



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. S.B. 243 130th General Assembly (As Passed by the General Assembly)

Sens. Bacon, Faber, Hite, Hughes, Jones, Lehner, Obhof, Oelslager, Schaffer

Reps. Amstutz, Cera, Stautberg, Anielski, Antonio, Baker, Barborak, Boyce, Buchy, DeVitis, Dovilla, Driehaus, Duffey, Grossman, Hood, Hottinger, Milkovich, Patterson, Reece, Strahorn, Sykes, Wachtmann, Young

Effective date: March 23, 2015; certain sections effective December 19, 2014

ACT SUMMARY

- Exempts sales of clothing and school supplies and instructional materials from sales and use taxation during August 7, 8, and 9, 2015.
- Adjusts the rate "brackets" of the financial institution tax (FIT).
- Adjusts the formula used to calculate the amount by which the top FIT bracket rate increases if revenue generated by the FIT falls below a revenue "target."
- Expands a continuing FIT exemption by exempting entities that were grandfathered unitary savings and loan holding companies on January 1, 2012, and nonbank subsidiaries of such entities, and subjects those entities and subsidiaries to the commercial activity tax.
- Eases qualifications necessary for property to qualify for a tax exemption for a cultural center that is a historic structure under renovation and that is conveyed to a nonpublic, noncharitable organization.
- Modifies the investment eligibility requirements for the purchase of a computer data center to be exempt from the sales and use tax.
- Creates the Economic Gardening Technical Assistance Pilot Program in the Development Services Agency to provide eligible businesses with services related to marketing, market research, and the development of business connections.

- Repeals the Program after two years.
- Appropriates \$500,000 per year to the Program in fiscal year 2015.
- Permits a county to pay by credit card for webinar services and purchases of automatic or electronic data processing or recordkeeping equipment, software, and services.
- Permits a county law library resources board to accept payment of fees for services or receive gifts by a financial transaction device, such as a credit or debit card, if the board of county commissioners permits payments to be made by financial transaction device for other types of payments to the county.
- Requires the Ohio Healthier Buckeye Advisory Council to submit its recommendations regarding public assistance programs by December 1, 2015, instead of December 1, 2014.
- Adds the Governor or the Governor's designee to the *ex officio* members of the Ohio Business Gateway Steering Committee.
- Makes other changes to operating and capital appropriations.

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CONTENT AND OPERATION

Sales tax holiday

The act establishes a three-day period in 2015 during which clothing and school supplies and instructional materials are exempt from state and county sales and use taxes. The tax-exempt period is Friday, August 7, 2015, through Sunday, August 9, 2015.

The tax exemption applies to each of the following:

(1) Items of clothing up to \$75 each. "Clothing" means all human wearing apparel suitable for general use, but does not include items such as those used in a trade or business, accessories or sports or protective equipment.

(2) Items of school supplies and instructional materials up to \$20 each. "School supplies" means items commonly used by a student in a course of study and are explicitly listed in the act, including items such as book bags, crayons, erasers, notebooks, pencils, and pens. "School instructional materials" means reference books, reference maps and globes, textbooks, and workbooks only.¹

The exemption applies regardless of whether the sale occurs in Ohio or outside Ohio: if the sale occurs in Ohio, the sale is exempt from the sales taxes; if the sale occurs outside Ohio (for example, by mail-order or over the Internet) but the item is used in Ohio, the sale is exempt from the use taxes that would otherwise apply.²

Financial institution tax (FIT)

The act adjusts the rate "brackets" of the FIT and the formula by the Tax Commissioner used to calculate the amount by which the top-bracket FIT rate increases if revenue generated by the FIT falls below a revenue "target." In addition, the act exempts from the FIT and subjects to the commercial activity tax entities that were grandfathered unitary savings and loan holding companies on January 1, 2012, and nonbank subsidiaries of such holding companies.

Continuing law levies the FIT on the basis of a financial institution's total equity capital in proportion to the institution's gross receipts situated to Ohio ("total Ohio equity capital"). Total Ohio equity capital is taxed at one of three rates depending on the dollar of equity capital being taxed (these rate tiers are often referred to as "brackets").

¹ Section 3.

² Section 3; R.C.5739.02, 5741.02, 5741.021, 5741.022, and 5741.023 (not in the act).

