

Tax Expenditure Review Committee



November 2018 Report

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Introduction

Created in Am. Sub. H.B. 9 of the 131st General Assembly, the Tax Expenditure Review Committee (TERC) was created to review all current tax expenditures at least once every eight years and make recommendations on whether each tax expenditure should be continued, modified, repealed, or scheduled for further review at a later time.

The Committee is composed of six voting members: three Representatives and three Senators appointed by the Speaker of the House and Senate President, respectively, in consultation with their minority leader counterparts. For the 132nd General Assembly, the following members served on the Tax Expenditure Review Committee: Senator Scott Oelslager (Chairman), Senator John Eklund, Senator Vernon Sykes, Representative Tim Schaffer, Representative Gary Scherer, Representative John Rogers, and Ohio Department of Tax Commissioner Joe Testa.

Tax Expenditure Review Schedule

The Committee Chair determined the schedule for tax expenditure review based on the most recent Tax Expenditure Report for fiscal years 2018 and 2019 prepared by the Ohio Department of Taxation (Appendix A). The Chair also consulted a memorandum prepared by the Legislative Service Commission that outlines the relevant legislative history for each tax expenditure in the state of Ohio (Appendix B).

It was determined that the Committee would hear the first fifteen (15) expenditures listed in Department of Taxation's Tax Expenditure Report. The Committee reviewed the expenditures numbered 1.01 through 1.15, all exemptions from Ohio's Sales and Use Tax.

Committee Hearing Overview

The Committee held a total of four (4) hearings, on October 10, 2017, April 11, 2018, April 25, 2018, and May 9, 2018.

A public notice was released at least one week prior to each committee hearing, with background information on the Committee, the date, time, and location of the hearing, and a list of the tax expenditures to be reviewed at the hearing.

The public notice also included the following testimony guidance, informed by provisions included in H.B. 9:

- The fiscal impact of each expenditure on the state and local taxing authorities.
- The public policy objectives of each expenditure, whether the expenditure has been successful in accomplishing its policy objective, and whether that objective might be better accomplished through appropriations or another, less costly method.
- The unintended consequences of each expenditure, including its positive or negative effects on the Ohio economy and job market, and whether the expenditure creates an unfair competitive advantage.

- Suggestions for retention, modification, or repeal of the expenditure.

The Committee heard testimony from interested parties and members asked relevant questions of the witnesses. The Tax Expenditure Review Committee recommendations are detailed in the following report.

Tax Expenditure Review

Review Contents

For each of the tax expenditures reviewed by the Committee, this section includes:

1. The title of the expenditure and its corresponding Tax Expenditure Report code;
2. A brief summary of the expenditure, its statutory language, its revenue impact, and any Department of Taxation guidance available regarding the expenditure;
3. Summaries of the testimony provided, if applicable. The full text of the testimony can be found in the Appendix.

1.01 – Sales to churches and certain other nonprofit organizations

Overview

Sales to churches, nonprofit entities organized under Internal Revenue Code section 501(c)(3), and certain other types of nonprofit organizations are exempt from the sales and use tax. (R.C. 5739.02(B)(12); originally enacted 1935, revised 2013)

Statutory Language

R.C. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or

otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report ¹			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$600.1	\$614.2	\$609.1	\$639.4	\$671.3	\$704.8

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199404.aspx

https://www.tax.ohio.gov/sales_and_use/information_releases/st200802.aspx

Summary of Testimony

No testimony was provided.

1.02 – Sales to the state, any of its political subdivisions, and certain other states

Overview

Sales to the state of Ohio and any of its political subdivisions are exempt from the sales and use tax. Also exempt from the sales and use tax are sales to any other state (and its subdivisions) as long as such state provides an exemption for sales made to the state of Ohio (and its subdivisions). (R.C. 5739.02(B)(1); originally enacted 1935, revised 1994)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

¹ The estimated FY 2020-2021 Tax Expenditure Report amounts cited in this report have not been formally published and are subject to change.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$122.9	\$122.9	\$118.6	\$118.6	\$118.6	\$118.6

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199903.aspx

Summary of Testimony

No testimony was provided.

1.03 – Sales by churches and certain types of nonprofit organizations

Overview

Sales, other than motor vehicles, mobile homes, and manufactured homes, by churches, nonprofit organizations organized under Internal Revenue Code section 501(c)(3), and certain other nonprofit organizations are exempt from the sales and use tax, if the number of days on which sales are made does not exceed six in any calendar year, except the limitation on the number of days on which tax-exempt sales may be made does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school. (R.C. 5739.02(B)(9); originally enacted 1961)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(9)(a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days on which such sales are made exceeds six in any calendar year, the church

or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

(b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$45.7	\$47.6	\$47.6	\$50.1	\$52.7	\$55.4

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2007_03.aspx

"Sales by Primary and Secondary School and Student-Related Organizations" – November 6, 2015²

Summary of Testimony

No testimony was provided.

1.04 – Tangible personal property used primarily in manufacturing tangible personal property

Overview

Sales of tangible personal property where the purpose of the purchaser is to use the property primarily in a manufacturing operation to produce tangible personal property for sale

² This item was sent to a select group of school organization representatives for distribution – Ohio Association of School Business Officials (OASBO), Ohio Conference Seventh-day Adventist, Ohio Jewish Communities, Catholic Conference of Ohio, Lutheran Schools of Ohio, Ohio Association of Independent Schools, Association of Christian Schools International, and Agudath Israel.

are exempt from the sales and use tax. (R.C. 5739.02(B)(42)(g) and 5739.011; originally enacted 1935, revised 1990)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

R.C. 5739.011. (A) As used in this section:

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

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

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

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

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

(6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw

materials or parts from the point of receipt or preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

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

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

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

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

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

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

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

(8) Coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances;

machinery, equipment, and other tangible personal property used to treat, filter, pump, or otherwise make the substance suitable for use in the manufacturing operation; and machinery and equipment used for, and fuel consumed in, producing electricity for use in the manufacturing operation;

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

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

(11) Parts, components, and repair and installation services for items described in division (B) of this section;

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

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

(C) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, the "thing transferred" does not include any of the following:

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

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

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

(4) Tangible personal property that is or is to be incorporated into realty;

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

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

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

(8) Except as provided in division (B)(13) of this section, machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

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

(D) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report	
FY 2018	FY 2019
\$2,210.7	\$2,299.9

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st200002.aspx

https://www.tax.ohio.gov/sales_and_use/information_releases/st197901.aspx

O.A.C. 5703-9-21 (<http://codes.ohio.gov/oac/5703-9-21v1>)³

Manufacturing Sales Tax Exemptions (https://www.tax.ohio.gov/Researcher/VTa/OVTA_Topics/september2015.aspx)

Summary of Testimony

Rob Brundrett, Ohio Manufacturers' Association

Full testimony on page 80 of Appendices

Mr. Rob Brundrett is the Director of Public Policy Services for the Ohio Manufacturers' Association. Mr. Brundrett stated that sales taxes are intended to be imposed on the final consumption of goods; intermediate transactions are not intended to be taxed. OMA outlines four reasons that intermediate transactions should not be taxed:

- (1) Imposing a tax on intermediate transactions causes tax pyramiding which results in a final effective tax rate that is much higher than the statutory rate.
- (2) Taxing intermediate transactions, also known as business inputs, increases the cost of doing business. This can lead to three different consequences: a business may charge higher prices; a business may pay lower wages; or, a business may provide a lower return on investment.
- (3) Direct inputs lead to the production of more valuable goods that are ultimately subject to the tax.
- (4) All states surrounding Ohio have a sales tax and have exemptions from the tax for machinery and equipment used in the production of tangible goods. Imposing a tax on these goods would put Ohio at an economic disadvantage.

While certain manufacturing expenses are tax exempt, manufacturers still pay sales tax on all goods and services not included in the exemption.

³ The Department of Taxation worked with industry over the past year (2017) to agree on minimal changes to this rule. After lengthy discussions, the rule is ready to be sent to the Common-Sense Initiative Office but has yet to be sent over. The Department anticipates completing that task within the next few weeks.

Mr. Brundrett stated that this sales tax exemption should not be repealed. There is room for improvement in the tax exemption. OMA suggests that the following be tax exempted as well: temporary workers; industrial janitorial and maintenance services; and certain equipment and supplies used to clean food processing equipment.

Tom Zaino, The Manufacturing Policy Alliance

Full testimony on page 96 of Appendices

Mr. Tom Zaino testified on behalf of his client, the Manufacturing Policy Alliance. The Manufacturing Policy Alliance supports the sales and use tax exemption for manufacturing and packaging. This exemption benefits manufacturers of tangible personal property as well as the employees and suppliers of manufacturers. The exemption successfully eliminates most pyramiding and ensures Ohio's competitiveness among other states. Along with recommending the continuation of the exemption, Zaino cites a number of additional proposed exemptions that would further benefit manufacturers.

Jeff McClain, Ohio Chamber of Commerce

Full testimony on page 100 of Appendices

Mr. Jeff McClain is the Director of Tax and Economic Policy for the Ohio Chamber of Commerce. The Ohio Chamber of Commerce supports the continuation of the sales tax exemption on the sale of tangible personal property primarily used in manufacturing. The exemption successfully protects Ohio's manufacturers from having to pay a 6%-8% sales tax at each stage of the manufacturing process. By preventing the pyramiding of sales tax on Ohio's manufactured goods, the exemption helps maintain the competitiveness of Ohio jobs and Ohio's economy. The Chamber of Commerce argues that the manufacturing exemption provides critical support for an essential part of Ohio's business health, and is worth the \$2.2 billion in tax revenue the state forgoes each year.

1.05 – Packaging and packaging equipment

Overview

Packaging and packaging equipment, including materials, labels, and parts for packaging machinery, and equipment, sold to manufacturers and other qualified businesses are exempt from the sales and use tax. (R.C. 5739.02(B)(15); originally enacted 1961)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(42)(a), (g), or (h) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property

that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons.

Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report	
FY 2018	FY 2019
\$255.2	\$264.7

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2010_01.aspx

Summary of Testimony

Lora Miller, The Ohio Council of Retail Merchants

Full testimony on page 102 of Appendices

Ms. Lora Miller is the Director of Government Affairs and Public Relations at the Ohio Council of Retail Merchants. The Ohio Council of Retail Merchants supports the continuance of the sales tax exemption for packaging and packaging equipment. This exemption has shown to be incredibly important to retailers and consumers as it minimizes the costs of selling merchandise, increasing the purchasing power. The Ohio Council of Retail Merchants suggests the General Assembly consider enhancing certain tax exemptions such as this one rather than limiting or eliminating them.

Tom Zaino, The Manufacturing Policy Alliance

Full testimony on page 96 of Appendices

Mr. Tom Zaino testified on behalf of his client, the Manufacturing Policy Alliance. The Manufacturing Policy Alliance supports the continuation of the sales tax exemption on packaging and packaging equipment. This exemption benefits a number of industries in Ohio in addition to the manufacturing industry.

1.06 – Sales of tangible personal property and services to electricity providers

Overview

Tangible personal property and services used or consumed by a provider of electricity in generating, transmitting, or distributing electricity for use by others is exempt from the sales and use tax. (R.C. 5739.02(B)(40); originally enacted 2000)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$343.1	\$356.8	\$279.8	\$285.3	\$288.0	\$290.5

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199902.aspx

Summary of Testimony

No testimony was provided.

1.07 – Tangible personal property used or consumed in agriculture and mining

Overview – Agriculture

Purchases of tangible personal property used or consumed directly in producing a product sold by farming, agricultural, horticultural, or floricultural operations are exempt from the sales and use tax. (R.C. 5739.02(B)(42)(n); originally enacted 1935, revised 2011)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report ⁴			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$331.1	\$339.4	\$310.3	\$313.6	\$317.1	\$321.0

⁴ These estimated amounts are from the yet to be published FY 2020-FY 2021 Tax Expenditure Report and are subject to change.

Tax Department Guidance

<http://codes.ohio.gov/oac/5703-9-23v1>

Overview – Mining

Purchases of tangible personal property used or consumed directly in producing a product sold by mining or in the production of crude oil, mining, or natural gas are exempt from the sales and use tax. (R.C. 5739.02(B)(42)(a); originally enacted 1935, revised 2011)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons.

Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report	
FY 2018	FY 2019
\$73.4	\$74.3

Tax Department Guidance

<http://codes.ohio.gov/oac/5703-9-22v1>

<https://www.tax.ohio.gov/Researcher/VTa/current.aspx>

https://www.tax.ohio.gov/sales_and_use/information_releases/st200308.aspx

Summary of Testimony

Michael Cope, Ohio Coal Association

Full testimony on page 104 of Appendices

Mr. Michael Cope serves as President of the Ohio Coal Association. The Ohio Coal Association supports the tax exemption applying to supplies and equipment used directly in the exploration, production, and extraction of Ohio coal, citing the recovering coal industry as reasoning. Any tax levied on the purchase of new equipment would be detrimental to the industry. Additionally, a tax would increase the cost of mining, which would translate to high electricity bills for Ohioans.

Tony Seegers, Ohio Farm Bureau Federation

Full testimony on page 105 of Appendices

Mr. Tony Seegers is the Director of State Policy for the Ohio Farm Bureau Federation. Mr. Seegers stated that the agriculture industry is capital intensive and yields low profits. Levying a sales tax on input costs would have severe consequences; the tax exemption should be continued. A sales tax on inputs would impact production negatively. While other industries may pass an intermediate sales tax on to the consumer, farmers would bear the burden of this tax, which would likely drive some farms out of business.

1.08 – Agriculture land tile and portable grain bins

Overview

Sales and installation of agricultural land tile and erection or installation of portable grain bins are exempt. (R.C. 5739.02(B)(30) and (31); originally enacted 1985)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
Y 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$1.1	\$1.1	\$1.1	\$1.1	\$1.1	\$1.2

Tax Department Guidance

None.

Summary of Testimony

No testimony was provided.

1.09 – Tangible personal property used to produce printed materials

Overview

Machinery, equipment, and material used in the production for sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other graphic productions or reproductions are exempt from the sales and use tax. (R.C. 5739.02(B)(42)(f); originally enacted 1973)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report	
FY 2018	FY 2019
\$9.8	\$9.9

Tax Department Guidance

None.

Summary of Testimony

No testimony was provided.

1.10 – Tangible personal property used in storing, preparing, and serving food

Overview

Tangible personal property used in storing, preparing, and serving food in a commercial food establishment is exempt from the sales and use tax. Also exempt from the tax are items used to clean tangible personal property used to store, prepare, or serve food for human consumption. (R.C. 5739.02(B)(27); originally enacted 1981)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$33.8	\$34.7	\$42.6	\$44.0	\$45.3	\$46.7

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2010_01.aspx

Summary of Testimony

Lora Miller, Ohio Council of Retail Merchants

Full testimony on page 102 of Appendices

Ms. Lora Miller testified on behalf of the Ohio Council of Retail Merchants, where she serves as the Director of Government Affairs and Public Relations. The exemption from sales tax for tangible personal property used in storing, preparing, and serving food helps maximize sales by limiting the effect of tax pyramiding, helps protect the public health, and helps preserve inventory in a safe manner. The sales tax exemption is necessary and should continue.

1.11 – Tangible personal property used in preparing eggs for sale

Overview

Equipment and supplies used for the cleaning, sanitizing, preserving, grading, sorting, classifying, packaging, and handling of eggs for sale are exempt from the sales and use tax. (R.C. 5739.02(B)(24); originally enacted 1974)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or

plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$3.2	\$3.3	\$3.9	\$4.0	\$4.2	\$4.4

Tax Department Guidance

None.

Summary of Testimony

No testimony was provided.

1.12 – Building and construction materials and services used in certain structures

Overview

A sales and use tax exemption is provided for building and construction materials and services sold to construction contractors for incorporation into certain types of structures. The exemption applies to structures built under a construction contract with the following entities: federal government, the state of Ohio and its political subdivisions, religious institutions and other organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, businesses engaged in horticultural and livestock purposes, and certain other types of entities specified in state law. (R.C. 5739.02(B)(13); originally enacted 1959, revised 1994)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and

construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections 5501.70 to 5501.83 of the Revised Code; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$226.8	\$232.7	\$209.6	\$209.8	\$210.1	\$210.4

Tax Department Guidance

<http://codes.ohio.gov/oac/5703-9-14v1>

<https://www.tax.ohio.gov/Researcher/VTa/OVTATopics/March2015.aspx>

https://www.tax.ohio.gov/portals/0/forms/sales_and_use/exemption_certificates/ST_STEC_CC_FI.pdf

https://www.tax.ohio.gov/portals/0/forms/sales_and_use/exemption_certificates/ST_STEC_CO_FI.pdf

Summary of Testimony

No testimony was provided.

1.13 – Tangible personal property used directly in providing public utility services

Overview

Property (including fuel) used in production, transportation, or distribution of a public utility service, or used in the repair and maintenance of machinery and equipment used directly in providing a public utility service, is exempt from the sales and use tax. (R.C. 5739.02(B)(42)(a); originally enacted 1935)

Statutory Language

R.C. 5739.01. As used in this chapter:

(P) "Used directly in the rendition of a public utility service" means that property that is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and that retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used directly in the rendition of a public utility service. In this definition, "public utility" includes a citizen of the United States holding, and required to hold, a certificate of public convenience and necessity issued under 49 U.S.C. 41102.

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. [Emphasis added]

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report	
FY 2018	FY 2019
\$116.3	\$116.3

Tax Department Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199902.aspx

Summary of Testimony

Mark Donaghy, Greater Dayton Regional Transit Authority

Full testimony on page 108 of Appendices

Mr. Mark Donaghy is the Chief Executive Officer of the Dayton Regional Transit Authority. The Dayton RTA has faced decreasing state support, and has to rely more on local and federal dollars to fund services. There are increasing demands for transportation, but Dayton RTA cannot grow to meet the demand. The sales tax exemption allows Dayton RTA to save a nominal amount of money that can help offset other costs.

1.14 – Property used to fulfill a warranty or service contract

Overview

Parts and labor used to fulfill a warranty that is provided as part of the price of tangible personal property sold are exempt from the sales and use tax. In addition, parts and labor used to fulfill a warranty, maintenance, or service contract in which the vendor of such warranty or contract agrees to repair or maintain the consumer's tangible personal property, are exempt from the tax. (R.C. 5739.02(B)(42)(k); originally enacted 1986)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$52.8	\$53.1	\$52.0	\$52.4	\$52.8	\$53.1

Tax Department Guidance

None.

Summary of Testimony

Joe Cannon, Ohio Automobile Dealers Association

Full testimony on page 110 of Appendices

Mr. Joe Cannon serves as the Vice President of Government Relations for the Ohio Automobile Dealers Association. This tax exemption protects consumers who have already paid

tax at the time of the sale of the vehicle or service contract from being subject to double taxation. Without this tax exemption, it's reasonable to think that consumers would travel across state lines to seek repair work.

Lora Miller, Ohio Council of Retail Merchants

Full testimony on page 102 of Appendices

Ms. Lora Miller is the Director of Government Affairs and Public Relations for the Ohio Council of Retail Merchants. She asserts that the cost of manufacturer warranties and service contracts are generally included in the purchase price of an item. Imposing a tax on these warranties and service contracts constitutes a double taxation as the consumer pays tax on the original purchase, and would pay tax again if not for a sales tax exemption certificate. While this exemption does have a considerable fiscal impact on the state, it is beneficial to consumers and should be continued.

1.15 – Motor vehicles sold in Ohio for use outside the state

Overview

Motor vehicles sold in Ohio to nonresidents, when the vehicles are immediately removed from Ohio and titled or registered in another state, are exempt from the sales and use tax. However, no exemption is permitted if the vehicle is titled or registered in a foreign nation (other than Canada), or in a U.S. state that applies its sales tax to an Ohioan purchasing a vehicle in that state. (R.C. 5739.02(B)(23); originally enacted 1971, revised 2007 and 2008)

Statutory Language

R.C. 5739.02. (B) The tax does not apply to the following:

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;

Revenue Impact

Revenue Impact on GRF in Millions from FY 2018-FY 2019 Tax Expenditure Report		Estimated Revenue Impacts on GRF in Millions for FY 2020-FY 2021 Report			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$55.4	\$57.1	\$50.5	\$51.3	\$52.1	\$53.1

Tax Department Guidance

[https://www.tax.ohio.gov/portals/0/forms/fill-in/sales and use/exemption certificates ST STEC NR FI.pdf](https://www.tax.ohio.gov/portals/0/forms/fill-in/sales_and_use/exemption_certificates_ST_STEC_NR_FI.pdf)

Summary of Testimony

Jason Warner, Greater Ohio Policy Center

Full testimony on page 112 of Appendices

Mr. Jason Warner is the Manager of Government Affairs at the Greater Ohio Policy Center. Mr. Warner noted that state spending for public transportation has been repeatedly reduced as a result of continued cuts to GRF funding. One suggestion to increase GRF funding levels is to remove or revise the tax exemption on out of state automobile sales. Eliminating the exemption would allow Ohio to begin capturing additional revenue.

Joe Cannon, Ohio Automobile Dealers Association

Full testimony on page 110 of Appendices

Mr. Joe Cannon is the Vice President of Government Relations for the Ohio Automobile Dealers Association. Mr. Cannon stated that this sales tax exemption makes Ohio an appealing state for consumers to purchase vehicles. The Ohio Automobile Dealers Association prefers the old law that eliminated the tax altogether, but still supports the current law that creates a neutralized, or reciprocal tax.

NCSL Memorandum

Full testimony on page 71 of Appendices

Mr. Jackson Brainerd and Ms. Savannah Gilmore provided an informational memorandum on behalf of the National Conference of State Legislatures. This memorandum includes information about Ohio's tax exemptions as well as similar exemptions in surrounding states. The Ohio sales tax exemptions examined generally exist in surrounding states. A table included in the full testimony shows the taxability of each Ohio exemption in the surrounding states.

General Interest Testimony

Several individuals testified before the Committee in order to provide general input on Ohio tax expenditures and on the Committee's review process. The section provides a summary of that testimony.

Summary of Testimony

Ohio Department of Taxation, Tax Commissioner Joe Testa

Full testimony on page 114 of Appendices

Joe Testa is the Tax Commissioner for Ohio under the Ohio Department of Taxation. In his October 17, 2017 testimony, Commissioner Testa provided an overview of the tax expenditures, including the mechanics of tax expenditures, criteria used to determine whether a tax provision constitutes a tax expenditure, and the sources of data used in the estimate of tax expenditures. Commissioner Testa serves as a nonvoting member of the Tax Expenditure Review Committee.

LSC Testimony

Full testimony on page 116 of Appendices

Mr. Jean Botomogno, Principal Economist for the Ohio Legislative Service Commission, submitted a memorandum containing information about the tax expenditures being reviewed. Estimates of the fiscal impact of each tax expenditure on the state GRF are from the Tax Expenditure Report dated January 2017, produced by the Department of Taxation. It is worth noting that Department of Tax Code 1.04 is the largest single tax expenditure listed in the report.

Code Used in Tax Expenditure Report	Description	Authority	Enactment	Estimated Revenue Loss (\$ in millions)			
				State GRF		Counties and Transit Authorities	
				FY 2018	FY 2019	FY 2018	FY 2019
1.01	Sales to churches and certain other nonprofit organizations	R.C. 5739.02(B)(12)	H.B. 134, 90th G.A., (1934) (enacted the sales tax)	\$600.1	\$614.2	\$147.0	\$150.5
1.02	Sales to the state, any of its political subdivisions, and to certain other states	R.C. 5739.02(B)(1)	H.B. 134, 90th G.A., (1934) H.B. 715, 120th G.A., (1994)	\$122.9	\$122.9	\$30.1	\$30.1
1.03	Sales by churches and certain types of nonprofit organizations	R.C. 5739.02(B)(9)	H.B. 374, 104th G.A., (1962)	\$45.7	\$47.6	\$11.2	\$11.7
1.04	Tangible personal property used primarily in manufacturing tangible personal property	R.C. 5739.02(B)(42)(g)	H.B. 121, 91st G.A., (1935) H.B. 531, 118th G.A., (1990) (codified various case law)	\$2,210.7	\$2,299.9	\$541.6	\$563.5
1.05	Packaging and packaging equipment	R.C. 5739.02(B)(15)	H.B. 374, 104th G.A., (1962)	\$255.2	\$264.7	\$62.5	\$64.9

Wendy Patton, Policy Matters Ohio – April 11, 2018

Full testimony on page 119 of Appendices

Ms. Wendy Patton is the Senior Project Director at Policy Matters Ohio. Three of the five tax exemptions reviewed during the April 11, 2018 committee meeting are among the top 10 in terms of the largest dollar growth over that period of time. Policy Matters Ohio suggests that the committee closely examine whether these exemptions are in the best interest of the state.

Zach Schiller, Policy Matters Ohio – April 25, 2018

Full testimony on page 122 of Appendices

Mr. Zach Schiller testified as Research Director at Policy Matters Ohio. Policy Matters Ohio includes specific recommendations for how the committee should proceed when examining tax exemptions. In addition to general recommendations, they provide recommendations specific to the five exemptions examined at the April 25, 2018 committee meeting. Policy Matters Ohio suggests that there are broader issues that the committee should consider that go beyond the specifics of each tax expenditure being reviewed.

Wendy Patton, Policy Matters Ohio – May 9, 2018

Full testimony on page 125 of Appendices

Ms. Wendy Patton provided testimony as Senior Project Director at Policy Matters Ohio. The five tax exemptions examined at the May 9, 2018 committee include two of the top 20 largest exemptions. These tax exemptions should be more closely examined for reduction or elimination.

Dale Miller

Full testimony on page 130 of Appendices

Mr. Dale Miller provided interested party testimony. Mr. Miller stressed that careful review and elimination or reduction of some of the state's tax expenditures is necessary in order to rebuild the state's relationships and financial support for the county and local

government partners. Rather than reviewing expenditures one by one, the committee should target a specific percentage reduction in expenditures or include expenditures in aggregate as a budget item.

Gail Long

Full testimony on page 132 of Appendices

Ms. Gail Long offered interested party testimony informed by her experience working 40 years in the City of Cleveland as a social worker, including serving as director of a settlement house. She acknowledged the position of the tax expenditure review committee to recommend the elimination of special-interest tax breaks that cost revenue intended for collection by the state of Ohio. Ms. Long asserted that the largest tax expenditure is made for owners of businesses like limited liability companies (LLCs). Ms. Long ultimately recommends the repeal of the tax expenditure to LLC owners, and highlights the importance of dedicating tax revenue to public programs like public transit, supports for those with limited means, and public health issues such as infant mortality.

Gavin DeVore Leonard, One Ohio Now

Full testimony on page 133 of Appendices

Mr. Gavin DeVore Leonard provided testimony on behalf of One Ohio Now. Mr. Leonard stated that the committee should eliminate or abolish tax expenditures that are unfair and onerous to ensure that the state does not use revenues that could be spent elsewhere for the benefit of everyone in Ohio.

Gloria Aron, Northern Ohioans for Budget Legislation Equality

Full testimony on page 134 of Appendices

Ms. Gloria Aron provided testimony on behalf of Northern Ohioans for Budget Legislation Equality. Ms. Aron stated that when reviewing tax expenditures, the committee should consider alternative uses for that revenue. The committee should consider cutting back on exemptions and put the revenue toward spending on social welfare programs.

Greg Lawson, The Buckeye Institute

Full testimony on page 135 of Appendices

Mr. Greg Lawson testified as a Research Fellow at the Buckeye Institute. He stated that a number of measures have taken place to reform the tax system in Ohio. The next step is to eliminate tax expenditures so that Ohio's personal income tax can be reduced. The Buckeye Institute would like to see an automatic sunset of tax expenditures.

Jon Honeck, County Commissioners Association of Ohio

Full testimony on page 143 of Appendices

Mr. Jon Honeck is the Senior Policy Analyst for the County Commissioners' Association of Ohio. Mr. Honeck stated that the sales tax has become one of the more important sources of revenue for the state GRF and for counties' general funds. The sales tax base is stagnant and is

probably declining slowly in real terms. The evaluation process for tax expenditures should include recognition of alternative uses for the revenue that would be economically beneficial. State and federal tax policy have undergone significant shifts in recent years; this should be taken into account when evaluating the need to continue existing tax expenditures.

Diane Howard, United Clevelanders Against Poverty

Full testimony on page 147 of Appendices

Ms. Diane Howard testified on behalf of United Clevelanders Against Poverty, an organization comprised of low income individuals who are working to address issues of poverty. Ms. Howard asserted that while there are some exemptions worth keeping, a number of exemptions are not beneficial to the general public. Ms. Howard suggests these expenditures be removed and the revenues allocated to funding necessary projects.

Recommendations

The Chair requested that each member of the Committee provide written comments and recommendations to be included in this report. Please find the memorandums beginning on page (39).

For the purpose of this report, the Committee recommends that expenditures 1.01 through 1.15 be continued without modification.

Future Tax Expenditure Review Hearing Schedule

The Chair of the Tax Expenditure Review Committee recommends the following proposed schedule for reviewing the remainder of the tax expenditures for the next three General Assemblies:

General Assembly	Tax Expenditures
133rd General Assembly	• Remainder of Ohio's Sales and Use Tax Expenditures (Tax Expenditure Report codes 1.16 through 1.56)
134th General Assembly	• Ohio's Individual Income Tax Expenditures (Tax Expenditure codes 2.01 through 2.37)
135th General Assembly	• Ohio's Financial Institutions Tax Expenditures (Tax Expenditure Report codes 3.01 through 3.03) • Ohio's Commercial Activity Tax Expenditures (Tax Expenditure Report codes 4.01 through 4.20) • Ohio's Public Utility Excise Tax Expenditures (Tax Expenditure Report codes 5.01 through 5.03) • Ohio's Kilowatt Hour Tax Expenditure (Tax Expenditure Report code 6.01) • Ohio's Insurance Premium Tax Expenditures (Tax Expenditure Report codes 7.01 through 7.03) • Ohio's Cigarette and Other Tobacco Products Tax Expenditures (Tax Expenditure Report codes 8.01 through 8.02) • Ohio's Alcoholic Beverage Tax Expenditures (Tax Expenditure Report codes 9.01 through 9.04)

The Chair of the Tax Expenditure Review Committee recommends the following guidelines to prepare for the 133rd General Assembly:

1. Consult with the Department of Taxation to determine which expenditures require the most time and resources to properly review. Use this information to create a well-balanced schedule.
2. Consider hiring additional assistance to aid in the review process.

