



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Joe McDaniels

### **Sub. H.B. 430**

132nd General Assembly  
(As Passed by the General Assembly)

**Reps.** Schaffer, Faber, Antani, Brenner, Ginter, Green, Greenspan, Hagan, Hambley, Hill, Johnson, Landis, Lang, Merrin, Pelanda, Perales, Reineke, Roegner, Rogers, Romanchuk, Ryan, Schuring, Slaby, R. Smith, Sprague, Thompson, Wiggam, Young

**Sens.** Hackett, Beagle, Eklund, Balderson, Burke, Coley, Gardner, Hoagland, Hottinger, Huffman, LaRose, Lehner, McColley, O'Brien, Oelslager, Peterson, Terhar, Thomas

**Effective date:** September 13, 2018

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## **ACT SUMMARY**

- Modifies the statutory language that governs the sales and use tax exemption for property used in producing oil and natural gas.
  - Specifies that property approved by the Department of Natural Resources as part of a water pollution control facility qualifies for property tax and sales and use tax exemptions available under continuing law.
  - Extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses to December 31, 2019.
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## **CONTENT AND OPERATION**

### **Sales and use tax exemption for oil and gas production property**

The act modifies the statutory language that governs the existing sales and use tax exemption for property used directly in producing oil and natural gas.

Continuing law exempts the sale or use of tangible personal property used directly in the production of crude oil or natural gas. The act elaborates on this exemption by adding some definition to what constitutes the "production" of oil and gas and by listing several examples of goods and services that are, or are not, included in the scope of the exemption. The act's effect on the exemption's scope is not clearly

apparent from the statutory language, because the scope of the exemption has been determined largely by an administrative rule<sup>1</sup> and prior decisions by courts and the Board of Tax Appeals. However, the act states that it is intended to clarify existing law.

### **Exempt items and services**

Under the act, "production" is defined to include operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain oil or gas, to prepare the wellbore for production, and to lift and control all substances yielded by the reservoir to the surface of the earth. Consequently, purchases of any items used directly in such operations are exempt from the sales and use tax.<sup>2</sup>

In addition, the act lists multiple examples of goods and services that are exempt from tax:

- (1) Services provided to construct permanent access roads, the well site, and temporary impoundments;
- (2) Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs;
- (3) Casing, tubulars, and float and centralizing equipment;
- (4) Trailers to which production equipment is attached;
- (5) Drilling and workover services used to work within a subsurface wellbore; well completion services, including cementing of casing; wireline evaluation, mud logging, and perforation services; reservoir stimulation, hydraulic fracturing, and acidizing services; and any items used directly in providing any of those services;
- (6) Pressure pumping equipment;
- (7) Artificial lift systems equipment;
- (8) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;
- (9) Items directly used to control production equipment.

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<sup>1</sup> Ohio Administrative Code 5703-9-22.

<sup>2</sup> Under continuing law, any person that provides production services for another party is treated as being engaged in production for the purposes of the exemption, thereby also qualifying that person's purchases of such property for the exemption.



## Taxable items

The act also lists several examples of items that are not within the scope of the exemption, and are therefore taxable (if not exempted under another law):

(1) Items used primarily in the exploration and production of any mineral resource other than oil or gas;

(2) Items used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation;

(3) Items used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;

(4) Items used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;

(5) Items used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;

(6) Well site fencing, lighting, or security systems;

(7) Communication devices or services;

(8) Office supplies;

(9) Trailers used as offices or lodging;

(10) Motor vehicles of any kind;

(11) Items used primarily for the storage of drilling byproducts and fuel not used for production;

(12) Items used primarily as safety devices;

(13) Data collection or monitoring devices;

(14) Access ladders, stairs, or platforms attached to storage tanks.

In addition, if any item is incorporated into real property, it is disqualified from the exemption, as it was under prior law.



## **Tax exemptions for water pollution control property**

The act also specifies that property used to control water pollution may qualify for property tax and sales and use tax exemptions authorized by continuing law when the Department of Natural Resources (ODNR) is the agency that approves the property as qualifying pollution control property.

An application to exempt such a facility must be filed with the Tax Commissioner. Continuing law changed in part by the act states that, before approving the application, the Commissioner must seek the opinion of the Director of Environmental Protection. Another continuing provision changed in part by the act defines a "water pollution control facility" as property whose installation has been approved by either the Ohio Environmental Protection Agency or "any other governmental agency having authority to approve [such] installation."

The act specifies ODNR as an agency that approves the installation of water pollution control facilities, and requires the Commissioner to seek the opinion of the Director of ODNR when considering the exemption application of such a facility that falls within the department's jurisdiction.

In addition, continuing law requires that an applicant for exemption pay an application fee equal to 0.5% of the total project cost, up to \$2,000. The fee is credited to the agency that provides the opinion on the application. The act specifies that, when ODNR provides an opinion on a facility, the fee is credited to ODNR for use in administering the exemption program.<sup>3</sup>

### **Application to pending cases**

The act states that the act's changes to the sales and use tax exemption for property used in producing oil and gas are intended to be "remedial" and to apply both prospectively and to any cases or audits pending on or after May 18, 2018.

### **Fireworks license moratorium**

The act extends to December 31, 2019, a previously existing moratorium on issuing a fireworks manufacturer or wholesaler license or approving the geographic transfer of those licenses. Under prior law, the moratorium would have ended September 15, 2018.<sup>4</sup> The moratorium prohibits the State Fire Marshal from issuing either kind of license to anyone who did not hold the respective license for a particular

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<sup>3</sup> R.C. 5709.20, 5709.211, 5709.212, and 5709.22.

<sup>4</sup> R.C. 3743.75.



fireworks plant or location immediately before June 29, 2001. It also prohibits the Marshal from approving the transfer of either kind of license to a location other than the place where the license applied immediately before that date, unless certain criteria are satisfied, including that no fireworks business remains at the original location and the new location is in the same municipality or township as the original one.

The moratorium began in 1997 and originally was set to expire December 15, 1999.<sup>5</sup> It has been extended seven times since then. The June 29, 2001, date is the effective date of the act that first established the moratorium in codified law.<sup>6</sup>

Ongoing law requires a manufacturer or wholesaler of fireworks to obtain a manufacturer's or wholesaler's license from the State Fire Marshal. Failure to obtain a license subjects a person to criminal penalties.<sup>7</sup>

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## HISTORY

ACTION	DATE
Introduced	11-29-17
Reported, H. Gov't Accountability & Oversight	01-25-18
Passed House (85-12)	01-31-18
Reported, S. Ways & Means	05-23-18
Re-reported, S. Rules & Reference	06-06-18
Passed Senate (32-1)	06-06-18
House concurred in Senate amendments (73-13)	06-07-18

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<sup>5</sup> Section 165 of H.B. 215 of the 122nd General Assembly.

<sup>6</sup> H.B. 161 of the 124th General Assembly.

<sup>7</sup> R.C. 3743.02, 3743.15, 3743.60, 3743.61, and 3743.99, not in the act.

