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Final Analysis

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SUMMARY

Property taxation

Exemption reporting

- Requires the Tax Commissioner's biennial report on state tax expenditures to include information on property tax exemptions.

Community school tax exemption applications

- Removes a requirement that community schools file an annual statement after an initial application with the Tax Commissioner as a condition of retaining a property tax exemption.

Combined school district property and income tax levies

- Allows a school district to propose to renew an emergency property tax levy and a combination income and property tax levy in a single ballot question.
- Applies the changes to resolutions adopted or proceedings that are pending or completed on or before April 3, 2023.

ADAMHS district taxing authority

- Requires revenue from certain joint-county alcohol, drug addiction, and mental health service (ADAMHS) district property taxes to be expended for the benefit of the residents of the county from which it is collected.
- Requires a member county of a joint-county ADAMHS district and, in certain circumstances, a withdrawing county from such a district to continue to levy and collect an ADAMHS-related tax following reorganization of the district.
- Requires, under certain circumstances, a new ADAMHS-related county tax to be labeled as a renewal or replacement for ballot language purposes.

Tax abatements

- Provides a temporary period for the owner of property located in an enterprise zone to apply for exemption from property taxation; and abatement and refund of unpaid taxes.
- Provides a temporary period for a school district that acquired property in February 2021 to apply for abatement and remission of paid taxes, penalties, and interest for that tax year, payable to the person that paid them.
- Provides a temporary period for an agricultural society that acquired property from a county in March 2021 to apply for tax exemption for the property, notwithstanding the fact that the property has outstanding taxes assessed prior to its transfer.

Exemption and abatement of certain TIF property

- Allows municipal corporations that adopted a tax increment financing ordinance between June 1 and December 31, 2002, to temporarily file for tax exemption according to the terms of the ordinance, including parcel-by-parcel exemptions.
- Applies the temporary provision to exemption applications pending on April 3, 2023.

Sales and use tax exemptions

- Exempts from sales and use tax all of the following:
  - Electronic tax filing and payment services used in business to report or pay income tax, other than employee withholding, on behalf of an individual;
  - Certain taxable services that might be provided incidentally or supplementally to those electronic tax preparation services;
  - Documentary service charges imposed by motor vehicle and manufactured home dealers from the sales and use tax;
  - Certain watercraft that are seasonally stored or repaired in Ohio.

Pollution control and energy conversion facility exemptions

- Modifies existing property and sales and use tax exemptions for facilities primarily devoted to pollution control, energy conversion, and thermal efficiency improvement, as follows:
  - Extends the exemptions to leased property;
  - Extends the exemptions to property that primarily benefits a business, so long as that benefit aligns with an exempt purpose;
  - Extends the exemptions to property used to haul industrial waste to a point of disposal or treatment, or to store, filter, process, or dispose of such waste.
- Applies the changes to new exemption applications and applications pending on April 3, 2023.

Income tax credits

Tax credit for commercial vehicle operator training expenses

- Authorizes a temporary nonrefundable income tax credit of up to $25,000 per year for training expenses paid by employers to train employees to operate a commercial vehicle.
- Limits the total amount of credits that may be awarded each year to $1.5 million.

Tax credit for donations to scholarship organizations

- Modifies the credit cap of an existing income tax credit for donations to scholarship granting organizations for joint filers.

Refunds of tax penalties

- Allows taxpayers to obtain a refund of any tax-related penalties and fees the taxpayer overpaid or paid improperly.

Tax Expenditure Review Committee

- Eliminates the Tax Expenditure Review Committee as of April 3, 2023.

Video service changes

- Limits "video service" to "the provision by a video service provider of video programming" (a person granted video service authorization under Ohio's video service authorization law is a video service provider).
- Provides that direct-to-home satellite services, as defined under federal law, and video streaming content, are not video services.
- Clarifies that direct-to-home satellite services and video streaming services are subject to sales tax.

Appropriations

- Appropriates $30 million in FY 2023 to provide grants to eligible minor league sports teams.
- Appropriates $35 million in the FY 2023 – FY 2024 biennium to fund certain cultural and sports facilities projects.

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DETAILED ANALYSIS

Property taxation

Exemption reporting

The act expands the scope of the existing Tax Expenditure Report to include the evaluation of property tax exemptions.

Continuing law requires the Tax Commissioner to produce a report on tax expenditures that is submitted with the Governor's biennial budget. This Tax Expenditure Report must include a description of each tax expenditure, as well as a detailed estimate of the loss to the General Revenue Fund (GRF) for the current and previous biennium resulting from the tax expenditure. A "tax expenditure" is any tax exemption, credit, deduction, or other provision that reduces the revenue that would otherwise be collected from a tax levied by the state.

