



Department of
Taxation

INTRODUCTION

Chairman Dolan, Vice-Chair Burke, Ranking Member Sykes, and members of the Senate Finance Committee: my name is Jeff McClain, Tax Commissioner for the Ohio Department of Taxation.

Thank you for the opportunity to testify today on the budget tax proposals that are included in Governor Mike DeWine's Fiscal Year (FY) 2020-2021 budget, and various amendments included in the As Passed by House version of House Bill 166.

ODT and Administration Tax Proposals

Lead Abatement Tax Credit – Governor DeWine has been vocal about family safety and protecting Ohio's youngest and most vulnerable citizens. Continuing his efforts in Congress, Governor DeWine's proposal creates an application and certificate program for the Ohio Department of Health to grant an income tax credit for individuals who incur expenses for lead abatement activities. This program also creates a nonrefundable credit against the Ohio personal income tax for said taxpayers. If the amount of the credit is greater than a taxpayer's liability, the credit may be carried forward for up to seven taxable years. The credit is equal to the lesser of the lead abatement costs incurred on the eligible dwelling or \$10,000. Over the biennium, \$5 million per year has been appropriated for this program.

Opportunity Zones -- The 2017 federal Tax Cuts and Jobs Act included the Opportunity Zone program. Working with communities across the state and the U.S. Treasury, Ohio established 320 Opportunity Zones in low-income, high-poverty census tracts. The zones have a high potential for job creation, a vision for new investment, and possibilities for development.

Governor DeWine has included a 10% nonrefundable state income tax incentive in this budget to further draw on those investments to Ohio communities. This new credit is carved out of the budget of an existing but under-utilized tax credit (InvestOhio).

Repayment of Municipal Net Profit Overpaid Distributions – I am happy to report that the centralized collection of the Municipal Net Profit Tax is off to a successful start in its first year, and we are entering our second season. We now have approximately 3,600 companies using the centralized filing system and we expect that number to grow. Taxpayers can file the annual tax return and declaration of estimated taxes electronically through the Ohio Business Gateway or through Modernized e-File (MeF) with an approved software vendor. Please be assured that the Department of Taxation is committed to ensuring that all municipalities receive every dollar they're entitled to, while also making sure that business taxpayers don't make municipal net profit tax payments in excess of what's required.

Taxpayers using the centralized system make payments based on their combined annual estimated tax liability, meaning the total estimated annual tax liability for all municipal corporations in which the taxpayer has business. Taxpayers make one payment each quarter toward that combined estimated annual liability. The state system distributes the money as directed by the taxpayer to the appropriate municipalities. In some instances, a taxpayer may estimate high in one city and low in another and need to adjust that in subsequent quarters. As the year goes by, the actual amount of tax owed becomes clearer, but ultimately, with filing extensions, it can take up to 18 months for the true tax liability to be determined. Once the true liability for a previous year is known, taxpayers often make adjustments to current year declarations, typically in the fourth quarter.

Right now, the only way to compensate for overpayments to a city is for the state to hold off on any additional payments to that city until the amount of money that city has received equals the amount of money it is actually owed. When you hear about a "negative tax distribution", it really means the city has received too much money from one or more taxpayers in prior distributions.

That's why we are seeking a law change that will require municipalities to return excess payments to the state within 30 days. We are rightfully focused on getting revenue to municipalities in a quick and efficient manner; likewise, taxpayer overpayments should be returned in a similar fashion. That will make the entire system run more smoothly. In the event the municipality fails to repay the state in the prescribed

time, the language allows the tax commissioner to deduct the amount owed from the next distribution. There were 154 municipalities overpaid by \$432,000 in the last monthly report, meaning that, without this proposed statutory change, nearly 500 other cities and villages might not receive their full distributions. This change will greatly enhance our ability to fairly distribute the municipalities' taxes.

Municipal Net Profit and Municipal Electric Light and Telephone Companies – Language included in the operating budget creates a separate Municipal Net Profit Tax Fund to receive revenue from the centralized collection system. Under current law, the revenue is deposited into the Municipal Income Tax Fund, which also receives revenue from the state administered municipal income tax on electric and telephone companies.

As Passed by House Items

Personal Income Tax – The House included language to reduce the Business Income Deduction (BID) from \$250,000 to \$100,000 (or from \$125,000 to \$50,000 for married filing separately) and repealed the 3% flat tax on taxable business income over \$250,000. Under the House-passed version, business income over the \$100,000 threshold will now be taxed through the bracketed rate structure.

The bill contains modifications to the bracketed rate structure. The bottom two brackets have been reduced to zero, and for all other brackets, the marginal rates have been reduced by 6.6%.

Also, the House included language to reduce the rate of tax paid by certain pass-through entities on a percentage of the non-resident investors' distributive income from 5% to 3% for individual investors and from 8.5% to 3% for non-individual investors. This provision also authorizes a pass-through entity to avoid withholding the tax if a non-resident investor submits a statement to the entity, subject to the penalties of perjury, affirming that the investor intends to comply with and remit state income tax as required by law.

Sales and Use Tax – Various sales and use tax changes were made by the House.

The House modified the definition of substantial nexus for use tax for remote sellers. This included two

main provisions: inclusion of the South Dakota standard that was upheld by the United States Supreme Court in *Wayfair v. South Dakota*, and marketplace facilitator language.

The House also modified the sales taxation of “transportation network companies” services. The proposed language excludes from the definition of “price” any service fee charged, including the base fare and other surcharges. This change violates the Streamlined Sales and Use Tax Agreement. From the Department’s perspective, these services are already subject to Ohio’s sales tax, and this change to the definition of price would result in a tax cut for this industry.

Exemptions were repealed for the following items: aviation repair and maintenance services and parts, sales of flight simulators, sales of investment bullion and coins, the \$800 cap on sales of qualified fractionally-owned aircrafts, sales of property and services for maintenance and repair of qualified fractionally-owned aircrafts, and the sales of qualified property to qualified motor racing teams.

Exemptions were expanded for manufacturers: to include equipment and supplies to clean processing equipment that is part of a continuous manufacturing operation to produce food (currently limited to dairy products); and to include equipment, supplies, building and janitorial services used to clean or maintain any tangible personal property, machinery, or equipment that is part of a continuous manufacturing operation.

Financial Institutions Tax – Language limits the tax base such that total equity capital in excess of 14% of total assts would not be included in the tax base.

Chairman Dolan and members of the Senate Finance Committee, I am greatly appreciative of your time and would be happy to answer any questions you may have.