Bracket adjustment

Under prior law, the FIT rate brackets were as follows:

Total Ohio equity capital	Tax rate
≤\$200 million	8 mills (0.8%)
>\$200 million, but ≤\$1.3 billion	4 mills (0.4%)
>\$1.3 billion	2.5 mills (0.25%)

The act moves the \$1.3 billion dollar from being taxed at the 4-mill rate to being taxed at the 2.5-mill rate, changing the top two brackets as follows:³

Total Ohio equity capital	Tax rate
>\$200 million, but <\$1.3 billion	4 mills (0.4%)
≥\$1.3 billion	2.5 mills (0.25%)

Rate adjustment mechanism

Continuing law provides a mechanism under which the Tax Commissioner adjusts FIT rates if revenue from the FIT for the 2014 or 2016 tax year is more than 110% or less than 90% of a target revenue amount. Under continuing law, the target revenue amount for purposes of adjusting the FIT rate in 2014 equals \$200 million and the amount for such purposes in 2016 equals 1.06% of the 2014 amount (\$212 million). If the amount of FIT revenue collected in 2014 is less than 90% of the target amount, only the 0.25% third-tier rate for equity capital in excess of \$1.3 billion would be adjusted upward for tax year 2015 and thereafter. Similarly, if revenue for 2016 is less than 90% of the 2016 target, the third-tier rate, as adjusted for any 2014 shortfall, would be adjusted upward for 2017 and thereafter. Under prior law, the Tax Commissioner would increase the top rate by a percentage equal to the difference between (1) the percentage by which the \$200 million (2014) or \$212 million (2016) target exceeded the actual revenue and (2) 10% of the target amount. It was unclear how this formula would generate a result under prior law, as the formula required the Commissioner to subtract a dollar amount from a percentage.

Calculation of collected taxes

The act maintains the rate adjustment mechanism described above, but makes some modifications to the variables and formula used to determine that rate adjustment. First, the act requires the Tax Commissioner to add, for the purpose of determining the amount of FIT collected in 2014, the total amount of a one-time,

³ R.C. 5726.04(A)(2).

nonrefundable credit claimed in 2014 by certain financial institutions, necessarily increasing this variable for purposes of the 2014 rate adjustment formula.⁴

The added amount accounts for a credit allowed under continuing law that authorizes, for tax year 2014, a nonrefundable credit against the FIT for a financial institution with a dealer in intangibles in its qualifying controlled group — that is, the group of entities grouped together for the purpose of paying the FIT. The credit compensates for the fact that the last year that the dealers in intangibles tax (DIT) was payable — 2014 — was also the first year the FIT was payable; the credit ensures that financial institution groups that include a dealer in intangibles are not required, in effect, to pay both the FIT and the last year's DIT in the same year.⁵

Rate adjustment formula

Second, the act changes the formula the Tax Commissioner employs to calculate an increase in the top-bracket rate if FIT revenue does not exceed 90% of the 2014 or 2016 target amount. As discussed above, prior law required the Tax Commissioner to increase the top FIT rate by a percentage equal to the difference between (1) the percentage by which the applicable revenue target exceeded the actual revenue and (2) 10% of that target amount. The act modifies that calculation by instead requiring the Commissioner to increase the top rate by a percentage equal to the following fraction if FIT revenue does not exceed the 90% threshold:

$$\frac{\text{Denominator} + (90\% \text{ of target amount} - \text{FIT collected})}{\text{Total Ohio equity capital in top bracket} \times 0.0025}$$

To illustrate, assume 2014 FIT revenue equals \$170 million and \$2 billion of Ohio equity capital is taxed in the top bracket as reported by taxpayers in 2014. The Tax Commissioner would determine the percentage to increase the top-bracket rate by solving the following equation:

$$\frac{\$5 \text{ million} + (\$180 \text{ million} - \$170 \text{ million})}{\$2 \text{ billion} \times 0.0025 (= \$5 \text{ million})}$$

Solving the above equation results in three, which, converted into a percentage, requires the Tax Commissioner to increase the top rate by 300%, quadrupling that rate from 0.25% to 1%.⁶ Assuming the \$2 billion in top-bracket equity capital remains unchanged

⁴ R.C. 5726.04(E)(1)(c).

⁵ R.C. 5726.57 (not in the act).

⁶ R.C. 5726.04(E)(3) and (5).

for tax year 2015, the act would increase the total FIT collected within that bracket from \$5 million to \$20 million.

