxable Bus. Income**	**TAX**	**Taxable Bus. Income**	**TAX**	**Taxable Bus. Income**	**TAX**	**TAX - regular rate**
$ 120,000.00	$ 30,000.00	$ 633.88	$ 30,000.00	$ 900.00	$ 0	$ 0-	N/A
$ 160,000.00	$ 40,000.00	$ 950.76	$ 40,000.00	$ 1,200.00	$ 0	$ 0-	N/A
$ 200,000.00	$ 50,000.00	$ 1,320.56	$ 50,000.00	$ 1,500.00	$ 0	$ 0-	N/A

$ 250,000.00	$ 62,500.00	$ 1,782.81	$ 62,500.00	$ 1,875.00	$ 0	$ 0	N/A
$ 300,000.00	$112,500.00	$ 3,888.35	$112,500.00	$ 3,375.00	$ 50,000.00	$ 1,500.00	$ 1,237.35

One can readily see that for taxpayers with taxable business income below $250,000, there will be a one-year increase in income tax due in 2015.

One other feature that seems to have escaped notice is that while taxpayers with Ohio business taxable income are not subject to tax on the first $250,000 of such income beginning in 2016, the first dollar of business income in excess of that amount, they are subject to the three percent tax rate. That means that taxpayers with more than $250,000, but less than $290,000 total Ohio business income, will pay more income tax under the flat tax than they would if the excess income were taxed under the normal graduated rate system. Over-all, individuals with Ohio business income still see a sizeable reduction in their income tax as a result of the bill. However, individuals that might fall into this range of business income need to be aware of this situation when making their estimated tax payments.

September 22, 2015

The Honorable Jeff McClain
Chairman, Ways and Means Committee
Ohio House of Representatives
77 S. High St., 12th floor
Columbus, OH 43215

Re: **<u>House Bill 326</u>**

Dear Chairman McClain:

The Ohio Manufacturers' Association (OMA) expresses its gratitude to members of the General Assembly and to the Administration for leading efforts that reduce the tax burden on small businesses. The recently passed budget will reduce Ohioan's tax burden.

The small-business deduction in the budget bill will support reinvestment and jobs in our communities. However, after the passage of the budget bill, it came to light that the implementation of the measure would cause – in some cases - unintended tax consequences.

House Bill 326 removes any doubt of the legislature's intent and fixes the calculation of taxes. The bill clarifies that, for tax year 2015, the small business exemption will be applied to 75% of a business's first $250,000 of income; the remaining 25% of income will be taxed using the current graduated tax rates; and any income above $250,000 will be taxed at a 3% flat rate.

The OMA thanks you Chairman McClain and Representative Amstutz for identifying this issue and introducing this important piece of clarifying legislation. We urge quick passage of House Bill 326.

Respectfully,

Rob Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association

September 22, 2015

The Honorable Bob Peterson
Chairman, Ways and Means Committee
Ohio Senate
1 Capitol Square
Ground Floor North, Rm. 041
Columbus, OH 43215

Re: **<u>Senate Bill 208</u>**

Dear Chairman Peterson:

The Ohio Manufacturers' Association (OMA) expresses its gratitude to members of the General Assembly and to the Administration for leading efforts that reduce the tax burden on small businesses. The recently passed budget will reduce Ohioan's tax burden.

The small-business deduction in the budget bill will support reinvestment and jobs in our communities. However, after the passage of the budget bill, it came to light that the implementation of the measure would cause – in some cases - unintended tax consequences.

Senate Bill 208 removes any doubt of the legislature's intent and fixes the calculation of taxes. The bill clarifies that, for tax year 2015, the small business exemption will be applied to 75% of a business's first $250,000 of income; the remaining 25% of income will be taxed using the current graduated tax rates; and any income above $250,000 will be taxed at a 3% flat rate.

The OMA thanks Senator Beagle for identifying this issue and introducing this important piece of clarifying legislation. We urge quick passage of Senate Bill 208.

Respectfully,

Robert A Brundrett

Rob Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association

HB 343 Would Repeal Sales Tax on Employment Services

Mark A. Engel, Esq.
Bricker & Eckler LLP

House Bill 343 has been introduced by a number of co-sponsors. The bill would repeal the inclusion of employment services as a service that is subject to the sales tax.

Effective in 1993 in order to fill a hole in the state budget, employment services were subjected to sales and use taxes. A taxable "employment service" included any transaction in which a person provides personnel to perform work under the supervision or control of another, whether on a short- or long-term basis, where the personnel are paid by the person who provided them. The entire amount paid for the service served as the base on which the tax was calculated.

Five categories of transactions are excluded from the definition. They include:

- Transactions between members of an affiliated group
- Persons providing medical and health care services
- Persons providing contracting and subcontracting services
- Persons "permanently" assigned to another pursuant to a contract of at least a year in duration
- Transactions where the service provided to the customer is "resold" by the customer to another.

The tax generated a great deal of revenue, more than was expected, and the Department became more aggressive when it came to auditing the issue. In particular, transactions involving the "permanent assignment" provision and the "resale" provision resulted in a great deal of litigation, much of which ended up adverse to taxpayers. In addition, the Department began to take the position that any transaction involving personnel was a taxable employment service.

Of interest to manufacturers, the Department took the position, ultimately sustained by the supreme court, that labor provided to manufacturers for positions "on the floor" did not qualify for the manufacturing exemption found in R.C. 5739.02(B)(42)(g) and R.C. 5739.011. The reason for this position was that the exemption depended on the use of the "thing transferred." Employment labor was not a thing, but rather was a service.

While there has been a great deal of general discussion about the tax since its enactment, pressure to re-examine the tax has increased the past couple of years. OMA has advocated making employment services subject to the manufacturing exemption in its testimony before the Ohio legislature the past couple of years. It had not sought complete repeal due to the possible financial impact of such a measure.

House Bill 343 proposes to do away with the tax completely. It would delete "employment services" from the list of taxable transactions in R.C. 5739.01(B)(3)(k); it would delete the definition found in R.C. 5739.01(JJ); and would delete reference to the provision in R.C. 5739.02 and 5741.01.

Ohio House of Representatives

REPRESENTATIVE MARK J. ROMANCHUK
HOUSE DISTRICT 2

REPRESENTATIVE RON YOUNG
HOUSE DISTRICT 61

HB 343
To Exempt Employment Services and Employment Placement Services from Sales and Use Tax
Sponsor Testimony
October 7, 2015

Chairman Baker, Ranking Member Smith, and members of the committee, thank you for the opportunity to present testimony on HB 343. In my testimony, I will address the problems associated with Ohio's employment services tax, and how it is counterproductive to our stated goal of "jobs".

Ohio's tax on employment services is essentially a tax on labor. The law is outdated, confusing, costly to comply with, affects Ohio's competitiveness, and kills jobs.

Since the law was enacted in 1993, it has expanded - without legislative enactment - to include five exceptions to what constitutes an employment service and eight pages of a Tax Department Information Release explaining the nuances of the law. The law lacks clarity and results in employers having difficulty in determining if a particular transaction is taxable or not taxable. As a result, Representative Young and I have heard several examples from Ohio-based companies who spend an inordinate amount of time and money trying to comply with the law. We heard from one company that spends *hundreds* of hours training their staff on the nuances of this law.

The complexity and lack of clarity of the Sales and Use Tax law has spawned a significant level of litigation and audits. Representative Young and I have heard from a large, Columbus-based accounting firm that "sales tax audits" are the number one matter they assist their clients with.

Since sales tax auditing is frequent and aggressive, there is a cost to the state. At this time, it is unknown how much the Ohio Department of Taxation spends to audit this tax. Whatever the number, one has to ask, "What is the opportunity cost for the Department of Taxation to perform these audits?"

Ohio's economy has seen rapid change since 1993. Technology has revolutionized how we do business, and we are now competing with other countries around the world. The days of your competitor being just down the road are long past – our competition is Europe, Asia, and the rest of the world. As we trade and compete with other nations around the world, cost is a significant factor in deciding who will win the business. Simply put, adding a tax on labor does not help Ohio companies compete and win.

Only nine states in the nation tax labor. Four of the states (HI, NM, SD, WA) tax employment services as part of their main tax on business (most often a gross receipts tax similar to Ohio's CAT). Five of the states (OH, CT, IA, PA, WV) tax it under their sales tax *but only Ohio taxes both the fee charged by the service provider AND the wages earned by the employee.*

If you believe, as I do, that the more you tax something the less you get of it, then this tax harms job growth. In addition, if you ask yourself "where is the tax coming from, the employer or employee?" I would submit to you it is coming from the wages paid to the employee. Therefore, the tax acts as a suppressor of wages. If our goal is to create an environment that produces good, high paying jobs, this tax is clearly harmful to that goal.

Representative Young and I would be happy to answer any questions.