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**State Representative
John M. Rogers**

June 26th 2018

The Honorable Scott Oelslager
Ohio Senate District 29
1 E Capital St
Columbus, OH 43215

Chairman Oelslager,

As I look back on this first segment of the Tax Expenditure Review Committee's work, we have to date considered 15 tax expenditures amounting to approximately \$5.5 billion dollars in forgone 2018 revenue, (\$4,481. GRF & \$1,098 in County and Transit). Commissioner Testa provided an overview of the individual expenditures, which were supplemented with information provided by the Legislative Service Commission. Witness testimony in large measure was offered by those entities or their representatives lobbying to maintain the existing tax treatment, offset by others who testified that more efforts should be made when considering each section of the code.

Tax expenditure policy can and should play an integral role in spurring economic growth and development. Tax expenditures are intended to operate as an exception within our normal tax collection framework, reducing revenue with the anticipated effect that one might observe with a government funded or subsidized program. These government programs are often referred to as entitlement programs but significantly differ from tax expenditures in that the latter are not necessarily subject to the systematic scrutiny a government-subsidized program may encounter – in large measure because they are not subject to the budgetary process each biennium.

First, in order for the body to fulfill its duties, I believe that the following should be determined and/or be made clear in addition to determining the amount of forgone revenues:

1. The tax expenditure's purpose
2. Performance measures to monitor the success of the tax expenditure's intended purpose
3. The tax expenditure's success in achieving that purpose

Secondly, I believe further discussion is needed by the committee in order to determine whether an expenditure not only benefits the entity that receives it, but also whether Ohio and our residents are benefiting as well. To clarify:

1. How does the entity receiving the subsidy benefit?
2. How many within the class of the entity exist?
3. Does the expenditure treat all within the class in an equitable manner or does it manifest itself differently for different taxpayers?

Committees:

Criminal Justice
Finance
Public Utilities
Finance Subcommittee on
Transportation
Ways and Means Ranking Member

**www.house.state.oh.us
77 S. High Street, Columbus, Ohio 43215-6111**

Contact Information:

Office: 614-466-7251
Toll-Free: 1-800-282-0253
Email: Rep60@ohiohouse.gov

4. Does the expenditure's benefits to Ohio exceed its costs? Alternatively, does the expenditure's costs exceed its benefits to Ohio?

Next, because tax expenditures represent forgone revenue. Often times, those lost dollars may have to be made up with other or higher taxes. I believe it would be beneficial to know how the forgone revenues affect those entities that would otherwise receive the revenue. The following questions could be considered:

1. Has the expenditure or combination of expenditures resulting in local entities having lost revenues result in the taxing entities having to turn to taxpayers to make up the difference?
2. Should hold harmless clauses be a component of all tax expenditure policy?
3. Have the lost revenues translated into an equivalent or increased amount from another revenue source?

Next, the committee should consider whether there is a method by which we could assess if another means exists or that would be a better approach to achieving the results sought by the expenditure in the first place. Additionally, with respect to any tax expenditure as enacted to provide financial relief or incentive, does a subsequent change years later to another area of the tax code inflate the original expenditure value?

Considering that the General Assembly has repeatedly reduced various taxes over the last few years while simultaneously expanding the number of tax expenditures, I would suggest that existing expenditures might be worth adjusting because of the change to other tax structures. Moreover, I would also recommended that all expenditures include a sunset clause, thereby forcing the General Assembly to consider or reconsider each one individually on a periodic basis.

Finally, much has been said during my tenure here about transparency of policy and implementation of programs. Of importance to the committee should be ensuring that an expenditure is simple to implement, it is transparent, and it is administrable.

Thank you for allowing me the opportunity to share my thoughts in this matter and your consideration is greatly appreciated. It has been an honor and pleasure to serve with this body.

Respectfully,



John M. Rogers
State Representative
Ohio House District 60



**SENATOR
Vernon Sykes
28th District**

Committees:

- Education – Ranking Member
 - Finance
 - Health and Human Services
 - Public Utilities
 - Local Government, Public Safety & Veterans Affairs
- Subcommittee:
- Finance: Primary & Secondary Education – Vice Chair

MEMORANDUM

To: Senator Scott Oelslager, Chairman of the Tax Expenditure Review Committee

From: Senator Vernon Sykes

Re: Tax Expenditure Review Committee Recommendations

Date: June 4, 2018

Chair Oelslager, I would like to thank you for the opportunity to present recommendations for the Tax Expenditure Review Committee (TERC). The committee has done important work in listening to testimony from Ohio industries as they explain the benefits of certain tax expenditures on their respective businesses, as well as everyday Ohioans advocating that we use their tax dollars appropriately. The testimony we received has given the committee much to deliberate over and I would like to offer several recommendations to be included into our first report.

I would like to focus my recommendations on how we can improve the functionality of the committee as a whole, rather than individual tax expenditures. The committee has the potential to examine future tax expenditures in a more comprehensive manner if we make adjustments to the way the committee operates.

Recommendation 1: Ask for an appropriation of no more than \$1 million dollars in the next biennial budget. A thorough and comprehensive analysis of Ohio's tax expenditures will require staff with expertise in tax policy. Currently, LSC does not have the resources to dedicate full time staff to the necessary work, nor is legislative staff sufficient enough to accomplish the goals of the committee. If the committee is to dive into Ohio's tax expenditures; we must provide adequate funding to hire appropriate staff.

Recommendation 2: Hire between 4-6 full time staffers to be housed in LSC whose sole responsibility will be working on tax expenditures on behalf of the committee. With the established appropriation from Recommendation 1, the committee should task LSC to hire at least 4 but no more than 6 staffers to work with the committee on evaluating Ohio's tax expenditures. LSC should look to hire a diverse set of experts, including but not limited to CPA's, economists, tax policy experts, former Department of Taxation staff, and auditors. LSC would be the ideal place for the staff to be housed as they can act in a non-partisan fashion focused on analyzing data and working with the committee free from outside partisan influence.

Recommendation 3: Establish review criteria to evaluate the tenure and success of tax expenditures. The TERC staffers should recommend criteria to be considered by committee members to be used to evaluate tax expenditures in current and future reviews. The work that the committee has engaged in so far has involved testimony from various groups that either oppose or support particular tax expenditures, but with proper staff the committee could request a whole host of criteria that should be evaluated when determining the success or failure of tax expenditures. The criteria would be decided upon by the committee and could include but not be limited to any of the following:

- What was the original intent of the tax expenditure and is the expenditure meeting its goals?
- Who, by income bracket, takes advantage of or most benefits from a certain tax expenditure?
- What mechanisms are in place to make sure that a business or individual who is taking advantage of certain tax breaks are meeting accountability standards that are in place?
- In addition to how much a particular expenditure is costing the state in forgone revenue, how much is a particular expenditure costing local governments and transit authorities?
- Are expenditures that were created to incentivize job creation successful? Do the jobs that are created pay enough in income and benefits so that employees are not forced to rely on public assistance?
- Should tax expenditures have a sunset provision that would require legislative approval to continue?
- Do any current or proposed tax expenditures have any loopholes that could be exploited for abuse in ways that was not originally intended?

Recommendation 4: Continued citizen involvement in the Tax Expenditure Review Committee. The committee has the obligation to carefully consider not only how the tax dollars of our constituents are spent, but what tax revenue we choose to forgo in order to implement tax breaks. The committee has had the pleasure to hear from citizens who have an active interest in their government and who have implored us to make decisions that will benefit everyone in Ohio rather than just some businesses and industries. In order to encourage more citizen involvement, I recommend that we amend the current structure of the Tax Expenditure Review Committee to allow for members of the public to sit on the board as full members and participate in the review and recommendation process.

Chair Oelslager, I applaud the work that you and the committee have done up to this point. The committee still has more work to do and I believe that through proper funding, hiring of full time staff, establishing evaluation criteria, and the inclusion of citizens on the committee that we can live up to the responsibility entrusted to the committee to be good stewards of Ohioans tax dollars.



Mark Flanders
Director

OHIO LEGISLATIVE SERVICE COMMISSION

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Memorandum

September 27, 2017

TAX EXPENDITURES: LEGISLATIVE HISTORY

This memorandum lists the bill number (with General Assembly number), sponsor or joint sponsor, and votes that enacted each tax expenditure as listed in *The Tax Expenditure Report* prepared by the Ohio Department of Taxation that is part of the most recent set of budget documents released by Governor Kasich.¹ The tables below are organized to be used in conjunction with *The Tax Expenditure Report* as it follows the exact order of taxes as presented.

There may be differences in the date of enactment indicated in *The Tax Expenditure Report* with the date of enactment listed in the table. The table notes the session of legislative enactment that we identified as the original enactment or amendments as noted in *The Tax Expenditure Report*. It does not reflect every legislative change since enactment.

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
1.01	Sales to churches and certain other nonprofit	5739.02(B)(12)	H.B. 134, 90th G.A., 2nd Special Session (1933-	House Third consideration 75-25, Senate 21-7, House concurrence 73-23

¹ [http://www.tax.ohio.gov/portals/0/communications/publications/FY18-19 Tax Expenditure Report.pdf](http://www.tax.ohio.gov/portals/0/communications/publications/FY18-19_Tax_Expenditure_Report.pdf).

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	organizations		1934) Spaght	
1.02	Sales to the state, any of its political subdivisions, and to certain other states	5739.02(B)(1)	H.B. 134, 90th G.A., 2nd Special Session (1933-1934) Spaght H.B. 715, 120th G.A. (1993-1994) Sweeney	House Third consideration 75-25, Senate 21-7, House concurrence 73-23 House 81-18, Senate 29-2
1.03	Sales by churches and certain types of nonprofit organizations	5739.02(B)(9)	H.B. 374, 104th G.A. (1961-1962) Cassel	House 109-4, Senate 29-2 (conference committee) Passed over Governor's veto, House 108-23, Senate 32-6
1.04	Tangible personal property used primarily in manufacturing tangible personal property	5739.02(B)(42)(g)	H.B. 121, 91st G.A. (1935-1936) Kalb H.B. 531, 118th G.A. (1989-1990) Sheerer	House Third consideration 116-0, Senate 29-0, House concurrence 106-4 House Third consideration 97-0, Senate 31-0, House concurrence 94-0
1.05	Packaging and packaging equipment	5739.02(B)(15)	H.B. 374, 104th G.A. (1961-1962) Cassel	House 109-4, Senate 29-2 (conference committee) Passed over Governor's veto, House 108-23, Senate 32-6
1.06	Sales of tangible personal property and services to electricity providers	5739.02(B)(40)	S.B. 3, 123rd G.A. (1999-2000) Johnson	Senate Third consideration 20-12, House 87-9, Senate concurrence 29-3
1.07	Tangible personal property used or consumed in agriculture and mining	5739.02(B)(42)(a) and (n)	H.B. 134, 90th G.A. 2nd Special Session (1933-1934) Spaght H.B. 153, 129th G.A. (2011-2012) Amstutz	House Third consideration 75-25, Senate 21-7, House concurrence 73-23 House 59-40, Senate 22-11 (conference committee)

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
1.08	Agriculture land tile and portable grain bins	5739.02(B)(30) and (31)	H.B. 335, 116th G.A. (1985-1986) Deering	House Third consideration 92-1, Senate 31-0, House concurrence 91-0
1.09	Tangible personal property used to produce printed materials	5739.02(B)(42)(f)	H.B. 241, 110th G.A. (1973-1974) Feighan	House Third consideration 87-8, Senate 27-3, House concurrence 81-9
1.10	Tangible personal property used in storing, preparing and serving food	5739.02(B)(27)	H.B. 694, 114th G.A. (1981-1982) Shoemaker	House 68-28, Senate 18-15 (conference committee)
1.11	Tangible personal property used in preparing eggs for sale	5739.02(B)(24)	H.B. 1313, 110th G.A. (1973-1974) Deering	House 90-0, Senate 30-0
1.12	Building and construction materials and services used in certain structures	5739.02(B)(13)	S.B. 376, 103rd G.A. (1959-1960) Olenick H.B. 632, 120th G.A. (1993-1994) Wise, D.	Senate Third consideration 19-13, House 76-58, Senate concurrence 23-9 House Third consideration 97-2, Senate 33-0, House concurrence 96-0
1.13	Tangible personal property used directly in providing public utility services	5739.02(B)(42)(a)	H.B. 134, 90th G.A. 2nd Special Session (1933-1934) Spaght	House Third consideration 75-25, Senate 21-7, House concurrence 73-23
1.14	Property used to fulfill a warranty or service contract	5739.02(B)(42)(k)	H.B. 54, 116th G.A. (1985-1986) Guthrie, see R.C. 5739.01	House Third consideration 93-0, Senate 32-0, House concurrence 94-2
1.15	Motor vehicles sold in Ohio for use outside the state	5739.02(B)(23)	S.B. 222, 109th G.A. (1971-1972) Maloney H.B. 119, 127th G.A. (2007-2008) Dolan	House 79-7, Senate 31-0 House 96-1, Senate 33-0 (conference committee)

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
			H.B. 562, 127th G.A. (2007-2008) Hottinger	House 90-3, Senate 33-0 (conference committee)
1.16	Tangible personal property used in research and development	5739.02(B)(42)(i)	H.B. 281, 120th G.A. (1993-1994) Troy	House Third consideration 96-0, Senate 29-4, House concurrence 95-1
1.17	Tangible personal property and services used in providing telecommunications and satellite broadcasting services	5739.02(B)(34)	H.B. 171, 117th G.A. (1987-1988) Hinig	House 85-14, Senate 18-15 (conference committee)
1.18	Qualified tangible personal property used in making retail sales	5739.02(B)(35)	H.B. 121, 91st G.A. (1935-1936) Kalb	House Third consideration 116-0, Senate 29-0, House concurrence 106-4
1.19	Property used in highway transportation for hire	5739.02(B)(32)	H.B. 335, 116th G.A. (1985-1986) Deering	House Third Consideration 92-1, Senate 31-0, House concurrence 91-0
1.20	Qualified call center exemption	5739.02(B)(45)	H.B. 95, 125th G.A. (2003-2004) Calvert	House 53-46, Senate 22-10 (conference committee)
1.21	Copyrighted motion pictures and films	5739.01(B)(8)	S.B. 312, 96th G.A. (1945-1946) Mechem	House 106-3, Senate 26-0
1.22	Equipment used in private warehouses and distribution centers with inventory primarily shipped out-of-state	5739.02(B)(42)(j) and (B)(48)	H.B. 715, 120th G.A. (1993-1994) Sweeney, see R.C. 5730.01(12)(B) H.B. 562, 127th G.A. (2007-2008) Hottinger	House 81-18, Senate 29-2 House 90-3, Senate 33-0 (conference committee)
1.23	Drugs distributed to physicians as free	5741.02(C)(7)	H.B. 238, 123rd G.A. (1999-2000) Womer	House Third consideration 96-1, Senate 32-1, House concurrence 97-0

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	samples		Benjamin	
1.24	Property used in air, noise, or water pollution control; or property used in energy or waste conversion facilities	5709.25	H.B. 26, 105th G.A. (1963-1964) Wylie S.B. 498, 111th G.A. (1975-1976) Maloney H.B. 95, 125th G.A. (2003-2004) Calvert	House Third consideration 97-28, Senate 26-3, House concurrence 87-36 Senate Third consideration 31-0, House 75-15, Senate concurrence 17-15 House 53-46, Senate 22-10 (conference committee)
1.25	Tangible personal property used in electronic publishing	5739.02(B)(42)(o)	H.B. 157, 127th G.A. (2007-2008) Hughes	House Third consideration 97-0, Senate 30-0, House concurrence 93-2
1.26	Prescription drugs and selected medical items	5739.02(B)(18)	H.B. 374, 104th G.A. (1961-1962) Cassel	House 109-4, Senate 29-2 (conference committee) Passed over Governor's veto, House 108-23, Senate 32-6
1.27	Transportation of persons and property	5739.02(B)(11)	H.B. 134, 90th G.A. 2nd Special Session (1933-1934) Spaght	House Third Consideration 75-25, Senate 21-7, House concurrence 73-23
1.28	Newspapers	5739.02(B)(4)	H.B. 134, 90th G.A. 2nd Special Session (1933-1934) Spaght	House Third Consideration 75-25, Senate 21-7, House concurrence 73-23
1.29	Artificial limbs, prostheses, wheelchairs, and other durable medical equipment	5739.02(B)(19)	H.B. 374, 104th G.A. (1961-1962) Cassel H.B. 3, 110th G.A. (1973-1974) Baumann	House 109-4, Senate 29-2 (conference committee) Passed over Governor's veto, House 108-23, Senate 32-6 House 82-2, Senate 28-0

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
			H.B. 8, 112th G.A. (1977-1978) Branstool	House 91-0, Senate 26-0 (conference committee)
			H.B. 117, 124th G.A. (2001-2002) Willamowski	House 99-0, Senate 32-0
			H.B. 95, 125th G.A. (2003-2004) Calvert	House 53-46, Senate 22-10 (conference committee)
1.30	Exemption for used mobile homes and reduced taxable price on new mobile homes	5739.02(B)(39) and 5739.0210	S.B. 142, 122nd G.A. (1997-1998) Johnson, B.	Senate Third consideration 31-0, House 97-1, Senate concurrence 29-0
			H.B. 163, 123rd G.A. (1999-2000) Core	House Third consideration 93-1, Senate 33-0, House concurrence 94-1
1.31	Sales of materials and services for maintenance and repair of aircraft	5739.02(B)(49)	H.B. 562, 127th G.A. (2007-2008) Hottinger	House 90-3, Senate 33-0 (conference committee)
1.32	Flight simulators	5739.02(B)(50)	H.B. 562, 127th G.A. (2007-2008) Hottinger	House 90-3, Senate 33-0 (conference committee)
1.33	Sales of natural gas by a municipal utility	5739.02(B)(7)	H.B. 390, 131st G.A. (2015-2016) Schaffer and Retherford	House Third consideration 93-0, Senate 33-0, House concurrence 69-26
1.34	Investment bullion and coins	5739.02(B)(54)	S.B. 172, 131st G.A. (2015-2016) Jordan	Senate Third consideration 31-2, House 84-10, Senate concurrence 28-2
1.35	Motor vehicle rental if payment is reimbursed under warranty	5739.02(B)(42)(p)	H.B. 64, 131st G.A. (2015-2016) R. Smith	House 61-34, Senate 23-9 (conference committee)
1.36	Value of motor vehicle	5739.01(H)(2)	H.B. 275, 114th G.A.	House Third consideration 89-3, Senate

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	trade-ins		(1981-1982) Hughes, E.	31-2, House concurrence 68-24
1.37	Discount for vendors	5739.12 and 5741.12	H.B. 552, 114th G.A. (1981-1982) Shoemaker per 1982 Annual Report of the Ohio Department of Taxation	House Third consideration 75-21, Senate 28-3, House concurrence 68-15
1.38	Food sold to students on school premises	5739.02(B)(3)	H.B. 694, 91st G.A. First Special Session(1935-1936) Wintzer	House 85-24, Senate 18-6
1.39	Value of watercraft trade-ins	5739.01(H)(3)	H.B. 365, 118th G.A. (1989-1990)/Deering	House Third consideration 95-6, Senate 24-5, House concurrence 95-0
1.40	Value of cable, video, and audio/visual works bought or sold by cable or video service providers	5739.02(B)(53)	H.B. 59, 130th G.A. (2013-2014) Amstutz	House 53-44, Senate 21-11 (conference committee)
1.41	\$800 tax cap on qualified fractionally owned aircraft	5739.025(G)(53)	H.B. 95, 125th G.A. (2003-2004)	House 53-46, Senate 22-10 (conference committee)
1.42	Ships and rail rolling stock used in interstate or foreign commerce	5739.02(B)(14)	H.B. 760, 92nd G.A. First Special Session (1937-1938) Richter	House Third consideration 83-16, Senate 26-0, House concurrence 106-1
1.43	Sales of qualified property used in an eligible computer data center	122.175	H.B. 153, 129th G.A. (2011-2012) Amstutz H.B. 59, 130th G.A. (2013-2014) Amstutz	House 59-40, Senate 22-11 (conference committee) House 53-44, Senate 21-11 (conference committee)
1.44	Sales to veterans' headquarters	5739.02(B)(33)	H.B. 54, 116th G.A. (1985-1986) Guthrie	House Third consideration 93-0, Senate 32-0, House concurrence 94-2
1.45	Sales of animals by nonprofit animal shelters	5739.02(B)(28)	H.B. 694, 114th G.A. (1981-1982) Shoemaker	House 68-28, Senate 18-15 (conference committee)

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
1.46	Agricultural "use on use" property	5739.02(B)(17)	H.B. 374, 104th G.A. (1961-1962) Cassel	House 109-4, Senate 29-2 (conference committee) Passed over Governor's veto, House 108-23, Senate 32-6
1.47	Tangible personal property used or consumed in commercial fishing	5739.02(B)(42)(d)	S.B. 312, 96th G.A. (1945-1946) Mechem	House 106-3, Senate 26-0
1.48	Property for use in a retail business outside Ohio	5739.02(B)(21)	S.B. 474, 107th G.A. (1967-1968) Maloney	Senate Third consideration 29-0, House 71-16, Senate concurrence 30-0
1.49	Sales of computers and computer equipment to certified teachers	5739.02(B)(37)	H.B. 215, 122nd G.A. (1997-1998) Johnson	House 93-4, Senate 30-2 (conference committee)
1.50	Purchases of qualified tangible personal property to qualified motor racing team	5739.02(B)(38)	H.B. 215, 122nd G.A. (1997-1998) Johnson	House 93-4, Senate 30-2 (conference committee)
1.51	Sales of tangible personal property and services for maintenance and repair of qualified fractionally owned aircraft	5739.02(B)(44)	H.B. 95, 125th G.A. (2003-2004) Calvert	House 53-46, Senate 22-10 (conference committee)
1.52	Bulk water for residential use	5739.02(B)(25)	H.B. 563, 112th G.A. (1977-1978) Mrs. Tansey	House 95-0, Senate 26-1
1.53	25 per cent refund for qualified tangible personal property used by electronic information service providers	5739.071	H.B. 152, 120th G.A. (1993-1994) Sweeney	House 72-25, Senate 32-1 (conference committee)
1.54	Emergency and fire	5739.02(B)(20)	H.B. 605, 106th G.A.	House Third consideration 113-8, Senate

SALES and USE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	protection vehicles and equipment		(1965-1966) Netzley	27-0, House concurrence 93-2
1.55	Controlled circulation magazines	5739.02(B)(4)	H.B. 121, 91st G.A. (1935-1936) Kalb S.B. 200, 124th G.A. (2001-2002) Spada H.B. 59, 130th G.A. (2013-2014) Amstutz	House 106-4, Senate 29-0 House 91-1, Senate 33-0 House 53-44, Senate 21-11 (conference committee)
1.56	Sales to qualifying nonprofit corporations	5739.02(B)(52)	H.B. 59, 130th G.A. (2013-2014) Amstutz	House 53-44, Senate 21-11 (conference committee)

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
2.01	Personal, spousal, and dependent exemption	5747.025	H.B. 475, 109th G.A. (1971-1972) Kerns H.B. 117, 121st G.A. (1995-1996) Johnson S.B. 200, 124th G.A. (2001-2002) Spada H.B. 59, 130th G.A. (2013-2014) Amstutz	House 56-42, Senate 17-15 (fourth conference committee) House 82-16, Senate 29-3 (conference committee) House 91-1, Senate 33-0 House 53-44, Senate 21-11 (conference committee)
2.02	Social security and railroad retirement benefits	5747.01(A)(5)	S.B. 464, 109th G.A. (1971-1972) Gillmor	House 90-0, Senate 32-0 (second conference committee)
2.03	Deductions for taxpayers not eligible for an employer-sponsored medical plan	5747.01(A)(11)	H.B. 4, 123rd G.A. (1999-2000) Gardner	House Third consideration 84-13, Senate 28-4, House concurrence 84-13
2.04	Exemption for disability income	5747.01(A)(4)	H.B. 475, 109th G.A. (1971-1972) Kerns	House 56-42, Senate 17-15 (fourth conference committee)
2.05	Exemption for active-duty military income	5747.01(A)(24)	H.B. 73, 126th G.A. (2005-2006) Trakas	House Third consideration 80-15, Senate 32-0, House concurrence 95-0
2.06	Deduction for excess medical expenses	5747.01(A)(11)	H.B. 4, 123rd G.A. (1999-2000) Gardner	House Third consideration 84-13, Senate 28-4, House concurrence 84-13
2.07	Exemption for pre-1972 trusts	5747.01(FF) and 5751.01(E)(7)	H.B. 530, 126th G.A. (2005-2006) Calvert	House Third consideration 92-1, Senate 30-3, House concurrence 93-2
2.08	Deduction for long-term care insurance premiums	5747.01(A)(11)	H.B. 4, 123rd G.A. (1999-2000) Gardner	House Third consideration 84-13, Senate 28-4, House concurrence 84-13
2.09	Deduction for contributions	5747.01(A)(10)	S.B. 161, 123rd G.A.	Senate Third consideration 33-0,

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	to college savings programs	and 5747.70	(1999-2000) Gardner	House 96-0, Senate concurrence 29-0
2.10	Deduction for uniformed service retirement income	5747.01(A)(26)	H.B. 372, 127th G.A. (2007-2008) R. McGregor & Ujvagi H.B. 59, 130th G.A. (2013-2014) Amstutz	House Third consideration 96-1, Senate 28-0, House concurrence 92-0 House 53-44, Senate 21-11 (conference committee)
2.11	Deduction for health insurance coverage for qualifying adult children and other dependents	5747.01(A)(11)	H.B. 1, 128th G.A. (2009-2010) Sykes	House 54-44, Senate 17-15 (conference committee)
2.12	Ohio business investor income deduction	5747.01(A)(31)	H.B. 59, 130th G.A. (2013-2014) Amstutz H.B. 483, 130th G.A. (2013-2014) Amstutz H.B. 64, 131st G.A. (2015-2016) R. Smith	House 53-44, Senate 21-11 (conference committee) House 61-33, Senate 24-7 (conference committee) House 61-34, Senate 23-9 (conference committee)
2.13	Medical savings account deduction	5747.01(A)(14)	H.B. 179, 121st G.A. (1995-1996) Van Vyven	House Third consideration 87-6, Senate 22-11, House concurrence 98-1
2.14	Joint filer credit	5747.05(G)	H.B. 86, 110th G.A. (1973-1974), Section 51/Shoemaker	House 66-30, Senate 30-2 (conference committee)
2.15	\$20 personal exemption credit	5747.022	H.B. 291, 115th G.A. (1983-1984) Hinig (By request) H.B. 59, 130th G.A. (2013-2014) Amstutz	House 62-36, Senate 17-16 (conference committee) House 53-44, Senate 21-11 (conference committee)
2.16	Retirement income credit	5747.055(B)	H.B. 291, 115th G.A. (1983-1984) Hinig (By	House 62-36, Senate 17-16 (conference committee)

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
			request) H.B. 64, 131st G.A. (2015-2016) R. Smith	House 61-34, Senate 23-9 (conference committee)
2.17	Resident credit for income taxed by another state	5747.05(B)	H.B. 475, 109th G.A. (1971-1972) Kerns	House 56-42, Senate 17-15 (fourth conference committee)
2.18	\$50 credit for taxpayers aged 65 years or older	5747.055(F)	S.B. 464, 109th G.A. (1971-1972) Gillmor	House 90-0, Senate 32-0 (second conference committee)
2.19	Credit for taxpayers with income below \$10,000	5747.056	H.B. 66, 126th G.A. (2005-2006) Calvert S.B. 208, 131st G.A. (2015-2016) Beagle	H.B. 66: House 53-46, Senate 19-13 (conference committee) S.B. 208: Senate Third consideration 30-0, House 87-6, Senate concurrence 30-0
2.20	Dependent care credit	5747.054	H.B. 1, 117th G.A. (1987-1988) Stinziano	House 76-16, Senate 19-13 (conference committee)
2.21	Campaign contribution credit	5747.29	S.B. 8, 121st G.A. (1995-1996) Cupp	House 62-35, Senate 19-13 (conference committee)
2.22	Lump sum retirement income credit	5747.055(C) through (E)	S.B. 464, 109th G.A. (1971-1972) Gillmor H.B. 64, 131st G.A. (2015-2016) R. Smith	House 90-0, Senate 32-0 (second conference committee) House 61-34, Senate 23-9 (conference committee)
2.23	Credit for adoption related expenses	5747.37	S.B. 4, 123rd G.A. (1999-2000) S.B. 250, 130th G.A. (2013-2014) Jones & LaRose	House 96-0, Senate 33-0 House 84-4, Senate 29-1
2.24	Earned income tax credit	5747.71	H.B. 59, 130th G.A. (2013-2014) Amstutz	House 53-44, Senate 21-11 (conference committee)

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
			H.B. 483, 130th G.A. (2013-2014) Amstutz	House 61-33, Senate 24-7 (conference committee)
2.25	Historic structure rehabilitation credit *also available to qualifying insurance taxpayers and FIT taxpayers	149.311, 5725.34, 5726.52, 5729.17, and 5747.76	H.B. 149, 126th G.A. (2005-2006) Calvert H.B. 554, 127th G.A. (2007-2008) Hottinger H.B. 153, 129th G.A. (2011-2012) Amstutz S.B. 314, 129th G.A. (2011-2012) Wagoner & Cafaro H.B. 510, 129th G.A. (2011-2012) Amstutz H.B. 483, 130th G.A. (2013-2014) Amstutz S.B. 235, 131st G.A. (2015-2016) Beagle & Coley	House Third consideration 84-5, Senate 32-0, House concurrence 88-6 House Third consideration 88-9, Senate 30-2, House concurrence 89-5 House 59-40, Senate 22-11 (conference committee) House 85-5, Senate Third consideration 31-2, Senate concurrence 30-1 House Third consideration 75-23, Senate 25-8, House concurrence 77-16 House 61-33, Senate 24-7 (conference committee) Senate Third consideration 22-11, House 82-10, Senate concurrence 29-2