Since property taxes are levied by local governments – not the state – they were previously not considered "tax expenditures" for the purpose of the Report. The act requires the Report to include a description of each property tax exemption authorized in the Revised Code.

Under the act, the Report must classify each property tax exemption into one of the following categories: (1) charitable and public worship, (2) public and educational, (3) local economic development, or (4) other exemptions. The Report must also include the aggregate true (market) value of property exempted in the state during the preceding year as a result of the exemption, and the amount of revenue paid from the GRF to reimburse subdivisions in relation to the exemption. (Under continuing law, the state reimburses local governments for the revenue lost due to the homestead exemption and for certain taxes subject to the 2.5% and 10% rollbacks, resulting in a debit to the GRF.)

The act defines a property tax exemption as any provision that either exempts, or authorizes a local government to exempt, all or part of the value of otherwise taxable real property from property tax, but includes only those exemptions reported on forms prescribed by the Tax Commissioner. Some examples of such exemptions include the homestead exemption; a 10% tax rollback for nonbusiness property; exemptions for schools, nature preserves, and property used for charitable purposes; and partial tax increment financing exemptions, community reinvestment area exemptions, and enterprise zone exemptions.[1]

Community school tax exemption applications

Under former law, enacted in 2019 by H.B. 166 of the 133rd General Assembly, a community school seeking a tax exemption for its property was excused from the requirement to file an exemption application with the Tax Commissioner as a condition of obtaining the exemption after its initial application was approved, but had to instead file an annual statement

[1] R.C. 107.03 and 5703.48.

with the Commissioner affirming that it continued to qualify for the exemption. The act discontinues this provision.

Under continuing law, property used for an educational purpose, including property used as a community school, qualifies for a property tax exemption.[2] To obtain a property tax exemption, a property owner, including a community school, is required to apply to the Tax Commissioner, by the last day of the taxable year for which exemption is sought, to obtain the exemption, with only a few exceptions. The Commissioner evaluates each application and decides whether to approve the exemption. If approved, the Commissioner will order the county auditor to remove the property from the tax list.

H.B. 166 changed the exemption process for a community school. Instead of being required to obtain the Tax Commissioner's approval for any year after the Commissioner approves the initial application, a community school is excused from refiling an application for any future year, so long as the community school submits an annual statement to the Commissioner attesting that its property continues to qualify for the educational purpose exemption.

By discontinuing this provision, the act again requires community schools to follow the same exemption application procedures applicable to other schools and most other property owners seeking a tax exemption.[3]

The change applies to tax year 2021 and thereafter. If a community school did not receive the tax exemption for tax year 2021 or 2022 due to a failure to submit the annual statement, the school may apply to the Commissioner for an abatement or refund of taxes on the property for that year.[4]

Combined school district property and income tax levies

Under continuing law, a school district may levy an emergency property tax levy for up to ten years, which collects a fixed sum of tax revenue each year (referred to in this analysis as an "emergency levy").[5] A school district may also levy an income tax in combination with a fixed-sum property tax levy for up to ten years or for a continuing period of time (referred to in the analysis as a "combination levy").[6] If either an emergency levy or a combination levy is scheduled to expire, the district may submit the tax to voters for renewal. However, under former law, the renewal of each tax must have been approved separately by voters.

The act authorizes a school district to propose to renew an emergency levy and a combination levy in a single ballot question. The proposal of such a combined renewal has

[2] R.C. 5709.07(A), not in the act.

[3] R.C. 5713.08 and 5717.27.

[4] Section 21.

[5] R.C. 5705.194, not in the act.

[6] R.C. 5748.09.

similar requirements to the two separate school district levies which constitute it. It must be authorized by a school district board of education resolution passed with a two-thirds vote, certified to the Tax Commissioner and county auditor to calculate the appropriate rates, submitted to the board of elections by another resolution passed with a two-thirds vote, and finally certified for the ballot at a primary or general election. If the renewal is approved by voters, the school district may issue notes in anticipation of a portion of the proceeds from each tax.[7]

The combined renewal levy authorized by the act differs from other levies in a few ways. First, the levy must be submitted in the last year of the combination levy's term, but the renewal of the emergency levy can apply regardless of where it is in its term. If the combined renewal is approved, any remaining tax authorized under the original emergency levy cannot be collected.[8] Second, the emergency levy may be renewed for up to ten years or for a continuing period as a part of a combined renewal, even though a stand-alone emergency levy renewal may not exceed ten years.[9] Finally, if voters do not approve the combined question, that failure does not terminate the authority of the existing tax levies to be collected through their previously approved terms.[10]

Applicability to pending proceedings

The act's authorization of a combined emergency and combination levy apply to school board resolutions adopted or proceedings that are pending or completed on or before April 3, 2023, to the extent the authorization supports those resolutions or proceedings.[11]

ADAMHS district taxing authority

Overview

The act makes several changes to the taxing authority of alcohol, drug addiction, and mental health service (ADAMHS) boards. Continuing law requires an alcohol, drug addiction, and mental health service district to be established in any county, or combination of counties, with a population of 50,000 or more.[12] A service district comprised of one county is referred to as a "single county district" and a service district comprised of more than one county is referred to as a "joint-county district." Each service district must establish an ADAMHS board.