Ohio House of Representatives

State Representative
Ron Young
Sponsor Testimony for HB 343
House Economic and Workforce Development Committee
October 7, 2015

Madam Chair Baker, Vice Chair Romanchuk, Ranking Member Smith, Members of the Economic and Workforce development committee, thank you for giving me the opportunity to provide sponsor testimony to you today. House Bill 343 will repeal the sales tax on employment services. This tax first became effective in 1993. The state was experiencing an economic downturn and in need of new revenue. At this time, I was not involved in politics. I was the operator of Technical Employment Services (TES), a professional staffing firm. Needless to say, my clients did not take kindly to paying an additional 6% to 8% on every invoice. On a typical $20,000 fee the extra charges ranged from $1,200 to $1,600. There was a noticeable downturn in business. As the cost of hiring increased the number of hires decreased.

I made a number of calls to Columbus to determine why our industry was targeted. After all other services were not and still are not taxed today. Services such as Accountants and Lawyers do not pay the sales tax. Why are Employment Services taxed? After a number of calls I had exasperated several prominent people in Columbus. Finally, in an effort to relieve himself of my company one of them honestly shared his feelings on the subject. He said simply, "Ron there was really no rationale for taxing the employment industry. The state needed the money and it took the money. If you don't want this sort of thing to happen again get a lobbyist." And he hung up on me. This experience played a significant role in my running for state office in 1996.

My company, TES, was a permanent placement firm. We recruited engineers to become regular employees of our clients. Temporary placement firms assign their employees to fill specific positions at client companies on a temporary basis. Professional Employer Organizations (PEO) take responsibility for whole work functions with client companies. In Ohio all of these companies pay the sales tax on the full invoice.

A PEO offers client companies some interesting options. For example, a PEO could be tasked to take responsibility for a client's warehouse. In this scenario the PEO might provide the floor personnel, supervisors, managers, Plant Manager, Accounting personnel and whatever other personnel might be required. All personnel would be employees of the PEO. This type of "workforce flexibility" is very attractive to companies in a number of settings. However, in Ohio this type of arrangement has become problematic.

Consider the problem from a client's perspective. Imagine the client needs to establish a warehouse/distribution center somewhere in our region. After initially targeting Ohio, they end up going to one of our border states. Why? Well, one of the primary reasons is the employment sales tax. Michigan, Indiana, Kentucky and West Virginia do not charge the tax. The 6% to 8% additional payments Ohio charges might not sound like a lot, but when you consider that for every million in employee wages and PEO fees, the company's costs increase by $60,000 to $80,000. Of course, the tax also presents similar problems for all types of employment services and puts Ohio at a tremendous disadvantage. According to the Federation of Tax Administrators there are only 9 states that tax employment services. However, 4 of them (HI, NM, SD, WA) tax them under a gross receipt tax rather than a sales tax.

The other 5 states (OH, CT, IA, PA, WV) do tax it as part of their sales tax however Ohio is the only one that taxes both the employment services fee and the employee wages.

The employment service tax cost Ohio jobs, damages our economic growth and gives the impression that Ohio does not understand job creation in 21st Century America. It punishes job creators, deters companies from coming to Ohio and forces others to leave our state. In fact this tax calls into the question, our chairwoman's famous axiom, "It's all about jobs" and the less well known but non-the-less poignant adage "Ohio means Jobs." If Ohio really means jobs then why do we punish our job creators?

Thank you again for giving me the opportunity to bring to you this important piece of legislation. I would be happy to answer any questions you might have.

Ohio's Direct Pay Tax Program Receiving Review

The Ohio Department of Taxation will soon be sending their staff to meet with businesses that hold a direct pay permit for sales and use tax.

Over the past several years, the tax department has been looking for ways to improve its operations. In recent years, it changed a long standing practice that it discovered where the tax department wasn't notifying businesses when they had overpaid their taxes when filing their tax returns. A review of the direct pay program has revealed a similar pattern: many companies have been overpaying their tax liabilities.

Approximately 450 business taxpayers have a direct pay permit from the state, allowing them to pay tax directly to the State rather than pay the vendor when a taxable item or service is purchased.

These businesses, most of which are in the manufacturing, construction contracting, or public utility sectors, typically have larger or more complex use tax obligations and the program allows them additional time to identify and compute their taxable transactions.

"Our goal is to make sure businesses hold on to money they've earned," said Ohio Tax Commissioner Joe Testa. "It will certainly benefit those businesses as well as help local governments who are budgeting based on a predictable stream of revenue."

Testa says there have been instances where a large taxpayer reconciles its books and determines that it overpaid and requests a refund. Likewise, when the reconciliation results in a large tax liability, the local government receives a bump in revenue that is difficult for them, due to taxpayer confidentiality, to determine whether or not it is a one-time payment.

The Department of Taxation will be working with direct pay permit holders to set bookkeeping benchmarks that allow for more accurate assessments of tax liabilities. Each permit holder will be contacted by letter, with a follow-up phone call to arrange a meeting to review their direct pay program.

If you have questions, please contact the Department of Taxation at 614-466-8099.

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Ohio Manufacturers' Association

Tax Counsel Report
October 15, 2015

By Mark A. Engel
Bricker & Eckler LLP

Administrative Actions:

In IT 2015-01 – *To Rescind Information Release IT 2013-01 and Provide Guidance for Taxpayers Filing a Joint or "Married Filing Separately" Federal Income Tax Return* – issued July 2, 2015, the Department announced that it would follow the decision of the US Supreme Court in Wynne v. Comptroller, which ruled that states must recognize same sex marriages legally performed in another jurisdiction. Taxpayers filing amended federal returns to file returns as married must also file amended Ohio returns for all open years. Taxpayers in registered domestic partnerships, civil unions, or other similar relationships that are not denominated as marriage must still file separately.

In IT 2015-02 – *Personal Income Tax: Residency Guidelines – Tax imposed on Resident and Nonresident Individuals for Post-2014 Taxable Years* – Issued September 2015, the Department explained its interpretation of the bright-line domicile test of R.C. 5747.24 following the *Cunningham* decision, explained earlier. A significant change is that the affidavit required by R.C. 5747.24 now requires a taxpayer to state that he or she is not domiciled in Ohio pursuant to common law notions of domicile.

Legislative Actions:

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

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

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

Senate Bill 208 was introduced to remedy a technical flaw contained in Am. Sub. H.B. 64. Under the latter bill, non-business taxable income remained taxable under the existing graduated tax tables, while business taxable income (i.e., business income in excess of a specified nontaxable amount) is taxed at a flat 3 percent rate. However, in tax year 2015 only, for some taxpayers (married filing jointly) with business taxable income that exceeded $187,500, but less than $250,000, taxing such income at a rate of 3 percent resulted in a higher tax liability than if the taxpayer were taxed on that income under the graduated rate structure. The bill attempts to remedy that situation by providing that taxable business income that exceeds $187,500, but is less than $250,000, will be taxed at the applicable graduated rate. Also, because a taxpayer's tax liability is now the sum of the tax computed under the graduated rate structure and the 3 percent rate, the bill revises a number of income tax credits to make clear that the credit applies against the aggregate income tax liability of a taxpayer.

Due to unintended problems with the language of the bill, its progress has been slowed down and it may become a vehicle for a larger budget bill correction bill.

Judicial Actions:

Ohio Supreme Court

In *Cunningham v. Testa*, Slip Opinion No. 2015-Ohio-2744, the Court held that when an income taxpayer files the statement of non-domicile provided by R.C. 5747.24, attempting to invoke the bright-line test for domicile provided by that statute, the Tax Commissioner may resort to common law standards of domicile to determine whether the taxpayer is indeed domiciled inside the state where there is "substantial evidence" that the statement may be false. In this case, the fact the taxpayer had applied for and obtained the homestead exemption for the residence that he and his spouse owned in Ohio.

In *Schwartz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-3431, the Court held that while a sale of a foreclosed property by HUD was not presumed to be at arm's-length, where the purchaser presented evidence that the transaction was indeed at arm's-length, the purchase price would be presumed to be the value of the property.

In *Cruz v. Testa*, Slip Opinion No. 2015-Ohio-3292, the Court held that an officer assessed sales tax as a responsible party of the taxpayer should have been permitted to present evidence to show that the original assessment was never served upon the entity. The Court remanded the case to the BTA for a determination on that issue and specifically stated that the BTA may take additional evidence in order to make the determination.

In *MacDonald v. Shaker Hts. Bd. of Income Tax Review*, Slip Opinion No. 2015-Ohio-3290, the Court held that on appeal to the BTA, the decision of an income tax board of review is not entitled to any presumption of correctness or deference. Rather, the BTA makes factual and legal determinations in such cases on a de novo basis; therefore, it may take additional evidence and is not constrained by the findings made in the lower agency.

In *Navistar, Inc. v. Testa,* Slip Opinion No. 2015-Ohio-3283, the Court held that while the Tax Commissioner had the authority to audit the accuracy of the amortizable amount claimed by the taxpayer for its NOL credit against the CAT, the BTA had failed to consider all the evidence presented by the taxpayer that its records were in fact kept according to GAAP, such that it had claimed the correct amount. The case was remanded to the BTA for a determination without taking additional evidence. For more details, please see the attached item.