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
2.26	Motion picture tax credit *also available to qualifying individual income tax, financial institutions tax, and commercial activity tax payers. The maximum amount of the credit granted was doubled and the individual taxpayer cap removed effective tax year 2016 (affecting FY 2017).	122.85, 5726.55, 5747.66, and 5751.54	H.B. 1, 128th G.A. (2009-2010) Sykes H.B. 508, 129th G.A. (2011-2012) Beck H.B. 390, 131st G.A. (2015-2016) Schaffer	House 54-44, Senate 17-15 (conference committee) House Third consideration 92-4, Senate 29-2, House concurrence 96-0 House Third consideration 93-0, Senate 33-0, House concurrence 69-26
2.27	Credit for pass-through entity investor's share of financial institutions tax	5747.65	H.B. 510, 129th G.A. (2011-2012) Amstutz S.B. 208, 131st G.A. (2015-2016) Beagle	House Third consideration 75-23, Senate 25-8, House concurrence 77-16 Senate Third consideration 33-0, House 87-6, Senate concurrence 30-0
2.28	Small business investment credit	122.86 and 5747.81	H.B. 153, 129th G.A. (2011-2012) Amstutz	House 59-40, Senate 22-11 (conference committee)
2.29	Lump sum distribution credit for taxpayers with less than \$100,000 in OAGI	5747.055(G)	S.B. 464, 109th G.A. (1971-1972) Gillmor H.B. 64, 131st G.A. (2015-2016) R. Smith	House 90-0, Senate 32-0 (second conference committee) House 61-34, Senate 23-9 (conference committee)
2.30	Deduction for organ donation expenses	5747.01(A)(25)	H.B. 119, 127th G.A. (2007-2008) Dolan	House 96-1, Senate 33-0 (conference committee)
2.31	Enterprise zone day care/training credit	5709.65	H.B. 351, 114th G.A. (1981-1982) Thompson, I.	House Third consideration 71-26, Senate 28-3, House concurrence 87-1
2.32	Enterprise zone employee credit	5709.66	S.B. 19, 120th G.A. (1993-1994) Suhadolnik	Senate Third consideration 26-6, House 96-3, Senate concurrence 31-0
2.33	Grape production credit	5747.28	H.B. 715, 120th G.A.	House 81-8, Senate 29-2

INDIVIDUAL INCOME TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
			(1993-1994) Sweeney	
2.34	Ethanol plant investment credit	901.13; 5747.75	S.B. 144, 124th G.A. (2001-2002) Mumper	Senate Third consideration 33-0, House 93-2, Senate concurrence 33-0
2.35	Deduction for Pell grant or Ohio college opportunity grant proceeds	5747.01(A)(30)	H.B. 167, 129th G.A. (2011-2012) Derickson & Mallory	House Third consideration 96-0, Senate 31-0, House concurrence 96-0
2.36	Displaced worker job training credit	5747.27	S.B. 271, 120th G.A. (1993-1994) Ray	House 97-2, Senate 33-0
2.37	Deduction for ABLE Account contributions	5747.01(A)(32); 5747.78	H.B. 483, 131st G.A. (2015-2016) Amstutz	House Third consideration 96-0, Senate 33-0, House concurrence 93-3

FINANCIAL INSTITUTIONS TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
3.01	New markets tax credit *also available under the domestic and foreign insurance premium taxes	5725.33, 5726.54, and 5729.16	H.B. 1, 128th G.A. (2009-2010) Sykes	House 54-44, Senate 17-15
3.02	Credit for venture capital loan loss *also available under the domestic and foreign insurance premiums taxes, public utility excise tax, and the individual income tax	150.07, 5725.19, 5726.53, 5727.241, 5729.08, and 5747.80	H.B. 405, 124th G.A. (2001-2002) Peterson	House 53-45, Senate 18-14 (conference committee)
3.03	Deduction for Real Estate Investment Trusts	5726.041	H.B. 510, 129th G.A. (2011-2012) Amstutz	House Third consideration 75-23, Senate 25-8, House concurrence 77-16

COMMERCIAL ACTIVITY TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
4.01	Exclusion of first \$1 million of taxable gross receipts	5751.03	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.02	Qualifying distribution center receipts exclusion	5751.01(F)(2)(z)	H.B. 530, 126th G.A. (2005-2006) Calvert H.B. 472, 129th G.A. (2011-2012) Beck S.B. 28, 130th G.A. (2013-2014) Obhof	House Third consideration 92-1, Senate 30-3, House concurrence 93-2 House Third consideration 96-0, Senate 33-0, House concurrence 89-0 Senate Third consideration 33-0, House 94-1, Senate concurrence 33-0
4.03	State and federal cigarette excise tax exclusion	5751.01(F)(2)(q)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.04	Exclusion of real estate brokerage gross receipts that are not retained	5751.01(F)(3)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.05	State and federal alcoholic beverage excise tax exclusion	5751.01(F)(2)(s)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.06	Professional employer organization exclusion	5751.01(F)(2)(x)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.07	Motor vehicle transfer exclusion	5751.01(F)(2)(t)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.08	Exclusion of certain services to financial institutions	5751.01(F)(2)(u)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.09	Exclusion of receipts from sale of agricultural commodities by an agricultural commodity	5751.01(F)(2)(ii)	H.B. 59, 130th G.A. (2013-2014) Amstutz	House 53-44, Senate 21-11 (conference committee)

COMMERCIAL ACTIVITY TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
	handler			
4.10	Exclusion for qualified supply chain receipts	5751.01(F)(2)(jj)	H.B. 64, 131st G.A. (2015-2016) R. Smith	House 61-34, Senate 23-9 (conference committee)
4.11	Exclusion for tax differential of CAT/PAT for railroads	5751.01(F)(2)(kk)	H.B. 340, 131st G.A. (2015-2016) Amstutz	House Third consideration 92-0, Senate 32-0, House concurrence 91-1
4.12	Exclusion anti-neoplastic drug receipts	5751.01(F)(2)(v)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.13	Credit for increased qualified research and development expenses *also available against tax liabilities under the FIT. This estimate includes the estimated credit amount attributable to the FIT	5726.56 and 5751.51	H.B. 283, 123rd G.A. (1999-2000) Thomas H.B. 94, 124th G.A. (2001-2002) Carey, delayed implementation H.B. 66, 126th G.A. (2005-2006) Calvert for 5751.51 H.B. 510, 129th G.A. (2011-2012) Amstutz	House 83-13, Senate 32-1 (conference committee) House 59-38, Senate 21-12 (conference committee) House 53-46, Senate 19-13 (conference committee) House Third consideration 75-23, Senate 25-8, House concurrence 77-16

COMMERCIAL ACTIVITY TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
4.14	Job creation tax credit *also available against insurance taxes, the petroleum activity tax, the FIT and the individual income tax (as long as the sole proprietor and pass-through entity is not claiming the credit against the CAT). This estimate includes the estimated credit amount attributable to those taxes.	122.17, 5725.32, 5726.50, 5729.032, 5736.50, 5747.058(A) and 5751.50(A)	S.B. 363, 119th G.A. (1991-1992) Finan H.B. 510, 129th G.A. (2011-2012) Amstutz	House 94-2, Senate 31-1 House Third consideration 75-23, Senate 25-8, House concurrence 77-16
4.15	Job retention tax credit *also available against insurance taxes, the petroleum activity tax, the FIT and the individual income tax (as long as the sole proprietor and pass-through entity is not claiming the credit against the CAT). This estimate includes the estimated credit amount attributable to those taxes.	122.171, 5726.50, 5725.98, 5729.98, 5736.50, 5747.058(B), and 5751.50(B)	H.B. 405, 124th G.A. (2001-2002) Peterson H.B. 510, 129th G.A. (2011-2012) Amstutz	House 53-45, Senate 18-14 (conference committee) House Third consideration 75-23, Senate 25-8, House concurrence 77-16
4.16	Credit for net operating loss carry-forwards and other deferred tax assets	5751.53	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)

COMMERCIAL ACTIVITY TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
4.17	Research and development loan program credit *also available to the personal income tax. This estimate includes the estimated credit amount attributable to the personal income tax.	5751.52	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.18	Exemption for pre-1972 trusts	5751.01(E)(7)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.19	Horse racing taxes and purse exclusion	5751.01(F)(2)(y)	H.B. 66, 126th G.A. (2005-2006) Calvert	House 53-46, Senate 19-13 (conference committee)
4.20	Exclusion for receipts from sale of uranium from qualifying uranium enrichment zone	5751.01(F)(2)(gg)	H.B. 153, 129th G.A. (2011-2012) Amstutz	House 59-40, Senate 22-11 (conference committee)

PUBLIC UTILITY EXCISE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
5.01	Exemption for municipal utilities and nonprofit waterworks	5727.05	H.B. 293, 72nd G.A. (1896) Goodale	House 90-2, Senate 31-0

PUBLIC UTILITY EXCISE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
5.02	Sales to other public utilities for resale	5727.33(B)(4)	H.B. 573, 104th G.A. (1961-1962) Dennis H.B. 95, 125th G.A. (2003-2004) Calvert	House 102-36, Senate 32-6 House 53-46, Senate 22-10 (conference committee)
5.03	\$25,000 deduction from gross receipts for each public utility company	5727.33(E) and (F)	H.B. 43, 90th G.A. (1933-1934) McCluskey H.B. 95, 125th G.A. (2003-2004) Calvert	House 64-24, Senate 22-1 (conference committee) House 53-46, Senate 22-10 (conference committee)

KILOWATT HOUR TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
6.01	Exemption for qualified end-users	5727.81(D)	S.B. 3, 123rd G.A. (1999-2000) Johnson	Senate Third consideration 20-12, House 87-9, Senate concurrence 29-3

INSURANCE PREMIUM TAXES				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
7.01	Deduction for premiums received from qualified small business alliances	1731.07	H.B. 478, 119th G.A. (1991-1992) Jones, W.	House 77-10, Senate 23-10 (conference committee)
7.02	Credit for small insurers	5729.031	H.B. 215, 122nd G.A. (1997-1998) Johnson	House 93-4, Senate 30-2 (conference committee)

7.03	Ohio Life and Health Guaranty Association contribution credit	3956.20	H.B. 89, 118th G.A. (1989-1990) Stinziano	House Third consideration 63-34, Senate 32-0, House concurrence 89-2
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CIGARETTE AND OTHER TOBACCO PRODUCTS TAXES				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
8.01	Discount for cigarette tax stamps	5743.05	S.B. 324, 89th G.A. (1931-1932) Special Joint Taxation Committee H.B. 530, 126th G.A. (2005-2006) Calvert	Senate Third consideration 18-6, House 68-51, Senate concurrence 22-1 House Third consideration 92-1, Senate 30-3, House concurrence 93-2
8.02	Discount for timely payment of other tobacco products excise tax	5743.52	H.B. 904, 119th G.A. (1993-1994) Sweeney H.B. 492, 130th G.A. (2013-2014) Scherer	House 68-30, Senate 21-12 House Third consideration 92-0, Senate 32-0, House concurrence 64-30

ALCOHOLIC BEVERAGE TAX				
Department of Tax Code	Description	Ohio Revised Code Authority	Act/General Assembly/Sponsor	Vote Totals
9.01	Advanced payment credit/discount	4303.33	H.B. 316 & H.B. 964, 105th G.A. (1963-1964) Cassel	House Third consideration 115-0, Senate 28-2, House concurrence 119-1 House 121-0, Senate 28-1 (eliminated conflicts in H.B. 316)
9.02	Small brewer's credit	4303.332	H.B. 694, 114th G.A. (1981-1982) Shoemaker	House 68-28, Senate 18-15 (conference committee)

9.03	Sacramental wine exemption	4301.23	H.B. 501, 92nd G.A. (1937-1938) Ogrin	House Third consideration 88-28, Senate 25-0, House concurrence 92-12
9.04	Small wine producer's exemption	4303.333	H.B. 694, 114th G.A. (1981-1982) Shoemaker S.B. 150, 127th G.A. (2007-2008) Roberts	House 68-28, Senate 18-15 (conference committee) Senate Third consideration 32-0, House 94-3, Senate concurrence 33-0



Mark Flanders
Director

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Memorandum

R-132-3286

To: The Honorable Scott Oelslager
Ohio Senate

From: Jean J. Botozogno, Principal Economist *JJB*

Date: April 23, 2018

Subject: H.B. 49 estimates of business tax incentives

This memorandum offers the cost to the GRF of specified business tax incentives in the current biennium and future years as provided in Section 757.40 of Am. Sub. H.B. 49 of the 132nd General Assembly, the first operating budget act to include information required by R.C. 107.036. The table below provides credits that may be authorized in each fiscal year of the FY 2018-FY 2019 biennium, an estimate of revenue foregone in each fiscal year of the biennium, and an estimate of the amount of credits authorized that will remain outstanding at the end of the biennium. Those estimates assume that firms receiving the credits would continue to meet the performance objectives required to continue receiving the credit; thus, actual costs to the GRF may be different than those presented in the table. Also, please note that these estimates may be different than those included in the 2017 Tax Expenditure Report for the same tax expenditure.

I hope this memorandum has been helpful. If you have additional questions, please call me at (614) 644-7758.

Biennial Business Incentive Tax Credit Estimates (\$ in Millions)					
	Estimate of Total Value of Tax Credits Authorized		Estimate of Tax Credits Issued/Claimed		Expected Outstanding Credits
Tax Credit	FY 2018	FY 2019	FY 2018	FY 2019	End of Biennium
Job Creation Tax Credit	\$100.0	\$100.0	\$105.0	\$100.0	\$885.0
Job Retention Tax Credit	\$0	\$0	\$55.0	\$55.0	\$290.0
Historic Preservation Tax Credit	\$60.0	\$60.0	\$120.0	\$90.0	\$190.0
Motion Picture Tax Credit	\$40.0	\$40.0	\$50.0	\$50.0	\$35.0
New Markets Tax Credit	\$10.0	\$10.0	\$9.8	\$10.0	\$38.0
Research and Development Tax Credit	\$4.5	\$4.5	\$4.5	\$4.0	\$30.0
InvestOhio Tax Credit	\$12.5	\$12.5	\$18.0	\$15.0	\$42.0
Estimate Total	\$227.0	\$227.0	\$362.3	\$324.0	\$1,510.2



Mark Flanders
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Memorandum

R-132-3282

To: The Honorable Scott Oelslager
Ohio Senate

From: Philip A. Cummins, Senior Economist *PAC*

Date: April 20, 2018

Subject: Profile of Ohio manufacturing and the sales tax exemption for property used in manufacturing

The largest tax expenditure by far is the sales tax exemption for property used primarily to produce manufactured products. GRF revenue foregone because of this tax expenditure is estimated by the Department of Taxation at more than \$2.2 billion in FY 2018 and \$2.3 billion in FY 2019. This compares with total GRF revenue foregone for all tax expenditures of an estimated \$9.1 billion and \$9.4 billion, respectively, in those years.

Ohio manufacturers' shipments were valued at more than \$312 billion in 2016, according to data from the U.S. Census Bureau's Annual Survey of Manufactures. The following table summarizes data on Ohio manufacturers' shipments in that year.

Ohio Manufacturers' Shipments, 2016	
Sector	Total Value of Shipments and Receipts for Services (\$ in billions)
Durable goods	\$193.3
Nondurable goods	\$119.2
All manufacturing	\$312.5

As of 2016, Ohio had 14,000 manufacturing establishments with more than 662,000 employees, as indicated by the U.S. Census Bureau's County Business Patterns. The Census Bureau defines an establishment as a single physical location at which business is conducted and services are provided. It differs in many cases from a

company or enterprise, which may consist of one establishment or more. Sales taxes are imposed at the company level. Details on Ohio manufacturers by numbers of establishments and employees are shown in the following table.¹

Ohio Manufacturing Establishments and Number of Employees, 2016						
	Number of Establishments			Number of Employees, Pay Period Including March 12		
Employment Size of Establishment	Total	Durable Goods	Nondurable Goods	Total	Durable Goods	Nondurable Goods
All	14,000	9,516	4,484	662,428	439,158	223,270
1 to 4 employees	4,032	2,722	1,310	8,132	5,585	2,547
5 to 9 employees	2,478	1,695	783	16,602	11,367	5,235
10 to 19 employees	2,320	1,653	667	31,873	22,754	9,119
20 to 49 employees	2,462	1,740	722	77,812	54,596	23,216
50 to 99 employees	1,246	788	458	87,851	55,364	32,487
100 to 249 employees	957	602	355	145,723	90,883	54,840
250 to 499 employees	331	202	129	115,321	70,608	44,851
500 to 999 employees	122	73	49	80,678	48,288	32,913
1,000 employees or more	52	41	11	98,436	78,070	19,200

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¹ In ranges shown for 250 employees and higher, numbers of employees do not sum to totals because data were stated only as ranges by the Census Bureau to limit disclosure of information on individual companies. In these instances, the midpoints of ranges of the numbers of employees were instead used to create the table.



Mark Flanders
Director

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Memorandum

R-132-3381

To: The Honorable Scott Oelslager
Ohio Senate

From: Jean J. Botomogno, Principal Economist *JJB*

Date: May 8, 2018

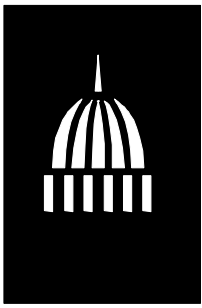
Subject: Tax Expenditure Review Committee, third meeting

You requested that LSC staff provide background information on certain sales tax expenditures that were slated for the second and third meetings of the Tax Expenditure Review Committee.

This memorandum provides the estimated fiscal costs to the state and counties and transit authorities of the expenditures listed in the Department of Taxation's Tax Expenditure Report. As stated in an earlier memorandum to the committee, the Department of Taxation does not include revenue losses from permissive county and transit authorities' sales and use taxes. Those local sales taxes share the same sales tax base as the state, so state tax expenditures also reduce permissive local sales taxes. I have estimated the fiscal cost to counties and transit authorities at about 24.5% of the state's revenue loss. Losses in the table are in millions of dollars.

I hope this memorandum has been helpful. If you have additional questions, please call me at (614) 644-7758.

Code Used in Tax Expenditure Report	Description	Estimated Revenue Loss (\$ in millions)			
		State GRF		Counties and Transit Authorities	
		FY 2018	FY 2019	FY 2018	FY 2019
1.06	Sales of tangible personal property (TPP) and services to electricity providers	\$343.1	\$356.8	\$84.1	\$87.4
1.07	TPP used in agriculture or mining	\$404.5	\$413.6	\$99.1	\$101.3
1.08	Agricultural land tile and portable grain bins	\$1.1	\$1.1	\$0.3	\$0.3
1.09	TPP used to produce printed materials	\$9.8	\$9.9	\$2.4	\$2.4
1.10	Items used in storing, preparing, and serving food	\$33.8	\$34.7	\$8.3	\$8.5
1.11	Property used in preparing eggs for sale	\$3.2	\$3.3	\$0.8	\$0.8
1.12	Building and construction materials used in certain structures	\$226.8	\$232.7	\$55.6	\$57.0
1.13	TPP used directly in providing public utility services	\$116.3	\$116.3	\$28.5	\$28.5
1.14	Property used to fulfill a warranty or service contract	\$52.8	\$53.1	\$12.9	\$13.0
1.15	Motor vehicles sold in Ohio for use outside the state	\$55.4	\$57.1	\$13.6	\$14.0



NCSL MEMO

NATIONAL CONFERENCE *of* STATE LEGISLATURES

To: Senator Scott Oelslager

From: Jackson Brainerd & Savannah Gilmore

Date: May 8, 2018

Subject: Regional Comparison of Select Sales & Use Tax Exemptions

NCSL examined a variety of Ohio's sales and use tax exemptions to see if they exist in any of the states surrounding Ohio. We specifically examined if similar exemptions exist in Indiana, Kentucky, Michigan, Pennsylvania and West Virginia.

The Ohio sales tax exemptions that were examined generally exist in the surrounding states. The only Ohio exemption that most other states do not have is the exemption for building and construction materials and services used in certain structures. (5739.02(B)(13); Dept. of Tax Code 1.12) This is taxable in all other states, except for in Pennsylvania, where this is usually taxable other than for construction materials used to facilitate public utility services.

It's worth noting that while all the other states have sales tax exemptions for sales to the state and their political subdivisions, only West Virginia also included sales to other states in their exemption. Also, none of the other states had tax exemptions specific to egg production. However, various items used in raising poultry and agricultural products were exempt.

NCSL created a table that lists the taxability of each Ohio exemption in the surrounding states that includes statutory citations, in addition to some web links. Please do not hesitate to contact us if you have any questions.

Regional Comparison of Selected Ohio Sales and Use Tax Exemptions

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Sales to churches and certain other nonprofit organizations	Sales to religious organizations consistent with their religious functions are exempt. Sales to qualified nonprofit organizations of tangible personal property, accommodations, or services are exempt from tax, provided that they are used primarily in carrying out the nonprofit's purpose or to raise money for that purpose and the organization is not operated predominantly for social purposes. Ind. Code Ann. §6-2.5-5-25.	Sales to resident 501(c)(3) religious organizations are exempt provided that such property is used solely in Kentucky within the institutional educational function. Certain sales to nonprofit organizations are exempt from Kentucky's sales and use tax.	Sales to a church or house of religious worship is exempt except: 1) sales in activities that are mainly commercial enterprises; and 2) sales of vehicles other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes. Mich. Comp. Laws §205.54a(1)(b). Sales to nonprofits are exempt if the income/benefit from the operation does not inure, in part or in whole, to an individual/private shareholder and if the activities exclusively are for the benefit of the public at large. Mich. Comp. Laws §205.54a(1)(a).	Exempt. Tangible personal property and services sold to nonprofits and religious organizations or churches are exempt. 72 Pa. Stat. §7204(10).	Sales to certain nonprofit organizations are exempt. W.Va. Code R. tit. 110, §110-15-72.1.1. Sales to churches that make no charge for services they render are exempt, except for gasoline or special fuel. W. Va. Code §11-15-9(a)(5).

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Sales to the state, and of its political subdivisions, and certain other states	Sales to the state and local governments are exempt on any purchases to be used primarily to carry out a governmental function. Ind. Code Ann. §6-2.5-5-16; Indiana Tax Information Sales Tax Bulletin 4.	Sales to the state or its political subdivisions are exempt. Ky. Rev. Stat. Ann. §139.470(7).	Sales to Michigan or its political subdivisions are exempt. Mich. Comp. Laws §205.54h; Mich. Comp. Laws §205.94(1)(g).	Sales made to Pennsylvania, including its instrumentalities and political subdivisions, are exempt from sales and use tax. 72 Pa. Stat. §7204(12); Pennsylvania Board of Finance and Revenue Decision No. 1519199 (Aug. 26, 2016).	Sales to West Virginia or its political subdivisions are exempt from sales and use tax. In addition, sales made to other states that provide a reciprocal exemption are exempt. W. Va. Code §11-15-9(a)(3); West Virginia Publications TSD-301.
Sales by churches and certain types of nonprofit organizations	In general, the gross receipts from sales by nonprofit organizations are taxable. However, the code provides an exemption from the gross retail tax for sales of tangible personal property by qualified nonprofit organizations if three conditions are met. Ind. Code Ann. §6-2.5-5-26(a). Most sales by religious organizations are exempt from Indiana's sales and use tax as long as it furthers its religious mission. Ind. Admin. Code tit. 45, r. 2.2-5-	Certain sales by nonprofit organizations are exempt from sales and use tax. Ky. Rev. Stat. Ann. §139.495(1). A specific exemption for sales by religious organizations is not provided. Ky. Rev. Stat. Ann. §139.470.	Michigan provides an exemption from sales and use tax for the sale of tangible personal property for fundraising purposes by a nonprofit organization or church having aggregate sales at retail in any calendar year of less than \$5,000. Mich. Comp. Laws §205.54o(1).	Taxable. 61 Pa. Code §32.21(c)(1).	Sales by nonprofit organizations are exempt from sales and use tax if they constitute occasional or casual sales. W. Va. Code R. tit. 110, §110-15-72.1.1.

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	58; Ind. Admin. Code tit. 45, r. 2.2-5-55(b)(2).				
Tangible personal property used primarily in manufacturing tangible personal property	Machinery, tools, and equipment qualify for the manufacturing exemption when directly used by the purchaser in the direct manufacture of tangible personal property. Ind. Code Ann. §6-2.5-5-3(b).	Kentucky provides a sales and use tax exemption for tangible personal property purchased to be used in the manufacturing or industrial processing of tangible personal property, so long as the manufacturing or industrial processing is performed at a “plant facility” and the tangible personal property manufactured or processed will be offered for sale. Ky. Rev. Stat. Ann. §139.470(9).	Michigan exempts from sales and use tax tangible personal property sold to industrial processors and specified persons for use or consumption in industrial processing. Mich. Comp. Laws §205.54t(1); Mich. Comp. Laws §205.94o(1).	Pennsylvania exempts from sales and use tax services and tangible personal property, including machinery and equipment, used directly and predominantly in manufacturing or processing by the purchaser. 72 Pa. Stat. §7201(k)(8)(ii)(A); 72 Pa. Stat. §7201(k)(8)(ii)(D); 72 Pa. Stat. §7201(o)(4)(B)(i); 72 Pa. Stat. §7201(o)(4)(B)(iv); 61 Pa. Code §32.32(a).	Sales of machinery or equipment used directly in manufacturing are exempt. W.Va. Code R. tit. 110, §110-15-123.4.2.2.d.
Packaging and packaging equipment	Packaging materials, including steel straps, to be used by the purchaser as enclosures for selling tangible personal property are exempt from gross retail tax. Ind. Code Ann. §6-2.5-5-9(d)(1); Ind. Admin. Code tit. 45, r. 2.2-5-16(c)(1).	Packaging materials sold to persons that will use them to package items that they resell are exempt from sales and use tax. Ky. Rev. Stat. Ann. §139.470(2)(a). Packaging equipment is exempt. For the purposes of Kentucky’s manufacturing and	Packaging materials sold to persons regularly engaged in rendering services are subject to tax. Mich. Admin. Code r. 205.68(2). Packaging equipment is exempt because Michigan does not deem industrial processing to end until manufactured goods are finished,	Wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, bailing wire, nonreturnable containers and all other wrapping supplies are exempt from sales and use tax, when the use of such property is incidental to the delivery of any personal property. 72 Pa. Stat.	Sales to vendors of boxes, cartons, containers, and wrapping and packaging materials and supplies for use in packaging tangible personal property for sale are exempt when transferred by the vendor to the purchaser, because they are considered purchases for

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	Packaging, storage, and distribution equipment is only exempt when used during the production process. Ind. Admin. Code tit. 45, r. 2.2-5-8(d).	processing exemptions, the terms “processing production” and “processing” includes the processing and packaging of raw materials, in-process materials, and finished products, and the processing and packaging of farm and dairy products for sale. Ky. Rev. Stat. Ann. §139.010(17)(c); Ky. Rev. Stat. Ann. §139.486; 103 Ky. Admin. Regs. 30:120.	meaning that inventory packaging equipment is eligible for the state's industrial processing exemption. Mich. Comp. Laws §205.54t(7)(a); Mich. Comp. Laws §205.94o(7)(a).	§7204(13); 61 Pa. Code §31.3(5). Wrapping equipment and supplies, including internal packing materials and returnable containers, that are directly used in packaging are exempt. 61 Pa. Code §32.32(a)(2)(v).	resale. W. Va. Code R. tit. §110-15-32.1.1. The taxability of packaging equipment depends on whether it is used directly in manufacturing. W.Va. Code R. tit. 110, §110-15-123.4; West Virginia Publication TSD-358 (July 2008).
Sales of tangible personal property and services to electricity providers	The generation of electricity is treated as the manufacture of tangible personal property in Indiana, and machinery, tools, and equipment used directly in the direct production of electricity are tax-exempt. Ind. Code Ann. §6-2.5-5-3(b).	Coal used in the manufacturing of electricity is specifically exempted from the sales and use tax. Ky. Rev. Stat. Ann. §139.480(2).	Depends. There is no specific exemption for machinery and equipment used for energy production, but energy production may constitute industrial processing. Mich. Comp. Laws §205.54t(3)(b); Michigan Revenue Administrative Bulletin 2018-4 (Feb. 28, 2018).	Tangible personal property, such as machinery and equipment, parts for machinery and equipment, and supplies, purchased for direct use in the production, delivery, or rendering of a public utility service, including energy production, is exempt from sales and use tax. 72 Pa. Stat. §7201(k)(8)(ii)(C); 72 Pa. Stat. §7201(o)(4)(B)(iii).	Taxable.

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Tangible personal property used or consumed in agriculture and mining	Exempt. Agricultural machinery, tools, and equipment are exempt from gross retail tax and use tax if acquired by a person who directly uses such property in the direct production, extraction, harvesting, or processing of agricultural commodities. Ind. Code Ann. §6-2.5-5-2. Purchases of machinery, tools, or equipment used directly in mining operations are exempt from sales and use tax (gross retail tax). Ind. Code Ann. §6-2.5-5-3(b); Ind. Admin. Code tit. 45, r. 2.2-5-9.	Sales of farm machinery used exclusively and directly in the occupation of farming are exempt from sales tax. Farm machinery purchased for other uses is taxable. Ky. Rev. Stat. Ann. §139.480(11); 103 Ky. Admin. Regs. 30:091, Section 3; Kentucky Sales Tax Facts Dec. 2016. Kentucky allows an exemption for tangible personal property to be used in industrial processing, which includes mining and quarrying, of tangible personal property. Ky. Rev. Stat. Ann. §139.470(10)(a).	Exempt. Sales of machinery, tools, equipment, repair parts, motor fuel, oil, grease, and other tangible personal property necessary for the operation and maintenance of exempt machinery, tools, or equipment are exempt when used for agricultural production. Mich. Comp. Laws §205.54a(1)(e) as amended by 2016 Mich. H.B. 5889, effective March 27, 2017; Mich. Admin. Code r. 205.51(5)(f). Mining is considered an extractive operation, and thus property used in the extraction process is exempt from sales tax. Mich. Comp. Laws §205.54u(2); Mich. Comp. Laws §205.94p(2).	Exempt. Machinery and equipment that is predominantly used directly in farming, including milking equipment, is exempt from tax. 61 Pa. Code §32.33(a); Pennsylvania Local Sales Use Tax REV-1729. Purchases of tangible personal property and services predominantly used directly in mining activities are exempt from tax. 72 Pa. Stat. §7201(k)(8); 72 Pa. Stat. §7201(o)(4).	Exempt. West Virginia generally exempts sales of tangible personal property for use in connection with the commercial production of an agricultural product the sale of which ultimately will be subject to tax. W. Va. Code §11-15-9(a)(8); W.Va. Code R. tit. 110, §110-15-9.3.8, §110-15-93.1. West Virginia exempts from tax the sales of services, machinery, supplies, and materials directly used or consumed in the production of natural resources. W. Va. Code §11-15-9(b)(2); W.Va. Code R. tit. 110, §110-15-123.4.3.1.
Agriculture land tile and portable grain bins	Materials used as part of drainage water management systems	On-farm facilities used exclusively for grain storing are exempt. Ky.	Land tile and portable grain bins are exempt.	Tangible personal property used directly in farming (including	Sales of tangible personal property for use in production of an

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Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	are exempt if purchased for agricultural purposes. This includes drainage tiles. Materials used in the repair of grain bins are taxable.	Rev. Stat. Ann. §139.480(13).	Mich. Comp. Laws §205.54a(1)(e).	drainage tiling) is exempt.	agricultural product are generally exempt. W. Va. Code §11-15-9(a)(8).
Tangible personal property used to produce printed materials	Machinery and equipment used in commercial printing are exempt. Ind. Code Ann. §6-2.5-5-3(a)(2).	Printing machinery and equipment may qualify for Kentucky's manufacturing exemption.	Printing machinery and equipment used to create printed items for sale are eligible for Michigan's industrial processing exemption. (See Michigan Revenue Administrative Bulletin 2000-4)	Pennsylvania has a manufacturing exemption for which machinery, equipment, and supplies used directly in printing for business purposes would qualify. 72 Pa. Stat. §7201(c)(2).	Machinery and supplies used to produce printed products for business purposes are considered eligible for a manufacturing exemption. W.V. Code R. tit. 110, § 110-15-49.2.
Tangible personal property used in storing, preparing, and serving food	Restaurant equipment used in the processing of food ingredients into a new, marketable food product is eligible for the manufacturing exemption. Ind. Code Ann. §6-2.5-5-3(b).	Taxable.	Taxable.	Restaurant equipment is taxable, but frozen food lockers meant for storing meat and perishable food items are exempt. 61 Pa. Code §47.3.	Taxable. Food processing is excluded from the state definition of manufacturing. WV Code §11-6E-2(b)(2)(D)(6).
Tangible personal property used in preparing eggs for sale*	Purchases of property for use in the direct production and extraction of agricultural commodities for sale are exempt from sales tax.	Sales of materials used to build on-farm facilities used for raising poultry are exempt, including handling facilities.	Sales of property necessary for agricultural operations are not exempt if the equipment is attached to and becomes part of real estate. Mich. Comp. Laws §205.54a(1)(e). Animal feed is exempt.	Property that is primarily used directly in farming is exempt from tax, but buildings and enclosures are taxable.	West Virginia exempts sales of tangible personal property for use in connection to commercial agricultural production. W. Va. Code §11-15-9(a)(8).

Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Building and construction materials and services used in certain structures	Taxable.	Taxable.	Taxable.	Generally taxable, although construction materials used to facilitate public utility services are exempt.	Taxable.
Tangible personal property used directly in providing public utility services	Taxable. Ind. Admin. Code tit. 45, r. 2.2-4-11(a).	Depends. Sales of utilities are exempt if they are for residential use. Nonresidential sale of utilities and related services are taxable.	Taxable.	Depends. Sales of utilities are exempt if they are for residential use. Nonresidential sale of utilities and related services are taxable.	Exempt.
Property used to fulfill a warranty or service contract	Exempt. Any parts transferred to a buyer under the terms of an original manufacturer warranty are not subject to sales tax. (See IN Tax Information Sales Tax Bulletin 2 .)	Extended warranty services for tangible personal property are subject to sales tax if the service contract agreement is sold or purchased on or after July 1, 2018. Ky. Rev. Stat. Ann. §139.200(2)(q).	Exempt. (See Michigan Treasury Update Aug. 2017)	Taxable.	Exempt. Repairs, including parts and labor, performed pursuant to a warranty are not subject to sales tax. WV Code Sec. 110-15-63.
Motor vehicles sold in Ohio for use outside the state	Vehicles sold for use outside the state are eligible for sales tax exemptions, but the vehicle must be physically delivered by the dealer to a location outside the state in order to qualify as a sale in interstate commerce.	Exempt only if sold to a nonresident of Kentucky who registers the vehicle in a state that allows Kentucky residents to purchase motor vehicles without payment of that state's sales tax at the time of sale.	Generally taxable unless the seller or purchaser hires a shipping company to deliver the vehicle to an address outside Michigan.	Exempt only if the in-state vehicle dealer delivers the vehicle to the purchaser at a location outside of Pennsylvania for registration outside of the state.	Vehicles purchased in the state but immediately removed are exempt, on the condition that the vehicle is titled and registered in another state. W.Va. Code R. tit. 110, §110-15-9.2.24.4.

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Exemption Description	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	IN Admin. Code tit. 45, r. 2.2-5-53.				

Sources: Bloomberg Tax, NCSL research.

** Nothing found specific to egg production. Information included in the table relates to various items used in raising poultry and agricultural products being exempt.*



**BEFORE THE TAX EXPENDITURE REVIEW COMMITTEE
SENATOR SCOTT OELSLAGER, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

APRIL 11, 2018

Mr. Chairman and members of the Committee, my name is Rob Brundrett. I am the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the powerhouse in Ohio's economy. In addition to copies of my testimony, I have provided committee members with a copy of "2017 Ohio Manufacturing Counts." This book is prepared annually by the OMA to provide facts about the importance of manufacturing to Ohio's economy.

Manufacturing is the largest of the state's 20 industry sectors. Manufacturing contributed more than \$108 billion in GDP in 2016, the most recent year represented in this publication. This amounts to nearly 18% of the state's economy. The second largest industry sector is government at 11%. Ohio is the third largest manufacturing state in the U.S. following only California and Texas.

Almost 700,000 Ohioans work in manufacturing and these workers earn an average \$58,000 per year.

Ohio's Sales and Use Taxes

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

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

First, imposing the tax on intermediate transactions (sometimes called business inputs) causes the tax to be imposed at each step in the production of a good. This causes the tax to pyramid at each step of the economic ladder, resulting in an effective tax rate that may be much higher than the statutory rate. For example, in conjunction with the 1994 tax study commissioned by the General Assembly, the staff provided an example in which a sales tax rate of 6.5 percent applied to two stages of production resulted in an effective tax rate of 9.5 percent at the time of the final retail sale.¹

Second, imposing the tax on business inputs increases the cost of doing business through the higher prices that result from the tax. Business generally will respond to higher costs in a combination of three ways: It may decide to charge higher prices; it may pay lower wages to workers (or expatriate those positions elsewhere); or it may provide a lower return on investment to owners.²

Third, direct inputs lead to the production of more valuable goods that are ultimately subject to the tax.

Fourth, the provision has economic development implications. Every single state that surrounds Ohio has a sales tax. Every one of those states has some sort of exemption from the tax for machinery and equipment used in the production of tangible goods to be sold by manufacturers. Moreover, the *1994 Study* also found that lower rates of taxation on business equipment increase the rate of business formation of smaller firms. Thus, imposing the sales tax on manufacturing machinery and equipment puts Ohio at a disadvantage from an economic development perspective.³

The application of sales and use taxes to business inputs has been the subject of comment on at least two prior occasions in Ohio. In 1982, the Final Report and Recommendations of the Joint Committee to Study State Taxes (114th General

¹ Roy Bahl, Ed., *Taxation and Economic Development: A Blueprint for Tax Reform in Ohio* (Battelle Press 1994), p. 277-278 (the “1994 Staff Report”).

² *Taxation and Economic Development in Ohio: A Blueprint for the Future*, Final Report of the Commission to Study the Ohio Economy and Tax Structure (December 23, 1994), p. iii (“1994 Study”).

³ *Id.*, at p. 5-4.

Assembly, December 1982), pp. 15-16 concluded that the taxes should be imposed broadly on consumer spending, but very selectively on business spending. Similarly, the *1994 Study* at p. 5-4 and the *1994 Staff Report* at p. 27 both recognized that the sales tax should only be imposed upon the final consumer and that business inputs should not be taxed at all. The taxation of business inputs should be avoided because doing so leads to multiple levels of taxation and economic disadvantages. Moreover, the *1994 Report* concluded that if the sales tax is extended to services, there should be liberal exemptions for transactions between businesses.

Manufacturing Exemptions for Tangible Personal Property are Not Absolute

Manufacturers enjoy exemption for three categories of purchases:

- Machinery and equipment used primarily during and in the manufacturing process
- Ingredients and materials that are incorporated into the final product that is produced for sale
- Packages and packaging equipment

However, this does not mean that manufacturers do not pay sales and use taxes in Ohio. Manufacturers purchase and use many goods and services that are not included in the manufacturing exemptions. Those items include machinery and equipment that are used before manufacturing begins, or after it ends; cleaning equipment and supplies; maintenance and repair equipment and supplies; storage facilities; most safety items; and office supplies and equipment and motor vehicles. As a result, manufacturers pay millions of dollars in sales and use taxes annually to the state of Ohio.

According to the 2017 Annual Report of the Ohio Department of Taxation, manufacturers as an economic segment paid more than \$483 million in sales and use taxes directly to the state of Ohio. This is in addition to the untold millions of tax dollars that were paid to, and reported by, vendors and retailers located in Ohio. It appears that

in terms of tax directly owed to the state, as opposed to tax that is collected from others, manufacturing is one of the largest payers of sales and use taxes in the state.

The Exemption Should Not Be Repealed

Repeal of the manufacturing exemption should not be considered.

First, repeal is contrary to the recent efforts of Ohio tax policy to move away from the taxation of economic investment and towards personal consumption. Manufacturers invest in manufacturing machinery and equipment in order to expand or maintain their capacity to provide jobs and to produce a product for sale, a product that in most cases will be subject to the sales and use taxes when it is sold and used.

Since 2005, Ohio has attempted to move away from the taxation of business investment. It eliminated the tax on business tangible personal property. It eliminated the net worth base of the corporation franchise tax. And, it excludes from the commercial activity tax receipts in the nature of a return on investment. As noted earlier in my remarks, the purchase of machinery and equipment by manufacturers is not final consumption. Rather, it reflects an investment in the business. The sales tax exemption for manufacturing machinery and equipment is consistent with this policy.

Imposing the sales tax on business inputs, including manufacturing machinery and equipment (and labor) is contrary to sound tax policy. As previous tax study commissions⁴ have concluded, good tax policy is based on simplicity, equity, stability, neutrality and competitiveness. Removing the exemption and subjecting those purchases to tax will render the tax more opaque, more complex, and less fair as final consumers will pay an even higher proportion of their family income in sales taxes. Removing the exemption violates the principles of neutrality and competitiveness as it results in higher costs, which may influence economic decisions and competitiveness. Taken together, all these factors may in fact render the tax less stable.

⁴ 1994 Study, p. 5-1; *Report of the Committee to Study State and Local Taxes*, March 1, 2003, p. 6.

Exclusion of Services as Manufacturing Inputs

There many additional cases in which the sales or use tax should be amended to exclude specific manufacturing service inputs. I'll briefly describe three specific recommendations involving: 1) temporary workers; 2) industrial janitorial and maintenance services; and 3) certain equipment and supplies used to clean food processing equipment.

One, Ohio does not impose sales or use taxes (or the CAT) on the wages paid to employees. Just as wages are not subject to such taxes, and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities that are otherwise exempt from the tax. Such temporary employees are a business input; the sales tax should not apply to transactions by which such labor is obtained (See attached OMA House Bill 343 Testimony, 131st General Assembly).

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

Three, Ohio law currently exempts the equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce, milk, ice cream, yogurt, cheese, and similar dairy products for human consumption. This exemption was born out of a court case many years ago. This exemption is limited to one type of manufacturer who was party to that court case. However the reasons why the exemption makes sense to dairy manufacturers also apply to a variety of other food manufacturers who use clean-in-place technology to ensure that the food all of us eat is safe.

Conclusion

In conclusion, the manufacturing exemption is founded on sound tax and economic policy. The sales and use taxes are intended to be taxes on ultimate household consumption; they are not intended to apply to business inputs or to intermediate transactions. Applying the taxes to transactions involving the investment in manufacturing machinery and equipment increases the cost of the goods that are produced, negatively impacts economic decisions, and may place Ohio at a disadvantage when it comes to economic development. That isn't good policy. It ought not to be the policy of Ohio.

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



**BEFORE THE ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEE
THE OHIO HOUSE OF REPRESENTATIVES
REPRESENTATIVE NAN BAKER, CHAIR**

**HOUSE BILL 343
TESTIMONY
OF
LUKE HARMS
SENIOR MANAGER, GOVERNMENT RELATIONS
WHIRLPOOL CORPORATION**

NOVEMBER 18, 2015

Chair Baker and members of the Committee, my name is Luke Harms. I'm Senior Manager of Government Relations at Whirlpool Corporation. Whirlpool is the number one appliance manufacturer in the world, with approximately 100,000 employees and 70 manufacturing and technology centers. Here in Ohio, Whirlpool has five manufacturing facilities with approximately 10,000 employees.

I'm testifying here today on behalf of The Ohio Manufacturers' Association (OMA) with respect to House Bill 343, which proposes to repeal the sales tax on employment services. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

Today I will provide you with background information about the existing sales tax exemption provided to manufacturers with respect to the purchase and use of machinery and equipment used in a manufacturing operation to produce tangible personal property for sale. I will cover the sound policy reasons to extend such tax treatment to employment services.

Ohio's Sales and Use Taxes

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

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

First, imposing the tax on intermediate transactions (sometimes called business inputs) causes the tax to be imposed at each step in the production of a good. This causes the tax to pyramid at each step of the economic ladder, resulting in an effective tax rate that may be much higher than the statutory rate. For example, in conjunction with the 1994 tax study commissioned by the General Assembly, the staff provided an example in which a sales tax rate of 6.5 percent applied to two stages of production resulted in an effective tax rate of 9.5 percent at the time of the final retail sale.¹

Second, imposing the tax on business inputs increases the cost of doing business through the higher prices that result from the tax. Business generally will respond to higher costs in combination of three ways: It may decide to charge higher prices; it may pay lower wages to workers (or expatriate those positions elsewhere); or it may provide a lower return on investment to owners.²

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Fourth, the provision has economic development implications. Every single state that surrounds Ohio has a sales tax. Every one of those states has some sort of exemption from the tax for machinery and equipment used in the production of tangible goods to be sold by manufacturers. Moreover, the *1994 Study* also found that lower rates of taxation on business equipment increase the rate of business formation of smaller firms. Thus, imposing the sales tax on manufacturing machinery and equipment puts Ohio at a disadvantage from an economic development perspective.³

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Manufacturing Exemptions for Tangible Personal Property Is Not Absolute

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However, this does not mean that manufacturers do not pay sales and use taxes in Ohio. Manufacturers purchase and use many goods and services that are not included in the manufacturing exemptions. Those items include machinery and equipment that is used before manufacturing begins, or after it ends; cleaning equipment and supplies; maintenance and repair equipment and supplies; storage facilities; most safety items; and office supplies and equipment and motor vehicles. As a result, manufacturers pay millions of dollars in sales and use taxes annually to the state of Ohio.

According to the 2014 Annual Report of the Ohio Department of Taxation, manufacturers as an economic segment paid more than \$410,000,000 in sales and use taxes directly to the state of Ohio. This is in addition to the untold millions of tax dollars that were paid to, and reported by, vendors and retailers located in Ohio. It appears that in terms of tax directly owed to the state, as opposed to tax that is collected from others, manufacturing is one of the largest payers of sales and use taxes in the state.

The Tax on Employment Services

Effective January 1993, in order to fill a hole in the state budget, employment services were added as a taxable service by a conference committee facing a midnight deadline to reach agreement on a new budget. 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.

Originally, four categories of transactions were excluded from the definition. Those four categories include:

- Transactions between members of an affiliated group;
- Persons providing medical and health care services;
- Persons providing contracting and subcontracting services; and
- Persons assigned to another pursuant to a contract of at least a year in duration that specifies that each employee covered by the agreement is “permanently” assigned to the purchaser.

A fifth category, involving services that were resold, was later added to the statute.

The tax generated a great deal of revenue, more than was expected, and the Department became more and more aggressive when it came to auditing the issue. The result was increased uncertainty on the part of business and increased time and expense in litigation responding to the aggressive enforcement activities of the Department.

For example, many manufacturers had begun employing temporary labor as a means of providing extra flexibility in meeting their workforce needs. Whether on a “temp-to-hire” basis, or as a means of meeting temporary up-ticks in production activities, manufacturers increasingly turned to vendors of temporary employees to fill those needs. Not surprisingly, many of those manufacturers assumed that the existing manufacturing exemption, which exempted purchases of machinery and equipment

used to produce tangible personal property for sale in a continuous manufacturing operation, would also cover workers on the manufacturing floor that operated the exempt equipment. Manufacturers and other purchasers of employment services also believed that in appropriate circumstances the services would be resold. After protracted litigation, they were soon disabused of both notions.

Another area that served fertile for litigation was the exclusion for employees that were “permanently assigned” to the purchaser. As noted previously, there were two conditions to this exclusion. First, the employees had to be provided pursuant to an agreement of a least a year in duration. Second, the agreement had to “specify” that the employees were provided to the purchaser on a “permanent” basis.

This provision likewise resulted in a flood of litigation involving issues such as

- Whether the agreement had to be written, or whether an oral agreement would suffice.
- The length of the term of the agreement, especially those that renewed or were cancelable at will.
- The meaning of the requirement that employees be “permanently assigned” to the purchaser.
- Whether the mere recitation of language in a service agreement that employees were permanently assigned was sufficient; or whether the course of conduct between the parties also had to establish that the positions were indeed indefinite.

The Department of Taxation continues to pursue employment services aggressively. It argues that employee turnover is a sign that the employees are not permanently assigned. It also takes the position that an agreement must set forth the name of every employee covered by the agreement, and that if any of the employees provided under an agreement are not provided on an indefinite basis, then the entire agreement is tainted and none of the employees qualify for the exclusion.

In recent audits, the Department takes the position that virtually any transaction involving personnel was a taxable employment service. Thus, transactions in which outside consultants are retained to provide services, such as computer and software design, an engineer, or a skilled tradesperson, are routinely picked up on audit as employment services.

The Tax on Employment Services Should Be Repealed

House Bill 343 proposes to do away with the tax on employment services completely. The bill deletes “employment services” from the list of taxable transactions in R.C. 5739.01(B)(3)(k); it deletes the definition of “employment services” found in R.C. 5739.01(JJ); and deletes reference to the provision in other statutes.

Repeal of this provision reflects sound policy.

First, repeal is consistent with the recent efforts of Ohio tax policy to move away from the taxation of economic investment and towards personal consumption. Manufacturers invest in manufacturing machinery and equipment in order to expand or maintain their capacity to provide jobs and to produce a product for sale, a product that in most cases will be subject to the sales and use taxes when it is sold and used.

Since 2005, Ohio has attempted to move away from the taxation of business investment. It eliminated the tax on business tangible personal property. It eliminated the net worth base of the corporation franchise tax. And, it excludes from the commercial activity tax, receipts in the nature of a return on investment, including labor costs. Repealing the sales tax on employment services is consistent with this policy.

Second, imposing the sales tax on business inputs, including manufacturing machinery and equipment and labor is contrary to sound tax policy. As previous tax study commissions⁴ have concluded, good tax policy is based on simplicity, equity, stability, neutrality and competitiveness. Subjecting employment services to tax renders the tax more opaque, more complex, and less fair as final consumers who are less

⁴ 1994 Study, p. 5-1; *Report of the Committee to Study State and Local Taxes*, March 1, 2003, p. 6.

economically advantaged pay an even higher proportion of their family income in sales taxes. The tax on employment services violates the principles of neutrality and competitiveness as it results in higher costs, which may influence economic decisions and competitiveness. Taken together, all these factors may in fact render the tax less stable.

Just as wages are not subject to sales and use taxes; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities be excluded from the tax. Employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.

Third, the provision has generated more and more litigation as the Department has taken increasingly aggressive positions with respect to it. The provision is neither clear, nor is it easy to administer.

Temporary employment services play a critical role for manufacturers. At Whirlpool, temporary employees help the company manage seasonal demand changes for appliances. For example, our KitchenAid small appliance factory in Greenville has much higher shipment levels in the months leading up to the holiday season and our major appliance factories in Clyde, Marion, Findlay and Ottawa also see a significant uptick in shipments in the summer, driven by increased home construction and renovations. Temporary employment services not only help us avoid layoffs, but they help recruit skilled workers, many of whom eventually become Whirlpool employees. We compete in a competitive global environment. The products we produce here in Ohio must compete every day with imported appliances from Mexico, China and many other countries.

In conclusion, the impact of H.B. 343, to repeal the imposition of sales and use taxes on temporary employment services is not only founded on sound tax and economic policy, but will help Ohio manufacturers like Whirlpool to remain globally competitive. The sales and use taxes are intended to be taxes on ultimate household consumption; they are not intended to apply to business inputs or to intermediate transactions. Applying

the taxes to transactions involving the investment in labor, especially in labor to operate manufacturing machinery and equipment increases the cost of the goods that are produced, negatively impacts economic decisions, and may place Ohio at a disadvantage when it comes to economic development. That isn't good policy. It ought not to be the policy of Ohio.

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

**Testimony of the Manufacturing Policy Alliance
by Thomas M. Zaino, JD, CPA
Tax Expenditure Review Committee
April 11, 2018**

Chairman Oelslager and fellow distinguished members of the Tax Expenditure Review Committee, my name is Tom Zaino, and I am Managing Member of Zaino Hall & Farrin LLC. I am here today on behalf of the Manufacturing Policy Alliance (MPA). The Manufacturing Policy Alliance (MPA) is a group of large manufacturers around the state of Ohio who operate in all eighty-eight counties. Combined, MPA has an annual payroll of \$2.5 billion and spends approximately \$11 billion with suppliers around the state.

MPA was formed to provide an effective voice on critical policy matters that affect the competitiveness of Ohio and its large manufacturing companies. We strive to work with the General Assembly and the Governor to help sustain a healthy and vibrant economy. I am here today to speak to the Committee with regard to its review of the sales and use tax exemption for manufacturing and packaging. These exemptions are critical to manufacturers. Therefore, my testimony is to express support for the continuing exemption of the following:

- The transfer of things used primarily in a manufacturing operation to produce tangible personal property for sale under R.C. 5739.02(B)(42)(g); and
- Machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale under R.C. 5739.02(B)(15).

I will discuss the impacts of these two exemptions using the Committee's standards of review.

Who receives the direct benefit or consequences of the exemptions?

Manufacturers of tangible personal property receive the direct benefit of both of these exemptions. The employees and suppliers of manufacturers also receive a consequential benefit by insuring the strength of Ohio's manufacturing industry. The packaging exemption also benefits other important industries in Ohio.

What is the fiscal impact of the exemptions on state and local taxing authorities?

The Ohio Department of Taxation and Legislative Service Commission is best situated to provide the Committee this information.

What public policy objectives support the exemptions?

MPA believes that elimination of pyramiding and competitiveness are the major public policy goals of these two exemptions:

Eliminate Pyramiding: According to the Report of the 1994 Commission to Study the Ohio Economy and Tax Structure, "the concept behind the sales tax as a consumption tax leads to the conclusion that all business purchases should be exempt and only the sale to the final consumer should be taxed. This approach results in

no pyramiding of the tax.” The two exemptions do not totally eliminate pyramiding for manufacturers as described by the Commission. However, the exemptions certainly mitigate pyramiding.

Ensure Competitiveness: According the 2003 Report of the Committee to Study State and Local Taxes, “the tax system is a meaningful part of a state’s living, working, and business environment. It should not impose an excess burden on taxpayers, particularly as compared to the tax systems of other states and, more and more, as compared to other parts of the world.” Forty-five states impose a sales and use tax. Of those, only four provide no exemption for manufacturing machinery & equipment and for raw materials. Five other states provide no or only a partial exemption for machinery & equipment. Only six states provide no or only a partial exemption for packaging of manufacturers. If Ohio were to “disarm” and eliminate or narrow these two exemptions, it would place Ohio at a competitive disadvantage to most states and further deteriorate our competitiveness with other parts of the world.

Do the exemptions successfully accomplish any of the intended public policy objectives?

Pyramiding: Somewhat. The manufacturing exemption goes a long way, but does not totally eliminate pyramiding of the sales and use tax for manufacturers. Many purchases by manufacturers continue to be subjected to sales and use tax, including employment services deployed on manufacturing lines, safety equipment not physically attached to machinery (i.e., safety glasses, respirators, etc.), equipment used before manufacturing begins and after manufacturing ends, and packaging. Of course, the packaging exemption separately exempts packaging equipment and material of manufacturers.

Competitiveness: Yes. The manufacturing and packaging exemptions broadly keep Ohio on a level playing field for overall competitiveness among major states because almost all state with a sales tax provide a manufacturing and packaging exemption.

Could the public policy objectives be accomplished successfully without the expenditure or with less cost to state and local governments?

No. The MPA is not aware of any other practical method of achieving the public policy objectives without the exemption or with less cost to state and local governments.

Could the intended public policy objectives identified be accomplished successfully through a program that requires legislative appropriations for funding?

No. The MPA is not aware of any other practical method of achieving the public policy objectives through a program that requires legislative appropriations for funding.

Does the tax expenditure provide unintended benefits to individuals, organizations, or an industry other than those the general assembly intended or created an unfair competitive advantage for its recipient with respect to other businesses in the state?

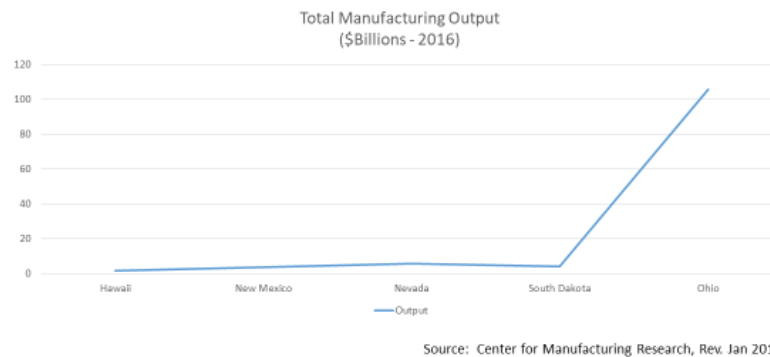
No. MPA does not believe the exemptions provide unintended benefits to individuals, organization or an industry other than those the general assembly intended, not do they create an unfair advantage for its recipients with respect to other business in Ohio.

What negative effects would terminating the exemptions have taxpayers that currently benefit from the exemption?

Terminating the exemptions would have devastatingly negative effects on Ohio and manufacturing jobs. According to the Center for Manufacturing Research, manufacturing accounted for 16.9 per cent of Ohio's total economic output and employed 687,400 individuals in 2016. This was approximately 12.5% of nonfarm employment. Ohio would risk losing these manufacturing jobs to all the other states that provide these exemptions or do not have a sales tax.

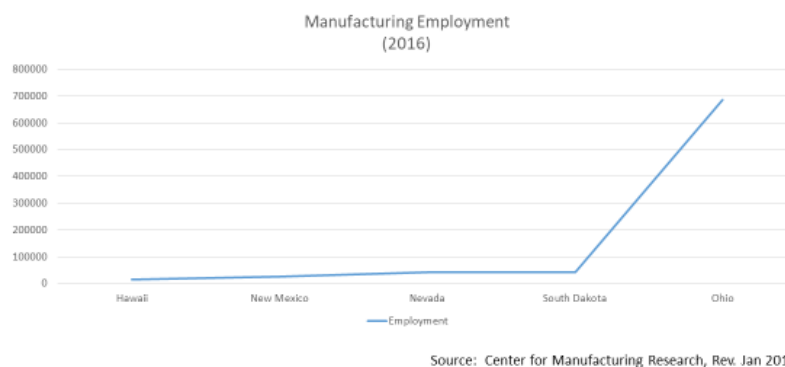
States with a sales tax that do not have an exemption for manufacturing also have no major manufacturing in their state. These states are Hawaii, Nevada, New Mexico, and South Dakota. Using 2016 data from the Center for Manufacturing and Research, the following chart compares the manufacturing output of states with no manufacturing exemptions with Ohio.

Comparing Output of States With No Manufacturing Exemption to Ohio



This next chart compares manufacturing employment in those states with no manufacturing exemptions with Ohio.

Comparing Mfg. Employment of States With No Manufacturing Exemption to Ohio



While the comparisons are obviously dramatic and the causality may be suspect, these charts certainly point out that Ohio should not eliminate its manufacturing exemptions and only compete with Hawaii, New Mexico, Nevada and South Dakota for manufacturing jobs.

What are the negative or positive effects on the state's employment and economy as a result of the tax expenditure?

Devastatingly negative. See the discussion and charts above.

What is the feasibility of modifying the tax expenditure to provide for adjustment or recapture of the proceeds of the tax expenditure if the objectives of the tax expenditure are not fulfilled by the recipient of the tax expenditure?

None. The exemptions could not be modified in any practical way to recapture benefits if the objectives are not achieved.

Suggestions

The Ohio's sales and use tax manufacturing exemption and the packaging exemption have a very significant impact on manufacturers and is an important tool for Ohio to maintain its competitiveness to attract and retain manufacturing. MPA suggests that the Committee recommend continuation of the manufacturing or packaging exemptions.

The current manufacturing exemption and the Manufacturing Rule (O.A.C. 5703-9-21) has been very successful since its enactment in 1990 because it was the result of joint efforts by ODT and businesses. However, manufacturing has changed significantly in the last twenty eight years and MPA encourages the Committee to recommend that the Ohio Department of Taxation sponsor a broader dialogue on Ohio's manufacturing exemption and the 35 page rule in an effort to ensure Ohio's competitiveness for attracting and retaining manufacturing. Concerns that could be discussed include the lack of exemption for safety equipment in light of more modern efforts to ensure workers' safety, as well as the lack of an exemption from the imposition of sales tax on employment services which includes the wages of workers on the manufacturing line. MPA stands ready to assist policy makers with keeping Ohio's manufacturing industry healthy and competitive.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or members of the Committee may have.



Tax Incentive Review Committee Testimony

April 10, 2018

In our efforts to keep Ohio's businesses competitive, allow me to explain our position on one of the items before you. Over the years, Ohio has enacted an array of tax deductions, exemptions and credits. Most of them fall under one of the following rationales:

- They are constitutionally required;
- They exclude a "necessity" such as food, from taxation;
- They enhance Ohio's incentives to invest in manufacturing equipment, locate businesses in targeted economic development areas, etc.
- They limit double taxation/pyramiding.