Under continuing law, an ADAMHS board in a joint-county district may, with voter approval, levy property tax within the joint-county district to fund the district's operations

[7] R.C. 5748.09(J).

[8] R.C. 5748.09(J)(1).

[9] R.C. 5748.09(J)(2).

[10] R.C. 5748.09(K).

[11] Section 24.

[12] R.C. 340.01(B).

(referred to in this analysis as a "district tax").[13] Boards of county commissioners also may, with voter approval, levy property tax to fund either the county's share of expenses of a joint-county district of which it is a member ("county contribution tax") or the operations of the county's single-county district ("single county tax").[14]

The act makes several changes to the authority to levy district, county contribution, and single county taxes. First, the act limits which residents within a joint-county district may benefit from district and county contribution tax revenue. Second, the act expressly stipulates the circumstances in which a county contribution or single county tax must continue to be levied following the reorganization of a joint-county district. Third, the act requires, in circumstances related to the withdrawal of a county from a joint-county district, a new county contribution or single county tax to be designated as a renewal or replacement.

Tax revenue use limitations

The act requires revenue from a district tax to be expended for the benefit of the residents of the county from which the revenue is collected, but only if the district is formed on or after April 3, 2023. (A district is not formed just because a county joins or withdraws from a district or if two joint-county districts merge.)[15] Under former law, an ADAMHS board in a joint-county district had discretion in how to spend district tax revenue within the district, regardless of county lines, provided the use is authorized by law and as approved by voters.

Similarly, the act requires revenue from a county contribution tax, which is ultimately paid to a joint-county district of which the county is a member, to be expended by the ADAMHS board only for the benefit of the residents of that county. This restriction applies to any joint-county district, regardless of the date the district is formed.[16]

The act's tax revenue use limitations apply to tax year 2023 and thereafter, regardless of when the applicable tax is approved by voters.[17]

Reorganization of a joint-county district

Under continuing law, a county contribution tax submitted to voters must identify the name of the joint-county district of which the county is a member.[18] When a county joins or withdraws from a joint-county district, though, the name and legal identity of the district changes. Since a county contribution tax is approved to fund a specific joint-county district, the county may no longer be able to levy a county contribution tax after the reorganization of that district.

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[13] R.C. 5705.19, not in the act.

[14] R.C. 5705.221.

[15] R.C. 340.01(C).

[16] R.C. 5705.221(D).

[17] Section 19.

[18] R.C. 5705.25, not in the act.

In such circumstances, the act requires a county that remains part of a newly reorganized joint-county district to continue to levy its county contribution tax that was previously approved by voters. The contribution tax is levied pursuant to the same terms approved by voters for the defunct joint-county district and is used to fund the county's share of expenses for the new joint-county district. If the board of county commissioners of that county approves the renewal or replacement of the county contribution tax, the question of the tax submitted to voters and the election notice must identify the name of the new joint-county district instead of the defunct district.[19]

The act similarly requires a withdrawing county to continue to levy a county contribution tax pursuant to the terms approved by voters, but only if the county joins a new joint-county district or establishes its own single-county district in the year following its withdrawal. The question of renewing or replacing such a county tax and the election notice must also identify the name of the new joint- or single-county district instead of the defunct district.[20]

The act's treatment of county taxes following a reorganization of a joint-county district is similar to a provision in continuing law requiring a district tax to continue to be levied in a county that withdraws from a joint-county district, until the district tax expires or is renewed or replaced.[21]

The act's reorganization-related county tax modifications apply to tax year 2023 and thereafter, regardless of when the applicable tax is approved by voters.[22]

Renewal or replacement designation

As explained above, if a county withdraws from a joint-county district that levies a district tax, that tax will continue to be levied in the withdrawing county until the tax expires or is renewed or replaced. If a board of county commissioners proposes to levy a county contribution or single county tax to take effect once the district tax ceases to be levied in that withdrawing county, the question of the tax submitted for voter approval would, under former law, appear in the same manner as any other new county contribution or single county tax.