In *Metamora Elevator Co. v. Fulton Cty. Bd. of Revision*, slip Opinion No. 2015-Ohio-2807, the Court held that corrugated metal grain storage bins were business fixtures and, as such, had to be disregarded in determining the value of the taxpayer's real property.

Ohio Court of Appeals

In *Turney LLC v. Cuyahoga Cty. Bd. of Revision*, 2015-Ohio-4086, the Court of Appeals reversed the decision of the court of common pleas and held that a purchaser that received title at a closing occurring before the date the complaint was filed was the owner of the property entitled to file the complaint under R.C. 5715.19, notwithstanding the fact the title was not recorded until 6 weeks after the filing deadline. The Court of Appeals specifically rejected the argument that recordation of the title was necessary to effect a transfer of title as between the seller and buyer.

Ohio Board of Tax Appeals

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision,* BTA No. 2014-4335 & 4336 (Sept. 17, 2015), the BTA reversed the decision of the BOR and reinstated the auditor's determination of value. The BOR had investigated evidence and the result from a prior year, determined that no changes had occurred on the property or in the market, and determined value based upon that review. The BTA held that reliance on information submitted in a prior case, as well as the value determined there, was not competent and probative evidence of value. Absent additional evidence, the BTA held it was appropriate to reinstate the auditor's original determination of value.

In *Accel, Inc. v. Testa*, BTA No. 2012-2840 (7/15/15), the BTA held combining individual health and beauty products into gift baskets constituted "assembly" for purposes of the sales and use tax exemption, such that packaging materials used for the assembled products were exempt from tax. The BTA also found that the fact employee turnover occurred, and that hours fluctuated, did not prevent a finding that employees provided by an outside agency were assigned to the taxpayer on a permanent basis.

In *NASCAR Holdings, Inc. v. Testa*, BTA No. 2015-263 (6/15/15), the BTA dismissed an appeal filed by an attorney who was not licensed to practice in Ohio as jurisdictionally defective. The BTA specifically refused to apply the line of cases that permit corporate officers and employees to file cases in light of a long line of civil cases holding that actions filed by lawyers who were not admitted to practice in Ohio failed to invoke the jurisdiction of the court.

In *Bd. of Edn. of Columbus City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2014-3495 (8/10/15), the BTA held that a dollar-for-dollar reduction for deferred maintenance in an appraisal report was not proper, but that the appraisal was otherwise competent evidence of the value of the property. *See also 6565 Worthington, LLC v. Franklin Cty. Bd. of Revision*, BTA No. 2014-2992 (7/16/15), where the BTA held that such adjustments should be considered in the computation of net income or in determining the cap rate to be applied.

In *Bd. of Edn. of Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2014-3110 (8/11/2015), the BTA held that an appraisal report as of a date other than the tax lien date was competent evidence of value when the appraiser offered oral testimony that the report reflected the value as of the lien date.

In *Bd. of Edn. of Westerville City Schools v. Franklin Cty. Bd. of Revision,* BTA No. 2014-4463 (7/27/15), the BTA held that discrepancies in the name of the purchaser on the purchase agreement and closing statements did not render the sale invalid for purposes of determining value.

In *Akron City Schools v. Summit Cty. Bd. of Revision*, BTA No. 2014-3927 (7/30/15), the BTA held that a land contract constituted a recent sale at the time at which the contract was completed and title was transferred, but not on the date when the contract was signed.

Tax Commissioner Opinion

No opinions to report.

Other

Navistar Amicus Brief

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

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

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

Oral argument was held on May 6. We were permitted to participate in oral argument, but due to the number of questions asked of Navistar's counsel, our time was limited. A decision in Navistar's favor, summarized previously and in greater detail in the attached item, was issued August 18, 2015.

Ohio Supreme Court Decides BTA Must Consider All Evidence Presented in Resolving Whether Any Error Existed in Computing NOL Credit Against the CAT

By Mark A. Engel, Esq.
Bricker & Eckler LLP

The Ohio Supreme Court issued a decision this week finding that the deadline for notifying the Tax Commissioner of the amount a taxpayer intended to claim as a credit against the commercial activity tax ("CAT") for net operating losses ("NOLs") accrued under the former franchise tax, did not preclude the tax commissioner from adjusting the amounts reflected in the notice. However, perhaps signaling an ultimate taxpayer win, because the Board of Tax Appeals ("BTA") failed to determine whether in fact there was an error in the original notice, the Court vacated the BTA's decision and remanded the case with instructions to make such a determination without conducting an additional hearing. In doing so, it pointed to extensive evidence submitted by the taxpayer in support of its position that was not discussed by the BTA. It also limited the evidence that may be considered on behalf of the Tax Commissioner. *Navistar, Inc. v. Testa*, Slip Opinion 2015-3283, decided August 19, 2015.

<u>The NOL Credit</u>: In 2005, Ohio enacted legislation to phase out the corporation franchise and tangible personal property taxes and to replace them with the CAT. As part of the CAT, a credit was provided based on net operating losses incurred under the franchise tax. In order to claim the credit, taxpayers had to file a report by June 30, 2006, indicating the value of their Ohio NOLs net of any valuation allowance as of fiscal year ending in 2004.

Navistar filed the requisite report on time. However, at the time it was undergoing a restatement of its financial statements for fiscal year 2004 and notified the Tax Commissioner of that fact. Subsequently, it restated its financial statements. As part of the restatement, Navistar increased its valuation allowance for deferred taxes to 100 percent, which reduced the amount of its CAT credit to $0. Upon audit, the Tax Commissioner exercised his authority to correct errors and reduced the amount of the credit to zero. Navistar appealed to the BTA, where it argued that the Tax Commissioner did not have the authority to change the amount of the credit because there was no error made in the original valuation allowance. Absent an error, the Tax Commissioner had no authority to change the amount of the credit.

<u>The BTA Decision</u>: At the BTA, Navistar introduced evidence from three different experts to the effect that its original calculation of the valuation allowance complied with generally accepted accounting principles ("GAAP") and was, therefore correct. The Tax Commissioner relied upon Navistar's amended 10-K report, which contained a statement that it had not applied GAAP correctly. Navistar had also filed a lawsuit against its former accounting firm alleging fraud in the preparation of its financial statements and the Tax Commissioner submitted a copy of the Complaint as evidence in the case. Finally, the Tax Commissioner relied upon an expert who testified that based upon the 10-K filing and the contents of the Complaint, Navistar had not complied with GAAP in establishing its valuation allowance. Therefore, its credit report contained an error that could be corrected.

The BTA upheld the action of the Tax Commissioner. Without discussing the testimony of Navistar's witnesses, the BTA concluded that the Tax Commissioner did have the authority to change the amount, and that based upon the 10-K filing Navistar's original calculation was in error. However, while it admitted the Complaint into evidence, the BTA refused to find that it constituted a statement against interest and limited its use at the hearing. Navistar appealed that decision to the Supreme Court.

<u>The Supreme Court Decision</u>:The Supreme Court vacated the decision of the BTA. First, it agreed with the Tax Commissioner that under R.C. 5751.53, that official had the authority to revise the amount of the credit, but only if there was an error in the original calculation. It also agreed that the books and records used to compute the amount of the credit must be kept in accordance with GAAP.

Nevertheless, the Court found the BTA's decision to be unreasonable and unlawful. The BTA specifically referred to the statement in Navistar's 10-K report in finding that Navistar had failed to satisfy GAAP in computing the amount of the credit. However, the BTA failed to discuss the testimony of Navistar's witnesses to the contrary. The Court therefore remanded the case to the BTA to "carefully consider and weigh all pertinent evidence" before determining whether Navistar's original calculation complied with GAAP.

The Court also noted that while the Complaint had been submitted into evidence, the BTA had rejected the Tax Commissioner's argument that the Complaint constituted a statement against interest. While the Complaint was admitted into evidence, the hearing examiner had strictly limited its use at the hearing. The ruling by the hearing examiner regarding the Complaint was not modified or reversed by the BTA; therefore, that ruling stood. Because the Tax Commissioner failed to file a cross-appeal contesting the ruling on the Complaint, he was deemed to waive his right to rely upon the Complaint.

The Court instructed the BTA to consider all the evidence in accordance with the Court's opinion and determine, without further hearing, whether the valuation allowance originally reported by Navistar complied with GAAP. If it did, then the BTA must reverse the Tax Commissioner's final determination. If it finds the original calculation did not comply with GAAP, the BTA must affirm that final determination.

<u>Comments</u>: The Court clearly instructed the BTA to consider all the evidence on the matter of whether the valuation allowance complied with GAAP. What is interesting, however, is its holding that the Complaint may not be used as evidence in that determination. That holding will clearly limit the evidence in the record that is favorable to the Tax Commissioner's position. Its expert relied in large part upon the Complaint in concluding that Navistar had not complied with GAAP. In the absence of independent evidence to the contrary, the BTA's finding will largely depend upon the credibility of Navistar's three expert witnesses. Their testimony was largely unrefuted and their qualifications were not seriously challenged.