One or more of these criteria explains or constitutes a plausible reason for the enactment of most of the tax expenditures. For our purposes, the largest tax expenditure in the entire Tax Expenditure Report is the sales tax exemption for the sale of tangible personal property (TPP) (1.01) primarily used in manufacturing, with the state estimated to be foregoing over \$2.2 billion in revenue per year per the most recent Tax Expenditure Report. Originally enacted in 1935 when Ohio was a manufacturing powerhouse, the exemption was intended to protect Ohio manufacturers from having to pay a 3% sales tax (now between 6% to 8%) on items of TPP that are ultimately incorporated into the completed product being manufactured.

This exemption has had the effect of preventing the pyramiding of that 6-8% sales tax at each stage of the manufacturing process and is especially important, for obvious competitiveness reasons, to the state's manufacturing sector and overall economy where many Ohio manufacturers are part of a multi-tier supply

chain. The very act of preventing the pyramiding of the sales tax on Ohio manufactured goods is critically important to the continued help and competitiveness of Ohio jobs and Ohio's economy. The sales tax manufacturing exemption clearly provides critical support for an essential part of Ohio's business health – and is undeniably worth the price.

Therefore, the Ohio Chamber of Commerce fully supports the necessity for and value of this exemption and its continuation.

Jeff McClain

Director, Tax & Economic Policy

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April 11, 2018

The Honorable Scott Oelslager, Chairman
Ohio Tax Expenditure Review Committee
Statehouse
Columbus, OH 43215

Dear Chairman Oelslager and members of the TERC:

The Council appreciates the opportunity to share with you our support for the continuance of the sales tax exemption for packaging and packaging equipment as set forth in Ohio Revised Code 5739.02(B)(15), identified by the Ohio Department of Taxation as Tax Code 1.05.

At the outset, it is important for the Committee to understand how important retailers are to Ohio and the state's economy. The retail industry accounts for \$46.5 billion of Ohio's annual Gross Domestic Product—approximately 18%—and supports 1.5 million jobs, which is one in four of all Ohio jobs, more than any other industry. As to the economy, it goes without saying that the more taxable sales retailers make, the more Ohio sales tax is collected and remitted to the state. Previous General Assemblies recognized this and enacted public policies such as tax exemptions to maximize the collective interests of retailers and the state. In a time where consumption-based taxes are considered preferable to income taxes, legislative policy relative to maximizing retail sales becomes increasingly more important to both retailers and the state. In this regard, the General Assembly should actually consider enhancing certain tax exemptions as opposed to eliminating or limiting them.

One such public policy enacted by the legislature is the exemption from sales tax for packaging and packaging equipment, a policy decision that has been of great benefit to retailers and other industries. This exemption is actually one of utmost importance to retailers and consumers as it minimizes the costs of selling merchandise, thereby providing greater purchasing power to consumers. It cannot be emphasized enough that the more consumers benefit financially from policies such as this, the more the state will recognize in overall sales tax collections.

Council Affiliates

 Ohio Association of Wholesaler-Distributors

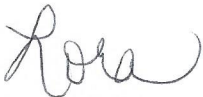


Packaging and packaging equipment includes materials, labels, and parts for packaging machinery and equipment sold to manufacturers and other qualified businesses. Examples include shopping bags and gift boxes, however, the exemption is not limited to packaging in which the merchandise is delivered to the retail customer. The essential characteristic of a package is that it restrains movement of the enclosed contents in more than one plane of direction. As for packaging equipment, the statute provides that “‘packaging’ means placing therein.” Nonetheless, the exemption is not limited to property that actually places the product in the package but is also available for property that is an “integral part of” machinery or equipment used in placing the product in packages.

It is also worth noting that in addition to exempting food for consumption off premises from taxation in the state Constitution, the voters of Ohio chose to exempt from taxation the packaging that contains food for human consumption *on or off* the premises where sold. Again, these exemptions serve to enhance consumer purchasing power which in turn enhances sales tax collections.

Mr. Chairman and members of the Committee, thank you for the opportunity to provide some insight on how critically important the sales tax exemption for packaging and packaging equipment is to Ohio’s retailers and consumers.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lora", written in dark ink.

Lora Miller
Director of Governmental Affairs & Public Relations



Tax Expenditure Review Committee

4/25/2018

Chairman Oelslager and members of the Tax Expenditure Review Committee, my name is Mike Cope President of the Ohio Coal Association. Thank you for allowing me to testify today in support of language in ORC 5739.02(B), which exempts supplies and equipment used directly in the exploration, production and extraction of Ohio coal from the sales and use tax.

The Ohio Coal is just beginning to recover after eight years of a relentless “War on Coal” by the previous administration in Washington. These regulations were designed to make coal production prohibitly expensive. Still today, fifty nine percent of Ohio’s electric energy is supplied by coal burning generation facilities. Our state has been fortunate to have low electric costs needed by heavy industry especially the manufacturing Industry to remain competitive.

Coal extraction whether it be above ground or underground requires a great deal of heavy equipment for earth moving. Any tax levied on the purchase of new equipment would be devastating to our recovering industry. State policy that could increase the cost of coal mining could translate to higher electricity bills for Ohio’s consumers. A tax of this nature would be regressive and harmful to our Industry.

Thank you Chairman Oelslager for allowing me to testify today. For decades this tax exemption has benefited mining companies throughout Ohio, creating well paying jobs, and providing affordable energy to the people of this state. We urge the Committee’s continued support and I would be happy to answer any questions at this time.



*Working together for Ohio farmers to advance
agriculture and strengthen our communities.*

**Ohio Farm Bureau Federation
Testimony on the Agricultural Sales Tax Exemption and
Agricultural Land Tile and Portable Grain Bins
Before the Tax Expenditure Review Committee
Tony Seegers, Director of State Policy
April 25, 2018**

Chairman Oelslager, members of the Tax Expenditure Review Committee, thank you for the opportunity today to provide testimony on behalf of the Ohio Farm Bureau and its members. We appreciate the thoughtful review of tax expenditures the committee is conducting. Farm Bureau shares the goal of ensuring Ohio is as competitive as possible. This includes keeping our tax code from being seen as a deterrent to success and economic viability.

Agriculture's sales tax exemption is a critical component to creating a business environment in Ohio that allows agriculture to produce the food we all consume. The exemption is narrowly defined, and serves to uphold the objective that a sales tax is not meant to be levied on a product's input or production components.

The application of sales tax to input costs of a capital intensive, low profit industry such as agriculture would have significant and severe consequences. Farm Bureau strongly believes the sales tax exemption must be preserved.

When you look at agriculture in our state, it's easy to associate recent historically-high commodity prices and increasing yields with good times for Ohio's farmers. However, as we have been reminded, the commodity market can be a volatile place, subject to large swings in prices. Those high commodity prices, which peaked in 2012, have since tumbled. Farm income is projected to be at its lowest levels in 12 years.

This slide in income is one thing, but cost of inputs for farm operations is an even bigger concern to many farmers across the state. If you don't farm, you may not think about all the input costs that farmers incur in order to produce the food we eat. But the fact is, agriculture is a highly capital intensive industry with significantly low profit margins. Many of our farmers are simply battling to break even.

High production costs are a major driver of narrow profit margins in agriculture. To demonstrate how application of the sales tax input cost would impact production, we have provided the model below. These statistics are based on statewide average costs compiled by The Ohio State University's Department of Agriculture, Environmental and Development Economics. They are based on 2000 acres of corn production. As you will see, for every 1,000 acres of corn produced, *application of the sales tax equates to nearly \$26,510 of cost to the farmer* in addition to the \$417,130 cost of production.



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agriculture and strengthen our communities.*

Variable Costs		Per Acre Cost	7.25% Sales Tax Per Acre
Seed (kernels)3		\$116.88	\$8.47
Fertilizer	Starter Fertilizer	\$0.00	\$0.00
	N (lbs.)	\$93.63	\$6.78
	P2O5(lbs)	\$35.86	\$2.59
	K2O(lbs)	\$15.59	\$1.13
	Lime(ton)	\$6.25	\$0.45
Chemicals	Herbicide	\$56.08	\$4.06
	Fungicide	\$0.00	\$0.00
	Insecticide	\$0.00	\$0.00
Drying (Fuel & Electric)		\$23.10	\$0.00
Trucking - Fuel Only		\$2.89	\$0.00
Fuel, Oil, Grease		\$10.07	\$0.73
Repairs		\$26.78	\$1.94
Crop Insurance		\$15.00	\$0.00
Miscellaneous		\$5.00	\$0.36
Int. on Oper. Cap.		\$10.00	\$0.00
Hired Labor		\$0.00	\$0.00
Total Per Acre		\$417.13	\$26.51

Machinery	Cost
37 ft. Chisel Plow	\$50,500
60 ft. Field Cultivator	\$75,500
Boom Sprayer, Self Prop.	\$242,500
16 Row Planter	\$105,500
Combine 440 HP	\$360,000
Corn Head 8 Row	\$59,000
Anhydrous Applic. 32.5'	\$21,000
Fertilizer Spreader	\$12,000
2 Semi Tractor/Trailers**	\$70,000
Grain Cart	\$50,500
360 HP Tractor	\$274,000
310 HP Tractor	\$266,000
Total	\$1,586,500
7.25% Sales Tax	\$115,021.25



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agriculture and strengthen our communities.*

While it would be easy to tell you applying the sales tax to agricultural inputs would be passed on to consumers in the form of higher food costs, I can't use that scare tactic. We can't play that card because it simply isn't true -at least not immediately. For farmers, the reality is even more damaging. Because prices are dictated by commodity exchanges and global demand, increased costs associated with applying sales tax to inputs will largely be eaten by farmers. Considering the profit margins we operate on, one can't help to think this would very likely drive some farms out of business.

Getting food from field to fork requires growers, commodity handlers, food producers and logistics to connect all of those processes. Another important merit of the exemption is that it ensures compliance with the intent of the sales tax, which is to tax consumption. If you think about all the stops that food makes on its way through the production process, the impact of compounding tax is also a real concern.

Finally, the exemption is narrowly defined. It is very difficult to abuse as implemented and meets the legislative intent under which it was created. It is structured so that the only items purchased are those for use in the production of agricultural goods. The use of this exemption is strictly enforced. Farmers must provide a properly completed exemption certificate to their vendor and the vendor must retain the certificate as proof of the nontaxable sale. It is the obligation of the farmer to prove the purchases are being used directly in the production of a product for sale. Items that are exempt include seeds, fertilizers, pesticides, field tiles, portable grain bins, tractors, plows and combines. The exemption does not include almost all motor vehicles licensed to operate on the highway, lawn mowers and items used to maintain fields not in production.

The sales tax exemption is a vitally important component of Ohio's current tax code. It provides guards against compounding tax on food production and recognizes input costs for farms are not end consumption. It is prescriptive, and Ohio regulations provide appropriate levels of accountability to prevent abuse. Farm Bureau urges the committee and the legislature to continue its recognition of these benefits and preserve Ohio's agricultural sales tax exemption.

Thank you again Chairman Oelslager and members of the committee for the opportunity to present testimony on behalf of Farm Bureau and our members. I will be happy to answer any questions you may have.

Ohio Senate
Tax Expenditure Review Committee

Senator Scott Oelslager, Chair

May 9, 2018

Testimony Given by:
Mark Donaghy, Chief Executive Officer
Greater Dayton Regional Transit Authority
Dayton, Ohio

Mr. Chairman and members of the Committee:

My name is Mark Donaghy, Chief Executive Officer of the Greater Dayton Regional Transit Authority (RTA). RTA is the regional public transportation provider for the Dayton Region including Montgomery and western Greene Counties. RTA provides fixed-route bus service as well as demand responsive services for people with mobility impairments across the region. We carry more than 10 million passengers each year and today more than 30,000 will board our buses. As is the case with most urban transit systems in Ohio, 2/3rds of RTA passengers are riding the bus to access a job, often entry level in retail, logistics or the various medical fields. Without our services these customers would lose their jobs and regional employers would face shortages of manpower that would be devastating.

I speak before you today having spent the last 42 years in public and private transportation operations, the last 12 years in Dayton. Never before have our challenges been so great. In my 12 years in Dayton I have been forced to reduce services to the public 3 times and raise fares as well. Today we operate about 25% less service than when I arrived. It is becoming impossible to serve new employment locations given the decline in revenue from our dedicated local funding source, the county sales tax.

Since the year 2000, state support for transit in Ohio has declined more than 75%. Urban systems no longer receive any support for the operating budgets, including the elimination of subsidies for the reduced fare programs for older adults and people with mobility impairments. State funding today is limited to capital projects such as bus replacement. As a result RTA's across the state have been forced to rely more on local and federal sources of funds and in some cases seeking new local taxes to fill the gap. The recent decision to leave RTA's and counties out of the solution for the MCO sales tax reduction will cost my agency over \$4.5 million annually. We had to implement another round of cuts and fare increases in February of this year and will need to address the entire shortfall for 2019.

With a rebounding economy there are new demands for service in the north, south and eastern portions of our region as well as downtown. We simply cannot meet these demands, especially in the areas of highest job growth for logistics in northern Montgomery County and retail across the region. As economic development teams in the individual jurisdictions as well as the Dayton Development Coalition work hard to attract new investment in our region they can no longer rely on RTA to help them win competitions with neighboring states.

Today I respectfully ask your committee to insure a thoughtful and detailed evaluation of each tax break brought before it be made prior to any action being taken including consideration of the adverse effects that will result to state and local government revenues as well as those for public agencies such as ours. The unintended consequence in this case may well be slowing Ohio's progress toward building a 21st century economy that our children and theirs desperately need.

I would be happy to answer any questions that you may have.

I thank you for the opportunity to speak with you today.



THE OHIO AUTOMOBILE DEALERS ASSOCIATION

Testimony before the Tax Expenditure Review Committee

Joe Cannon, Vice President, Government Relations

May 9, 2018

Good morning Mr. Chairman and members of the committee. On behalf of our over 830 franchised motor vehicle dealers, I appreciate the opportunity to come before you today. As a reminder, our members employ close to 50,000 people in Ohio, collect over \$1 billion in sales tax on behalf of the state, and pay a considerable amount of commercial activity and other business-related taxes.

I know we are all pleased that the auto sales tax collection numbers are solid (April numbers came in 13% over estimates). And I think it's safe to say we all want our sales, as well as our service and parts business, to continue to remain strong, which is why we are here today. Ohio's tax code contains a number of provisions which benefit consumers when purchasing vehicles or parts and service work. Those provisions need to remain in place for our industry to continue to move forward.

Two of those provisions on today's agenda include:

1) Property used to fulfill a warranty or service contract

Parts and labor used to fulfill a warranty that is provided as part of the price of tangible personal property sold (in our case a vehicle) are exempt from sales and

use tax. In addition, parts and labor used to fulfill a maintenance or service contract in which the vendor of such warranty or contract agrees to repair or maintain the consumer's tangible personal property, are exempt from tax, with the exception of any deductible paid by the consumer at the time of repair.

These exemptions exist because consumers have already paid tax at the time of sale of the vehicle or the service contract— asking them to pay tax on warranty or service contract work would constitute double taxation and would result in consumers seeking repair work across state lines, particularly consumers located along Ohio's borders. Consumers who purchase new vehicles with warranties and used vehicles with service contracts do so with the understanding that repairs will be paid for by a third party, such as a manufacturer. The cost of the repairs is built into the price paid up front.

We urge you to retain this important consumer benefit.

2) Motor vehicles sold in Ohio for use out of state

For years consumers entering Ohio to purchase vehicles were not subject to Ohio sales tax. This made Ohio very appealing to purchase vehicles. Under a previous Administration and in response to efforts in some states, there was a pursuit to require all consumers entering Ohio to pay Ohio sales tax on vehicle purchases, which would have negatively impacted consumers and our sales. In response, we worked with the legislature and the Department of Taxation to 'neutralize' tax in the sales process for non-resident consumers – if your state is taxing Ohioans, then Ohio will tax you, as long as the home state gives credit for tax paid in Ohio. While we preferred the old law, the current reciprocity effort has worked well for both consumers and our industry for years.

We urge you to retain this important consumer benefit.

Thank you for the opportunity to testify. I will be happy to answer any questions.



**Tax Expenditure Review Committee
Testimony Concerning Motor Vehicles Sold for Use Outside Ohio
Jason E. Warner, Greater Ohio Policy Center
Wednesday, May 9, 2018**

Chairman Oelslager and Members of the Tax Expenditure Review Committee, thank you for the opportunity to provide written testimony concerning Department of Tax Code 1.15 – Motor vehicles sold in Ohio for use outside the state (ORC 5739.02 (B)(23)).

My name is Jason Warner and I am the Manager of Government Affairs at the Greater Ohio Policy Center (GOPC). Greater Ohio is a nonprofit nonpartisan organization that is valued for its data-driven research. Our mission is to champion revitalization in Ohio to create economically competitive communities. It is with this mission in mind that Greater Ohio expresses insights on this particular section of the revised code and ways in which it could be improved to support the State of Ohio.

GOPC has for some time been looking into ways to strengthen and support transportation, and in particular public transportation, in Ohio. Currently, state spending for public transportation has been reduced to levels not seen since the early 1980's. This is the end result of repeated cut in GRF funding over the course of the past 16 years. In order to boost support for public transit, it is necessary for the state to begin to look at innovative alternatives to increase revenues. One option is to eliminate or revise the exemption on out of state automobile sales.

Currently, motor vehicle dealers are only required to collect sales tax on sales of motor vehicles to nonresidents who will remove the vehicle to one of seven states – Arizona, California, Florida, Indiana, Massachusetts, Michigan and South Carolina. Sales of motor vehicles to all other states are exempted from the sales tax. The amount of sales tax collected on sales of motor vehicles to Nonresidents who will remove the vehicle purchased to any of the above seven states is the lesser of the sales tax due to Ohio, or the amount of sales tax the nonresident would pay in the state of titling, registration or use. The state also imposes a 6% sales tax rate on vehicles sold to nonresidents who remove the vehicle to a foreign country (except Canada).

The exemption was put into place upon the notion that the purchaser will pay taxes in their home state when the vehicle is registered and titled in the home state. The seven states noted above, provide a credit to consumers when they title the vehicles in their states. This is not the case for all states however. As an example, the State of Florida advises consumers that Arkansas, Mississippi and West Virginia impose a sales tax on motor vehicles but do not allow a credit for taxes paid in Florida. Therefore, as an example, someone who purchases a vehicle in Florida will pay the Mississippi sales tax rate to Florida and then pay the same sales tax rate again in Mississippi when they register and title the vehicle there.¹

Elimination of the exemption will allow Ohio to begin receiving benefit from the service Ohio dealers are providing and capture revenue. The application of the same 6% sales tax rate as Ohio imposes on vehicles sold for use in a foreign country would provide the state with

additional revenue that it is not currently capturing. It would also permit for uniformity in the application by not including the local piggy-pack option since the vehicle will not be titled in that county. Revenues would be retained by the state for additional GRF funding that support priority funding projects in the state.

Thank you again for providing GOPC with the opportunity to share our thoughts on this issue and for considering this request to close a tax loophole and provide more funding to support Ohio's diverse transportation system.

ⁱ https://revenue.law.floridarevenue.com/LawLibraryDocuments/2018/01/TIP-121577_TIP%2018A01-01%20FINAL%20RLL.pdf



Department of Taxation

Office of the Tax Commissioner
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(614) 466-2166 Fax (614) 466-7979
tax.ohio.gov

April 11, 2018

Senator Scott Oelslager
Senate Building
1 Capitol Square, 1st Floor
Columbus, OH 43215

Chairman Oelslager:

The Ohio Department of Taxation (ODT) has prepared an individual memorandum on each of the five expenditures being heard today in the Ohio Tax Expenditure Review Committee. Each memorandum contains an overview, statutory language, estimated expenditure amounts, links to guidance issued by ODT, and relevant illustrative court guidance. Below you will find an explanation of the methodology used for the estimates found in the Tax Expenditure Report and in the attached memoranda.

Section 5703.48 of the Ohio Revised Code (R.C.), enacted in 1987, requires the Tax Commissioner to produce a Tax Expenditure Report no later than November 1 of each even-numbered year. R.C. 107.03(F) requires the Governor to submit the report to the Ohio General Assembly as an appendix to the biennial budget.

In accordance with R.C. 5703.48, the Tax Expenditure Report provides a description of each tax expenditure, an estimate of the dollars unavailable (or "revenue foregone") to the General Revenue Fund (GRF) because of the tax expenditure, and, in comparative form, the amount of revenues that were unavailable to the GRF in the immediately preceding biennium. The estimates reflect the amount of financial benefit provided to those persons or activities by the tax expenditure, adjusted to reflect the GRF's share of the tax expenditure. No further adjustments are made to the estimates, except where another tax expenditure is also available to the taxpayer for the same item or activity.

There are other methods to quantify tax expenditures including estimating revenues that would be gained if the tax expenditure were repealed. The tax expenditures in the attached memoranda are not quantified using methods other than "revenue foregone." Estimates produced under a "revenue gain from repeal" concept encompass an extensive array of (primarily downward) adjustments. For one thing, "revenue gain from repeal" estimates require assumptions to be made about the tax expenditure repeal date. There may be important cash flow consequences

associated with assumed repeal dates. Another potentially significant adjustment involves taxpayer behavioral responses to the repealed tax expenditure. Economic activity would likely be affected to some degree as tax is newly applied to the previously tax-exempt item or activity. Furthermore, one may expect at least some short-term taxpayer non-compliance with the newly-taxed activity.

The figures in the attached memoranda reflect reasonable estimates (rounded to the nearest \$100,000 for those estimates of \$1 million or more) of the tax benefits realized by recipients of the tax expenditures – what has been referred to as the “revenue foregone.” Additionally, while this report provides totals summing the expenditures, the totals do not represent the revenue that would be gained by the GRF from repealing all tax expenditures simultaneously.

The accuracy of the estimates varies with the source of data and applicability of the data to the tax expenditure provision. Data emanating from tax returns filed with ODT, as well as other information generated by ODT, is used whenever possible. However, in many instances, ODT relies on external sources of data that may not be as reliable as those from the agency. Governmental sources include data produced by other State of Ohio agencies, the federal government (e.g., the Internal Revenue Service, the U.S. Census Bureau, other state governments, and Ohio’s local governments. Other data sources include, but are not limited to, business information service providers, academic research, and non-profit

In the attached memoranda, we have included the estimated value of the tax expenditures as given in the Tax Expenditure Report for Fiscal Years 2018-2019. ODT is currently working on the upcoming Tax Expenditure Report for Fiscal Years 2020-2021, and we have provided preliminary values where available.

Sincerely,



Joseph W. Testa
Tax Commissioner



Mark Flanders
Director

OHIO LEGISLATIVE SERVICE COMMISSION

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Memorandum

R-132-3221

To: The Honorable Scott Oelslager
Ohio Senate

From: Jean J. Botozogno, Principal Economist *JJB*

Date: April 10, 2018

Subject: Tax Expenditure Review Committee, second meeting

You requested that LSC staff provide background information on the first five sales tax expenditures listed in the Department of Taxation's Tax Expenditure Report. This memorandum provides background information on when each tax break was created and its fiscal cost.

One of the committee's charges, as specified in Am. Sub. H.B. 9 of the 131st General Assembly, is to determine whether each tax expenditure successfully accomplishes its objectives. We are unable to state why a tax exemption was enacted or the extent to which it is meeting its original intent because language in the Ohio Revised Code enacting tax exemptions in general does not include intent or specific measurable goals, though it may occur in specific instances. Thus, the lack of specific metrics in tax law precludes an assessment of the success of most tax expenditures. However, LSC is able to provide the year of enactment and an estimate of the cost of the requested expenditures. Those are included in the table below. The sales tax was originally enacted by H.B. 134 of the 90th General Assembly. Information in the column of the table labeled "Enactment" includes major legislative changes since enactment, but may not identify every legislative change since enactment.

Estimates of the fiscal impact of each tax expenditure on the state GRF are from the Tax Expenditure Report dated January 2017. This report is produced by the Department of Taxation in connection with the introduction of the executive budget every two years. The Department of Taxation does not, however, include revenue losses from permissive county and transit authorities' sales and use taxes. Those local sales

taxes share the same sales tax base as the state, so state tax expenditures also reduce permissive local sales taxes. I have estimated the fiscal cost to counties and transit authorities at about 24.5% of the state's revenue loss. Losses in the table are in millions of dollars. It may be worth noting that exemption 1.04, for tangible personal property used primarily in manufacturing, is the largest single tax expenditure listed in the Tax Expenditure Report.

I hope this memorandum has been helpful. If you have additional questions, please call me at (614) 644-7758.

Code Used in Tax Expenditure Report	Description	Authority	Enactment	Estimated Revenue Loss (\$ in millions)			
				State GRF		Counties and Transit Authorities	
				FY 2018	FY 2019	FY 2018	FY 2019
1.01	Sales to churches and certain other nonprofit organizations	R.C. 5739.02(B)(12)	H.B. 134, 90th G.A., (1934) (enacted the sales tax)	\$600.1	\$614.2	\$147.0	\$150.5
1.02	Sales to the state, any of its political subdivisions, and to certain other states	R.C. 5739.02(B)(1)	H.B. 134, 90th G.A., (1934) H.B. 715, 120th G.A., (1994)	\$122.9	\$122.9	\$30.1	\$30.1
1.03	Sales by churches and certain types of nonprofit organizations	R.C. 5739.02(B)(9)	H.B. 374, 104th G.A., (1962)	\$45.7	\$47.6	\$11.2	\$11.7
1.04	Tangible personal property used primarily in manufacturing tangible personal property	R.C. 5739.02(B)(42)(g)	H.B. 121, 91st G.A., (1935) H.B. 531, 118th G.A., (1990) (codified various case law)	\$2,210.7	\$2,299.9	\$541.6	\$563.5
1.05	Packaging and packaging equipment	R.C. 5739.02(B)(15)	H.B. 374, 104th G.A., (1962)	\$255.2	\$264.7	\$62.5	\$64.9



Tax & Budget

Testimony to the Tax Expenditure Review Committee

Wendy Patton and Zach Schiller

Good morning, Chairman Oelslager and members of the committee. I am Wendy Patton, senior project director at Policy Matters Ohio, a nonprofit, nonpartisan research institute with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for this opportunity to testify today. We are pleased to see the implementation of House Bill 9 of the 131st General Assembly, which established a formal review of Ohio's \$9 billion in annual tax expenditures, commonly known as tax breaks.

Today's review includes some of the largest items among Ohio's 129 tax expenditures. The manufacturing exemption alone represents a use of state resources that is greater than annual funding for the Ohio Departments of Rehabilitation and Correction and Youth Services combined.¹ The 15 items we were told are on the agenda for evaluation over the next five weeks represent more [Ohio tax dollars foregone](#) than are spent in the primary Medicaid budget line (651525).² The [growth rate](#) of Ohio's tax expenditures is estimated to be 8.3 percent in the 2018-19 budget period compared to the prior, two-year budget; by comparison, the General Revenue Fund will grow by 2.1 percent. Three of the five tax breaks you are evaluating today are among the top 10 in terms of the largest dollar growth over that time period (the sales tax exemptions for manufacturing machinery and equipment, sales to churches and non-profits and packaging materials and equipment).

House Bill 9 provided for the Tax Expenditure Review Committee to direct the Legislative Service Commission (LSC) in assisting it. Given the enormous size, long history and complexity of the tax expenditures under review today, a thorough analysis should have been requested from LSC and provided in advance to the public, so Ohioans could comment more knowledgeably on this huge use of state resources. House Bill 9 outlined specific criteria for the committee to consider in deciding whether each expenditure should be continued, repealed, modified or scheduled for further review. The notice for this meeting asked the public to address the criteria. The lack of prior and published evaluation makes it difficult for both the public and lawmakers to make the most effective use of this hearing.

Other states provide detailed evaluations for this work. [Washington State](#), a leader in tax break oversight, releases an annual overview of all state and local tax expenditures and their impact on beneficiaries and state revenues by tax and by sector. The Indiana Legislative Services Agency's [Incentive Review Team](#) of eight, with the assistance of eight additional analysts named as authors, takes a deep dive into business incentives and recommends modifications. So does the [Maryland Department of Budget and Management](#), which last November found a biotech incentive ineffective and recommended improvement through coordination with related programs, better targeting and a reduction of administrative burden. Virginia's evaluation of the state's sales-tax exemption for [non-profits](#) included a survey of the

¹ Total state expenditure (excluding federal funds) for the Ohio Department of Rehabilitation and Correction in 2018 is \$1.8 billion and funding for the Ohio Department of Youth Services (excluding federal) is \$216.5 million. The manufacturing exemption is \$2.2 billion in 2018.

² Total state expenditure (net of federal dollars) in the 651525 agency line item, the primary Medicaid line item in the General Revenue Fund, is \$3.7 billion in 2018. The estimate of revenue foregone in 2018 of because of the five items to be considered today totals \$3.2 billion in 2018; for the first 15 items of the tax expenditure report, it is \$4.5 billion.

tax break in other states and found in some places it is far narrower than in others. Texas requires an [incidence study](#) of each tax break, which allows lawmakers and the public to understand the income levels of beneficiaries for major tax breaks, and how tax breaks impact various sectors.

Understanding each tax expenditure should begin with data on how many entities are benefiting from it. A number of other states provide such information. For instance, [California's tax expenditure report disclosed](#) that 8,099 returns in 2015-16 claimed its sales and use tax exemption for manufacturing and research and development equipment and leases. In response to a query from Policy Matters Ohio, the Ohio Department of Taxation told us that it does not have data to identify how many taxpayers have utilized the manufacturing exemption or others on today's agenda. While purchasers of many items excluded from the sales tax are required to fill out certificates to claim an exemption, these are designed to protect the vendors collecting the tax, and the taxation department only sees them if it is conducting an audit. The committee should ask the department and the LSC how data on the number of entities receiving exemptions can be collected, or estimated in limited cases, and recommend legislation to ensure that.

In conducting your review, the committee should look into more detailed questions (Policy Matters recommended some in a [September report](#)). For instance, in examining whether a tax break "promotes or would promote growth or retention of high-wage jobs in the state," one of the factors permitted under the law, the committee should request data on wage levels for employees at recipient companies, and whether they are paid enough that they and the family members do not need public benefits such as Medicaid and food aid. In considering possible modifications, the committee should consider whether guard rails should be added to ensure that recipients are paying taxes, complying with state laws and providing information that allows for appropriate review of the tax break. In Virginia, for instance, the law that established the sales-tax exemption for nonprofit organizations required, among other things, that they be in compliance with state solicitation laws, have administrative costs that do not exceed 40 percent of annual gross receipts, and provide an estimate for their total taxable purchases.