Exclusion for certain holding companies and subsidiaries

The act expands an existing exemption from the FIT for entities that satisfy the federal definition of a "grandfathered unitary savings and loan holding company." Grandfathered unitary savings and loan holding companies (described below) and their directly owned nonbank subsidiaries are not subject to the FIT and their equity capital therefore is not part of the tax base of their banking subsidiaries that are subject to the FIT. The act expands the exemption for such companies and their nonbank subsidiaries by allowing companies that formerly (i.e., on January 1, 2012) satisfied the federal definition of grandfathered unitary savings and loan companies even if they do not satisfy the definition after that date, and by exempting both directly and indirectly owned nonbank subsidiaries. Bank organizations owned by such entities and any other entity on that bank organization's call report continue to be subject to the FIT.⁷

Entities exempted from the FIT are, by implication, subject to the commercial activity tax (CAT) unless they are specifically exempted from the CAT, since the CAT generally applies if the FIT does not.⁸ The CAT is a tax levied on the basis of a business' taxable gross receipts.

Under federal banking law, a grandfathered unitary savings and loan holding company is a holding company that may hold only one savings and loan subsidiary institution and may continue (after 1999) to be engaged in a broad range of nonfinancial business activities unlimited by restrictions on nonfinancial business activities that, without the grandfathering, would apply under the Bank Holding Company Act of 1956.⁹

Property tax exemption for cultural center under renovation

The act expands the potential application of a tax exemption for property belonging to a charitable or educational institution, the state, or a political subdivision and used as a performing arts center. Under continuing law, such property is tax-exempt even if it is conveyed through a single conveyance or a series of conveyances to an entity that is not a charitable or educational institution, the state, or a political subdivision. However,

⁷ R.C. 5726.01.

⁸ R.C. 5751.01(E)(3) (not in the act).

⁹ 12 U.S.C. § 1467(c)(9)(C).

under law mostly unchanged by the act, the exemption continues to apply only if all of the following conditions are satisfied:

(1) The property has been listed as tax-exempt for the ten tax years immediately preceding the year in which the property is conveyed ("conveyance year");

(2) The owner to which the property is conveyed either (a) leases the property, through one lease or a series of leases, to the entity that owned or occupied the property for the ten tax years before the conveyance year or an affiliate of that prior owner or occupant or (b) contracts for the renovation if the property is partly owned by a 501(c)(3) federally tax-exempt organization;

(3) The property includes improvements that are at least 50 years old;

(4) The property is being renovated in connection with a claim for federal historic preservation tax credits;

(5) The property continues to be used for the performing arts; and

(6) The property is certified by the United States Secretary of the Interior as a "certified historic structure" or is certified as being part of a certified historic structure.

The act expands the exemption by easing the first and second qualifications. Instead of having to have been tax-exempt for ten years before the conveyance, the property must have been tax-exempt for only the year immediately preceding the conveyance year, and the lessee need only have owned or occupied the property for that immediately preceding year.¹⁰

Eligibility for computer data center equipment tax exemption

The act modifies the eligibility requirements for the purchase of a computer data center to be exempt from sales and use taxation. Under prior law, one of the eligibility requirements was that one or more taxpayers operating a computer data center business at the project site had to, in the aggregate, make payments for a capital investment project of at least \$100 million at the project site during a three calendar year period. The act instead provides that the \$100 million must be invested in the project site over the following cumulative time periods, based on the project's start year:

(1) For projects beginning in 2013, five consecutive calendar years;

(2) For projects beginning in 2014, four consecutive calendar years;

¹⁰ R.C. 5709.121.

(3) For projects beginning in or after 2015, three consecutive calendar years.¹¹

Economic Gardening Technical Assistance Pilot Program

The act creates the Economic Gardening Technical Assistance Pilot Program. Under the Program, the Development Services Agency (DSA) may provide technical assistance to eligible businesses, including assistance in market research, marketing, and the development of connections with trade associations, academic institutions, business advocacy groups, peer-based learning sessions, mentoring programs, and other businesses. The Director may contract or coordinate with one or more persons to aid in the administration and operation of the Program.

A business is eligible to receive assistance under the Program if it is for-profit, has between six and 99 employees, generates between \$750,000 and \$25 million in annual revenue, has maintained its principal place of business in Ohio for the previous two years, and has increased its gross revenue and number of full-time Ohio employees during three of the past five years.

When selecting eligible businesses to assist under the Program, the Director must select businesses from more than one industry and, to the extent practicable, businesses that are geographically distributed throughout the state. Once selected, a business must agree to attend a specified number of meetings with the Director, to provide the Director with financial and job creation data, and to comply with any additional reporting the Director requires.