The OMA filed an amicus brief with the Court. Much of the analysis set forth in the amicus brief found its way into the Court's decision regarding the discussion of the law, as well as the characterization of the evidence introduced by Navistar and its importance in determining whether or not error in fact existed.

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2015-OHIO-3283

NAVISTAR, INC., APPELLANT, *v.* TESTA, TAX COMMR., APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Navistar, Inc. v. Testa,* Slip Opinion No. 2015-Ohio-3283.]

Commercial-activity-tax credit—R.C. 5751.53 authorizes the tax commissioner to issue a final determination changing the amount of potential CAT credit to reflect a correction of an inaccuracy or error in the original reported amount.

(No. 2014-0140—Submitted May 6, 2015—Decided August 18, 2015.)

APPEAL from the Board of Tax Appeals, No. 2010-575.

FRENCH, J.

{¶ 1} Under Ohio's 2005 tax-reform legislation, the new commercial-activity tax ("CAT") was enacted "to replace the existing corporate-franchise and personal-property taxes," which were phased out under that legislation for industrial corporations like Navistar, Inc. *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565, 2012-Ohio-5776, 983 N.E.2d 1317, ¶ 23, citing Am.Sub.H.B. No.

66, 151 Ohio Laws, Part II, 2868; R.C. 5733.01(G)(2). In this appeal, appellant, Navistar, Inc., claims that it is due a credit against the CAT.

{¶ 2} According to the testimony of employees of the Department of Taxation, the tax break at issue here, referred to simply as the "CAT credit," was intended to restore a portion of the value of a corporate asset, known as a "deferred-tax asset," the value of which would otherwise be substantially reduced by the transition from the franchise tax to the CAT. Specifically, the CAT credit would preserve part of the value of net operating losses ("NOLs") that taxpayers like Navistar had accumulated and were entitled to carry forward to later years and use as a deduction against income. But with the phase out of the franchise tax for most taxpayers (including industrial corporations like Navistar) and its replacement by the CAT, those NOLs would have lost their value under state tax law unless a special tax break was created. That tax break was the CAT credit, R.C. 5751.53.

{¶ 3} In this appeal, Navistar complains that as a result of Navistar's 2007 restatement of its 2004 financial statement, the tax commissioner erroneously reduced the amount of its potential CAT credit from over $27 million to zero. The tax commissioner based his determination on the restatement's increase in the "valuation allowance," an accounting entry that reflects the company's estimation of its future ability to realize the tax benefit of its NOLs. The 2007 restatement increased Navistar's valuation allowance from 62.4 percent to 100 percent; that increase led to a 100 percent offset of the NOLs for purposes of computing Navistar's potential CAT credit.

{¶ 4} Navistar contends that the tax commissioner had no statutory authority to adjust the amount of potential CAT credit based on accounting changes that were made after the deadline for applying for the CAT credit in June 2006. The tax commissioner, on the other hand, argues that his statutory audit authority under R.C. 5751.53(D) allowed him to change the amount of potential CAT credit based on a subsequent restatement of the relevant accounting entries.

{¶ 5} In addition, the parties disagree on a legal and factual issue concerning the importance of generally accepted accounting principles ("GAAP"). Navistar argues that the CAT-credit statute took a "snapshot" of the company's books and records as of the time the credit application was filed in June 2006 and that no subsequent changes to the accounting entries can be taken into account, even if those changes are necessary to bring the company's financial reporting into compliance with GAAP. But Navistar also argues that even if GAAP compliance is required to qualify for the credit, it has proved through expert testimony that the restatement's increase in the valuation allowance to 100 percent did *not* involve a correction required by GAAP, but instead constituted a different estimation of probabilities made by different management at a different point in time. The original valuation allowance for 2004, under this view, was reasonable because it was within the range permitted under GAAP.

{¶ 6} We read R.C. 5751.53(D) as authorizing the tax commissioner to issue a final determination changing the amount of potential CAT credit, but limiting that authority to making changes that reflect a correction of an inaccuracy or error in the original reported amount. As a result, we conclude that the tax commissioner's use of Navistar's restated valuation allowance as the basis for the final determination was justified only if the restated valuation allowance was a correction of error, which in this context can be the case only if Navistar's original valuation allowance was not in compliance with GAAP.

{¶ 7} Whether Navistar's original valuation allowance was in compliance with GAAP is a question of fact that must be determined in light of evidence that militates both ways. The Board of Tax Appeals ("BTA") considered certain statements by Navistar as relevant to this point but ignored the testimony of Navistar's experts, an omission that makes the BTA's decision unreasonable and unlawful. We therefore vacate the BTA's decision and remand the cause for a determination whether the original valuation allowance was in compliance with GAAP based upon all the evidence in the record. Disposition of this case will depend upon that determination.

NET OPERATING LOSSES AND THE CAT CREDIT

{¶ 8} The franchise tax's net-income method used the corporation's federal "taxable income," with Ohio adjustments, as the base on which the tax was imposed. *See* R.C. 5733.04(I) and 5733.05(B). As a general matter, "[t]he taxable income of a taxpayer engaged in business or profit-oriented activities is generally net profits rather than gross receipts or gross income." 1 B. Bittker & L. Lokken, *Federal Taxation of Income, Estates, and Gifts*, ¶ 20.1.1 (3d Ed.1999). By contrast, Ohio's CAT is measured not by net income but by the gross receipts generated by income-producing activity. *See* R.C. 5751.01(F) (defining "gross receipts" as "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration"); R.C. 5751.03 (imposing the tax on the "taxable gross receipts"). Compared with the franchise tax that it replaced, the CAT imposes a lower rate of taxation on a larger tax base: a tax base that consists of revenues that have not been offset by expenses.

{¶ 9} Under the franchise-tax law, which previously applied to Navistar, a corporation that experienced an NOL one year was allowed to use that loss to offset income in a different year by "carrying back" or "carrying forward" the NOL and using it as a deduction against income in a different year. *See* R.C. 5733.04(I)(1)(b).

{¶ 10} Because Ohio's franchise-tax law, along with other corporate-income-tax laws, allowed a carryforward of NOLs, accounting principles required that the future benefit be reflected as an asset on the corporation's books and records and accompanying financial statements. When the CAT was enacted in 2005, corporations feared that the substantial Ohio portion of the NOL asset on their books would lose its value. To soften that blow, the CAT credit was devised and was included in the original CAT legislation. Navistar refers to the promulgation of R.C. 5751.53 as a "grand bargain" between Ohio franchise-tax payers and the tax department, under which the taxpayers would support the tax reform while still retaining some of the value of their Ohio deferred-tax assets such as NOLs.

{¶ 11} Under R.C. 5751.53, taxpayers were able to compute a potential amount of CAT credit. That amount consists of a portion of the Ohio-apportioned NOLs on their books at the end of their 2004 fiscal year, which, when adjusted, furnished a total amount of credit that could be used to reduce CAT liabilities over a period of up to 20 years, stretching from 2010 (the year the CAT was fully phased in and the general franchise tax phased out for taxpayers such as Navistar) through 2029. R.C. 5733.01(G)(2)(a)(vi) (phase out of franchise tax); R.C. 5751.53(B)(1) through (10).

{¶ 12} The starting point for determining the potential CAT credit was the amount of Ohio-related NOLs on the corporation's books at the end of fiscal year 2004. R.C. 5751.53(A)(5), (6), and (9). That number would be reduced by the amount of "related valuation allowance." R.C. 5751.51(A)(6)(b). "Valuation allowance" is an adjustment dictated by accounting principles that is made on the books from year to year to reflect the likelihood that the company will realize the tax benefit of the NOLs. The less likely the corporation will be able to use the NOLs, the greater the valuation allowance. The lump sum that resulted from offsetting the Ohio NOLs with the valuation allowance would be "amortized" over a period of up to 20 years beginning with calendar year 2010; the lump sum is therefore referred to in the statute as the "amortizable amount." R.C. 5751.53(A)(9) and (B).

{¶ 13} To take the credit, a company was required to file an Amortizable Amount Report with the tax commissioner by June 30, 2006, that set forth the computation of the amortizable amount. R.C. 5751.53(D). The statute then gave the tax commissioner until June 30, 2010, to "audit the accuracy of the amortizable amount * * * and adjust the amortizable amount or, if appropriate, issue any assessment or final determination, as applicable, necessary to correct any errors found upon audit." *Id.*

FACTUAL BACKGROUND

{¶ 14} Navistar is in the business of manufacturing commercial trucks, buses, and military vehicles under the brand names International, Navistar Defense, and IC. Navistar has long operated a manufacturing plant in Springfield, Ohio, as well as facilities in other states. Before enactment of the CAT, Navistar was a longtime franchise-tax payer in Ohio.

{¶ 15} Navistar timely filed its Amortizable Amount Report (together with its franchise-tax return for tax year 2005) on or about June 23, 2006. To qualify for the CAT credit, a taxpayer must have "qualifying Ohio net operating loss carryforward equal to or greater than the qualifying amount" of $50 million. R.C. 5751.53(A)(4) and (A)(11). It is undisputed that Navistar met that requirement.