Instead, the act requires the county contribution or single county tax to be labeled as a renewal, renewal and increase, renewal and decrease, replacement, replacement and increase, or replacement and decrease in the ballot language and election notice, but only if three conditions are satisfied. First, the county must withdraw from a joint-county district. Second, the joint-county district from which the county withdraws must levy a district tax in the tax year the county withdraws from the district. Third, the board of county commissioners of the withdrawing county must adopt a resolution approving the levy of a county contribution or

[19] R.C. 5705.221(E).

[20] R.C. 5705.221(F).

[21] R.C. 340.01(B).

[22] Section 19.

single county tax to begin in the tax year immediately following the year the district tax expires or is renewed or replaced.

Such a county tax would not be labeled as a renewal or replacement on the ballot and in the election notice under former law since the board of county commissioners is a different taxing authority than the ADAMHS board, and a tax may only be renewed or replaced by the taxing authority that imposes it.[23]

The act's special renewal or replacement ballot language designation for these taxes applies to resolutions adopted by boards of county commissioners authorizing such taxes on or after July 12, 2023 (100 days after the act's April 3, 2023, effective date).[24]

Tax abatements

Enterprise zone property

The act establishes a temporary procedure by which an owner of real property that qualifies for enterprise zone property tax exemption, but failed to properly apply for the exemption, may apply to the Tax Commissioner for all of the following:

- Placement of the property on the tax exempt list;
- Abatement of more than three years of unpaid taxes, penalties, and interest on the property, including those assessed before the applicant acquired ownership; and
- Refund of paid taxes, penalties, and interest that would not have been due and payable had the initial application for exemption been timely and properly filed, including amounts paid by a prior owner.

The application for exemption, abatement, and refund must be filed before April 3, 2024 (one year after the act's April 3, 2023, effective date).

Continuing law exempts qualifying enterprise zone property from taxation, but such property may not be exempted without a proper application. Furthermore, a property owner generally may not obtain a tax exemption or abatement for more than three years, even if the property would have qualified for exemption before that three-year period. Similarly, continuing law generally prohibits a property owner from obtaining an abatement of unpaid taxes that have become a lien on the property before the owner acquired the property. The law also does not generally allow a property owner to obtain a refund of property tax overpayments made by a prior owner.[25]

[23] R.C. 5705.221(A) and (G).

[24] Section 19.

[25] Section 15; R.C. 5713.08; R.C. 5713.081, not in the act.

Certain school district property

The act establishes a temporary procedure by which a local school district that acquired property in February 2021 may apply for a tax exemption for tax year 2021 and remission of the taxes, penalties, and interest attributable to the property for that tax year, payable to the person that paid them.

The application for exemption and remission must be filed with the Tax Commissioner before April 3, 2024 (one year after the act's April 3, 2023, effective date).

Continuing law generally only allows a tax exemption if the property in question is exempt from taxation on the tax lien date, which is January 1 each year, and prohibits remission of taxes that became a lien before the property was acquired by the exempt user. In other words, continuing law would normally prohibit remission of taxes that became a lien on January 1, 2021, while owned by a nonexempt user, but that was then acquired by an exempt user in February 2021.[26]

Certain agricultural society property

The act establishes a temporary procedure by which a county agricultural society may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest due for tax year 2021 on property the agricultural society acquired from a county in March 2021. An application for exemption and abatement under the act must be submitted before April 3, 2024 (one year after the act's April 3, 2023, effective date).

Continuing law exempts county agricultural society property from taxation, provided it is used in furtherance of the society's purposes, but such property may not be exempted if it has unpaid taxes, nor may taxes be abated if the taxes were assessed prior to the property's transfer.[27]

Exemption and abatement of certain TIF property

The act establishes a temporary procedure by which a municipal corporation that adopted a tax increment financing (TIF) ordinance between June 1 and December 31, 2002, may apply for the tax exemptions authorized by that ordinance to commence in different tax years, as designated for each parcel in the TIF ordinance. State law did not specifically allow for parcel-by-parcel TIF exemption commencement dates in 2002, though it does currently.[28]

An application submitted under this provision must be made before April 3, 2024 (one year after the act's April 3, 2023, effective date), but may be submitted regardless of whether a previous application for exemption pursuant to the TIF ordinance has been submitted and received a final determination.

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[26] Section 16; R.C. 5713.08.

[27] Section 17.

[28] R.C. 5709.40(G), not in the act.