Within one year after the creation of the Program, the Director must publish a report that evaluates the effectiveness of the Program, recommends any changes, and details the number of businesses assisted under the Program, the types and locations of such businesses, the number of full-time jobs created as a result of the assistance, and the total compensation paid to full-time employees whose jobs were created as a result of the assistance. The Director must provide the report to the Governor, the Speaker and Minority Leader of the House, and the Majority Leader (President) and Minority Leader of the Senate, and publish the report on the DSA website.

The act requires the Director to adopt any rules in accordance with Ohio's Administrative Procedure Act that are necessary for the administration of the Program.¹²

¹¹ R.C. 122.175.

¹² Section 4.



Termination of the Program

The act terminates the program after two years.¹³

Appropriations

In fiscal year 2015, the act appropriates \$500,000 for the Program from the General Revenue Fund.¹⁴

Use of county credit cards

The act adds two items to the list of allowable expenses that may be paid for with a credit card held by a board of county commissioners or the office of any county appointing authority:

(1) Webinar expenses;

(2) Expenses for purchases of automatic or electronic data processing or recordkeeping equipment, software, or services.

Regarding purchases of (2) above, the following also apply:

(1) If the county has established an automatic data processing board, the county office, officer, or employee authorized to use the credit card complies with the laws governing such boards;

(2) The amount purchased may not exceed \$10,000 per quarter, unless the board of county commissioners adopts a resolution authorizing expenses that exceed that amount during the time period.¹⁵

Payment of fees to county law library resources boards

The act provides that the term "county expenses" includes fees for services and the receipt of gifts to a county law library resources fund authorized by rules adopted by a county law library resources board. If a board of county commissioners authorizes, as it is permitted to under continuing law, county expenses to be paid by financial transaction device, the county law library resources board for that county may accept payments by financial transaction device as if the board were a "county official." Under

¹³ Section 5.

¹⁴ Sections 7 and 8.

¹⁵ R.C. 301.27.



continuing law, "financial transaction device" includes devices such as credit or debit cards.¹⁶

Ohio Healthier Buckeye Advisory Council recommendation deadline

The act delays until December 1, 2015, the deadline by which the Ohio Healthier Buckeye Advisory Council must submit recommendations to the Director of Job and Family Services regarding public assistance service coordination, incentives to foster person-centered case management in public assistance programs, and eligibility determination standardization and automation. Under prior law, the recommendations were required to be submitted by December 1, 2014.¹⁷

Ohio Business Gateway Steering Committee membership

The act adds the Governor or the Governor's designee as an *ex officio* member of the Ohio Business Gateway Steering Committee. The Committee directs the development of the Ohio Business Gateway and oversees its operations.¹⁸

Additional appropriations changes

The act makes the following appropriation changes:

(1) In fiscal year 2015, transfers \$10 million from the Local Government Innovation Fund to be distributed by the Tax Commissioner to townships;¹⁹

(2) In fiscal year 2015, additionally appropriates the following to the Development Services Agency (DSA):

(a) \$500,000 to be used to support the 2015 Major League Baseball All-Star Game in Cincinnati;

(b) \$428,321 to support the Chagrin Valley Little Theater;

(c) \$300,000 to support the James Kilbourne Memorial Library renovation project in Worthington;

(d) \$1,510,000 to Connect Ohio to support the Digital Works Initiative;

¹⁶ R.C. 301.28.

¹⁷ R.C. 5101.92.

¹⁸ R.C. 5703.57.

¹⁹ Section 6.



(e) \$780,500 to Connect Ohio to provide broadband mapping and economic development consultation services.

(3) In fiscal year 2015, appropriates \$200,000 to the Department of Education for the Lake County Incubator Project at Lakeland Community College;

(4) In fiscal year 2015, appropriates the following to the Department of Job and Family Services:

(a) \$1,500,000 to be allocated to the Putnam County YMCA;

(b) \$300,000 to be allocated to provide operating funds for the Mayerson Jewish Community Center, Jewish Family Service of Cincinnati, and Dream Homes, Inc.;

(c) \$1,200,000 to be used for the Child Placement Level of Care Tool Pilot Program.²⁰

(5) Moves responsibility for the \$500,000 capital appropriation for the University Hospital Seidman Cancer Center Proton Therapy Center from the Facilities Construction Commission to Cleveland State University.²¹

HISTORY

ACTION	DATE
Introduced	11-19-13
Reported, S. Ways & Means	02-26-14
Passed Senate (30-2)	02-26-14
Reported, H. Finance & Appropriations	12-09-14
Passed House (79-9)	12-10-14
Senate concurred in House amendments (29-1)	12-11-14

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²⁰ Sections 7 and 8.

²¹ Sections 9 to 12.