{¶ 16} Under R.C. 5751.53(A)(9)(a), the "amortizable amount" is 8 percent of the sum of the taxpayer's "disallowed Ohio net operating loss carryforward" and other deferred tax items that are not at issue here. As relevant here, R.C. 5751.53(A)(6)(b) defines "disallowed Ohio net operating loss carryforward" as the "Ohio net operating loss carryforward amount" that Navistar "used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2004, adjusted for return to accrual," reduced by the "qualifying related valuation allowance amount." The

" 'qualifying related valuation allowance amount' is the amount of Ohio net operating loss reflected in [Navistar's] computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2004." *Id.* In its June 2006 Amortizable Amount Report, Navistar computed its amortizable amount as $27,048,726.

{¶ 17} In December 2007, Navistar undertook a massive restatement of its books and financial statements as noted in its annual Form 10-K filed with the Securities and Exchange Commission ("SEC"). Among other things, the restatement increased Navistar's valuation allowance from 62.4 percent to 100 percent. The restated financials did not eliminate the NOLs or other deferred-tax assets from the company's books; instead, the restatement merely increased the valuation allowance to the point that it completely offset the value of the assets as part of the company's net worth.

{¶ 18} The tax commissioner issued his final determination in this matter on January 11, 2010. The commissioner noted his statutory authority to audit the accuracy of the amortizable amount under the CAT-credit statute, R.C. 5751.53(D). Next, the commissioner concluded that "later restated financial statements must be used, even if the correction occurred much after the period at issue." The commissioner referred to the 2007 restated financials for 2004 as a "correction" of previous error and characterized the "revised financial statements" as "the most up-to-date *and accurate* financial statements for Navistar *under generally accepted accounting principles*." (Emphasis added.) Because the "restated financial statements revised the valuation allowance to one hundred percent," the tax commissioner adjusted the amortizable amount to zero.

{¶ 19} Navistar appealed to the BTA.

EVIDENCE PRESENTED DURING THE BTA PROCEEDINGS

Navistar's admissions

{¶ 20} The tax commissioner points to certain statements that he views as admissions by Navistar, some of which were relied upon in the BTA decision. First, the transmittal letter sent with the Amortizable Amount Report and the 2005 franchise-tax return stated that Navistar was "currently undergoing a restatement examination of its financial statements for the years 2002, 2003, 2004, and 2005," that "changes [would] occur to the 2002, 2003, and 2004 financial statements as part of this examination which [would] impact" the Amortizable Amount Report and the 2005 franchise-tax return, and that Navistar "reserve[d] [its] right to file these changes" with the state "when these items become final."

{¶ 21} Second, the revised Form 10-K that Navistar filed with the SEC on December 10, 2007, pertaining to the 2005 fiscal year, specifically stated that Navistar "determined that [it] *did not apply FASB Statement No. 109 properly* and that a full valuation allowance should be established for net U.S. and Canadian deferred tax assets based on the weight of positive and negative evidence, particularly our recent history of operating losses." (Emphasis added.)

{¶ 22} Third, Form 8-K, which Navistar filed with the SEC in April 2006, identified four matters that required restatement; these matters did not involve deferred-tax assets. But the document went on to enumerate 11 "items being reviewed," and those items included deferred-tax assets.

{¶ 23} The tax commissioner also urged the BTA to consider a civil complaint filed by Navistar's parent corporation against its former accountants. *See Navistar Internatl. Corp. v. Deloitte & Touche, L.L.P.*, N.D.Ill. case No. 1:11-cv-03507. The BTA examiner accepted the complaint into evidence, but refused to consider the complaint as an admission by Navistar. In its decision, the BTA took no position on the examiner's ruling, and instead stated as follows:

> While we acknowledge the commissioner's reference to the existence of litigation between [Navistar] and the accounting firm previously involved in the audit of its financial returns, such litigation and the allegations made by [Navistar] therein need not serve as the basis upon which we decide this matter given the grant [to audit the accuracy of the amortizable amount] provided by R.C. 5751.53(D).

BTA No. 2010-575, 2013 Ohio Tax LEXIS 7601, 9, (Dec. 31, 2013), fn. 4.

Expert testimony

{¶ 24} The tax commissioner introduced testimony of accounting professor Ray Stephens. The hearing examiner accepted Stephens as an expert for purposes of the issues before the board, and the BTA reinforced that ruling by "reject[ing] as unfounded [Navistar's] argument that * * * Stephens[] be found unqualified to offer an expert opinion regarding the accounting issues involved herein." *Id.*

{¶ 25} Stephens expressed his opinion that the amount of Navistar's CAT credit should be zero. Stephens based his opinion on his review of Navistar's SEC filings and the civil complaint, in addition to his accounting knowledge. On cross-examination, Stephens opined that Navistar's restatement of its financials amounted to an admission that its original valuation allowance was not in compliance with GAAP. In other words, Stephens based his opinion concerning the GAAP-compliance of the initial valuation allowance on Navistar's supposed admission that it was not in compliance with GAAP.

{¶ 26} Navistar introduced two experts who testified to the crucial factual issue that the BTA ought to resolve in this case: whether the original valuation allowance for 2004 was in compliance with GAAP.

{¶ 27} Douglas Pinney, a certified public accountant and a specialist in income-tax accounting issues, opined that the restated valuation allowance should have no effect on the computation of the CAT credit. Pinney supported his conclusion by noting that his review of documentation indicated that the tax-adjusting entries on Navistar's books in relation to the restated financials did not occur until after the filing deadline for the Amortizable Amount Report and were not part of the 2004 books and records that the statute requires be used in computing the amortizable amount. Pinney also explained that the valuation allowance involves subjective factors with respect to projecting whether the benefit of deferred-tax assets is likely to be actually realized. For that reason, Pinney testified, there is never a single number that is the "correct" valuation allowance, but instead, there is a range of numbers that might be acceptable for a valuation allowance under GAAP. Pinney testified that the original valuation allowance, which was made part of the company's books and records in early 2005 and formed the basis for the 2006 Amortizable Amount Report, was reasonable and was in compliance with GAAP.

{¶ 28} Pinney also testified about Navistar's Form 8-K from 2006 and Form 10-K with the restated financials from 2007. On Form 10-K, Navistar stated, "[W]e did not apply FASB Statement No. 109 properly" with respect to the deferred-tax assets and valuation allowance. Asked how he reconciled that statement with his other opinions, Pinney responded that the quoted statement "doesn't necessarily mean that the valuation allowance itself was incorrect." With respect to Navistar's Form 8-K, Pinney testified that Navistar was "simply indicat[ing] they were going to review this area," i.e., the deferred-tax assets and valuation allowance.

{¶ 29} Navistar also called Beth Savage, a certified public accountant who was a consultant for troubled companies. Her testimony amplified Pinney's point that the determination of the valuation allowance involves subjective judgment in weighing factors and predicting future events. She described the full valuation allowance in the restated financials as a "very conservative" position. Like Pinney, she testified that the credit calculation on the 2006 Amortizable Amount Report was proper because "[t]he calculation was done at a point in time[;] they used the information that was available to [them] then, and I believe that amount is supportable under generally accepted accounting principles."

Fact testimony

{¶ 30} Navistar called its vice president of tax, Carol Garnant, who confirmed the subjective aspect of the valuation allowance and added the historical perspective of having gone through the restatement process in her position at Navistar, testifying that neither the IRS nor any state authorities had found any fraudulent entries or accounting practices. She also testified that Navistar had in fact been able to realize the value of its NOLs.

{¶ 31} Navistar also called three Ohio Department of Taxation officials as on cross-examination to establish the historical background of the CAT credit.

THE BTA DECISION

{¶ 32} The BTA affirmed the tax commissioner's determination. Taking as its starting point R.C. 5751.53(D)'s authorization for the commissioner to " 'correct *any errors* found upon audit,' " the BTA concluded that Navistar's Form 10-K and the transmittal letter that it sent with its Amortizable Amount Report were admissions that the 2007 restatement of the valuation allowance constitutes the correction of error in the earlier financial statements. (Emphasis added by the BTA.) 2013 Ohio Tax LEXIS 7601, 8. The BTA stated, "It is uncontested [that Navistar] undertook a comprehensive restatement of its financial statements so that they were ultimately revised in accordance with generally accepted accounting principles." *Id.* Following the tax commissioner's reasoning, the BTA treated Navistar's statements as establishing that the change in valuation allowance corrected an earlier error. Under this analysis, the restated valuation allowance was in compliance with GAAP but the original valuation allowance was not. In reaching its conclusion, however, the BTA ignored Navistar's accounting evidence, which contradicted the idea that the original valuation allowance was not in compliance with GAAP.