If an application for exemption submitted pursuant to an ordinance covered by the act is pending, it need not be resubmitted, and the Tax Commissioner may consider it under the act's temporary provision, provided it otherwise meets the act's requirements.[29]

Sales and use tax exemptions

Electronic filing fees

The act exempts from sales and use tax income tax preparation services to electronically file an individual's federal, state, or local income tax return, transmit documents or schedules related to such a return, or electronically remit an individual's tax, provided such services are provided for use in business. The exemption applies only to services rendered on behalf of an individual. Fees charged for submitting returns, documents, or tax payments on behalf of entities that are not a natural person are not subject to the act's exemption, nor are fees charged to employers for electronically filing or remitting federal, state, or local income tax withholdings on behalf of an employee (referred to in this analysis as "qualifying tax preparation services").[30]

Under continuing law, qualifying tax preparation services used outside the business context, i.e., for personal use, are not subject to sales and use tax. However, former law did impose sales and use tax on such services used in business by classifying them as automatic data processing, computer services, or electronic information services (hereafter referred to collectively as "taxable electronic services").[31] The act effectuates the exemption by reclassifying qualifying tax preparation services as personal and professional services, which are not considered taxable electronic services and thus are not subject to sales or use tax, even if they are used in business.

The exemption applies beginning May 1, 2023.[32]

Incidental taxable electronic services exemption

Under continuing law, a "mixed" transaction involving both taxable electronic services and some other kind of service (i.e., a personal or professional service) in the same transaction is not taxable if the purchaser's "true object" is to receive the benefit of the other service and if the electronic service is only incidental or supplemental to the purchaser's receipt of the other service.

By classifying qualifying tax preparation services described above as a personal or professional service, the act exempts otherwise taxable electronic services that are furnished

[29] Section 14.

[30] R.C. 5739.01(B)(3)(e) and (Y)(2)(l).

[31] See Ohio Department of Taxation guidance, ST 1999-04 – On-line Services and Internet Access (PDF), updated September 2022, which may be accessed by conducting a keyword "On-line Services and Internet Access" search on the Ohio Department of Taxation's website: tax.ohio.gov.

[32] Section 22.

incidentally or supplementally as part of a transaction for those services to the extent those services could be distinguished from and would not otherwise qualify as a qualifying tax preparation service.[33]

Documentary service charges

The act also exempts from the sales and use tax documentary service charges on the sale of a motor vehicle by a motor vehicle dealer or a manufactured or mobile home by a manufactured housing dealer.[34] Under continuing law, a motor vehicle dealer or manufactured housing dealer may charge a consumer a documentary service fee for paperwork, title runner expenses, and other costs associated with making financial arrangements for the sale. The fee must not exceed the lesser of $250, or 10% of the sale price, excluding tax, title, and registration fees.[35] According to guidance published by the Department of Taxation, documentary service charges were formerly included in the price of a motor vehicle or manufactured or mobile home in computing sales or use tax on the transaction.[36]

As is the case for other existing exemptions that apply to all consumers, no exemption certificate is necessary to obtain the act's documentary service charge exemption.[37]

The exemption applies beginning May 1, 2023.[38]

Watercraft use tax exemption

The act exempts certain watercraft from state and local use taxes. In general, use tax is imposed on items purchased outside Ohio and used or stored in the state if no Ohio sales tax was paid. The use tax is assessed at the same state and local (i.e., county and transit authority) rates as the corresponding sales tax and applies to most purchases of tangible personal property, including watercraft.

Under the act, a watercraft purchased outside the state or, in some cases, in the state is specifically exempted from use tax if all of the following apply:

- The watercraft is in Ohio only for storage or maintenance (e.g., cleaning, repairing, or installing equipment, fixtures, or technology);
- The watercraft is not used or stored in Ohio from May through September of any year;

[33] R.C. 5739.01(B)(3)(e).

[34] R.C. 5739.02(B)(59).

[35] R.C. 1317.07, 4517.261, and 4781.24, not in the act.

[36] See Ohio Department of Taxation guidance, ST 1982-01 – Documentary Fees, updated November 2004, which may be accessed by conducting a keyword "Documentary Fees" search on the Ohio Department of Taxation's website: tax.ohio.gov.

[37] R.C. 5739.03.

[38] Section 22.