Over time, individual tax breaks are changed, broadened, and extended through the courts and the General Assembly. Tax expenditures are not a normative and structural part of every state's tax code, but benefits created through the political process – passed into law – and changed the same way, over time. For example, in some places, the manufacturing exemption is partial and does not cover the full tax, while in others, it is only provided to new or expanding businesses. While the vast majority of states with a sales tax offer some kind of a manufacturing exemption, its form and effect stems from a political process that varies from state to state and over time. Lawmakers need to ensure that it and the others now under review remain appropriate, true to their purpose and effective for Ohio's current economy.

The state has cut funding for libraries and local governments and underfunded early childhood education, public transit and other services relative to need. Yet tax expenditures – which have every bit as much impact on the state budget – have continued to grow and proliferate. Beyond a review of specific tax expenditures, the Tax Expenditure Review Committee should look to cut back on tax breaks. As the tax counsel to the Ohio Manufacturers' Association told the [2020 Tax Policy Commission](#) two years ago, "To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged."

Some may come before you today seeking to expand exemptions. While like you, we will listen with an open mind, we suggest that before making such recommendations, you weigh carefully if this is the best purpose that Ohio's tax dollars can be put toward given the challenges that the state faces. The existing manufacturing exemption does not exempt all business inputs from the sales and use tax; if so, there would be no need for the Ohio Administrative Code to outline 64 different examples of what is and isn't taxable under the exemption. This is a \$2.2 billion dollar program. Committee

members should understand all of the elements of this tax exemption, who they serve, and changes over time, to ensure they make sense in today's economy. This is how you look at expenditures in the budget. There is no reason to treat tax expenditures differently.

Tax expenditures represent an invisible entitlement that persists over time. It is the job of the Tax Expenditure Review Committee to bring transparency and accountability to this huge use of state resources. Transparency requires an analysis to inform the public that goes beyond testimony of witnesses, some of whom may be beneficiaries. We urge you to provide better information for the next meetings and continue to improve the tools you need to make long-overdue decisions about continuing, repealing or modifying Ohio's \$9 billion in tax expenditures.



Tax & Budget

Testimony to the Tax Expenditure Review Committee
Zach Schiller and Wendy Patton

Good morning, Chairman Oelslager and members of the committee. I am Zach Schiller, research director at Policy Matters Ohio, a nonprofit, nonpartisan research institute with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for this opportunity to testify today. As we have said earlier, we are pleased to see the implementation of House Bill 9 of the 131st General Assembly, which established a formal review of Ohio's \$9 billion in annual tax expenditures, commonly known as tax breaks.

We have some specific points about the sales-tax breaks you are hearing testimony on today. However, in addition to the recommendations we made at your April 11 hearing, we suggest there are broader issues you should consider that go beyond the specifics of each tax break being reviewed at today's hearing or the others you have.

House Bill 9, the statute that created this committee, provided that any bill proposing to enact or modify a tax expenditure should include a statement explaining the objectives and the sponsor's intent. Legislative history and sponsor's intent are both cited in the statute as among the things the committee may consider as part of reviewing the public policy objectives that might support the tax expenditure. While the LSC has said that it is unable to state why a tax exemption was enacted, or the extent to which it is meeting its original intent, that does not remove the need for the committee to examine those questions. The purpose of many tax expenditures may appear self-evident, but in others it is not. Every tax expenditure should have a specific, known, valid purpose or it should not exist. The committee should adopt a mechanism for determining the explicit purpose and if one cannot be ascertained, you should recommend elimination.

We were glad to see the LSC estimates of the revenue losses to counties and transit authorities for the first five sales-tax breaks on your list. Just those five amounted to a total of \$792.4 million for the current fiscal year. You should ask the Department of Taxation to break that down for each sales tax exemption by county and transit agency. Residents and local officials should watch these hearings with a clear understanding of how state tax breaks affect local budgets as well.

Some tax expenditures, such as the LLC loophole (otherwise known as the passthrough tax break for business owners), are unproductive and should be scrapped. We hope that you will see fit to recommend such reductions. But the committee also should make recommendations on how the review of tax expenditures should be integrated into the regular biennial budget process. Beyond providing a copy of your reports to the governor, legislative leaders and the public, you should provide alternatives on capping or otherwise reducing tax expenditures. For instance, last year, when the General Assembly was forced to shave hundreds of millions of dollars from the 2018-2019 biennial state budget, the reduction of tax expenditures should have figured prominently in the discussion. Spending is spending whether it is through the tax code or the budget; tax expenditures should not be off limits when spending must be cut. The committee should make recommendations on how to best accomplish such cuts, apart from changes you recommend to specific tax breaks.

The committee also should make recommendations on reporting requirements for businesses receiving the benefit of tax expenditures. The law provides that, "For each expenditure reviewed, the committee may recommend accountability standards for the future review of the expenditure." We previously urged you to document where feasible the number, wage levels and compliance with state law of firms benefitting from each individual tax break. The state should also take other steps to ensure that companies with tax breaks are benefitting Ohio and Ohioans. Companies should have to

disclose major layoffs, as already required in WARN notices; should disclose production shifts to foreign locations; should explain whether their actions have made any employees eligible for Trade Adjustment Assistance; and should describe impact on all affected communities if a plant or operation benefitting from a tax break is being moved from one location in the state to another.

Tax expenditures aimed at economic development represent only one of the state's tools. While the current budget provides for a bit more transparency, we still lack a full accounting of the state's investments and policies promoting economic development. These range from grants and loans to road-building and electricity discounts. All of these should be brought together in a unified economic development budget so the public and lawmakers can understand what is working and what is not.

Regarding the five sales-tax breaks that you are hearing testimony on today:

- 1.06, Sales of tangible personal property to electricity providers. This tax break was established in 2000 in connection with an overhaul of Ohio's regulation of the electricity market. In light of the major upheaval and possible changes in that industry, we recommend that you schedule this tax expenditure for future review.
- 1.07, Tangible personal property used or consumed in agriculture and mining. This section of the law would be modified under House Bill 430, which has been approved by the House and now is in the Senate Ways & Means Committee. Under current law, companies that produce oil and gas in Ohio already enjoy an exemption from the sales tax for purchase of tangible personal property "directly used in production" of oil and gas. House Bill 430 removes the qualification that that property be used "directly" in such production. This is a key definition long used in other sales tax exemptions, like the manufacturing tax exemption. Governor Kasich vetoed a similar bill that would have broadened the tax exemption for the oil and gas industry, warning that it would create an uneven playing field, and other industries would also seek to broaden definitions in similar exemptions – like some of the ones you are examining today and the ones you heard about last week. Commissioner Testa repeated this caution in the hearing on House Bill 430 last week. This illustrates how the General Assembly broadens tax breaks over time.
- 1.08, Agriculture land tile and portable grain bins. This exemption, approved in 1985, covers what would otherwise be considered real estate as opposed to tangible personal property, and not eligible for the agriculture exemption. Thus, it represented a broadening of the exemption.
- 1.09 and 1.10, These two exemptions, covering tangible personal property used to produce printed materials and in storing, preparing and serving food, each overlap with the manufacturing exemption. It is our understanding that these exemptions were part of the tax exemption for tangible personal property related to direct retail sales, which is no longer in place. As part of your review, you should examine that history.

As this shows, a careful analysis of each tax expenditure, including how it came to be and how it fits into other existing tax expenditures, should be a part of the committee's work. This includes tax expenditures that have been broadened since they were first enacted. The General Assembly should appropriate funds to dedicate staff to this undertaking.

Even as this committee has begun its work, tax breaks and proposals for additional ones have been proliferating. These have included expanding the income-tax deduction for business owners; a \$45 million rural jobs credit; a sales-tax exemption for prescription eyeglasses; expansion of college savings accounts to cover tuition at private K-12 schools and a permanent sales-tax holiday. Bills now under active consideration include not only the expansion of the sales-tax exemption for the oil and gas industry, but a gigantic increase in the movie tax credit and a new "transformational mixed use development credit" that could cost \$50 million for a single Cleveland project.

Before approving new tax breaks for oil and gas companies, insurers, movie producers and others, the General Assembly should make sure that its mechanism for reviewing existing ones is working. Adding new special-interest breaks is ill-conceived when this committee has barely started looking at the tax exemptions and credits we have now. When the

General Assembly thinks about giving away tens of millions for new business tax breaks, it should consider whether we have the money to pay for them, and whether the funds would be better spent educating young Ohioans, cutting our high infant-mortality rate, or fighting the opioid epidemic.

Ultimately, the General Assembly should add sunsets to all of Ohio's tax expenditures so that each would require regular approval. Tax expenditures should not be continued indefinitely any more than the other spending you approve in the capital, transportation and operating budgets.

Thank you for this opportunity to testify. I will be glad to answer questions.



Tax & Budget

Testimony to the Tax Expenditure Review Committee

Wendy Patton

Good morning, Chairman Oelslager and members of the committee. I am Wendy Patton, senior project director at Policy Matters Ohio, a nonprofit, nonpartisan research institute with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for this opportunity to testify today.

Today's review includes two of Ohio's top 20 largest tax breaks of the state's 129 tax expenditures. The tax exemption on building and construction materials is forecast to be among the top 20 in growth in size during this budget period. Altogether, the items you consider today represent more than \$460 million in annual forgone state revenues.

We raise questions about three items today: the tax break for egg farms, the tax break on construction materials and the tax break for warranties. In addition, we point out that advocates and stakeholders have failed to speak up in favor of some of the tax expenditures you have considered to-date. These tax breaks in particular should be closely scrutinized for reduction or elimination. As we stated in previous testimony, every tax expenditure should have a specific, valid, known purpose or it should not exist.

Tax breaks where there has been bad behavior: Egg production exemption

Egg producers have their own tax exemption, which is somewhat broader than the exemption that covers other agricultural producers. It includes some transport equipment used at the place of production as well as packaging materials and equipment. Why does or should this industry have a separate and more generous tax exemption than the break other agricultural producers?

One big egg farmer has been investigated for using slave labor – human trafficking – in plants. The Columbus Dispatch described the investigation on April 23, noting: "Frontline's investigation focuses on a group of Guatemalan teens who were smuggled into the country, then forced to work long hours in filthy conditions at area chicken farms, live in squalid trailers in Marion County, and have a significant portion of their paychecks directed to the individuals who arranged the trips and jobs." The article notes that the contract for this illegal labor arrangement was with Trillium Farms, which produces eggs. Several people who worked for the contractor have been convicted and imprisoned; Trillium, which has ended its contract with the individuals involved and cooperated with the investigation, claimed it was unaware of the trafficking and has not been charged.

Ohio's egg farms also have a troublesome environmental record. In 2004, [Buckeye Egg Farms](#) paid \$880,598 in fines for pollution at their Ohio facilities. They sold the Ohio facilities to Ohio Fresh Eggs. In 2011, Attorney General Mike DeWine reached a \$635,000 settlement with [Ohio Fresh Eggs](#) for pollution and run-off poisoning central Ohio waters.

The Tax Expenditure Review Committee is the only group examining tax breaks for industries like this. House Bill 9 allows the committee to consider public policy objectives, including legislative history, sponsor intent, and effects on economic development, "high-wage jobs," and "community stabilization." We suggest this language allows you to consider business behavior affecting the community as well as whether jobs created are good jobs. In addition, the

statute allows consideration of state and local fiscal effects. The short- and long-term costs of pollution and of human trafficking should be part of the discussion surrounding this \$3.2 million tax break. Companies that don't maintain basic standards for their workers and the environment should not be eligible for tax breaks. While this tax break is smaller than others you are reviewing today, it is about equal to what it costs the Ohio EPA for response and investigation.

Tax breaks with mission creep: Building and construction materials

Lawmakers placed the exemption for building and construction materials in the tax code in 1959. It exempts construction materials used in building for the public sector. Over time, policymakers have added a number of other entities, too.

Not all states give a sales tax exemption of this type. Of the states (and District of Columbia) that have a sales tax, 12 states, including Ohio, impose the sales tax on building and construction materials but with broad exemptions for many types of organizations (see appendix for Ohio's exemptions); 31 have narrow exemptions, and 3 have no exemptions.¹

Today Ohio's exemption goes to building materials used in structures for public sector entities, religious, charitable, not-for profit, privatized and horticultural organizations. The exemption is granted for certain sports facilities and convention centers, scientific and technical entities, private schools and privatized transportation facilities, performance centers, hospitals and health care providers and family and factory farms. It grows as times and tastes change: In 2011 it was expanded to cover structures for captive deer, horses and fish farming.

The list of entities qualifying for building material exemptions has grown. Ohio's needs have also increased: more children need early education, colleges need to be more affordable, the opioid epidemic is growing and needs to be stopped. The committee should tighten up on who is eligible for this exemption so lawmakers can direct resources towards urgent needs for public investment.

Tax breaks that expand beyond their boundaries: Warranty

A sales tax exemption is provided for parts and labor purchased to make repairs on an item covered by a warranty. The premise is that sales tax is paid on the warranty itself when it is purchased by a consumer, and that sales tax then should cover all parts and labor purchased in repairs done under the warranty. If a dealer provides repairs beyond the period of the warranty for the purposes of goodwill, parts and labor continue to be exempted from the state sales tax.

Some states exempt the warranty itself at the time of sale; others tax the warranty. Some – like Indiana – have a different treatment of tangible personal property purchased under different types of warranty.

The Tax Expenditure Review Committee should examine more closely whether this exemption, and especially the "goodwill" extension, make sense in Ohio's economy. It costs the state \$53 million a year.

In sum, we bring these questions to your attention because this body, uniquely, has the right and ability to scrutinize these large programs of tax expenditures, update them, set guard rails, and make sure they are addressing Ohio's needs. To make such decisions, significant information is needed from the state, but also from stakeholders. As we have noted before, we need to know more about these expenditures, starting with the number of taxpayers who benefit from them. A number of tax breaks are broadening over time; overall, we need to understand when that reflects sound policy and when it amounts to a kind of "tax break mission creep." Overall, the committee should recommend cutbacks

¹ Multistate Corporate Tax Guide 2018, Volume II: Sales and Use Tax, "Construction contractors."

in tax breaks to provide revenue for needed services, and standards so that those tax breaks we do have support good jobs and strong communities.

Thank you for this opportunity to testify. I will be glad to take questions.

Appendix: Building and Construction Materials tax exemption

From Ohio Revised Code [5739.02 \(B\) 13](#):

- Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies;
- Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements;
- Building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;

- Building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section....Ohio Revised Code [5739.02 \(B\) 12](#) - Charitable purposes" means:
 - The relief of poverty;
 - The improvement of health through the alleviation of illness, disease, or injury;
 - The operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions;
 - The operation of a home for the aged, as defined in section [5701.13](#) of the Revised Code;
 - The operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station;
 - The operation of a nonprofit animal adoption service or a county humane society;
 - The promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum;
 - The operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school;
 - The operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;
 - The production of performances in music, dramatics, and the arts; or
 - The promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

- Building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;

- Building and construction materials sold for incorporation into the original construction of a sports facility under section [307.696](#) of the Revised Code;

- Building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

- Building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections [5501.70](#) to [5501.83](#) of the Revised Code; and,

- Until one calendar year after the construction of a convention center that qualifies for property tax exemption under section [5709.084](#) of the Revised Code is completed, building and construction materials and services sold

to a construction contractor for incorporation into the real property comprising that convention center; Such exemptions have been approved for facilities located in, and owned by:

- County with population of more than 1.2 million; convention center or land upon which the convention center is located is owned or leased by the county.
- Largest city in a county having a population between 700,000 and 900,000, owned by the city.
- County of greater than 1 million in population; owned by convention facilities authority:
- Largest city in a county having population of 235,000 to 300,000, owned by the city
- City owned in county with population of 500,000 to 600,000 owned by the city in which the facility is located

Dale Miller
19750 Ridgeland Ave.
Cleveland, OH 44135
May 4, 2018

Honorable Senator Scott Oeslager, Chairperson
Ohio Senate Tax Expenditure Review Council
Statehouse
Columbus, OH 43215

Dear Chairman Oeslager,

Thank you very much for the opportunity to present written testimony relevant to your work in reviewing Ohio's Tax Expenditures. My main point is to reinforce in your minds the severity of the reductions in state support for county and local government that have taken place. The Local Government Fund allocation to Cuyahoga County has declined from \$38,346,000 in the year 2000 to \$18,433,000 in 2017, a reduction of 52%. In addition, Cuyahoga County is experiencing an annual loss of \$27 million per year due to the loss of Medicaid MCO Sales Tax. Given that our annual General Fund Revenue is approximately \$375 million, these are very large reductions. Other changes, such as reductions in library funding and elimination of the Estate Tax have significantly impacted other levels of government. There is a great need to rebuild the state's relationships and financial support for its county and local government partners. Careful review and elimination or reduction of some of the state's tax expenditure would provide the alternative resources necessary to accomplish this.

While my primary focus is on tax expenditures generally, rather than individual items, my biggest concern is on the alternative treatment of LLCs. This provision is very expensive, creates unequal treatment of people in similar circumstances, and encourages proactive tax avoidance behavior. This provision must be seriously reviewed and eliminated or substantially reined in.

I do not believe that progress will be made in reducing tax expenditures by considering their elimination separately on a case-by-case basis. Each has a constituency that will vigorously defend it resulting in little chance of any action being taken. Therefore, I will suggest two general approaches that may be more productive.

The first would be to target a specific percentage reduction in tax expenditures. For example, even a 5% reduction would result in an annual savings of \$450 million. All of the tax expenditures would be ranked in terms of the benefits they provide, and the lowest 5% would be eliminated. If the 5% reduction exercise were repeated on an annual basis for a number of years, a meaningful reduction would be obtained.

The second strategy would be to include the tax expenditures in aggregate as a budget item. This way, the tax expenditures would have to compete against all of the other prospective expenditures. A particular \$100 million tax expenditure may have benefits, but how do they

compare with a \$100 million increase in funding for public schools or higher education? Particularly compelling in this regard was the testimony by Wendy Patton and Zach Schiller of Policy Matters Ohio that the cost of tax expenditures are expected to grow by 8.3% during SFY 2018-9 over the previous biennium, compared to an increase of only 2.1% in the General Revenue Fund. Even a consciously applied decision to constrain and reduce tax expenditures so that they only grew at the same rate as the GRF during the current biennium would have saved slightly over \$500 million per year. Tax expenditures have grown so wildly precisely because they are not forced to compete directly with other alternatives as to how the money could be spent. Forcing such competition to take place by incorporating tax expenditures into the budget process would be a good way to make ongoing progress on this issue, as opposed to a single-shot improvement.

I close by saying that the idea of reducing tax expenditures has received a lot of lip service in the past but very little action. However, I am encouraged by the creation of a standing committee on this subject. I urge you to take advantage of the opportunity provided by this committee to lead a positive change that is large and meaningful.

Sincerely yours,
Dale Miller
Cuyahoga County Council, District 2

May 9, 2018

Chair Oelslager and members of the Committee:

My name is Gail Long. I worked in the City of Cleveland for more than 40 years as a social worker, including serving as director of a settlement house before my retirement in 2006. I am appalled at the conditions I see around me – the houses that are unsafe for children because of their lead levels, the horrific number of infants dying before their first birthday, the service cuts in our underfunded public transit system, parents who can't afford day care for their children, the inadequate number of good-paying jobs with benefits even in what is supposed to be the longest period of job creation on record.

When is Ohio going to start investing what it should in its people? How high does college debt have to be, how many schools must lack a nurse, a counselor or a librarian? When will the State stop spiraling down to levels where we once thought only the southern States such as Mississippi or Arkansas would be when it comes to measurements in education, health outcomes and other programs that reflect critical investments in our citizenry?

Your committee is in an enviable position. You can recommend the elimination of special-interest tax breaks that cost our state revenue. By far the biggest is the loophole for owners of businesses like limited liability companies, which is costing us more than \$1 billion a year. Where are all the new jobs and businesses that this tax break was supposed to bring about? I testified on tax loopholes on September 12, 2013 in North Ridgeville. Rather than improve, the loophole situation has gotten worse. The LLC loophole was only instituted in 2013, and is in my opinion the most egregious. I am a taxpayer living on a fixed income. I gladly pay my taxes so that our State is a better place in which to live. However, there is something terribly wrong when people with far more resources than I have pay no taxes on the first \$250,000 of their income if it is classified as coming from an LLC.

I know this is the last scheduled meeting of this committee before your first report is due July 1. I hope you will reconsider that schedule, take testimony on the LLC loophole, and recommend its repeal in your report.

Thank you for the opportunity to submit my remarks.

Gail Long

Testimony for Tax Expenditure Review Committee
Gavin DeVore Leonard, One Ohio Now
May 9, 2018

I am here to testify in support of full and thorough review of tax expenditures in this process. I represent a coalition of over 100 health and human service, labor, and advocacy groups who seek to ensure there is adequate revenue to invest in the public services that make our communities stronger.

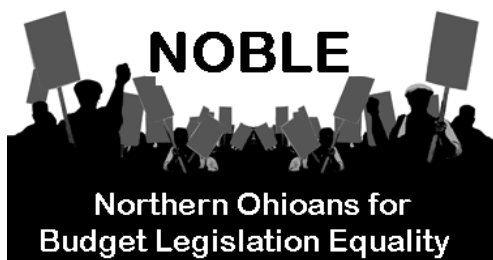
This committee represents the culmination of years of debate and hard work – across a range of political perspectives – toward the end of oversight in the tax expenditure arena. While many to most expenditures have a clear and important purpose, all of them require a thorough review. In this review process we must balance the needs of the state against the needs of a particular interests of a specific industry or group of people.

Ohio has a still-raging opioid epidemic, a rising price tag for higher education, significant infrastructure needs, and many more challenges. In far too many areas, we are struggling to keep up with the country in the basic metrics that make or break our short and long-term future here in the Buckeye State.

Review of tax expenditures, followed by eliminating or abolishing those that are particularly unfair or otherwise onerous, is a common sense process that can ensure we do not use revenues that could be well-placed in other areas toward the betterment of everyone in Ohio.

I urge you to take full advantage of this process.

Thank you for your time.



NOBLE/ORGANIZE! OHIO: (p) 216.651.2606 (f) 216.651.2633
www.organizeohio.org/NOBLE

Chairman Oelslager and members of the committee:

My name is Gloria Aron. I am speaking on behalf of the Northern Ohioans for Budget Legislation Equality (NOBLE). NOBLE is a coalition of individuals and organizations that works to bring the voices of low-income and working people to the State of Ohio's Biennium Budget process. We appreciate the opportunity to testify regarding the tax expenditures that the committee is reviewing.

We urge you to think through as you review these and other tax exemptions, credits and deductions: How worthy is each one compared to the other needs that could be met with the spending going toward this tax break? For that's what these tax breaks are: Spending, under another name. How critical is that spending compared to support needed for public transit, allowing people to go to their jobs, buy groceries or get to medical appointments? How critical is that spending compared to support for protective services for neglected and abused elderly, community based services for these same seniors or kinship care for children affected by the opioid crisis? How critical is that spending compared to access to mental health services, a fair and adequately funded public education, and affordable child care services for working parents?

Before you consider expansions of any tax expenditures, we suggest that you consider the alternative use of such monies. In fact, you should consider making cuts to exemptions and using the funds to bolster vital spending for human needs. Without revenue, Ohio cannot make progress it should to lift our standing among the 50 states in health outcomes, educational success, safe cities and other crucial measures.

Thank you very much for the opportunity to submit testimony on this important issue



THE BUCKEYE INSTITUTE

**Interested Party Written Testimony Submitted to
the Ohio Tax Expenditure Review Committee**

May 9, 2018

**Greg R. Lawson, Research Fellow
The Buckeye Institute**

Chairman Oelslager and members of the Tax Expenditure Review Committee, thank you for the opportunity to submit written testimony today.

My name is Greg R. Lawson. I am the research fellow at **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

The Kasich Administration and the General Assembly have made progress improving Ohio’s tax system. The state’s personal income tax has been lowered to less than five percent, Ohio relies more on the consumption tax, which is less economically distorting, and the state has begun to slowly address its flawed municipal income tax system. These changes have improved Ohio’s business climate, but more can and should be done to make Ohio more attractive to citizens and new businesses.

Confronting the proliferation of tax expenditures, commonly called “tax loopholes,” is the next logical step for meaningful reform. Eliminating unneeded tax expenditures will further reduce Ohio’s personal income tax, which will create a better economic environment for job creators of all shapes and sizes to grow Ohio’s economy. For years, The Buckeye Institute has called for a more thorough review of tax expenditures, and we do so again today.¹

In 2011, we joined with the Greater Ohio Policy Center and the Center for Community Solutions, two think tanks with policy views quite different than our own, to call for something similar to this very Committee to be created in order to examine the true economic effects of tax loopholes.² Today, we agree with our friends at Policy Matters Ohio who have called for an automatic sunset of tax expenditures in the absence of their explicit reauthorization by the General Assembly. Such a sunset provision would heighten the urgency of this review process and ensure that loopholes are regularly reviewed and eliminated when they no longer serve a public good.³

New tax expenditures have been inserted into the tax code at the state and federal levels for decades. Many with good reason. For example, sales tax exemptions have helped Ohio avoid a crippling tax system that inflates prices and costs to consumers by taxing subcomponents of products during production, and Ohio is wise to use exemptions that prevent such harmful taxes. But not all tax exemptions have such a net positive effect. Loopholes make the tax system more complex, less transparent, and less equitable—all hallmarks of an unsound tax policy.⁴ By contrast, lower, fairer income taxes and consumption taxes will improve Ohio’s tax climate without creating unfair economic advantages for some at the expense of others.

Tax expenditures cost the state tax revenue that must then be made up by other taxes and taxpayers. When, for instance, the General Assembly gives annual \$1.6 million tax exemptions for flight simulators, the rest of us without flight simulators must off-set that lost revenue

¹ The Buckeye Institute, **Tax Loopholes Ohio Should Close**, April 10, 2018.

² The Plain Dealer Editorial Board, **When 3 Think Tanks With Quite Different Outlooks Agree on a List of Tax Loopholes to Close, Ohio’s Leaders Should Listen**, *The Plain Dealer*, May 21, 2011.

³ Zach Schiller and Wendy Patton, **Testimony to Tax Expenditure Review Committee**, Policy Matters Ohio, April 25, 2018.

⁴ Rea S. Hederman Jr., Tom Lampman, Greg R. Lawson, and Joe Nichols, **Tax Reform Principles for Ohio**, February 2, 2015.

through other taxes. Similar exemptions that require off-setting taxes and tax hikes now permeate the state's tax code, and their associated costs add up. According to the latest Tax Expenditure Report from the Department of Taxation, Ohio is estimated to lose more than \$18 billion in revenue during the Fiscal Years 2018-2019 biennial budget period.⁵

To help address the loophole and lost revenue problem, The Buckeye Institute recently suggested closing a number of tax loopholes that cost Ohio more than \$1.8 billion (see attached list).⁶ Our suggestions include:

- The notorious NetJets loophole for those who buy shares of corporate jets;
- The motion picture tax credit, already eliminated in other states, including Michigan;⁷
- Credits for political campaign contributions; and
- The job retention and creation tax credits that favor some businesses over others.

State policymakers have significantly improved Ohio's tax system over the past decade and a half, but more work remains to be done. Fifteen years ago, Ohio had an uncompetitive tangible personal property tax and a highly progressive personal income tax with an onerous top rate of more than seven percent.⁸ As this Committee knows, that top income tax rate is actually higher due to Ohio's burdensome municipal income tax system and, in many cases, local school district income taxes. Since then, tax reform efforts have helped relieve some of the burden, but today Ohioans pay a total tax bill that remains much higher than it should.⁹

Ohio's average combined state **and** local tax rate is still more than seven percent according to the non-partisan Tax Foundation.¹⁰ In some places it can climb even higher, with the combined state and local tax rate reaching nearly 10 percent¹¹—a level one might expect in high-tax states like New York.¹² Such high rates have real world consequences for workers, businesses, and states. As the Tax Foundation has demonstrated, people and jobs do in fact migrate from high-tax states to low-tax states—and that migration will inevitably cost Ohio workers, businesses, and future economic opportunities.¹³

As state policymakers continue to tackle tax reform and strive to improve Ohio's recovering economy, the work of this Committee is critical. Closing unnecessary tax loopholes will save the state revenue, level the tax burden for businesses and families, and allow for further reductions in the state's still-too-high income taxes. By doing so, policymakers will strengthen Ohio's economic environment and job creation climate that will provide an even greater prosperity.

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⁵ Ohio Department of Taxation, *Tax Expenditure Report: The State of Ohio Executive Budget- Fiscal Years 2018-2019*, November 25, 2016.

⁶ **Tax Loopholes Ohio Should Close**, The Buckeye Institute, (Last visited May 2, 2018).

⁷ Paul Egan, **Snyder Signs Bill Ending Incentives for Film Industry**, *Detroit Free Press*, July 10, 2015.

⁸ Ohio Department of Taxation, **Ohio Individual Income Tax Rates: 2005-2017** (Last visited May 1, 2018).

⁹ Ohio Department of Taxation, **Student Tax Education Program- Tax History** (Last visited May 1, 2018).

¹⁰ Jared Walczak and Scott Drenkard, **State and Local Tax Rates 2018**, The Tax Foundation, February 13, 2018.

¹¹ Morgan Scarboro, Scott Drenkard, and Rea S. Hederman Jr., **Ohio Illustrated: A Visual Guide to Taxes and the Economy**, The Tax Foundation and The Buckeye Institute, June 2017.

¹² *Ibid.*

¹³ **State to State Migration Data**, The Tax Foundation (Last visited May 3, 2018).

About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

The Buckeye Institute is a non-partisan, nonprofit, and tax-exempt organization, as defined by section 501(c)(3) of the Internal Revenue code. As such, it relies on support from individuals, corporations, and foundations that share a commitment to individual liberty, free enterprise, personal responsibility, and limited government. The Buckeye Institute does not seek or accept government funding.