ANALYSIS

{¶ 33} Navistar presented a twofold argument to the BTA and presents the same arguments here. On the one hand, Navistar asserts that the tax commissioner lacked any authority to adjust the valuation allowance based on the restatement of financial statements that occurred after the June 2006 deadline for filing the Amortizable Amount Report. On the other hand, Navistar presented considerable evidence to the BTA to negate any inference that the 2007 restatement of the valuation allowance constituted the correction of an error in the original financial statements—thereby implicitly conceding that the tax commissioner might rely on a later financial restatement if it constituted the correction of an error in the original.

{¶ 34} We disagree with Navistar's first argument. The plain language of R.C. 5751.53(D) authorizes the tax commissioner to "adjust" the amortizable amount on account of his review of the "accuracy" of the reported amount and empowers the commissioner to "correct any errors found upon audit." The deadline for doing so was June 30, 2010, so we must conclude that the commissioner could order corrections based on information that became available to him before that date—even if the information became available only after the deadline for filing the report in June 2006. It follows that if the 2007 restatement of the valuation allowance cured an earlier inaccuracy or corrected an earlier error, it lay within the tax commissioner's authority to adopt the restated valuation allowance.

{¶ 35} We also agree with the tax commissioner that because the amortizable amount is computed by using amounts reflected in the company's books and records, R.C. 5751.53(A)(9)(a) and 5751.53(A)(6)(b), and those books and records must be maintained in accordance with GAAP, R.C. 5751.53(A)(10), a correction to the books and records that brings them into compliance with GAAP is a correction that the tax commissioner should recognize when issuing his determination regarding the accuracy of the amortizable amount pursuant to R.C. 5751.53(D). That conclusion also furnishes the standard for determining whether the original valuation allowance was inaccurate or in error for purposes of applying R.C. 5751.53(D): if the original valuation allowance is established to have been within the range acceptable under GAAP, then the later restatement of the valuation allowance does not involve error correction, and the tax commissioner lacks authority to adopt the restated allowance.

{¶ 36} The BTA acknowledged the tax commissioner's statutory authority to correct error, but the BTA's decision is unreasonable and unlawful in its failure to consider and weigh all the conflicting evidence concerning whether the original valuation allowance was in compliance with GAAP. Specifically, the BTA considered the official statements made by Navistar in its SEC filings as admissions, but it failed to consider the countervailing expert and lay testimony offered by Navistar. We therefore vacate the BTA's decision and remand the cause with the instruction that the BTA carefully consider and weigh all pertinent evidence before determining whether Navistar's original valuation allowance was in compliance with GAAP.

{¶ 37} One point of dispute remains. Before the BTA and this court, the tax commissioner has sought to rely on the complaint filed in Illinois by Navistar's parent corporation against its former accountants. The hearing examiner admitted the complaint as evidence but rejected the tax commissioner's argument that it constituted admissions against interest or statements by a party opponent. The examiner also limited the tax commissioner's use of the complaint in examining witnesses.

{¶ 38} The BTA's decision neither explicitly nor implicitly overturned the hearing examiner's ruling; instead, the board acquiesced in the ruling by noting that it need not rely on the complaint in reaching its decision. 2013 Ohio Tax LEXIS 7601, 9, fn. 4. As a result, the hearing examiner's ruling that precluded the use of the Illinois complaint as an admission has merged into the BTA's decision and constitutes the law of this case, subject to challenge by the tax commissioner in this appeal. *See Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, 866 N.E.2d 547, ¶ 9 ("Interlocutory orders * * * are merged into the final judgment," with the result that "an appeal from the final judgment includes all interlocutory orders merged with it").

{¶ 39} The tax commissioner has not adequately challenged the BTA's evidentiary ruling: he has neither specified it as an error in a protective notice of cross-appeal[1] nor formally contested it through a proposition of law and argument in his brief. *See Household Fin. Corp. v. Porterfield*, 24 Ohio St.2d 39, 46, 263 N.E.2d 243 (1970) (an issue "considered by the board and alluded to in both oral argument and the briefs" was nonetheless "deemed to be abandoned" when it was "not presented to this court as a proposition of law and argued as such"); *E. Liverpool v. Columbiana Cty. Budget Comm.*, 116 Ohio St.3d 1201, 2007-Ohio-5505, 876 N.E.2d 575, ¶ 3. Although the commissioner did allude to the issue in a footnote of his brief to this court, and although he reiterated the point during oral argument, his bare assertion that the Illinois complaint constitutes admissions against interest does not acknowledge the BTA examiner's contrary ruling, much less advance specific arguments in opposition to that ruling. *See Util. Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921

[1] In BTA appeals, it has been held necessary in some circumstances for an appellee to file a protective cross-appeal in order to advance alternative grounds for affirmance or to overturn explicit rulings of the BTA. *See, e.g., Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 33. We do not reach the question whether a protective cross-appeal was necessary here, because we hold that the tax commissioner waived the issue.

N.E.2d 1038, ¶ 53 (argument effectively waived where "[n]o argument is supplied regarding whether the relevant case law, applied to the facts of this case, justifies a decision in [the party's] favor"); *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 271, 2011-Ohio-2638, 951 N.E.2d 751, ¶ 19 ("it is not generally the proper role of this court to develop a party's arguments"). The tax commissioner has not shouldered the burden of demonstrating an abuse of discretion by the BTA's examiner. It follows that the tax commissioner has waived his right to rely on the Illinois complaint as admissions by Navistar and may not do so on remand.

CONCLUSION

{¶ 40} For these reasons, we vacate the BTA's decision and remand the cause with the instruction that the BTA determine, based on a consideration of all the evidence in accordance with this opinion, whether the valuation allowance originally reported on Navistar's Amortizable Amount Report was or was not in compliance with GAAP. If the BTA determines that the original valuation allowance was in compliance with GAAP, the BTA shall reverse the tax commissioner's determination and reinstate the amortizable amount as originally reported. If the BTA determines that the original valuation allowance was not in compliance with GAAP, the BTA shall affirm the tax commissioner's determination.

Judgment accordingly.

O'CONNOR, C.J., and LANZINGER, KENNEDY, and O'NEILL, JJ., concur.

PFEIFER and O'DONNELL, JJ., dissent.

PFEIFER, J., dissenting.

{¶ 41} I agree with much of the majority opinion, including its most important holding, that R.C. 5751.53(D) authorizes the tax commissioner to issue a final determination changing the amount of potential commercial-activity-tax credit to reflect a taxpayer's correction of an inaccuracy or error in the original reported amount. I agree that the books and records used to compute the amortizable amount must be maintained in accordance with generally accepted accounting principles ("GAAP") and that when such books and records are corrected to become GAAP-compliant, the tax commissioner should recognize that correction when determining the amortizable amount pursuant to R.C. 5751.53(D).

{¶ 42} I disagree, however, with the majority's ultimate disposition of the case, vacating the decision of the Board of Tax Appeals ("BTA") and remanding the cause to the BTA. The majority concludes that the BTA did not consider the testimony of appellant Navistar, Inc.'s experts regarding whether the original valuation allowance was in compliance with GAAP, and it admonishes the BTA to, on remand, "carefully consider and weigh all pertinent evidence before determining whether Navistar's original valuation allowance was in compliance with GAAP." Majority opinion at ¶ 36.

{¶ 43} Does this court have a reason to believe that the BTA was not "careful" in making its determination the first time around? Is assessing carefulness a part of our standard of review of BTA decisions? The fact that Navistar's experts are not mentioned in the BTA's decision does not mean that the BTA failed to take into account their testimony. Obviously, the BTA placed more weight on the statements that Navistar itself made at the time it filed the amortizable amount with the Department of Taxation. The BTA quotes the statement from Navistar's assistant director of tax that Navistar was " 'currently undergoing a restatement of its financial statements for the years 2002, 2003, 2004 and 2005' " and that " '[Navistar] believe[s] that changes will occur to the 2002, 2003 and 2004 financial statements as part of this examination which will impact the return and report that we are filing today.' " BTA No. 2010-575, 2013 Ohio Tax LEXIS 7601, 9 (Dec. 31, 2013). The BTA decision also quotes from

Navistar's statement to the Securities and Exchange Commission apprising it of errors in Navistar's previously filed financial statements:

> In its Form 10-K, [Navistar] stated, in part: "In addition, in previously issued financial statements, we had established a partial valuation allowance with respect to our net U.S. and Canadian deferred tax assets. We reassessed our need for a valuation allowance and determined that *we did not apply FASB Statement No. 109 properly* and that a full valuation allowance should be established for net U.S. and Canadian deferred tax assets based on the weight of positive and negative evidence, particularly our recent history of operating losses."

(Emphasis sic.) *Id.* at fn. 5. The BTA concluded that Navistar's books were "corrected to comport with generally accepted accounting principles." *Id.* at 11. There is no reason for this court to tamper with that factual finding. This case should be over.