- The watercraft does not have to be registered in Ohio (e.g., the watercraft is registered in another state and used in Ohio for fewer than 60 days);
- The owner paid one of the following:
  - Sales or use taxes in another jurisdiction (i.e., another state, a political subdivision of another state, or the District of Columbia) on the watercraft, or would have paid that tax if that jurisdiction taxed the sale, use, or ownership of the watercraft;
  - Any Ohio sales taxes imposed on the watercraft at the time of purchase, as authorized under and subject to the conditions of continuing law and calculated on the basis of a sales or use tax credit offered by another state.[39] Continuing law permits a nonresident who purchases a watercraft in Ohio and who satisfies certain criteria, including registering or titling the watercraft in another jurisdiction that levies tax on the sale, use, or ownership of the watercraft at a lower rate, to pay sales tax in Ohio at that lower rate, provided that other state offers a credit for sales taxes charged by Ohio. Under former law, if that owner brought the watercraft back to this state for storage or maintenance, then the watercraft became subject to Ohio's full use tax rate above that already-remitted lower rate.[40]

Under continuing law, a watercraft on which sales or use tax has been paid to another jurisdiction is taxable in Ohio only to the extent that Ohio's use tax rate exceeds the rate paid to the other jurisdiction or, if the watercraft was purchased by a nonresident who paid Ohio sales tax at the lower rate levied in the jurisdiction of titling or registration, the lower rate paid to Ohio, as described above.[41] Tangible personal property "halted temporarily" in Ohio is subject to use tax, unless the use is specifically exempted by law.[42] There is a limited exemption for a nonresident's transient use of property in the state.[43]

The act specifies that the use tax exemption does not apply to watercraft storage, repair, or installation services themselves, which are subject to sales and use tax under continuing law.[44]

The use tax exemption applies to all such watercraft beginning May 1, 2023.[45]

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[39] R.C. 5741.02(C)(11).

[40] R.C. 1547.53(B), 1547.531(B), and 5739.027, not in the act.

[41] R.C. 5741.02(C)(5).

[42] *Beatrice Foods Co. v. Lindley*, 70 Ohio St.2d 29, 33 (1982) (holding that use tax levied on tangible personal property brought permanently to or halted temporarily in the state does not violate the Commerce Clause of Article I, Section 8 of the U.S. Constitution).

[43] R.C. 5741.02(C)(4).

[44] R.C. 5739.01(B)(3)(a) and (b), (B)(7), and (B)(9) and 5741.02(C)(11)(c).

[45] Section 23.

Pollution control and energy conversion facility exemptions

Background

The act modifies property and sales and use tax exemptions authorized by continuing law for pollution control facilities and facilities that convert natural gas, oil, solid waste, or waste heat to other forms of energy in industrial or commercial settings. The exemptions are approved through an application process administered by the Tax Commissioner. The Commissioner reviews plans for and specifications of the property and determines whether the property is designed primarily for an exempt purpose, and is suitable and reasonably adequate for such purpose. If so, the property is certified as an "exempt facility" and is fully or partially exempt from property and sales and use tax. The portion of the property exempted depends upon the ratio of time the property is used for an exempt purpose.

The Commissioner, in making a determination with respect to an exempt facility, must consult with the Ohio Environmental Protection Agency or the Department of Natural Resources, if the facility is a pollution control facility, or the Department of Development, if the facility is an energy conversion facility.

Extension of exemptions

The act specifically extends the exempt facility exemptions to leased property. Former law did not explicitly allow or disallow an exemption for leased property, so it was possible that the Tax Commissioner could deny an application for an exempt facility certificate because the applicant was not the property owner.

The act also extends the exemptions to property that primarily benefits a business, so long as that benefit also aligns with an exempt purpose, i.e., pollution control or energy conversion. Under former law, property that was primarily used for the benefit of the business or primarily for the safety, health protection, or benefit of the business's employees did not generally qualify as an exempt facility. If a facility primarily benefits the business while, at the same time, serving an exempt purpose, no exemption was allowed. The act effectively eliminates the business purpose exception, by allowing the exemptions for facilities that serve exempt purposes regardless of the benefits incurred by the applicant business.

The act also adds several purposes that may qualify property for exemption as an industrial water pollution control facility. It extends that exemption to property used to haul industrial waste to a point of disposal or treatment and property used to store, filter, process, or dispose of such waste. Under continuing law, property used to collect or conduct industrial waste to a point of disposal or treatment and property that is designed to reduce, control, or eliminate water pollution caused by industrial waste or by the discharge thereof into a disposal system qualifies for exemption as an industrial water pollution control facility.[46]

[46] R.C. 5709.20.

Application to pending cases

The act applies both prospectively and to any exemption applications pending before the Tax Commissioner or Board of Tax Appeals or an Ohio court on April 3, 2023.[47]

Income tax credits

Tax credit for commercial vehicle operator training expenses

The act authorizes a temporary nonrefundable personal income tax credit of up to $25,000 for employers that train their employees to be commercial vehicle operators.[48] As a credit against the income tax, it may be claimed by employers that are sole proprietors or organized as a pass-through entity such as a partnership, limited liability company, or S corporation owned at least in part by an individual, estate, or trust; it would not be available to corporations other than those electing S corporation status.