THE BUCKEYE INSTITUTE

Tax Loopholes Ohio Should Close

Source: **Tax Expenditure Report Fiscal Years 2018-2019**

More Than \$1,800,000,000 in Savings that Should be Used to Reduce Ohio's Tax Rate

Exemptions Based on Specified Use of Property or Service

Tax Expenditure	Estimated Savings for Tax Reform	Explanation for Elimination
Motion Picture Tax Credit (Ohio Revised Code 122.85, 5726.55, 5747.66, 5751.54; originally enacted 2009, revised 2012, 2016)	\$42,200,000	Motion picture tax credits are a form of corporate welfare that frequently do not pay for themselves long-term.
Small Business Investment Credit	\$17,000,000	The goal has merit, but lower rates and a broader base is the key to systemic tax reform to ensure everyone can benefit.
Copyrighted Motion Picture and Films (Ohio Revised Code 5739.01(B)(8); originally enacted 1945)	\$14,800,000	Given that rentals for private home use are not exempt from taxation, there appears to be a double-standard when it pertains to rentals for exhibition purposes.
\$800 Tax Cap on Qualified Fractionally-Owned Aircraft	\$31,500,000	While recognizing the mobility of those in the market for fractionally-owned aircraft, it is questionable why there is such a low cap for sales tax on an item geared to those of higher affluence.
Sales of Materials and Services for Maintenance and Repair of Aircraft (Ohio Revised Code 5739.02(B)(49); originally enacted 2008)	\$30,900,000	This is a relatively new exemption from 2008. It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.

Flight Simulators (Ohio Revised Code 5739.02(B)(50); originally enacted 2008)	\$3,200,000	This is a new exemption from 2008. It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.
Agricultural Land Tile and Portable Grain Bins (Ohio Revised Code 5739.02(B)(30) and (31); originally enacted 1985)	\$2,200,000	It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.
Purchases of Qualified Tangible Personal Property to Qualified Motor Racing Teams (Ohio Revised Code 5739.02(B)(38); originally enacted 1997)	Less Than \$1,000,000	It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.
Sales of Tangible Personal Property and Services for Maintenance and Repair of Qualified Fractionally-Owned Aircraft (Ohio Revised Code 5739.02(B)(44); originally enacted 2003)	Less Than \$1,000,000	It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.

Income Tax Deductions

Tax Expenditure	Estimated Savings for Tax Reform	Explanation for Elimination
Deduction for Long-Term Care Insurance Premiums (Ohio Revised Code 5747.01(A)(11); originally enacted 1999)	\$18,300,000	While the purchase of long-term care insurance is a worthwhile goal, using the tax code to give it preference is not good tax policy.
Ohio Business Investor Income Deduction (Ohio Revised Code 5747.01(A)(31); originally enacted 2013, revised 2014)	\$1,180,100,000	While the deduction has yielded positive economic gains, it remains a benefit available only to certain taxpayers. It is better policy to move towards elimination of the income tax in its totality.

\$50 Credit for Taxpayers Aged 65 Years or Older (Ohio Revised Code 5747.055(F); originally enacted 1972)	\$48,400,000	Given increasing lifespans, it is questionable that a credit for no other reason than age can achieve a broad public purpose outside of political considerations.
\$20 Personal Credit (Ohio Revised Code 5747.022; originally enacted 1983, revised 2013)	\$46,000,000	Income tax rates have been lowered substantially and personal exemptions are indexed to inflation. Though this is now limited to only those with less than \$30,000 in income, it is questionable how beneficial this credit will continue to be.
Credit for Taxpayers with Income Below \$10,000 (Ohio Revised Code 5747.056; originally enacted 2005, revised 2006, 2009, 2015)	\$6,000,000	With an Earned Income Tax Credit, it is questionable if this credit has utility.
Campaign Contributions Credit (Ohio Revised Code 5747.29; originally enacted 1995)	\$6,900,000	Outside of political considerations, there appears to be no other public policy impact for this exemption.
Deduction for College Savings Account Contributions (Ohio Revised Code 5747.01(A)(10) and 5747.70; originally enacted 1999)	\$28,600,000	Nearly 90 percent of the taxpayers claiming the credit have incomes greater than \$60,000. These taxpayers will take advantage of tax-free savings without a deduction.
Grape Production Credit (Ohio Revised Code 5747.28; originally enacted 1995)	Less Than \$1,000,000	It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.
Ethanol Plant Investment Credit (Ohio Revised Code 901.13, 5747.75; originally enacted 2002)	Less Than \$1,000,000	It appears as a narrowly-tailored carve-out with limited applicability or impact outside of a highly-specialized group.

Commercial Activity Tax

Tax Expenditure	Estimated Savings for Tax Reform	Explanation for Elimination
Job Creation Tax Credit (Ohio Revised Code 122.17, 5725.32, 5726.50, 5729.032, 5736.50, 5747.058(A), and 5751.50(A); originally enacted 1993, revised 2013)	\$230,300,000	Tax credits that favor specific businesses create an un-level playing field for all businesses. It is better to reduce overall taxes, especially income and corporate taxes so that the tax incidence falls fairly on everyone.
Job Retention Tax Credit (Ohio Revised Code 122.171, 5726.50, 5725.98, 5729.98, 5736.50, 5747.058(B), and 5751.50(B); originally enacted 2003, revised 2013)	\$133,200,000	Tax credits that favor specific businesses create an un-level playing field for all businesses. It is better to reduce overall taxes, especially income and corporate taxes so that the tax incidence falls fairly on everyone.



TAX EXPENDITURE REVIEW COMMITTEE

May 9, 2018

Testimony of Jon Honeck
Senior Policy Analyst

Good morning Chair Oelslager, Commissioner Testa, and Members of the Tax Expenditure Review Committee. My name is Jon Honeck. I am a Senior Policy Analyst for the County Commissioners' Association of Ohio (CCAO). Thank you for allowing me to testify about the role of tax expenditures affecting the sales tax. My testimony today will make three major points:

- The sales tax has become the more important source of revenue for the state GRF and for counties' general funds.
- The sales tax base is stagnant, at best, and is probably declining slowly in real terms.
- The evaluation process for a tax expenditure should include a recognition of alternative uses for the revenue that would be more economically beneficial.
- State and federal tax policy have undergone significant shifts in recent years, and this should be taken into account when evaluating the need to continue existing tax expenditures.

Ohio's 88 counties are the "branch offices" of state government. Counties provide basic services that are defined by state law, such as justice and public safety, infrastructure, public health, human services, and economic and workforce development. County government is on the front lines in dealing with the opiate addiction epidemic which has become the greatest public health crisis of our generation. Besides the toll in sheer human suffering, the epidemic is escalating county costs in criminal justice, emergency response, and child protective services, at the same time that it removes thousands of addicted working-age individuals from the labor force.



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Counties are responsible for raising most of the revenue necessary to provide our services. In the wake of the recession and cuts to the local government fund, the sales tax has become the single most important source of revenue for county general funds. In the average county, 52% of general fund revenue now comes from the sales tax. The county sales tax applies to the same items and services as the state sales tax, but the maximum county tax rate is capped at 1.5 percent. In addition, transit authorities may levy up to a maximum 1.5 percent tax rate.

It should be noted that the sales tax is also the most important source of revenue for the state GRF. In the first nine months of FY 2018, the sales tax accounted for 46% percent of GRF tax revenue. Given the importance of the sales tax to both the state and counties, it is important to understand the capacity of the sales tax to generate long-term revenue growth to support public services.

Economists generally recommend a tax system with a broad base and low rates that can grow in tandem with the economy. Conversely, if a tax base becomes too narrow, tax rates will have to increase in order to generate significantly more revenue. Unfortunately for Ohio, this is no longer just a theoretical discussion. Our sales tax base is shrinking in real, inflation-adjusted terms.

The fourth quarter of calendar year 2017 was the first time since 2010 that payments to Medicaid Managed Care Organizations were not in the sales tax base. If we compare fourth quarter 2017 returns to the same quarter in 2007, ten years earlier, we see that the state collected \$284 million more, an increase of 14.3 percent. In real terms, this was a loss of purchasing power as consumer inflation rose by 17 percent. This loss of value occurred *despite* the fact that the state sales tax rate was 0.25 percentage points higher in 2017 than 2007 (5.75% vs. 5.5%). The same trend is evident if we compare FY 2017 returns to FY 2000: the sales tax base has struggled to keep pace with inflation (see Appendix).

Comparison of 4th Quarter State GRF Sales Tax Revenue, 2007 vs 2017 (millions \$)

	2007 (4th Qtr)	2017 (4th Qtr)	Change (\$)	Change (%)
Revenue	\$1,984.4	\$2,268.2	\$283.8	14.3%

Source: OBM Monthly, GRF Sales Tax Returns and PLF.

The impact of tax expenditures is just one of many reasons for slow growth in the sales tax base. Others include the shift to online retailing, the growth of service sectors that are not in the sales tax base, and retail price deflation. Nonetheless, the long-run trend of slow growth in the sales tax base -- the primary revenue source for state and counties -- creates an urgent need to evaluate the effectiveness of all tax expenditures.

Evaluating Alternative Uses

The term “tax expenditures” implies that the state is choosing to bestow a benefit on some type of activity or organization. It also implies that tax benefits should be evaluated in much the same way as any line item or program in the state budget. With approximately \$6 billion in lost sales tax revenue from tax expenditures in FY 2018, not only should a tax break be achieving its intended purpose, the state needs to ask whether the tax break is the best possible use for these resources.

There is little doubt that there are some pressing needs for greater state investment, including addressing the substance abuse epidemic that took the lives of 4,050 Ohioans in 2016. The Ohio State University Swank Program in Rural-Urban Policy estimated the annual statewide costs associated with treatment, criminal justice, and lost productivity between \$2.8 billion to \$5.0 billion, not including future lost lifetime earnings and lost productivity from those who suffered a fatal overdose.¹ The OSU study also estimated that the growth of addiction could account for between one third to one half of the decline in the state’s labor force participation since 2007, and noted that there is a strong correlation at the county level between poverty, unemployment, and overdose rates.

Targeted programs that improve access to workforce development, employment, and addiction treatment in counties that are severely-affected by the opiate epidemic would measurably improve Ohio’s economy and its business climate.

How has the tax environment changed?

Many tax expenditures remain in the law for decades. Over time, the circumstances under which they were enacted may have changed significantly, not just in terms of the competitive environment but also in terms of tax law. Over the last decade, Ohio’s tax system has changed radically. House Bill 66 (2005) eliminated the tangible personal property tax and the corporate franchise tax and replaced them with a low-rate commercial activity tax that applies only to in-state sales. Income tax rates have been lowered and business income under \$250,000 for a married couple is excluded from taxation.

Recent changes in the federal tax code are too voluminous to review in full today, but beneath the headline reductions in corporate and personal income tax rates, there were some major changes that create significantly more favorable tax treatment for investment income and capital expenditures.

There is little doubt that the beneficiaries of tax expenditures who come before this committee will testify that the continuation of their specific tax break is absolutely vital to their business or industry. As these claims are made, however, it is important to understand that total tax incidence may shift significantly over time, rising in some industries while falling in others. The

¹ Mark Rembert, et al. *Taking Measure of Ohio’s Opiate Crisis*, OSU Swank Program in Rural-Urban Policy (October 2017), available at <https://cpb-us-w2.wpmucdn.com/u.osu.edu/dist/2/14548/files/2017/10/SWANK-Taking-Measure-of-Ohios-Opioid-Crisis-1vtx548.pdf>.

original rationale for certain tax breaks may no longer hold true. Now that the sales tax has become the primary work horse for the state and counties, it is vital to keep tax expenditures balanced and in check in order to help preserve the tax base.

Conclusion

The sales tax has become the more important source of revenue for the state GRF and for counties' general funds. The evidence appears that the sales tax base is stagnant at best, and is probably declining slowly in real terms. The state should do everything possible to avoid further erosion of the tax base due to policy decisions that create additional exemptions or carve outs. Existing tax breaks should be critically examined to understand whether they are still crucial given the recent evolution of state and federal tax policy.

Thank you for allowing me to testify, I would be pleased to answer any questions you may have.

APPENDIX

After adjusting for the elimination of the Medicaid MCO tax and the increase in the state tax rate, the sales tax *base* has struggled just to keep pace with inflation since the turn of the century. The adjusted sales tax base (i.e., not including Medicaid MCOs) increased by 40 percent from 2000 to 2017, while the consumer price index increased by 42 percent. Sales tax *revenue* increased in real terms because the permanent state tax rate was raised from 5 percent to 5.75 percent.

State Sales Tax Revenue and Estimated Sales Tax Base, FY 2000 vs. FY 2017

(in millions \$)

	FY 2000	FY 2017	Change (\$)	Change (%)
GRF Revenue	\$6,211.9	\$10,806.3	\$4,594.4	74.0%
Medicaid MCO Revenue	n/a	\$803.0		
Adjusted Revenue	\$6,211.9	\$10,003.3	\$3,791.4	61.0%
Tax rate	5%	5.75%		
Estimated Tax Base	\$124,238.0	\$173,970.4	\$49,732.4	40.0%

Source: LSC Historical Revenues and Expenditures; OBM FY 2017-2018 Executive Budget proposal

Chairman Oelslager and members of the committee:

My name is Diane Howard. I am speaking on behalf of United Clevelanders Against Poverty (UCAP), an organization of Cleveland low income individuals working to address the issues affecting our lives. As is the case with most adults who are poor, I have been gainfully employed most of my life. I appreciate the opportunity you have given me to testify today regarding the tax expenditures .

It is my understanding that you are reviewing tax breaks totaling about \$4.5 billion. Within these tax breaks my assumption is that there are tax breaks that are worthy of keeping. It is also my assumption that within these tax breaks that there are state tax breaks that are not beneficial to the general public. UCAP urges you to carefully examine these tax expenditures with an eye toward reallocating them for the funding of necessary programs.

Ohio residents have seen substantial cuts that have harmed the people with whom we work and live. Facing previous local public transportation cuts and now the elimination of the Medicaid MCO sales tax, residents in the public housing estates where I live have difficulty getting to public transportation getting to their jobs and this will only get worse as the impact of the elimination of the MCO tax sets in. We are in great need of adequate public transportation funding. There is a great lack of fair and adequately funded public education for which my grandchildren rely. The elimination of some of these tax breaks could help support their education. State cuts for the support of senior programs that my friends and I use could be potentially be restored if some of these tax cuts were eliminated. Funding for Adult Protective Services, a mandatory service, that protects my peers, could be substantially restored to a level that actually protects abused adults across Ohio.

I do not pretend to understand most of the tax expenditures that you are currently reviewing. However, I do understand that the lack of and the loss of revenue that these tax break brings, greatly impacts the people with whom I work and live. Before you consider expansions of any tax expenditures, we suggest that you consider alternative use of such monies. In fact you should consider making cuts to exemptions, and using the funds to bolster human needs spending, examples of which I just described.

I implore you to carefully examine each of these expenditures with a view toward alternative use of such monies that could benefit struggling tax paying residents like me across Ohio.

Thank you very much for the opportunity to submit my testimony.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 11, 2018

Re: Tax Expenditure Review Committee: Sales to Churches and Certain Other Nonprofit Organizations

Overview

Ohio Revised Code 5739.02(B)(12); originally enacted 1935; revised 2013

Sales to churches, non-profit entities organized under Internal Revenue Code section 501(c)(3), and certain other types of non-profit organizations are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county

humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$600.1	\$614.2	\$609.1	\$639.4	\$671.3	\$704.8

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199404.aspx

https://www.tax.ohio.gov/sales_and_use/information_releases/st200802.aspx

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

The provision of private housing, even at reduced rates, does not, standing alone, demonstrate a charitable purpose required for exemption under RC 5739.02(B)(12). *Columbus Colony Housing, Inc. v. Limbach* (Ohio 1989) 45 Ohio St.3d 253, 544 N.E.2d 235.

A nonprofit corporation which operates certain major golf tournaments for the sole purpose of benefitting local charitable organizations by raising funds for and distributing the same to such organizations is exempt from sales tax under RC 5739.02(B) because it is the nature of the organization itself which allows for the applicability or nonapplicability of the exemption rather than the means it

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive. Case law in this area may be significant and should be consulted for further guidance.

uses to effect its goals. *Akron Golf Charities, Inc. v. Limbach, Tax Com'r* (Ohio 1987) 34 Ohio St.3d 11, 516 N.E.2d 222.

The operation on a nonprofit basis of an apartment building for low income tenants, for whom supplemental rent payments are made by an agency of the federal government, is not exclusively for charitable purposes within the meaning of RC 5739.02(B)(12), where all tenants must pay at least a part of their rent, nonpayment of rent will result in eviction, and no services other than those common to apartment buildings generally are provided for the tenants. *Quaker Apartments of Wilmington, Inc. v. Kosydar* (Ohio 1974) 38 Ohio St.2d 20, 309 N.E.2d 863, 67 O.O.2d 36.

Sales to a non-profit organization that sponsors awards programs and distributes educational materials fail to qualify for the sales tax exemption of RC 5739.02(B)(12) for sales to charitable organizations, as such activities do not meet the definition of "charitable purposes" in that section. *The Wolf Envelope Co v Tracy*, BTA 91-S-1623 (2-4-94).

Cemetery associations organized for the purposes of providing and maintaining burial grounds for deceased members of the Catholic church, in accordance with church law, are churches within the meaning of RC 5739.02(B)(12), and their purchases are thus exempt from sales and use tax; although the associations are organized as nonprofit corporations which sell goods and services necessary for burial, and are not incorporated as churches per se, it is their purposes and actual operations, not their form, which control with respect to the exemption, and the associations operate for the purposes of and as part of the Catholic church, when their operations serve to fulfill the church's tenet of providing blessed burial grounds for its deceased pending their resurrection, and when the Catholic diocese exercises total control over the associations, with any revenue generated going to the church, not a private individual, and thus any sales of goods or services are but a means of obtaining a religious objective. *St. Joseph Cemetery Assn v Limbach*, BTA 89-Z-145, 89-Z-1040 (5-1-92).

RC 5739.02(B)(12) provides for two separate sales tax exemptions which exist independent and apart from one another, one for churches and one for charities, and the section's requirement that a charity operate exclusively for charitable purposes does not apply to churches. *St. Joseph Cemetery Assn v Limbach*, BTA 89-Z-145, 89-Z-1040 (5-1-92).

Where a charitable organization which provides sheltered employment for mentally disabled persons purchases a vehicle to use to transport patients and equipment to the workplace, such vehicle is exempt from taxation pursuant to RC 5739.02(B)(12), which provides that sales of tangible personal property to nonprofit organizations operated exclusively for charitable purposes are exempt from sales tax; this exemption is made applicable to use tax pursuant to RC 5741.02(C). *Jani-Turf Maintenance Services v Limbach*, BTA 86-D-331 (10-7-88).

A neighborhood center which provides free programs for area residents, such as a daycare program, a tutorial program, and an afterschool meals program, is exempt from sales taxation under RC 5739.02(B)(12). *Bell Neighborhood Center v Limbach*, BTA 84-D-894 (8-6-87).

"Exclusively for charitable purposes" as used in RC 5739.02(B)(12) means the attempt in good faith, spiritually, physically, intellectually, socially, and economically, to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation of gain. A nonprofit corporation

providing services to hospitals and nursing homes is not a charity within the statute. *Joint Hospital Services, Inc v Lindley*, BTA E-1496-A (1977).

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 11, 2018

Re: Tax Expenditure Review Committee: Sales to the State, and of its Political Subdivisions, and Certain Other States

Overview

Ohio Revised Code 5739.02(B)(1); originally enacted 1935, revised 1994

Sales to the State of Ohio and any of its political subdivisions are exempt from the sales and use tax. Also exempt from the sales and use tax are sales to any other state (and its subdivisions) as long as such state provides an exemption for sales made to the State of Ohio (and its subdivisions).

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$122.9	\$122.9	\$118.6	\$118.6	\$118.6	\$118.6

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199903.aspx

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Contractor that managed and operated city golf courses did not possess actual authority to bind city to purchases, and thus contractor was not entitled, under theory that contractor was acting as city's agent, to sales and use tax exemption for purchases made by political subdivisions; management contract between city and contractor expressly disclaimed agency with respect to contractor's activities, and appeared to be more a liability barricade between city and vendors than a liability conduit. *Cincinnati Golf Mgt., Inc. v. Testa* (Ohio, 06-27-2012) 132 Ohio St.3d 299, 971 N.E.2d 929, 2012-Ohio-2846.

Determination that taxpayer sold pictures of school children to students or parents, rather than schools and that, therefore, taxpayer was not entitled to sales and use tax exemption for sales to political subdivisions was supported by evidence that schools did not buy pictures of school children from taxpayers, but merely provided taxpayer with opportunity to sell pictures to parents. *Ritchie Photographic v. Limbach* (Ohio, 12-30-1994) 71 Ohio St.3d 440, 644 N.E.2d 312.

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 11, 2018

Re: Tax Expenditure Review Committee: Sales **by** Churches and Certain Other Nonprofit Organizations

Overview

Ohio Revised Code 5739.02(B)(9); originally enacted 1961

Sales, other than motor vehicles, mobile homes, and manufactured homes, by churches, non-profit organizations organized under Internal Revenue Code section 501(c)(3), and certain other non-profit organizations are exempt from the sales and use tax, if the number of days on which sales are made does not exceed six in any calendar year, except the limitation on the number of days on which tax-exempt sales may be made does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(9)

(a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days

on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

(b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$45.7	\$47.6	\$47.6	\$50.1	\$52.7	\$55.4

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2007_03.aspx

“Sales by Primary and Secondary School and Student-Related Organizations” – November 6, 2015³

Illustrative Court Guidance⁴ (Synopsis obtained from Westlaw)

When a religious or charitable organization engages in the continuous selling of meals day after day, such sales are not exempt as being casual and isolated within the meaning of GC 5546-2, subdivision 7 (RC 5739.02). 1938 OAG 3465.

Sales by ladies' aid societies and by other similar organizations affiliated with churches and church work are usually casual and sufficiently isolated to be exempt and not taxable; however, this exemption does not extend to sales made at thrift stores maintained and conducted by charitable organizations where

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This item was sent to a select group of school organization representatives for distribution - Ohio Association of School Business Officials (OASBO), Ohio Conference Seventh-day Adventist, Ohio Jewish Communities, Catholic Conference of Ohio, Lutheran Schools of Ohio, Ohio Association of Independent Schools, Association of Christian Schools International, and Agudath Israel.

⁴ This list is not intended to be all-inclusive.

such sales are made regularly to customers as they apply for the goods sold at such stores. 1936 OAG 5726.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 11, 2018

Re: Tax Expenditure Review Committee: Tangible Personal Property Used Primarily in Manufacturing Tangible Personal Property

Overview

Ohio Revised Code 5739.02(B)(42)(g) and 5739.011; originally enacted 1935, revised 1990

Sales of tangible personal property where the purpose of the purchaser is to use the property primarily in a manufacturing operation to produce tangible personal property for sale are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

Sec. 5739.011.

(A) As used in this section:

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

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

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

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

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

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

(B) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

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

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

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

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

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

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

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

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

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

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

(11) Parts, components, and repair and installation services for items described in division (B) of this section;

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

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

(C) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, the "thing transferred" does not include any of the following:

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

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

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

(4) Tangible personal property that is or is to be incorporated into realty;

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

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

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

(8) Except as provided in division (B)(13) of this section, machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

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

(D) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

Expenditure Amount¹

Revenue Impact on GRF in Millions from FY18-19 Report	
FY 2018	FY 2019
\$2,210.7	\$2,299.9

Departmental Guidance

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

https://www.tax.ohio.gov/sales_and_use/information_releases/st200002.aspx

https://www.tax.ohio.gov/sales_and_use/information_releases/st197901.aspx

O.A.C. 5703-9-21 (<http://codes.ohio.gov/oac/5703-9-21v1>)²

Manufacturing Sales Tax Exemptions

(<https://www.tax.ohio.gov/Researcher/VTA/OVTATopics/september2015.aspx>)

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Taxable

Cranes used by scrap metal dealer to load metal into its baling and shearing machines did not move metal through continuous manufacturing operation, as required to qualify for materials handling equipment exception from use tax as such exception was defined in either of two audit years appealed from; cranes were used to move metal before any actual manufacturing began, and again after it had ended. *Sims Bros., Inc. v. Tracy* (Ohio, 09-23-1998) 83 Ohio St.3d 162, 699 N.E.2d 50, 1998-Ohio-116.

Where a manufacturer's computer aided drafting (CAD) system did not produce actual construction sets used in the production of a product, but instead created revised drawings which are used to reprogram machines before production commenced, the system was use taxable. *Aeroquip Corporation v Tracy*, BTA 97-T-1612, (12-15-00).

Computer systems and equipment are not eligible for the use on use sales tax exemption of RC 5739.02(B)(26) when the systems are used by a tool and die manufacturer's engineers to create instruction sets for the cutting or manufacturing of the tools and dies, but the instruction sets are transferred electronically from the engineers to the manufacturing equipment, and thus no "tangible personal property" within the exemption's meaning is created. *Mercury Machine Co v Limbach*, BTA 90-K-1516 (1-22-93), reversed by 94 Ohio App.3d 116 (Cuyahoga 1994).

A sand reclamation system used by a manufacturer of aluminum castings is not exempt from sales tax under the use-on-use exemption of the former RC 5739.02(B)(26) for items used directly in manufacturing other items for direct use in producing personal property for sale, when the system takes unusable sand left from the production process and reconditions and sifts it to remove impurities and ensure the desired size and shape, and the sand is then taken from the system and placed in a mixer and mixed with other materials to form molds which are then used to produce the final product, the castings; although the molds are used directly in the manufacturing process, the moldmaking process begins at the mixer and the sand reclamation system is one step removed from this and not directly involved in, nor a continuous part of, the manufacturing process. *Morris Bean & Co v Limbach*, BTA 86-C-1513 and 86-C-1514 (6-26-92).

² The Department of Taxation worked with industry over the past year (2017) to agree on minimal changes to this rule. After lengthy discussions, the rule is ready to be sent to the Common-Sense Initiative Office but has yet to be sent over. The Department anticipates completing that task within the next few weeks.

³ This list is not intended to be all-inclusive. Case law in this area may be significant and should be consulted for further guidance.

A dust collection system purchased by a manufacturer is not an employee safety device exempted from sales tax pursuant to OAC 5703-9-21 when the primary purpose of the system is to protect all of the manufacturer's employees, not just production employees. *Nutone, Inc v Limbach*, BTA 85-D-1145 (2-9-90).

Sprinklers, noise suppressors, and an acid neutralization system purchased by a manufacturer are not employee safety devices exempted from sales tax pursuant to OAC 5703-9-21 when the manufacturer is unable to show that the primary purpose of these items is the protection of production employees only. *Nutone, Inc v Limbach*, BTA 85-D-1145 (2-9-90).

Exempt

Where a broken mold manufacturer's operation is located on a casting manufacturer's property and the broken molds are used as raw material for the casting manufacturer, the casting manufacturer's boom crane used to load the broken molds to railroad cars for transport to the casting manufacturer's melt shop is used to handle "in-process" material and is exempt from use tax. *Ellwood Engineered Castings Co v Zaino*, BTA 2000-P-391, 2002 WL 461561 (3-22-02).

A furnace chart monitor purchased by a manufacturer was excepted from use taxation where the monitor was attached directly to the manufacturer's brazing furnace and used to track the furnace's internal temperature; i.e., it was used after the manufacturing process had begun, in that the parts being brazed had undergone other processing prior to insertion into the furnace, and it enabled the manufacturer to control the furnace and to continue production in a proper manner. *Aeroquip Corporation v Tracy*, BTA 97-T-1612, (12-15-00).

A computer assisted design (CAD) system leased by a bus manufacturer is exempt from sales and use tax, under the use on use exemption of the former RC 5739.02(B)(26), as an item used directly in producing personal property in turn used directly in manufacturing other personal property for sale, when the CAD system is used to manufacture blueprints that are used by production employees to manufacture and assemble the buses. *North American Computer Equipment, Inc v Tracy*, BTA 91-K-1593 (7-2-93).

A system used to purify water for use in boilers is exempt. *Mead Corp v Limbach*, BTA 85-B-1097 (3-2-90).

To: Senator Scott Oelslager

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 11, 2018

Re: Tax Expenditure Review Committee: Packaging and Packaging Equipment

Overview

Ohio Revised Code 5739.02(B)(15); originally enacted 1961

Packaging and packaging equipment, including materials, labels, and parts for packaging machinery, and equipment, sold to manufacturers and other qualified businesses are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(42)(a), (g), or (h) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons.

Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

Expenditure Amount¹

Revenue Impact on GRF in Millions from FY18-19 Report	
FY 2018	FY 2019
255.2	264.7

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2010_01.aspx

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

Illustrative Court Guidance² (Synopsis obtained from Westlaw)

In General

One defining characteristic of “package” which is exempt from sales tax is that it must restrain movement of packaged object in more than one plane of direction. *Loctite Corp. v. Tracy* (Ohio, 12-23-1994) 71 Ohio St.3d 401, 644 N.E.2d 281, 1994-Ohio-210.

In order for a business to be eligible, for sales tax purposes, for the packaging exemption of RC 5739.02(B)(15), the business must be engaged in manufacturing, assembling, processing, or some other activity described in RC 5739.01(E)(2) or RC 5739.01(E)(10); thus, the business may qualify for the packaging exemption only for those of its operations which fall within these sections. *Express Packaging, Inc v Limbach*, BTA 89-K-22 (9-18-92).

Taxable

Tape and adhesives used by a custom packaging company to seal cartons for shipping do not qualify for the packaging exemption when the company's function in this area is limited to placing the products into the cartons, neither of which it manufactures, then folding the carton flaps to close the cartons and sealing them, which does not amount to the requisite change in form of the cartons to qualify as manufacturing. *Express Packaging, Inc v Limbach*, BTA 89-K-22 (9-18-92).

Items used by a manufacturer to mark and label shipping containers for tracking and delivery do not qualify for the packaging exemption when the items themselves do not come within the list of packages in RC 5739.02(B)(15), nor are they used to actually place products into a package. *Express Packaging, Inc v Limbach*, BTA 89-K-22 (9-18-92).

A conveyor used to carry bags of flour or cereal to an area where it is palletized is not entitled to a sales and use tax exemption for equipment used to package tangible personal property produced for sale where the conveyor does not convey the bags all the way to the pallet and place them on it. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

A packaging exemption from sales and use taxes is not applicable to (1) poly sheet coverings used to cover hatch openings in a bulk flour truck before the hatch is closed, (2) shock-sorb paper used to cover palletized bags of flour to eliminate damage to bags and protect the bags from drops of water during transit, and (3) seals used to close discharge openings of a bulk flour truck to assure the customer that the discharge opening has not been tampered with during transit since the above items are used to protect the product in transit and do not constitute packaging. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

Assorted boxes and poly-bags used by a taxpayer to ship samples of flour to customers or to laboratories for analysis or testing do not qualify for a sales and use tax exemption for packaging materials where the product placed therein is not sold but rather is sent free of charge. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

² This list is not intended to be all-inclusive. Case law in this area may be significant and should be consulted for further guidance.