{¶ 44} I also disagree with the majority's ruling regarding the complaint by Navistar's parent corporation filed in federal court in Illinois against its former accountants, Deloitte & Touche, L.L.P. ("Deloitte"), alleging multiple GAAP violations in accounting services Deloitte performed for Navistar in the time period relevant to this case. *Navistar Internatl. Corp. v. Deloitte & Touche, L.L.P.*, N.D.Ill. case No. 1:11-cv-03507. One assertion in the complaint reads as follows:

> As a direct result of Deloitte's fraudulent statements and omissions, as well as Deloitte's incompetence and malpractice, Navistar was forced to fire Deloitte in 2006, hire new auditors,

> overhaul its accounting records and, in 2007, issue a massive restatement of its financial statements for fiscal years 2003, 2004, and the first three quarters of 2005 * * *.

{¶ 45} The majority holds that "the tax commissioner has waived his right to rely on the Illinois complaint as admissions by Navistar and may not do so on remand." Majority opinion at ¶ 39. But the complaint has been admitted into evidence, and it is unclear what the BTA's position is on whether the tax commissioner can use the complaint to prove his case. It has some evidentiary value. The hearing examiner, near the end of the hearing, told the tax commissioner's counsel, "You can make any argument you want about it at this point. It is evidence in the record." The BTA itself never ruled on how the complaint could be used; it concluded only that it did not need to rely on the complaint to arrive at its decision:

> While we acknowledge the commissioner's reference to the existence of litigation between [Navistar] and the accounting firm previously involved in the audit of its financial returns, such litigation and the allegations made by [Navistar] therein need not serve as the basis upon which we decide this matter given the grant provided by R.C. 5751.53(D).

2013 Ohio Tax LEXIS 7601 at 9, fn. 4. This is not a ruling that precludes the use of the complaint for any reason. How the commissioner may use the complaint remains an open question. It is the BTA, as fact-finder, that must decide what significance to accord the complaint on remand.

O'DONNELL, J., concurs in the foregoing opinion.

Maryann B. Gall; Vorys, Sater, Seymour & Pease, L.L.P., Laura A. Kulwicki, and Steven L. Smiseck, for appellant.

Michael DeWine, Attorney General, and Barton A. Hubbard, Assistant Attorney General, for appellee.

Bricker & Eckler, L.L.P., Mark A. Engel, and Anne Marie Sferra, urging reversal for amici curiae, Ohio Manufacturers' Association and Ohio Chamber of Commerce.

Tax

Uncertainty Around Federal Tax Extender Package

Here's what OMA Connections Partner, Clark, Schaefer, Hackett, predicts for the tax extender package in Congress:

"The House Ways and Means Committee recently approved legislation to permanently extend several tax breaks, including the following popular business incentives: 50 percent bonus depreciation; Exemption from U.S. taxation for foreign active financing income; Look-through treatment for payments between related controlled foreign corporations; 15-year recovery period for qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property.

"This follows the Ways and Means Committee approval of legislation to permanently extend the research tax credit and section 179 expensing.

"Neither of these proposals have been brought to the House floor for a vote. Several recent attempts to permanently extend the most popular tax incentives have failed because members of Congress have been unable to agree on budget priorities. Even though the administration and Congressional leaders have all stated they support the permanent extension of certain popular tax breaks, they have been unable to agree on how to pay for them. The tactics of repeated "symbolic" votes and threats of government shutdown to advance political agendas also cause delays in voting on tax legislation. Ultimately, it is likely that sometime in very late December, Congress will enact a short-term extenders package that will be retroactive to Jan. 1, 2015, and effective through Dec. 31, 2016." *10/6/2016*

House Introduces Tax Relief on Temporary Workers

This week Reps. Mark Romanchuk (R-Mansfield) and Ron Young (R-Leroy Township) introduced legislation, HB 343, that would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles. *10/1/2015*

Fiscal Year 2016 Travel Per Diem Rates Now Available

OMA Connections Partner, GBQ Partners LLC, reports that the IRS recently updated the per diem rates for business travel for fiscal year 2016, which started on October 1, 2015.

Additionally, GBQ reports that the IRS offers simpler alternatives that may be worthwhile for some companies. For example, instead of reimbursing employees for their actual expenses for lodging, meals and incidentals while traveling, employers may pay them a per diem amount, based on IRS-approved rates that vary from locality to locality.

Read more. *9/29/2015*

The Fix is In … Sort of

The House and Senate were hoping to have a near-finished bill this week that would repair an error in the business tax deduction passed in the state budget bill earlier this year.

The intent was to help small businesses reduce their taxes by creating a 75% income tax deduction on the first $250,000 of pass-through business income, then charge a 3% flat tax on income greater than $250,000. But the budget bill language did not match the intent and would actually cause a tax increase for some businesses.

Companion bills SB 208 and HB 326 were drafted to correct the error. The OMA submitted letters to both the House and Senate encouraging passage of the bills to fix the problem.

However, the fix is in need of a fix itself. The two new bills create their own unintended consequences and fail to address all possible tax increases. Both chambers are aware of the issue and are working to correct the errors. *9/24/2015*

How is Road Work Funded?

The Tax Foundation has taken a look at the share of road infrastructure expenditures funded by tolls, user fees, and user taxes in the states. The foundation believes that user fees and user taxes should provide the bulk of the financing for road work.

Ohio ranks 16th among the states in reliance on user fees and taxes, with 52% of road funding coming from them.

Take a look at the U.S. map here. *9/22/2015*

Bill Introduced to Repair Small Business Tax Foible

The General Assembly is taking swift action this month to fix an error in the state budget that would leave certain Ohio business owners facing a tax increase this year. Senator Bill Beagle (R-Tipp City) has introduced SB 208 and companion legislation has been introduced in the House.

The budget was supposed to reduce the tax on business income above $250,000 to a flat 3% rate. However the final version of the bill reads that the 3% rate applies to all taxable business income, not just income above $250,000. For some taxpayers, this 3% is higher than the current graduated tax rate.

In his brief testimony, Beagle said, "This clarifying language ensures Ohio's business owners will receive the full tax relief intended by House Bill 64."

The legislature is moving to fix this quickly in order for the hike on some businesses not to take effect. *9/10/2015*

OMA and Members Sign on to Tax Extender Letter to Congress

The OMA and more than 2,000 other companies, associations and organizations urged Congress in this letter to "act immediately on a seamless, multiyear or permanent extension of expired and expiring tax provisions, including appropriate enhancements."

These tax provisions are critical to U.S. jobs and the broader economy. The letter states: "Failure to extend these provisions is a tax increase. It will inject instability and uncertainty into the economy and weaken confidence in the employment marketplace. Acting promptly on this matter will provide important predictability necessary for economic growth." *9/10/2015*

Ohio Virtual Tax Academy is Sept. 23

The Ohio Department of Taxation is offering a free, half-day educational webinar the morning of Wednesday, September 23. Senior staff from the department will discuss a variety of topics including business tax (CAT & sales) and personal income tax overpayments and refunds, manufacturing exemptions, and bar and restaurant sales tax auditing.

The program qualifies for professional credits (3.5 C.P.E. and 3.0 C.L.E. credits).

Visit this link to view the agenda and speakers, as well as to register. *8/31/2015*

OMA Amicus a Factor in Manufacturing Victory

This week the Ohio Supreme Court issued a decision favorable to businesses, (*Navistar v. Testa*), finding that the deadline for notifying the Tax Commissioner of the amount a taxpayer intended to claim as a credit against the commercial activity tax (CAT) for net operating losses (NOLs) accrued under the former franchise tax, did not preclude the tax commissioner from adjusting the amounts reflected in the notice.

However the Board of Tax Appeals must consider all the evidence, including that submitted by the taxpayer, in determining whether an error was made.

The OMA filed an amicus brief with the court. The court used much of the OMA's analysis set forth in its amicus brief in its written decision, which signals a win ultimately for manufacturers.

This was an important case regarding the CAT, and the OMA's involvement factored into the outcome. You can read an analysis by OMA tax counsel Mark Engel from Bricker & Eckler. Congratulations and thank you, Mark, for your involvement on behalf of OMA. *8/20/2015*

Ohio Tax Dept. Issues New Withholding Tables

OMA Connections Partner, Clark, Schaefer, Hackett, reports that new employer withholding tables have been issued for use with payrolls that end on or after August 1, 2015 and says that according to The Ohio Department of Taxation:

"The new tables take into consideration the income tax rate reductions that went into effect when The Budget Bill was signed into law on June 30, 2015. The tables reflect a 3.1% reduction in the withholding rates previously in effect for 2014, and the new tables are to be used for the remainder of calendar year 2015 and in future years.

"The new withholding tables are posted on the Employer Withholding Tax web page. The tables include the percentage method for calculating withholding as well as daily, weekly, biweekly, semimonthly and monthly tables."

If you have questions about the new withholding tables, contact the Ohio Department of Taxation at (888) 405-4039 or CSH's Sharon Stone. *8/18/2015*

October 1 Compliance Deadline for "EMV" Payment Cards

OMA Connections Partner, GBQ Partners LLC, reports that, to enhance security, major U.S. card companies have mandated a liability shift for certain payment card transactions, effective on October 1, 2015.