Application process

The credit is available for expenses, other than wages, paid to train employees to obtain a commercial driver's license (CDL) or to operate a commercial motor vehicle. To obtain the credit, an employer must first apply to the Director of Development with an estimate of the training expenses that the employer expects to pay in the upcoming year. The Director may certify up to $50,000 of estimated training expenses as eligible for the tax credit.

Then, in January of the year after the year the expenses are incurred, the employer applies to the Director for the tax credit, which equals one-half of the employer's actual training expenses. The application must include an itemized list of training expenses for each employee that received credit-eligible training. Upon approval, the Director issues the employer a tax credit certificate indicating the amount of the credit. The Director must also notify the Department of Taxation of each certificate issued.[49]

Credit limits

The maximum credit allowed to any employer per year is $25,000 (one-half of $50,000, the maximum amount of certifiable training expenses). The total amount of credits awarded in any year may not exceed $1.5 million (i.e., 50% of the maximum $3 million in credit-eligible training expenses the Director may annually certify). However, if, in any year, the amount of credits awarded is less than $1.5 million, the difference may be carried forward and added to the maximum amount that may be awarded the following year.[50]

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[47] Section 20.

[48] R.C. 122.91, 5747.82, and 5747.98.

[49] R.C. 122.91(A) to (C).

[50] R.C. 122.91(B).

Carry forward

The credit is nonrefundable, which means that the credit may not exceed a taxpayer's tax liability in any year. However, if the credit does exceed a taxpayer's liability for a particular year, the taxpayer may carry forward and apply the difference to a future tax liability for up to five years.[51]

Reporting requirements

Each employer that is issued a tax credit certificate must report to the Director of Development by January 21 of the following year whether any employees whose training is the basis of that credit quit or were fired during the year in which the certificate was issued. The employer must also report the credit attributable to those employees, as well as any other information requested by the Director.

The Director must compile that information and annually report to the General Assembly the number of all such employees reported in that year, the total amount of issued credits attributable to those employees, and any other information the Director determines is necessary.[52]

Application date and rules

The credit applies to training expenses paid on or after January 1, 2024, but before January 1, 2028.[53]

The act requires the Director of Development to adopt rules, in consultation with the Tax Commissioner, necessary to administer the credit, which must include a description of any applicable fees, any penalties for noncompliance with reporting requirements, and the types of expenses that would qualify for the credit. These proposed rules must be prepared and filed no later than August 31, 2023 (150 days after the act's April 3, 2023, effective date).[54]

Tax credit for donations to scholarship organizations

The act modifies an existing income tax credit for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students. The credit is available for donations to "scholarship granting organizations" that prioritize scholarships for low-income students.

Former law limited the credit to $750 per year, but did not specifically address joint returns. The act specifies that the maximum amount of the credit that can be claimed by spouses filing jointly is $1,500, with each spouse eligible to contribute $750 to the total cap.[55]

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[51] R.C. 5747.82.

[52] R.C. 122.91(D).

[53] R.C. 122.91(B).

[54] R.C. 122.91(E) and Section 18.

[55] R.C. 5747.73.

Refunds of tax penalties

The act allows taxpayers to apply to the Tax Commissioner or Superintendent of Insurance for a refund of any amount the taxpayer overpaid or paid erroneously or illegally, including tax-related penalties and fees. In general, former law specified that the Commissioner or Superintendent was only required to refund overpaid taxes, with interest.

Under continuing law, generally, the Commissioner or Superintendent may impose penalties if a taxpayer fails to comply with tax filing and reporting requirements – for example, if a taxpayer fails to file a tax return, pay the full amount due, pay a tax electronically when required to do so, or obtain a required license or registration.

In many cases, the Commissioner is given discretion to forgive or waive tax penalties. This discretion applies to cases in which a penalty was charged improperly, as well as to cases in which the penalty was charged properly but, in the Commissioner's discretion, the taxpayer deserves leniency.[56]

Under the act, a taxpayer who overpaid or improperly paid any penalty or fee would be automatically entitled to a refund of that amount, without the need for the exercise of discretion or waiver. As with taxes that are overpaid and refunded, the taxpayer is also entitled to interest that accrues on the overpaid penalty or fee.