Exempt

Stretch wrap used by a manufacturer is exempt from sales tax under the packaging exemption of RC 5739.02(B)(15) when the wrap is used to combine multiple product units into a single unit for shipment, and the wrap confines the movement of the items in more than one plane of direction; likewise, pallets and “slip sheets”--corrugated sheets on which the manufacturer stacks its shipping containers--used to ship the product units are exempt when the stretch wrap is extended over the pallet or the “slip sheet” to form one unit for shipping which restrains the products' movement in another plane of direction other than downward. *Express Packaging, Inc v Limbach*, BTA 89-K-22 (9-18-92).

Under RC 5739.02(B)(15), equipment and machinery is exempt from sales and use tax only if it is used in placing tangible personal property produced for sale in packages; the equipment must be an integral part of the actual packaging process to be exempt. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

An exemption from sales and use tax is applicable to adhesive used by a taxpayer to secure bags of flour to pallets and each other to make the package more stable during transport. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

A scale used by a taxpayer to weigh 1,000 pound units of flour when preparing a shipment of flour in bulk in a railroad car or truck qualifies for a sales and use tax exemption for equipment used in placing tangible personal property produced for sale in packages since (1) the flour was not otherwise bagged or packaged, and (2) the railroad car or truck was a vessel in which the flour went to market. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

No exemption from sales and use taxes exists under the packaging exemption for truck washes used by a taxpayer to maintain a truck's cleanliness for transportation of bulk flour since the truck is not a package. *Mennel Milling Co. v. Limbach* (Hancock 1991) 72 Ohio App.3d 330, 594 N.E.2d 681.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: Sales of TPP and Services to Electricity Providers

Overview

Ohio Revised Code 5739.02(B)(40); originally enacted 2000

Tangible personal property and services used or consumed by a provider of electricity in generating, transmitting, or distributing electricity for use by others is exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$343.1	\$356.8	\$279.8	\$285.3	\$288.0	\$290.5

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st199902.aspx

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

None.

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: TPP Used in Agriculture

Overview

Ohio Revised Code 5739.02(B)(42)(n); originally enacted 1935, revised 2011

Purchases of tangible personal property used or consumed directly in producing a product sold by farming, agricultural, horticultural, or floricultural operations are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$331.1	\$339.4	\$310.3	\$313.6	\$317.1	\$321.0

Departmental Guidance

<http://codes.ohio.gov/oac/5703-9-23v1>

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Sales of horses by proprietor of riding stable may be subject to sales tax. *Red Fox Stables, Inc. v. Porterfield* (Ohio 1972) 28 Ohio St.2d 239, 277 N.E.2d 433, 57 O.O.2d 472.

Under the provisions of paragraph 2 of this section, sales of feed, seeds, lime, or fertilizer are exempt from the tax imposed by that act. 1935 OAG 3946.

In an appeal before the board of tax appeals in which a company in the business of making, selling, and applying chemical fertilizers claims that it is entitled to sales and use tax exemptions for certain of its purchases on the ground that such items are used directly either in manufacturing, pursuant to RC 5739.01(E)(2), or in agriculture, pursuant to RC 5739.02(B)(17), a court of appeals decision holding that the company, for purposes of personal property tax exemptions, does engage in manufacturing and agricultural activities is binding on the board in this respect, but the company must still prove that the items for which it is claiming sales tax exemption are used directly in such manufacturing or agricultural activities. *Mid-Ohio Chemical Co v Limbach*, BTA 89-Z-61 (8-21-92).

Trucks, repair parts, and fertilizer application equipment are exempt from sales tax as items used in agriculture, under RC 5739.02(B)(17), when the trucks and equipment are used to deliver fertilizer sold by the taxpayer to farmers and to directly apply the fertilizer onto the farmers' fields to enhance crop production. *Mid-Ohio Chemical Co v Limbach*, BTA 89-Z-61 (8-21-92).

Portable irrigation equipment used in a nursery to water growing nursery stock is exempt from taxation as "directly used in horticulture" under RC 5739.01(E)(2) and OAC 5703-9-23. *Spring Hill Nurseries Co v Lindley*, BTA 80-D-228

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: TPP Used "Directly" in Mining

Overview

Ohio Revised Code 5739.02(B)(42)(a); originally enacted 1935, revised 2011

Purchases of tangible personal property used or consumed directly in producing a product sold by mining or in the production of crude oil, mining, or natural gas are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons.

Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹	
FY 2018	FY 2019
\$73.4	\$74.3

Departmental Guidance

<http://codes.ohio.gov/oac/5703-9-22v1>

<https://www.tax.ohio.gov/Researcher/VTa/current.aspx>

https://www.tax.ohio.gov/sales_and_use/information_releases/st200308.aspx

Illustrative Court Guidance² (Synopsis obtained from Westlaw)

Equipment purchased to carry out reclamation as required by RC Ch 1513 and Ch 1514 is exempt from taxation. However, the exemption available to strip mining reclamation is not available to oil reclamation as RC 1509.072 is not included in RC 5739.01(E)(4). *Boltz v Lindley*, BTA 80-B-74 (10-18-83)

The determination of when gas and oil production begins cannot be arbitrary but must be logical and reasonable and made after consideration of all the evidence with regard to the production of gas and oil. *Boltz v Lindley*, BTA 80-B-74 (10-18-83).

Actual drilling was appropriate place for commencement of “activity of production” for purposes of applying “direct use” exception from sales taxation in cases involving production of crude oil and natural gas, to determine whether equipment not used to drill well, but used to prepare site for drilling and to lay flow lines before drilling rig was set, was within exception for items used directly in production of crude oil and natural gas. *Kilbarger Const., Inc. v. Limbach* (Ohio 1988) 37 Ohio St.3d 234, 525 N.E.2d 483.

The Supreme Court held that: (1) reclamation equipment was not excepted from sales tax; (2) statutory requirement that well sites be reclaimed did not, in and of itself, require exception for equipment; (3) taxing scheme did not violate principles of equal protection; and (4) “frac” tanks were not excepted from sales tax. *Lyons v. Limbach*, 40 Ohio St. 3d 92, 532 N.E.2d 106 (1988)

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: Agricultural Land Tile and Portable Grain Bins

Overview

Ohio Revised Code 5739.02(B)(30) and (31); originally enacted 1985

Sales and installation of agricultural land tile and erection or installation of portable grain bins are exempt.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$1.1	\$1.1	\$1.1	\$1.1	\$1.1	\$1.2

Departmental Guidance

None

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

A corporation in the business of installing drainage tiles in farms does not qualify for the exemptions found in RC 5739.01(E)(2) and 5739.02(B)(17), as the equipment is not used directly in a farming activity. *Hansen v Limbach*, BTA 87-E-653 (4-21-89).

Taxpayers who purchase drainage tile and install it underneath farm land are the “consumers” of the drainage tile under RC 5739.01(B) and are responsible for the payment of sales or use tax on the purchase thereof. *Emch v Lindley*, BTA 82-A-1259 (12-27-84).

A dealer of prefabricated agricultural units is not the “construction contractor” nor the “consumer” of the units when it assists in the physical installation of the prefabricated units onto prepared concrete slabs. *Botkins Grain & Feed Co v Lindley*, BTA 79-B-570 (1981), affirmed by 1 OS(3d) 64, 1 OBR 105, 437 NE(2d) 1182 (1982).

Grain bins which are installed and erected so as to become part of the real property are “construction contracts” under RC 5739.01. (See also *H.C. Attebery & Associates Co v Limbach*, 37 OS(3d) 239, 525 NE(2d) 479 (BTA 1988).) *H.C. Attebery & Associates Co v Limbach*, BTA 84-A-49 (1-21-87).

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: TPP Used to Produce Printed Materials

Overview

Ohio Revised Code 5739.02(B)(42)(f); originally enacted 1973

Machinery, equipment, and material used in the production for sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other graphic productions or re-productions are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹	
FY 2018	FY 2019
\$9.8	\$9.9

Departmental Guidance

None

Illustrative Court Guidance² (Synopsis obtained from Westlaw)

Tangible personal property used or consumed during the preparation and production for market and sale of printed matter is excepted from Ohio sales tax pursuant to RC 5739.01(E)(8). *Dayton Press, Inc. v. Lindley* (Ohio 1986) 22 Ohio St.3d 112, 489 N.E.2d 789, 22 O.B.R. 193.

The exception in RC 5739.01(E)(8) for printing materials applies to property used: in preparation of copy, artwork, and photographs; the conversion of these items into type, then into galley proofs, then into reproduction proofs; in the preparation of printing plates; and in final printing, collating, and binding; even though some of these processes are intermediate steps or are performed for the taxpayer by outside sources pursuant to contract. *Bell & Howell Co. v. Limbach* (Franklin 1984) 19 Ohio App.3d 77, 482 N.E.2d 1305, 19 O.B.R. 161.

Audio and video broadcast tapes containing advertisements are not exempt from sales and use taxation under the printed matter exception in RC 5739.01(E)(8) because such tapes are neither “printed matter” nor are they “distributed.” *Federated Department Stores, Inc, Gold Circle Stores Div v Lindley*, No. C-810379 (1st Dist Ct App, Hamilton, 5-5-82).

The initial creative process required to design and produce greeting cards is integral to the ultimate production and preparation for market and sale of the cards, and the purchase of materials necessary to perform those steps, including, artist supplies, paper, film, photo studio supplies and light tables, falls within the “production and preparation of printed matter” exemption to sales tax under RC 5739.01(E)(8). *American Greeting Corp v Tracy*, BTA 94-K-1185, 1996 WL 221870 (4-26-96).

Items used in producing catalogs distributed by a custom athletic apparel manufacturer to its customers for their pricing of the garments are not exempt from sales tax under RC 5739.01(E)(8) as items used in the production of printed matter for sale when the catalogs are not sold to the customers; moreover, items used in preproduction printing for the catalogs are taxable since the manufacturer is not a printer. *Betlin Mfg Co v Limbach*, BTA 88-C-318 (6-26-92).

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² This list is not intended to be all-inclusive.

The use or consumption of purchased items in the production and preparation in suitable condition for market and sale, in terms of RC 5739.01(E)(8), includes items used and consumed in the successive stages of printing, collating, and binding books and magazines, but it does not include items used in transporting and storing raw materials before use in the production of printed matter, or items used after the printed matter is complete that involve delivery of the finished printed matter to the retail market, or items used in transporting materials for storage or involved with inventory record keeping of storage, or the handling of waste products resulting from the actual printing activities. *Dayton Press, Inc v Lindley*, BTA 82-D-113 (2-15-85), reversed by 22 OS(3d) 112, 22 OBR 193, 489 NE(2d) 789 (1986).

The words in RC 5739.01(E)(8) “and preparation in suitable condition for market and sale” indicate a reference to the collation and binding of printed materials in forming a book to be marketed and sold and not to materials used or consumed in the process of preparing selected material into a suitable format ready to be used in the process of making printing plates to be used, in conjunction with printing presses, to produce the pages of a book. *Bell & Howell Co, Charles E. Merrill Publishing Div v Lindley*, BTA 81-F-625 (12-2-83).

Purchases of preliminary or preparatory artwork necessary to make printed playing cards and their boxes and printed commercial packages and packaging materials are exempt from taxation under RC 5739.01(E)(8). *Diamond International Corp & United States Playing Card Co v Lindley*, BTA 79-C-529 and 79-E-540 (1981).

The purchase of a gravure chill system for use in the rotogravure printing process is entitled to exemption from taxation under RC 5739.01(E)(8). *Diamond International Corp & United States Playing Card Co v Lindley*, BTA 79-C-529 and 79-E-540 (1981).

RC 5739.01(E)(8) does not expressly require that “printed matter” be produced on paper; the only statutory requirement is that the printed production be written or graphic matter. *Beatrice Foods Co v Lindley*, BTA 79-E-197 (1980).

The “printed matter” exemption found in RC 5739.01(E)(8) is not ambiguous. *Beatrice Foods Co v Lindley*, BTA 79-E-197 (1980).

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: April 25, 2018

Re: Tax Expenditure Review Committee: TPP Used in Storing, Preparing and Serving Food

Overview

Ohio Revised Code 5739.02(B)(27); originally enacted 1981

Tangible personal property used in storing, preparing and serving food in a commercial food establishment is exempt from the sales and use tax. Also exempt from the tax are items used to clean tangible personal property used to store, prepare or serve food for human consumption.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$33.8	\$34.7	\$42.6	\$44.0	\$45.3	\$46.7

Departmental Guidance

https://www.tax.ohio.gov/sales_and_use/information_releases/st_2010_01.aspx

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

It appears from the record, including the notice of appeal, that appellant provided a cleaning service, not tangible personal property used to clean; therefore, the services were properly taxable. Even if the taxes assessed related to tangible personal property sold by appellant, no certificates were provided to the commissioner or to this board establishing the exempt nature of the sales. The statutory requirements for establishing exemption are clear and have not been met; accordingly, the transactions were properly assessed. *Champion Cleaning Specialists, Inc., (Et. Al.) V. Joseph W. Testa, Tax Commissioner of Ohio, (Et. Al.)*, 2016 WL 3018424, at *1

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: May 9, 2018

Re: Tax Expenditure Review Committee: Property Used in Preparing Eggs For Sale

Overview

Ohio Revised Code 5739.02(B)(24); originally enacted 1974

Equipment and supplies used for the cleaning, sanitizing, preserving, grading, sorting, classifying, packaging, and handling of eggs for sale are exempt from the sales and use tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$3.2	\$3.3	\$3.9	\$4.0	\$4.2	\$4.4

Departmental Guidance

None

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Taxpayers appealed from Tax Commission's sales and use tax assessment with respect to material handling equipment and packaging material used in taxpayers' business of cleaning, candling, grading, oiling and packaging eggs for sale to retailers. The Board of Tax Appeals held that taxpayers were engaged in 'processing' within sales and use tax exemption and reversed the assessment order, and the Commission appealed. The Supreme Court, held that operation by which value of materials or things was enhanced without accompanying change in state or form of such property did not constitute 'processing' for purposes of statute defining 'retail sale' and 'sales at retail' to include for sales and use tax purposes all sales except those in which purpose of consumer is to incorporate the thing transferred into tangible personal property to be produced for sale by manufacturing, assembling, processing or refining. *Gressel Produce Co. v. Kosydar*, 34 Ohio St. 2d 206, 297 N.E.2d 532 (1973)

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: May 9, 2018

Re: Tax Expenditure Review Committee: Building and Construction Materials Used in Certain Structures

Overview

Ohio Revised Code 5739.02(B)(13); originally enacted 1959, revised 1994

A sales and use tax exemption is provided for building and construction materials and services sold to construction contractors for incorporation into certain types of structures. The exemption applies to structures built under a construction contract with the following entities: federal government; the State of Ohio and its political subdivisions; religious institutions and other organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; businesses engaged in horticultural and livestock purposes; and certain other types of entities specified in state law.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for

charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections 5501.70 to 5501.83 of the Revised Code; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$226.8	\$232.7	\$209.6	\$209.8	\$210.1	\$210.4

Departmental Guidance

<http://codes.ohio.gov/oac/5703-9-14v1>

<https://www.tax.ohio.gov/Researcher/VTA/OVTATopics/March2015.aspx>

https://www.tax.ohio.gov/portals/0/forms/sales_and_use/exemption_certificates/ST_STEC_CC_FI.pdf

https://www.tax.ohio.gov/portals/0/forms/sales_and_use/exemption_certificates/ST_STEC_CO_FI.pdf

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Cleaning services that general contractor purchased from a third party for a project for the Ohio National Guard were properly taxable under RC 5739.01(B)(3)(j) as building maintenance and janitorial services and were not exempt under RC 5739.02(B)(13), where the services were not incorporated into any

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

structure or improvement and were provided “post-construction”. *Dunlop & Johnston, Inc. v. Testa*, BTA 2014-1513 (2-19-2015), 2015 WL 971079.

The “materials sold to construction contractors for incorporation into a structure or improvement to real property,” which qualify for the exception provided in RC 5739.02(B)(13), are only those materials which ultimately become a part of the completed structure of improvement to real property which is the subject of the contract with the United States government or any of its agencies, or which is accepted when completed by the United States government or any of its agencies; the subject of a contract with an agency of the United States government to build a dam is the permanent dam itself, not a cofferdam which was required in the course of the construction. *Al Johnson Const. Co. v. Kosydar* (Ohio 1975) 42 Ohio St.2d 29, 325 N.E.2d 549, 71 O.O.2d 16.

In order for the sales tax exemption in RC 5739.02(B)(13), which exempts construction materials sold to construction contractors for incorporation into a structure or improvement to real property under a contract with the state or a political subdivision, to apply, the items at issue must be physically and permanently affixed to the structure or real property. Thus, items used by a company for asbestos removal from public buildings do not qualify for the exemption where the items were not permanently affixed to the buildings, but were used in the removal and disposed of at the conclusion of the job. *Asbestos Abatement & Disposal Corp v Limbach*, BTA 89-A-235 (6-14-91).

Work performed by a corporation for nonprofit organizations and churches or governmental subdivisions is not exempt from sales tax pursuant to RC 5739.02(B)(13) when the corporation does not present sufficient records to show it is entitled to the exemption, and does not present sufficient evidence to rebut the presumption of validity given to the tax commissioner's denial of the exemption. *Metzger Drainage, Inc v Limbach*, BTA 87-G-716 (3-30-90).

Materials purchased by a contractor for the construction of parking lots and sidewalks surrounding churches and religious schools are exempt from sales tax under RC 5739.02(B)(13) when applicable zoning laws require these institutions to have parking lots of a certain size, and the functions of the buildings would be limited by a lack of parking lots and sidewalks used by parishioners, students, and others seeking entry to the churches and schools; thus, the lots and sidewalks are essential and integral to the proficient operation of the institutions; moreover, this exemption is not limited to the materials used in the construction of the actual church or school building. *Carroll Contractors Corp v Limbach*, BTA 89-C-306 (4-3-92).

An organization which (1) works closely with a county juvenile court system and its children's services, (2) maintains homes for juveniles, and (3) provides medical attention, psychological services, counselling, educational programs, tutoring, vocational training, and spiritual programs, with no possibility of personal gain or net income for the taxpayer, qualifies for a sales tax exemption pursuant to RC 5739.02(B)(12). *Bethesda Evangelistic Enterprises, Inc v Limbach*, BTA 87-D-265 (10-24-89).

Construction materials purchased for subsidized senior citizen housing are exempt from taxation under RC 5739.02(B)(12) and 5739.02(B)(13) only if the following three conditions are met: (1) that the purchasers are nonprofit corporations; (2) that they operate exclusively for charitable purposes; that is, to promote the relief of poverty, the improvement of health through the alleviation of illness, disease, or injury; and (3) that the purchased construction materials are incorporated into a building used exclusively for charitable purposes. *National Church Residences of Chillicothe v Lindley*, BTA 81-C-216 and 81-C-217 (6-11-84), affirmed by 18 OS(3d) 53, 18 OBR 87, 479 NE(2d) 870 (1985).

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: May 9, 2018

Re: Tax Expenditure Review Committee: TPP Used Directly in Providing Public Utility Services

Overview

Ohio Revised Code 5739.02(B)(42)(a); originally enacted 1935

Property (including fuel) used in production, transportation, or distribution of a public utility service, or used in the repair and maintenance of machinery and equipment used directly in providing a public utility service, is exempt from the sales and use tax.

Statute Language

Sec. 5739.01

As used in this chapter:

(P) "Used directly in the rendition of a public utility service" means that property that is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and that retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used directly in the rendition of a public utility service. In this definition, "public utility" includes a citizen of the United States holding, and required to hold, a certificate of public convenience and necessity issued under 49 U.S.C. 41102.

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. [Emphasis added].

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹	
FY 2018	FY 2019
\$116.3	\$116.3

Departmental Guidance

None

Illustrative Court Guidance² (Synopsis obtained from Westlaw)

Exemption, from definition of “retail sale” that is subject to sales taxes, for a sale if the purpose of the consumer is to use or consume the thing transferred directly in the rendition of a public utility service, applied only to sales of converter boxes to cable television company, and did not apply to revenues from company's rental of converter boxes to customers. *Time Warner Operations, Inc. v. Wilkins* (Ohio, 12-13-2006) 111 Ohio St.3d 559, 857 N.E.2d 590, 2006-Ohio-6210.

Cable television converter boxes supplied to customers of a telecommunications company are “used directly in the rendition of a public utility service” within the meaning of ORC 5739.01(P) and are thus exempt from sales tax, but remote control units supplied in conjunction with the converter boxes are not absolutely essential to the cable service and are thus not covered by the public utility exemption. *Time Warner Entertainment v Zaino*, BTA 2003-R-1810, 2003-R-1811, 2005 WL 2319880, 2319881 (9-16-05).

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² This list is not intended to be all-inclusive.

A trucking company that has no PUCO or ICC authority is not a public utility and its trucks and parts are not used directly in the rendition of a public utility service; therefore, such company cannot avail itself of the exemption from sales and use tax provided by RC 5739.01(E)(2) and 5739.01(Q). *J & S Trucking, Inc v Limbach*, BTA 84-G-220 (8-21-87).

Supreme Court would remand case to Tax Commissioner to determine exempt portion of jet fuel sales pursuant to common-carrier standard, even though seller, on behalf of taxpayer, sought 100% exemption from sales tax and failed to present evidence on apportionment, where Court clarified common-carrier standard, and seller should have had opportunity to present evidence on issue. *Epic Aviation, L.L.C. v. Testa* (Ohio, 06-15-2016) 149 Ohio St.3d 203, 74 N.E.3d 358, 2016-Ohio-3392.

The proper test to be applied to an air carrier to determine if it qualifies for the public-utility-service exemption from the sales tax is whether it undertook to carry for all people, indifferently, as opposed to private carriers, who were not obligated to carry unless the obligation was voluntarily assumed by virtue of a special contract. *Epic Aviation, L.L.C. v. Testa* (Ohio, 06-15-2016) 149 Ohio St.3d 203, 74 N.E.3d 358, 2016-Ohio-3392.

The holding of a certificate of public convenience and necessity is not a prerequisite to public-utility-service exemption from the sales tax. *Epic Aviation, L.L.C. v. Testa* (Ohio, 06-15-2016) 149 Ohio St.3d 203, 74 N.E.3d 358, 2016-Ohio-3392.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: May 9, 2018

Re: Tax Expenditure Review Committee: Property Used to Fulfill a Warranty or Service

Overview

Ohio Revised Code 5739.02(B)(42)(k); originally enacted 1986

Parts and labor used to fulfill a warranty that is provided as part of the price of tangible personal property sold are exempt from the sales and use tax. In addition, parts and labor used to fulfill a warranty, maintenance, or service contract in which the vendor of such warranty or contract agrees to repair or maintain the consumer's tangible personal property, are exempt from the tax.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(42) Sales where the purpose of the purchaser is to do any of the following:

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$52.8	\$53.1	\$52.0	\$52.4	\$52.8	\$53.1

Departmental Guidance

None

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

Vehicle manufacturer appealed from decision of Board of Tax Appeals (BTA), Nos. 2004–T–187 & 2004–T–188, which affirmed two use-tax assessments that had been affirmed by Tax Commissioner, with respect to repair parts and repair services that manufacturer paid for under its “goodwill-repair” program. The Supreme Court, O'Connor, J., held that vehicle buyers, rather than vehicle manufacturer, were the “consumer,” for purposes of use tax. *DaimlerChrysler Corp. v. Levin*, 2008-Ohio-259, 117 Ohio St. 3d 46, 881 N.E.2d 840

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

To: Senator Scott Oelslager, Chair of the Tax Expenditure Review Committee

From: Joseph W. Testa, Tax Commissioner, State of Ohio

Date: May 9, 2018

Re: Tax Expenditure Review Committee: Motor Vehicles Sold in Ohio for Use Outside The State

Overview

Ohio Revised Code 5739.02(B)(23); originally enacted 1971, revised 2007 and 2008

Motor vehicles sold in Ohio to non-residents, when the vehicles are immediately removed from Ohio and titled or registered in another state, are exempt from the sales and use tax. However, no exemption is permitted if the vehicle is titled or registered in a foreign nation (other than Canada), or in a U.S. state that applies its sales tax to an Ohioan purchasing a vehicle in that state.

Statute Language

Sec. 5739.02

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;

Expenditure Amount

Revenue Impact on GRF in Millions from FY18-19 Report ¹		Estimated Revenue Impacts on GRF in Millions for FY 20-21 Report ²			
FY 2018	FY 2019	FY 2018	FY 2019	FY 2020	FY 2021
\$55.4	\$57.1	\$50.5	\$51.3	\$52.1	\$53.1

Departmental Guidance

https://www.tax.ohio.gov/portals/0/forms/fill-in/sales_and_use/exemption_certificates/ST_STEC_NR_FI.pdf

Illustrative Court Guidance³ (Synopsis obtained from Westlaw)

RC 5739.02(B)(23) provides an exemption for the purchase by nonresidents of motor vehicles for immediate removal from Ohio and registration and titling in another state. If a motor vehicle is purchased in Ohio and titled in Ohio, sales tax must be paid on the transaction. *Oty v Lindley*, BTA 81-F-240 (10-24-83).

¹ These amounts are from the FY2018-FY2019 Tax Expenditure Report.

² These estimated amounts are from the yet to be published FY2020-FY2021 Tax Expenditure Report and are subject to change.

³ This list is not intended to be all-inclusive.

OHIO SENATE
Tax Expenditure Review Committee
Minutes
October 17, 2017 Committee
132nd General Assembly

The Tax Expenditure Review Committee was called to order pursuant to the meeting notice at 2:32 p.m. in the Senate Finance Hearing Room of the Statehouse.

Attendance was taken. A quorum was present.

Representative Schaffer moved to appoint Senator Oelslager as chair of the Tax Expenditure Review Committee. Representative Scherer seconded the motion. The motion was agreed to by a vote of 4-0.

The following testimony was provided:

Tax Commissioner Joseph Testa, Ohio Department of Taxation – Interested Party (Written Testimony)

The committee adjourned at 2:52 p.m.

Scott Oelslager, Chair

OHIO SENATE
Committee on Tax Expenditure Review Minutes
April 11, 2018
132nd General Assembly

The Tax Expenditure Review Committee was called to order pursuant to the meeting notice at approximately 10:01 a.m. in the North Hearing Room of the Statehouse.

Attendance was taken. A quorum was present.

The minutes of the October 17, 2017 committee meeting were approved.

The Chair called up the Ohio Legislative Service Commission to provide testimony.

The Chair called up Joe Testa, Commissioner of the Ohio Department of Taxation to provide testimony.

The Chair called up **Department of Tax Code 1.01** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.02** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.03** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.04** for review. The following testimony was provided:

Rob Brundrett, Ohio Manufacturers' Association - Interested Party Testimony (Written Testimony)

Tom Zaino, Manufacturing Policy Alliance - Interested Party Testimony (Written Testimony)

Jeff McClain, Ohio Chamber of Commerce - Interested Party Testimony (Written Testimony)

The Chair called up **Department of Tax Code 1.01** for review. The following testimony was provided:

Lora Miller, Ohio Council of Retail Merchants - Interested Party Testimony (Written Only Testimony)

The Chair called up general testimony. The following testimony was provided:

Wendy Patton, Policy Matters Ohio - Interested Party Testimony (Written Testimony)

The committee adjourned at 11:04 a.m.

Scott Oelslager, Chair

OHIO SENATE
Committee on Tax Expenditure Review Minutes
April 25, 2018
132nd General Assembly

The Tax Expenditure Review Committee was called to order pursuant to the meeting notice at approximately 10:00 a.m. in the Finance Hearing Room of the Statehouse.

Attendance was taken. A quorum was not present.

The Chair called up **Department of Tax Code 1.06** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.07** for review. The following testimony was provided:

Michael Cope, Ohio Coal Association - Interested Party Testimony (Written Testimony)

Tony Seegers, Ohio Farm Bureau Federation - Interested Party Testimony (Written Testimony)

A quorum now present, the minutes from the April 11, 2018 meeting were approved.

The Chair called up **Department of Tax Code 1.08** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.09** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.10** for review. The following testimony was provided:

Lora Miller, Ohio Council of Retail Merchants - Interested Party Testimony (Written Only Testimony)

The Chair called up general testimony. The following testimony was provided:

Zach Schiller, Policy Matters Ohio - Interested Party Testimony (Written Testimony)

The committee adjourned at approximately 10:50 a.m.

OHIO SENATE
Committee on Tax Expenditure Review Minutes
May 9, 2018
132nd General Assembly

The Tax Expenditure Review Committee was called to order pursuant to the meeting notice at approximately 10:01 a.m. in the Finance Hearing Room of the Statehouse.

Attendance was taken. A quorum was present.

The minutes from the April 25, 2018 meeting were approved.

The Chair called up **Department of Tax Code 1.11** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.12** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.13** for review. No testimony was provided.

The Chair called up **Department of Tax Code 1.14** for review. The following testimony was provided:

Joe Cannon, Ohio Automobile Dealers Association - Interested Party Testimony (Written Testimony)

Lora Miller, Ohio Council of Retail Merchants - Interested Party Testimony (Written Only Testimony)

The Chair called up **Department of Tax Code 1.13** a second time for review. The following testimony was provided:

Mark Donaghy, Greater Dayton Regional Transit Authority - Interested Party Testimony (Written Testimony)

The Chair called up **Department of Tax Code 1.15** for review. The following testimony was provided:

Jason Warner, Greater Ohio Policy Center - Interested Party Testimony (Written Only Testimony)

The Chair called up **general testimony**. The following testimony was provided:

Jon Honeck, County Commissioners Association of Ohio - Interested Party Testimony (Written Testimony)

Gloria Aron, Northern Ohioans for Budget Legislation Equality - Interested Party Testimony (Written Testimony)

Chairman Oelslager temporarily designated Representative Schaffer to resume the responsibilities of Chairman of the Tax Expenditure Review Committee in his absence.

Greg Lawson, The Buckeye Institute - Interested Party Testimony (Written Testimony)

Wendy Patton, Policy Matters Ohio - Interested Party Testimony (Written Testimony)

Gavin DeVore Leonard, One Ohio Now - Interested Party Testimony (Written Testimony)
Diane Howard, United Clevelanders Against Poverty - Interested Party Testimony (Written Testimony)
Dale Miller - Interested Party (Written Only Testimony)
Gail Long, Northern Ohioans for Budget Legislation Equality - Interested Party (Written Testimony Only)

The committee adjourned at approximately 10:56 a.m.

Scott Oelslager, Chair