On October 1, the liability for counterfeit in-store payment card transactions generally shifts to the party (either the issuer or merchant) that doesn't support EMV cards (cards with computer chips as opposed to magnetic cards, also known as EuroPay, MasterCard and Visa (EMV) cards).

The Small Business Administration estimates that about 40% of U.S. payment cards will contain EMV chips by the end of 2015, up from 3% at the start of the year.

Read more from GBQ Partners here. *8/18/2015*

The Lowdown on Ohio's Tax Holiday

Ohio's first sales tax holiday started today, August 7, at 12:01 a.m. and concludes at 11:59 p.m. on Sunday, August 9. It's intended to help consumers save some money on back-to-school shopping. The tax-free shopping only applies to specific items.

OMA Connections Partner, Clark Schaefer Hackett, describes how it works. *7/31/2015*

New Ohio Legislation Helps Protect the Value of Awarded Tax Credits

HB 64, the state's budget for fiscal years 2016-2017, which becomes law on September 29, 2015, improves the computation of the Job Creation Tax Credit (JCTC) and Job Retention Tax Credit (JRTC).

JCTC and JRTC agreements awarded prior to the enactment of HB 64 compute the value of the tax credit based on new income tax revenue. Since personal income tax reductions over the past few years have negatively impacted the amount of tax credits realized by companies, HB 64 provides measures to help stabilize the value of the incentives for active agreements and future program awards.

Read more from OMA Connections Partner, GBQ Partners, here**.** *8/6/2015*

Tax Fix in the Works

Legislative leaders have indicated that it is likely the General Assembly will take action later this fall to fix the error in the recently passed state budget that would leave certain Ohio business owners facing a tax increase this year.

The budget was supposed to reduce the tax on business income above $250,000 to a flat 3% rate. However the final version of the bill reads that the 3% rate applies to all taxable business income, not just income above $250,000. For some taxpayers, this 3% is higher than the current graduated tax rate.

Lawmakers have noted this was an error and that a fix could be in the works. The legislature needs to remedy this by the end of the year in order for the hike on some businesses not to take effect. *7/23/2015*

ACA Related Excise Tax on Certain Small Employers Now in Effect

OMA Connections Partner, GBQ Partners, gives a timely heads-up about a potential excise tax liability for small employers that offer an "employer payment plan" arrangement to their employees.

Per GBQ: "Employer payment plans are arrangements in which the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace). These employer payment plans are considered to be a group health plan subject to the market reforms of the Affordable Care Act. If these plans fail to comply with the market reform provisions, the small employers will be subject to excise tax."

Transition relief for this tax was granted; however, after June 30, 2015, such employers are generally liable for the excise tax.

Furthermore, according to GBQ, "The excise tax is significant, especially for small businesses. Small employers with employer payment plans that do not comply with the reform provisions will be subject to a $100 per day, per employee excise tax. This could be as high as $36,500 per employee in a given year!"

Read more here. *7/21/2015*

FASB Delays Revenue Recognition Standard

OMA Connections Partner, Clark, Schaefer, Hackett, reports that on July 9, 2015, the Financial Accounting Standards Board (FASB) officially deferred implementation of the landmark global revenue recognition accounting standard by one year. You can read about the causes for the delay and revised implementation timing here. *7/14/2015*

Budget Tax Plan Has Unintended Consequences for Some Small Businesses

While the state budget passed by the General Assembly and signed by the governor grants tax relief for most Ohioans, it triggers a tax increase for the 2015 tax year for taxpayers taking advantage of the so-called small business tax deduction.

Businesses with total business income of up to about $270,000 a year will pay more in taxes for 2015 because of how the budget tax reforms phase in over the next two years.

Mark Engel, OMA's tax counsel from Bricker & Eckler LLP provides this useful memo. Individuals who fall into this range of business income should be aware of this situation and accordingly plan their estimated tax payments. *7/9/2015*

Business Tax Hikes Stopped in Final Budget Bill

This week the House Bill 64 conference committee crafted the final compromise version of the state budget.

The centerpiece of the as-introduced budget was a tax overhaul that included lower income taxes on individuals and small business owners paid for - in part - by increased sales, commercial activity, tobacco, and severance taxes.

Through active advocacy by OMA members and a united business community, the House and Senate agreed to a tax package that eliminated the proposed commercial activity tax rate increase and the proposed sales tax expansion and rate, while still lowering taxes on individuals and small businesses.

This is a big win for manufacturing. OMA tax counsel Mark Engel of Bricker & Eckler LLP prepared this memo recapping the most recent tax changes.

The tax provisions, as well as the rest of the bill, now need to clear Governor Kasich's desk. *6/25/2015*

Senate Adds to CAT Exemptions

This week the Senate failed to remove the only new commercial activity tax (CAT) exclusion included in HB 64, the state budget bill.

The provision relates to "receipts of a manufacturer, supplier, or distributor of beauty, health, personal care, or aromatic products, provided the vendor is part of an integrated supply chain and has a business location in Ohio, provided the receipts are from sales of such products to another such vendor or a retailer in that supply chain, provided both vendors are on the same parcel or collection of parcels, and those parcels are located in a county with a population between 150,000 and 200,000 according to the most recent federal decennial."

It is estimated that this exclusion could eliminate several millions of dollars per year from the CAT base. *6/18/2015*

Senate Proposes Electricity Tax Pass-Through

Among the hundreds of statutory changes the Senate made this week to the state budget bill, HB 64, is one that would shift the tax cost of generation property from competitive pricing to unregulated cost recovery from electricity customers.

A brief analysis prepared by OMA tax counsel Mark Engle writes the bill "exempts generation and production equipment from taxation. That revenue is made up by increasing the assessment percentage on transmission and distribution equipment of all electric and energy companies having such equipment by an amount sufficient to replace the money formerly raised by the tax on generation equipment."

The impact is to end tangible personal property taxes on generation equipment and shift the tax to transmission and distribution companies. "(T)he key is that this is a cost that may be passed through to ratepayers without the need for a rate case," Engle notes. *6/18/2015*

Senate Cuts Taxes by $1.7B in Latest Budget

This week the Ohio Senate announced its changes to the state budget bill. Included in the changes made by the Senate Finance Committee was a significant tax cut for Ohioans. The Senate calls for a net $1.7 billion tax cut which includes a 6.3% reduction in personal income tax rates.

The Senate version of HB 64 also eliminates entirely the state income tax on the first $250,000 in net income for small businesses and imposes a new flat tax at a rate of 3% percent on income in excess of $250,000. These changes would be effective for taxable years beginning on and after January 1, 2015.

The Senate proposes to increase the tax on cigarettes by 40 cents per pack.

Absent from the Senate version is a revision to Ohio's severance tax for oil and natural gas produced through hydraulic fracking. However, talks continue between interested parties, and some provision could yet be added before final action by the Senate.

The bill makes additional changes including the elimination of one commercial activity tax (CAT) carve out and the creation of another.

OMA tax counsel Mark Engel of Bricker & Eckler LLP drafted this memorandum that summarizes the Senate changes as well as key differences among the House and as-introduced versions.

An omnibus amendment to the bill will be introduced in the Senate Ways and Means Committee for its consideration. Additional amendments might be added either by the committee or by the full Senate. Both chambers will need to approve a reconciliation, and the bill would need the signature of the governor in order to become law. The current fiscal year ends June 30, and a new budget needs to be in place by July 1, 2015. *6/10/2015*

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

Current Status: 10/7/2015 - Senate Ways and Means, (Second Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9

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

Current Status: 3/17/2015 - House Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12

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

Current Status: 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/215
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19

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

Current Status: 6/24/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26

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

Current Status: 2/10/2015 - Referred to Committee House Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32

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

Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64

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

Current Status: 3/24/2015 - House Ways and Means, (First Hearing)
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65

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

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

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

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

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

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

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

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

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

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

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

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

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

Current Status: 9/16/2015 - Re-Referred to Committee

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

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

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

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

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

Current Status: 9/30/2015 - Referred to Committee House Ways and Means

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

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

Current Status: 6/30/2015 - Introduced

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

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

Current Status: 9/30/2015 - Referred to Committee House Ways and Means

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

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

Current Status: 10/6/2015 - House Ways and Means, (Third Hearing)

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

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

Current Status: 10/7/2015 - House Economic and Workforce Development, (First Hearing)

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

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

Current Status: 10/6/2015 - Introduced

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

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

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

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-2

SB12 **INCOME TAX CREDIT-SCIENCE RELATED DEGREE** (HOTTINGER J) To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.

Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12

SB18 **TAX CREDIT-NATIONAL GUARD EMPLOYMENT** (GENTILE L) To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.
Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18

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

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

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

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

SB88 **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.
Current Status: 3/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-88

SB100 **SALES TAX HOLIDAY-ENERGY STAR** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.
Current Status: 3/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100

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

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

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

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

Current Status: 10/14/2015 - Senate Ways and Means, (Fourth Hearing)

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

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

Current Status: 10/14/2015 - Senate Ways and Means, (Second Hearing)

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