Continuing law also requires that, if a taxpayer is entitled to a refund of certain taxes, the Tax Commissioner may intercept the refund and apply it to any debt that the taxpayer owes to the state, such as other past-due taxes or unpaid child support. Under the act, the Commissioner may similarly intercept any refunded penalty for the same purpose.[57]

Tax Expenditure Review Committee

The act sunsets the Tax Expenditure Review Committee as of April 3, 2023. The Committee was discontinued by H.B. 110 of the 134th General Assembly, but due to a technical error, the sunset was delayed until September 30, 2024.[58]

The Committee, consisting of six legislators and a representative of the Tax Commissioner, was created in 2017 to review tax expenditures – tax incentives that exempt all or part of something from a tax levied by the state, such as a deduction, exemption, or credit. It was required to make recommendations about whether each should be maintained, repealed, or modified, to study every tax expenditure once every eight years, and to publish biennial reports of its studies for inclusion with the Governor's budget.[59]

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[56] See, e.g., R.C. 5739.12(D), 5747.15(C), and 5751.06(F), not in the act.

[57] R.C. 128.47, 718.91, 3734.905, 4307.05, 5725.222, 5726.30, 5727.28, 5727.91, 5728.061, 5729.102, 5735.11, 5735.122, 5736.08, 5739.07, 5739.104, 5741.10, 5743.53, 5745.11, 5747.11, 5749.08, 5751.08, and 5753.06.

[58] Section 3; Section 130.12 of H.B. 110 of the 134th General Assembly, amended by Section 4 of the act.

[59] R.C. 5703.95, repealed; Sections 3, 4, and 5.

Video service changes

The act changes the definition of "video service" for purposes of the video service authorization (VSA) law and sales and use taxes. Under that definition, the act excludes direct-to-home satellite sales, as defined under federal law, from being video service. Federal law defines such sales as "the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite."[60] The act also excludes video streaming content from the video service definition.

The act limits video service to the provision of video programing by a "video service provider" (VSP). Under continuing law, a VSP is defined as a person granted a video service authorization under the VSA law. Since that law already prohibits any person from providing video service without having an authorization,[61] the act's change may result in some confusion regarding regulation of a person who provides video programming when the person is not a VSP, since video service is now only provided by a VSP.[62]

The act's changes to VSA law clarify that sales of direct-to-home satellite services and video streaming content are subject to sales tax. Sales of "digital products," including video streaming services, are generally taxable unless an exemption applies. Under continuing law, an exemption is available for cable service programming, video service programming, audio service programming, and electronically transferred digital audio or audiovisual products when bought or sold by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government. Several of the definitions in the VSA law, including the definition of "video service," are incorporated, by reference, into sales and use tax law. Therefore, by explicitly excluding direct-to-home satellite services and video streaming content from the VSA law definition, the act also clarifies that the cable, video service, and broadcasting sales and use tax exemption does not apply to such services and content. This appears to align with the Department of Taxation's interpretation of the exemption under former law.[63]

Appropriations

The act appropriates $30 million in FY 2023 under Fund 5CV3 appropriation item 1956E6, Minor League Relief. It requires the Department of Development, in accordance with the federal American Rescue Plan Act, to award grants to the following eligible minor league teams: Akron Rubber Ducks, Dayton Dragons, Lake County Captains, Lake Erie Crushers, Mahoning Valley Scrappers, Toledo Mud Hens, Cincinnati Cyclones, and Toledo Walleye. Grant

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[60] 47 United States Code 303(v).

[61] R.C. 1332.23(A), not in the act.

[62] R.C. 1332.21.

[63] R.C. 5739.01(B)(12) and (OOO) and 5739.02(B)(53); see also question 6 of Sales and Use Tax – Digital Products, which may be accessed on the Ohio Department of Taxation's website: tax.ohio.gov by conducting a keyword search for "digital product."

amounts are based on an eligible team's CY 2019 gross revenue; or, if the amount appropriated is insufficient to award grants in that manner, the Department must award grants in the same manner as grants awarded under the federal Shuttered Venue Operators Grant Program.[64]

The act additionally appropriates $35 million in the FY 2023-FY 2024 capital biennium from Fund 7030 appropriation item C230FM, Cultural and Sports Facilities Projects, and makes the following earmarks:

- $30 million for Gateway Economic Development Corporation Infrastructure.
- $5 million for Dayton Dragons Improvements.

The act authorizes the Treasurer of State to issue and sell $35 million in new bonds deposited to the credit of Fund 7030 to support the appropriation.[65]

For more information about the act's fiscal effects, see the LSC Final Fiscal Note for H.B. 66, which is available on the General Assembly's website, legislature.ohio.gov.

HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Ways & Means	02-24-21
Passed House (98-0)	03-03-21
Reported, S. Ways & Means	12-14-22
Passed Senate (30-0)	12-14-22
House concurred in Senate amendments (66-14)	12-14-22

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[64] Sections 7 to 9.

[65] Sections 10 to 13.